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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6694/2015

RAJNESH

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR

..... Respondents

+ W.P.(C) 6696/2015

SUGAN PANDEY

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

+ W.P.(C) 6697/2015

SHYAM LAL

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

+ W.P.(C) 6700/2015

RAMPHER PANDEY

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

+ W.P.(C) 6701/2015

RAVI LEKHRAJ

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

+ W.P.(C) 6707/2015

ROOP RAM

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION
& ANR.

..... Respondents

+ W.P.(C) 6727/2015
SHIV PRASAD GUPTA Petitioner
Versus
SOUTH DELHI MUNICIPAL CORPORATION
& ANR. Respondents

+ W.P.(C) 6748/2015
VIJAY PAL Petitioner
Versus
SOUTH DELHI MUNICIPAL CORPORATION
& ANR. Respondents

Counsel for the petitioners: Mr. Ramesh K. Mishra and Mr. Krishna K. Singh, Advs.

Counsel for the respondents: Dr. Vikrant Narayan Vasudeva, Adv.
Mr. Prasanta Varma, Adv. for SDMC.
Mr. Santosh Kumar Tripathi, Adv. for GNCTD.
Mr. Aditya Singh, Adv. for SDMC.
Mr. Vijay Sharma, Adv. for SDMC.
Mr. Naushad Ahmad Khan, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **11.08.2015**

1. The petitioners in each of these petitions claim to be street vendors, street vending from different locations and have filed these petitions to restrain the respondents, South Delhi Municipal Corporation (SDMC) and the Delhi Police from interfering with their respective vending activities till a

certificate of vending is issued in their favour pursuant to the survey of street vendors across NCT of Delhi.

2. These petitions came up before this Court first on 17th July, 2015 when the counsel for the petitioners stated that these petitions be disposed of in terms of the order dated 5th May, 2015 in W.P.(C) No.4364/2015 and in other connected petitions.

3. Copy of the said order dated 5th May, 2015 annexed to the petitions shows that the said petitions were disposed of, without issuing any restraint orders against the Municipality or the Police and leaving it open for the petitioners therein to approach the Town Vending Committee as and when the same is constituted and taking note of Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (The Street Vendors Act).

4. Attention of the counsel was drawn to the order dated 30th June, 2015 in W.P.(C) No.6115/2015 titled ***Brahm Pal Vs. New Delhi Municipal Corporation*** and other connected petitions dealing with such matters and further providing that if such petitions, in which virtually no reliefs are pressed, continue to be filed, the same may be dismissed with costs.

5. It was on 17th July, 2015 also noticed that the order dated 5th May, 2015 supra, in accordance with which the relief was claimed in these petitions also, did not grant any relief to the petitioners therein. It was yet further observed that the petitions are being filed under a misconception that without filing these petitions, the Town Vending Committee cannot be approached.

6. On the request of the counsel for the petitioners, the matters were adjourned on 17th July, 2015.

7. The counsel for the petitioners has today drawn attention to paras 15 & 16 of *Brahm Pal* supra dealing with a case, where the Appellate Authority constituted in terms of the judgment in *Gainda Ram Vs. MCD* (2010) 10 SCC 715 had restrained the municipality from dispossessing the petitioner therein till his application for permanent *tehbazari* site was considered and recording the statement of the counsel for the municipality that if on verification, the same was found to be correct, the said petitioner will not be dispossessed.

8. The counsel for the petitioners has also drawn attention to the order of the Presiding Officer of the Zonal Vending Committee and the order dated 14th September, 2012 of the Appellate Authority qua the petitioner in *W.P.(C) Nos.6694, 6696, 6697, 6700, 6701, 6707, 6727 & 6748 of 2015*

W.P.(C) No.6694/2015. It is stated that similar orders exist with respect to the petitioner in other petitions on the basis thereof, it is contended that the petitioners herein are at par with the petitioner referred to in paras 15 & 16 of ***Brahm Pal*** and thus are also entitled to a restraint order against dispossession.

9. I may at the outset say that there is no restraint order in favour of petitioner referred to in paras 15 & 16 of ***Brahm Pal***; all that is recorded is the statement of the counsel for the Municipality.

10. A perusal of the aforesaid orders shows that the petitioner in W.P.(C) NO.6694/2015 was found to be neither a Category I squatter nor a Category III squatter; however the Appellate Authority had directed *status quo* order in view of the provisions of The Government of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

11. The counsel for the petitioners, on enquiry, states that the petitioners herein are not basing their claims on the provisions of the Government of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. It is contended that since there was an order of *status quo* in favour of the petitioners herein, during the earlier regime, i.e. prior to the coming into

force of the Street Vendors Act w.e.f. 5th March, 2014, the same should continue, till the claims of the petitioners under the said Act are considered.

12. The Street Vendors Act does not contain any provision, giving any priority or beneficial treatment or weightage to such of the street vendors who, under the earlier regime may have been held to be Category I or Category III vendors or who may have interim order/s in their favour. Section 3 of the said Act requires the Town Vending Committee, to be constituted thereunder, to conduct a survey of all existing street vendors and accommodate them in the vending zones in accordance with the plan for street vending and the holding capacity of the vending zones. Sub-section (3) thereof provides that till then, no street vendor shall be evicted or relocated.

13. It is thus not as if street vending is to be unregulated and there is an absolute right to street vend from wherever one may desire. It cannot also be lost sight of that streets are primarily meant for passage, of pedestrians and vehicles and unregulated street vending invariably is an obstruction to movement on the streets. This Court, in exercise, particularly of writ jurisdiction, has to pass orders which advance substantial justice, keeping in view all relevant factors, and cannot be oblivious of the said concerns.

14. Though, undoubtedly there has been a delay on the part of the authorities concerned in constituting the Town Vending Committee and in framing the scheme within the meaning of Section 38 of the Street Vendors Act, but significantly no petition has come seeking mandamus to the concerned authorities to fulfil their statutory obligations in this regard. Instead, every day petitions are filed by persons, claiming to be street vendors and seeking to restrain the Municipal Authority and the Police from interfering in their street vending activity. In none of these petitions, as noticed in *Brahm Pal*, any such relief has been given. These petitioners are satisfied merely with the orders disposing off the petitions referring to Section 3(3) of the Act. It is for this reason only that this Court, in *Brahm Pal* was constrained to observe that such petitions, in future, will be dismissed with costs. Obviously, the delay on the part of the Authorities in framing the scheme, constituting the Town Vending Committee is to the benefit of the persons claiming to be street vendors in as much as taking advantage of Section 3(3) supra, they continue to street vend from wherever they desire and which they may not be entitled to, once the survey aforesaid has been conducted and pursuant to which only some would be accommodated in the vending zones to be identified.

15. Notwithstanding Section 3(3) of the Street Vendors Act, the petitioners herein seek restraint against the Police and SDMC from interfering with their vending activities. This Court would not be justified in issuing such restraint without satisfying itself, (a) that the petitioners in fact have been street vending from the site from which they claim; (b) whether the said street vending is an obstruction to free movement on the streets / pavements of the pedestrians and vehicles; (c) how many other street vendors are vending from the said site or in vicinity thereof and if it is not possible to accommodate all of them, which one of them should have priority; (d) whether such street vending poses any security or fire or other hazard; (e) whether such street vending is in infringement of the rights of any other person's residence or commercial establishment abutting the said street etc. Not only is the said exercise not in the domain of jurisdiction under Article 226 but undertaking such an exercise would tantamount to this Court conducting the survey and formulating the scheme which the other Authorities, under the Act aforesaid, have been mandated to do.

16. This Court, if were to in all such petitions, without enquiry as aforesaid, issue restraint orders sought, would be creating chaos and jungle raj on the streets of Delhi with the likely possibility of all the streets /

pavements being blocked and orders with respect to same site being passed in favour of more than one person and fights / disputes for primacy erupting between street vendors and which the law enforcement agencies would be unable to control because of each having an order in his / her favour.

17. The Act, vide Section 3(3) has already afforded the protection to the street vendors. The Police and the Municipal Authorities are expected to abide by the law of the land. If the Court were to in addition, issue restraint orders as are sought in these petitions, it would be taking away the jurisdiction of the said Authorities to, on the spot resolve the conflicts if arising between the rights of the street vendors under the Street Vendors Act and the rights of others viz. pedestrians, motorists, owners of properties abutting streets etc. under other laws and their other statutory obligations. It is for this reason only that this Court, as a general rule, has not been issuing orders as are sought in these petitions.

18. These matters are thus squarely covered by the order dated 30th June, 2015 in ***Brahm Pal*** supra. The petitioners also filed these petitions just to create a record of having filed the petitions and without even seeking any actual restraint as sought against the authorities. This is clear from the

petitioners having sought disposal of the petition in accordance with the order dated 5th May, 2015 supra.

19. The counsel for the petitioners has drawn attention to the order of the Division Bench dated 10th December, 2014 in W.P.(C) No.8661/2014 titled *National Association of Street Vendors of India (NASVI) Vs. South Delhi Municipal Corporation* whereby a status report was directed to be filed, whether the street vendors have been evicted from the areas to which the petition pertained and directing the municipality to allow the said street vendors to return. However, the same is an interim order and the counsel is unable to state as to what was the final outcome of the petition or whether the petition is still pending. The counsel for the petitioners at one stage stated that W.P.(C) No.8661/2014 is still pending and at another stage that the said petition is disposed of but the order disposing of the petition is not handed over.

20. The petitioners having not withdrawn the petitions inspite of their attention being drawn to the order dated 30th June, 2015 in *Brahm Pal*, the petitions are dismissed with costs on each of the petitioner of Rs.1000/- payable to the respondent SDMC.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

AUGUST 11, 2015

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(corrected and released on 26th August, 2015)