

\$~
*
+

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 10608/2022, CM APPL. 30726/2022, CM APPL.
32742/2022 & 32743/2022

Reserved on: 14th September, 2022
Pronounced on: 26th September, 2022

MAHABIR & ORS. Petitioner

Through: Mr. Shivam Kumar and Mr.
Gaurav Mishra, Advocates

versus

MUNICIPAL CORPORATION OF DELHI
& ORS. Respondent

Through: Mr. Tushar Sannu, Standing
Counsel with Ms. Pooja
Gupta, Advocates for MCD.
Ms. Urvi Mohan, Advocate for
Delhi Police/GNCTD.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE AMIT SHARMA

Judgment

AMIT SHARMA J.

1. The present writ petition preferred on behalf of the petitioners prays as follows:

“(i) Declare that the actions of the respondents of demolishing/breaking asunder the shops of the petitioners and their sole means of livelihood are illegal, arbitrary and violative of Fundamental Rights of the Street Vendors (Petitioners). And/or

(ii) Issue a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s), permanently restraining the respondents from creating any obstruction or impediment or from taking any other coercive action against the Street Vendors which may directly or indirectly interfere with their Right to Livelihood as enshrined under Article 21 of the Constitution of India. And/or

(iii) Issue a writ in the nature of Mandamus, or in the nature of prohibition, or any other appropriate writ(s), order(s) or direction(s), directing the respondents not to evict, restrain, demolish, or disturb Street Vendor's small business, till the final disposal of this instant Writ Petition. And/or

(iv) Direct the Respondent No. 1 to pay compensation and punitive damages in the amount of Rs. 50,000/- each for demolishing the shops of the Street Vendors, infringing their fundamental and statutory rights, and for their pain, harassment and suffering”

2. It is the case of the petitioners that they have been vending on their respective sites on the basis of vending certificate issued to them from the competent authority and despite the same, respondent/MCD has been removing the shops of the petitioners from the said sites. The aforesaid action, as per the petitioners, is arbitrary and illegal in as much as no notice, as mandated by Section 18 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act , 2014 which provides for giving a minimum 30 days notice, for taking any such action *qua* the vendors was given. In this factual context the petitioners have made the aforesaid prayers.

3. At the very outset, we are of the opinion that the prayers made in the present writ petition are not maintainable in view of the averments made in the petition and the documents attached therewith.

4. By way of prayer (i), the petitioners have sought a declaration that *“the actions of the respondents of demolishing/breaking asunder the shops of the petitioners and their sole means of livelihood are illegal, arbitrary and violative of Fundamental Rights of the Street Vendors (Petitioners)”*. The said prayer, on the face of the documents attached by the petitioners cannot be granted. The petitioners have placed reliance on the certificates of vending issued to them by the South Delhi Municipal Corporation bearing URI numbers 4974464, 1781142, 4686896 and 3440563, respectively.

5. It is noted that the vending certificates attached by the petitioners in support of their right to vend have stipulated mandatory conditions, which are required to be complied with by the vendors. One of the conditions viz no. 14 to the said certificate is *“no permanent or temporary structure will be erected/constructed by the seller at the point of sale”*. Thus, in our view, the admission of the petitioners to the existence of their ‘shops’, which have been demolished/broken, is prima-facie a violation of the aforesaid condition stipulated in the subject vending certificate. A translated copy of one such certificate attached with the petition as Annexure P1-Colly is reproduced below:

South Delhi Municipal Corporation

Vending Certificate

(C.O.V.)

URI: 4974464

Name of Street Vendor	Mahabir
Sex/age	Male/67
Father's/Mother's/Husband's name	Ram Anuj / Kailashi Devi
Aadhar Card number, if any	702715254711
Mobile Number	9953691222
Type of Vendor	Fresh fruits/ Vegetables/ Perishables
The zone where the vendor has given permission to sale	South Zone, Ward- S- 63*
Per month license fee (could be increased from time to time)	
Time of issuance of COV	
Signature of authority	
Stamps	

- Validity of Registration: Initially valid for five years from the date of issue and renewal after every five years and subject to fulfillment of the condition of Tahbazari/vending. (CoV) is non-transferrable.
- The said Vending Certificate will be valid till the Vending Zone is determined.
- After determination of the vending zone, new certificate according to the scheme along-with G.I.S. data will be issued.

CONDITIONS FOR CERTIFICATE OF VENDING

1. The seller should not have got any other permanent or long term sales certificate.
2. Vendor certificate will be non-transferable.
The seller is required to adhere to the sale period and zone prescribed by the TVC and the local body.
3. The Seller will not give on rent/lease the certificate of sale, in whatever condition it may be, in any manner.
5. The seller should not currently have any communicable disease.
6. Cleanliness will be maintained by the seller in the selling place/zone and the surrounding area and the health of the public will be taken care of.
7. Vendor has to at all time display a copy of Certificate of sale at a prominent place on the vending place/zone and will have to show necessary document to the TVC/ concerned inspector if required.
8. All reasonable efforts will be made by the street vendor so that pedestrians and traffic are not obstructed in any way.
9. Seller will not sell any harmful, dangerous and polluted items. This should also be ensured that the products sold and the services provided to the public is of the prescribed public health hygiene condition and other safety standards.
10. The street vendor shall not do any unauthorized / illegal activity.
11. The Mobile Vendor shall not stay at any place in any Hawking/Vending Zone for more than 30 minutes or as prescribed by the TVC or carry out any sales activity. Vendor shall not stay in any non-vending zone or conduct any sales activity.
12. Vendors shall not block footpaths and shall not carry out sale activities on roads. Care should be taken to walk on footpath in front of vending counters/stalls.
13. Violations may result in cancellation or suspension of the certificate of sale.
14. No permanent/temporary structure will be erected/constructed by the seller at the point of sale.
15. The seller will have to comply with the health and hygiene conditions in accordance with the local laws and orders of the courts.
16. Vendor has to comply with all the conditions mentioned in Delhi Rail Vendor Livelihood Protection by Delhi Government and the Sales Regulation Scheme 2019.

6. Even otherwise, apart from the bald assertions made in the petition, that shops of the present petitioners were

demolished/broken, the petitioners have not placed on record any document or material to show that any action was taken by the respondent as alleged. It is pertinent to observe that it has been averred in the petition that the petitioners still continue to vend at the respective sites.

7. Prayer (ii) to (iv) stem from the main prayer (i), which in our opinion is in direct conflict with the mandatory conditions stipulated in the vending certificate relied upon by the petitioners. No direction or relief can be granted to permit something which is otherwise impermissible in law or prohibited by an existing covenant, as in the case of the present petitioners. As pointed out hereinbefore, the petitioners seek to legitimise their action which is violative of the condition stipulated in the vending certificate. Admittedly, the petitioners are presently vending and cannot therefore, seek interim consequential directions in the present circumstances wherein the main relief is itself not maintainable. The prayer for compensation will also stand on a similar footing.

8. In view of the foregoing, we are of the considered opinion that the prayers made in the present writ petition are not maintainable and therefore, the writ petition is dismissed.

9. The writ petition accordingly stands disposed of.

AMIT SHARMA
JUDGE

SIDDHARTH MRIDUL
JUDGE

SEPTEMBER 26TH, 2022/hb