



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

% **Judgment reserved on : 17 December 2024**
Judgment pronounced on: 08 January 2025

+ **FAO 106/2023**

SH. SURESH CHAND SHARMA & ORS.Appellants
Through: **Mr. Shailender Negi, Adv.**

versus

NORTH DELHI MUNICIPAL CORPORATOIN & ORS.

....Respondents
Through: **Ms. Puja S. Kalra, SC with**
Mr. Virendra Singh, Adv.
with Mr. Sanjay Chauhan,
AO, KPZ, MCD.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This first appeal is preferred by the appellants under Section 104 (1) (i) read with Order XLIII Rule 1 (a) and Section 151 of the Code of Civil Procedure, 1908 [**“CPC”**] assailing the impugned order dated 19.02.2022 passed by the learned Additional District Judge-08, West District, Tis Hazari Courts, Delhi [**“learned ADJ”**], whereby the suit¹ filed by the appellants was returned in terms of Order VII Rule 10 of the CPC for its presentation before the appropriate forum.

2. Having heard the learned counsels for the parties and on perusal of the record, we find that that impugned order dated 19.02.2022 cannot be sustained in law.

¹CS No. 1027/2018 titled as ‘Suresh Chand Sharma & Ors. v. North Delhi Municipal Corporation’



3. Shorn of unnecessary details, the appellants instituted a suit against the respondents on the foundation that they are hawkers/street vendors carrying on their vending activity for more than three decades, and lastly, they were carrying on business from an authorized squatting zone at Sports Complex Supporting Wall opposite Balaji Action Hospital, Delhi by virtue of being *tehbazari* holders in the name of the appellants No. 1 and 2 whereas as appellant No.3 being the wife and legal heir of the deceased, who was a also *tehbazari* holder as reflected in the Zonal list prepared by the respondents.

4. It was claimed that the appellants fell in the first category of street vendors as classified in the judgment dated 12.05.1993 passed by the Supreme Court in W.P.(C) 1699/1987 titled as '**Gainda Ram & Ors. v. MCD & Ors.**' and their names were even found in the list prepared by the West Zone for allotment of alternative vending sites at Peripheral Road, BG-6 Block, Paschim Vihar, Delhi starting from Dalao to Jalebi Chowk, Paschim Vihar, Delhi.

5. The grievance of the appellants was that despite making repeated requests and regular visits to the office of the respondents seeking allotment of permanent vending sites, no site was allotted to them and they were subjected to constant harassment by the MCD² officials as well as Delhi Police. It was claimed that despite directions dated 22.10.2009 by the learned Presiding Officer of the Zonal Vending Committee to allot regular squatting sites as per the seniority list, nothing was done, and ultimately on 02.05.2018 the officials of the respondents from the Keshavpuram Municipal Zone visited the

² Municipal Corporation of Delhi



site along with demolition squad and demolished their sites and structures with the assistance of the police in an unlawful manner.

6. In the said backdrop the appellants claimed the following reliefs:

a. mandatory injunction in favour of plaintiff and against the defendants thereby directing the defendants to restore the vending structure as it was on 02.05.2018 before same was demolished and install all equipments which were in the stall of the plaintiffs.

b. recovery of damages amounting to Rs. 15,00,000/- towards loss of livelihood, structure and articles resulting from the illegal acts of defendant no. 3-10 and 13 except defendant no.5 and same may be directed to be attached/recovered from the salary of defendant no.3 to 10 except defendant no.5 as well as from the personal assets of defendant no.13, along with interest.

c. permanent injunction in favour of plaintiffs and against the defendants, their servants, agents, assigns, attorney or any other persons acting under them from interfering in any manner with the peaceful possession of the suit premises by the plaintiffs, more specifically shown in the photographs as well as the site plan annexed herewith.

d. any other or further order, relief or direction which this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants.”

7. On filing of the aforesaid suit, summons for settlement of issues were issued to the respondents and they filed their written statement. It appears that a challenge was mounted by the respondents regarding the maintainability of the suit and the learned ADJ upon hearing the parties passed the impugned order dated 19.02.2022, the operative portion of which reads as under:

“10. From the pleadings of the parties, an admitted position has emerged as reflected in various correspondence placed on record by the plaintiffs with the defendants no.1 to 12 which specifically mentions that on verification by the Licensing Inspector, the plaintiffs were found squatting at Paschim Vihar area in Squatting Zone must not have been removed without the provisions of The



Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 which provides for a comprehensive procedure not only for removal of illegal squattings but also provides for redressal of grievances of street vendors who were removed from their squatting sites.

11. Section 20 of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is relevant for the present case. It reads as under: {in the footnote type 2014 Act}

"20. Redressal of grievances or resolution of disputes of street vendor- (1) The appropriate Government may constitute one or more committees consisting of a Chairperson who has been a civil Judge or Judicial magistrate and two other professional having such experience as may be prescribed for the purpose of deciding the applications received under sub section (2); Provided that no employee of the appropriate Government or the local authority shall be appointed as member of the committee. (2) Every street vendor who has a grievance or dispute may make an application in writing to the committee constituted under sub section (1) in such form and the matter as may be prescribed. (3) On receipt of the grievance or dispute under sub section (2), the committee referred to in sub section 1 shall, after verification and enquiry in such manner as may be prescribed, take steps for redressal/ of such grievance or resolution of such dispute, within such time and in such manner as may be prescribed. (4) Any person who is aggrieved by the decision of the committee may prefer an appeal to the local authority in such form, within such time and in such manner as may be prescribed. (5) The local authority shall dispose of the appeal received under sub section (4) within such time and in such manner as may be prescribed; Provided that the local authority shall, before disposing of the appeal, give opportunity of being heard to the aggrieved person."

12. The plain reading of Section 20 of the Street Vendors Act, 2014 shows that it incorporates the complete procedure for disposal of grievances of street vendors right from raising of claim to final disposal of appeal. In the judgment of *Gainda Ram & Anr. v. MCD, Town Hall & Ors.*, (1993) 3 SCC 178, Hon'ble Supreme Court has held as under:



"No further litigation by or on behalf of any squatter/hawker will be entertained but if the MCD violates any part of this order the concerned party governed by this order will be entitled to file an IA/or directions."

13. Vide order dated 08.11.2016 in W.P. (C) 6130/2016 the matters pertaining to street vendors were directed to be listed before a Special Bench. The operative part of the order dated 08.11.2016 is reproduced as under:

" ... 9. Having regard to the fact that the questions of law and fact involved in the petitions and the appeals are of public importance and it is necessary for this Court to strike a balance between the right of the street vendors to carry on their trade and the larger interest of general public, we are of the view that it is essential that all the cases relating to/ arising out of the issues of the street vending and the implementation of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 are heard by a Special Bench.

10. Registry is directed to place the papers before the Chief Justice on the administrative side today itself for appropriate orders ... "

14. Accordingly, Hon'ble the Chief Justice has nominated Hon'ble DB-VIII as the Special Bench to hear all the cases relating to/arising out of the issues of the street vending and the implementation of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and directed that all pending Writ Petitions/LPAs before Single Benches/Division Benches as well as Fresh Petition/LPAs be listed before Hon'ble DB-VIII.

15. In view of the above, once it has been found that the plaintiffs have been covered under the scheme as drafted pursuant to the directions of the Hon'ble Supreme Court and have been found to be eligible squatters and entitled for allotment of sites as per provisions of Street Vendors Act, **this court ceases to have jurisdiction to entertain any petition/ suit filed by the plaintiffs in respect of their right as eligible squatters or violation thereof by North Delhi Municipal Corporation.**

16. Accordingly, I am satisfied that the plaintiffs instead of approaching this Court should have either pursued their grievances with the concerned Committee as envisioned u/s. 20 of the Street Vendors Act or they may approach the Hon'ble High Court of Delhi in Writ Jurisdiction as the jurisdiction of



this Court is barred in view of the directions of the Hon'ble Supreme Court and Hon'ble High Court of Delhi in the cases noted above. The plaint is hereby returned to the plaintiffs in terms of Order 7 Rule 10 CPC for its presentation before the appropriate Forum.” {Bold portions emphasized}

8. At the outset, we find the aforementioned order not sustainable in law for the reasons that we do not find any provision in the **2014 Act**³ which expressly bars the jurisdiction of the Civil Court. It is well settled that under Section 9 of the CPC, ordinary Civil Courts have jurisdiction to try all suits of civil nature except such suits, the cognizance of which is either expressly or impliedly barred. There is no doubt in saying that when a legal right is infringed, a suit would lie unless there is shown a specific bar against the entertainment of such civil suit. It is also well settled that there would arise every presumption in favour of existence of a right and remedy under the jurisdiction of Civil Courts and the exclusion thereof would normally be an exception.

9. On aforesaid legal proposition, we may refer to the decision in the case of **Venkamamidi Venkata Subba Rao v. Chatlapalli Seetharamaratna Ranganayakamma**⁴ wherein it was held as under:

“Under the normal course of civil procedure, the jurisdiction of the trial of the civil suits in relation to the matters covered under the Acts being time-consuming and tardy the lack of financial support or otherwise incapacity in defending or working the rights in the civil courts and by hierarchy of appeals defeat justice. Obviously, therefore, the civil suits by necessary implication stand excluded unless the fundamental principles of procedure are not followed by the tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires tribunals to enquire into the rival

³ The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

⁴ (1997) 5 SCC 460.



claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil court stands excluded.”

10. In light of the aforementioned proposition of law and coming to the instant matter, we find that the provisions of Order VII Rule 10 of the CPC could not have been invoked in the matter. At the cost of repetition, there is no specific provision under the 2014 Act exclusively barring the jurisdiction of the Civil Courts. While there may be an issue of jurisdiction of the Civil Court insofar as relief (a) is concerned, rest of the issues are clearly in the domain of the Civil Courts. The seeking of other reliefs is not barred by the 2014 Act either. Lastly, the direction by the learned ADJ that the appellants should invoke the writ jurisdiction of this Court is also not sustainable. The writ jurisdiction of this Court is by way of being a Constitutional Court and not a Civil Court where the parties may be directed to approach in terms of Order VII Rule 10 of the CPC.

11. In view of the foregoing discussion, the present appeal is allowed and the impugned order dated 19.02.2022 passed by the learned ADJ is set aside. The matter is remanded back to the learned ADJ with the direction to proceed in accordance with law.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 08, 2025

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