

**IN THE HIGH COURT OF SINDH, KARACHI**

**C. Ps. No. D-5877 & 6253 of 2015**

**C. P. No. D-8630 of 2017**

*Present:*

*Mr. Zafar Ahmed Rajput, J.*

*Ms. Sana Akram Minhas, J.*

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| Petitioner in<br>C.P. No. D-5877/2015  | : | New Karachi Meena Bazar Hawker Association,<br>through its General Secretary, through<br>Mr. Muhammad Arif Afzal Khan, Advocate.                                                                                                                                                                                                                                                                                                                                         |
| Respondents<br>No. 1 to 5.             | : | Commissioner Karachi; Asst. Commissioner<br>(General) Karachi Division; SSP. District Central<br>S.H.O. PS., New Karachi, and Province of Sindh,<br>through Secretary Local Government, through<br>Mr. Pervaiz Ahmed Mastoi, A.A.G.                                                                                                                                                                                                                                      |
| *****                                  |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Petitioner in<br>C. P. No. D-6253/2015 | : | New Karachi Meena Bazar Hawker Association,<br>through its General Secretary, through<br>Mr. Muhammad Arif Afzal Khan, Advocate.                                                                                                                                                                                                                                                                                                                                         |
| Respondents<br>No. 1 to 10.            | : | Commissioner, Karachi Division;<br>Additional Commissioner, Karachi Division;<br>Deputy Commissioner, District Central;<br>Kamal Hakeem ( <i>Focal Person</i> ) District Central;<br>SSP District Central; Asst. Commissioner, Sub-<br>Division New Karachi; SHO PS New Karachi;<br>Principal Secretary to Chief Minister Sindh;<br>Director Bureau of Supply & Prices, and<br>Local Government, through Government of Sindh<br>through Mr. Pervaiz Ahmed Mastoi, A.A.G. |
| *****                                  |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Petitioner in<br>C.P. No. D-8630/2017  | : | New Karachi Meena Bazar Hawker Association,<br>through General Secretary, through<br>Mr. Muhammad Arif Afzal Khan, Advocate.                                                                                                                                                                                                                                                                                                                                             |
| Respondents<br>No. 1 to 5.             | : | Province of Sindh, through Chief Secretary;<br>Deputy Commissioner Central, Karachi;<br>Addl. Deputy Commissioner Central, Karachi;<br>Sr. Clerk Hassan, DC Office Central Karachi,<br>and SHO PS New Karachi Industrial Area,<br>through Mr. Pervaiz Ahmed Mastoi, A.A.G.                                                                                                                                                                                               |
| Respondent<br>No.6.                    | : | Abdul Rafique<br>(Nemo)                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Respondent<br>No.7.                    | : | District Officer-III, Bachat Bazar & Price Control<br>E & IP Group of offices CDGK, through<br>Mr. Muhammad Khurram Ghayas, Advocate<br>alongwith Mr. Naveed Deputy Director (Sports),<br>KMC.                                                                                                                                                                                                                                                                           |
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| Date of hearing                        | : | 11.11.2024                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Date of order                          | : | 11.11.2024                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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**ORDER**

**ZAFAR AHMED RAJPUT, J:** - By this common order, we intend to dispose of above mentioned three Constitutional Petitions, as the same being arisen out of common facts and involving identical issues, have been heard by us together.

2. Briefly stated, the facts of the cases, as disclosed in the memos of the Petitions, are that the Petitioner is an Association registered under the Societies Registration Act, 1860, in the name and style of “New Karachi Meena Bazar Hawkers Association”, comprising hawkers operating small stalls in weekly Bachat Bazaars at different locations in North Karachi; that approximately 100 weekly Bachat Bazaars are organized in Karachi, including 22 in New Karachi Town, with the approval of the competent authorities and upon payment of prescribed charges; that the Petitioner-Association was initially permitted to organize Bachat Bazaars by the then Deputy Commissioner, Karachi-Central (“D.C., Central”), vide letter No. DCC/JB386/91; however, the permission was subsequently cancelled without lawful justification; that the Petitioner-Association challenged the cancellation by filing an appeal before the then Chief Minister, Sindh, which was allowed vide letter No. PA/DS-II/CMS/94-11323, but the concerned authorities continued to obstruct its business; that, owing to the illegal acts and omissions of the concerned authorities, the Petitioner-Association instituted Civil Suit No. 463 of 1994 before the IV<sup>th</sup> Senior Civil Judge, Karachi-Central, for declaration and permanent injunction, which was decreed on 16.02.1999; that, in C.P. No. 1578 of 2015, the Petitioner-Association deposited the prescribed charges before the Nazir of this Court and paid the requisite amount up to December 2015; that despite making payments against challans issued by the official Respondents, the Petitioner-Association and its members were allegedly threatened and harassed by the concerned administrative and police authorities, who obstructed the Bachat Bazaars and threatened to remove stalls, tents and goods without due process of law; that, after a letter dated 23.06.2015 cancelling the arrangement for Budh Bazaar was challenged in C.P. No. 3801 of 2015 and its operation was suspended by this Court, the Petitioner-Association was allegedly pressurized to withdraw the petition on the assurance that the Bachat Bazaar would be restored, following which it withdrew the petition and the Bazaar was restored; that the harassment allegedly continued and the concerned officer, at the instance of the Commissioner, Karachi, issued another letter dated 01.09.2015 cancelling permission to organize the Bachat Bazaar; hence, the Petitioner-Association filed **C.P. No. D-5877 of 2015**, *inter alia*, seeking a declaration that the letter dated 01.09.2015 is *ultra vires*, illegal and unlawful, along with a

consequential injunction restraining the official Respondents from harassing it in the course of organizing the Bachat Bazaar, wherein this Court, vide order dated 21.09.2015, suspended the operation of the said letter; that, subsequently, letters dated 29.09.2015 and 02.10.2015 cancelling permission to organize six Bachat Bazaars were challenged in **C.P. No.D-6253 of 2015** with a similar prayer, wherein this Court, vide order dated 07.10.2015, suspended the said letters; that, despite the aforesaid orders, the Petitioner-Association was prevented from organizing Bachat Bazaars, leading to the filing of C.P. No. D-7842 of 2017, which was disposed of on 21.11.2017 with directions to the Respondents to act in accordance with law; that, thereafter, the Addl. Deputy Commissioner issued a letter dated 31.10.2017 granting an NOC to one Abdul Rafique to organize Monday Bachat Bazar in the same area where the Petitioner-Association had previously been permitted to do so; hence, the Petitioner-Association filed **C.P. No. D-8630 of 2017** seeking similar relief.

3. Learned counsel for the Petitioner has contended that the then Chief Minister, Sindh, had allowed the Petitioner's appeal, and the subordinate administrative authorities had no lawful jurisdiction to override or rescind that order except through proceedings permissible under the law; that no specific law confers upon the administrative authorities an unqualified power to prohibit Bachat Bazaars or cancel permissions in respect of Bazaars organized on land owned by the KDA, KMC or DMC, particularly where the prescribed charges have been paid to the respective landowning bodies; hence, the impugned cancellation letters and restrictions are without lawful authority, ultra vires and liable to be set aside; that, out of 22 Bachat Bazaars operating in New Karachi Town, only seven associated with the Petitioner-Association have been restrained from operating, while similarly situated bazaars continue to function, despite no complaints regarding prices or quality of goods, rendering such selective action discriminatory, arbitrary and violative of the right to equal treatment; that the administrative authorities, in collusion with police officials and at the instance of influential persons, have continuously threatened and harassed the Petitioner-Association, removed stalls of poor hawkers without due process and demanded illegal gratification for their release and resumption of business, thereby abusing their official authority for unlawful gain; that the aforesaid actions, being arbitrary, discriminatory, mala fide and motivated by extraneous considerations, have caused financial loss and hardship to the Petitioner-Association and violated the fundamental rights guaranteed under Articles 4, 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"); that the Petitioner-

Association was condemned unheard, as no prior notice or opportunity of hearing was afforded before cancellation of the permissions, in violation of the principles of natural justice, particularly *audi alteram partem*; hence, the impugned actions are unlawful, unreasonable, contrary to law and of no legal effect.

4. Conversely, learned counsel appearing on behalf of KMC as well as learned AAG have maintained that the Petitioner-Association is not a welfare organization but is, in substance, operating as an extortion racket by forcibly organizing Bachat Bazaars in defiance of the Government's authority and in disregard of the directions and orders issued by the District Administration; that the members of the Managing Committee of the Petitioner-Association are not themselves hawkers; rather, they collect money from stallholders and distribute the same among the office-bearers and other persons providing them covert support, without expending any amount for the welfare of the hawkers; that the primary objective of the Government in organizing Bachat Bazaars is to facilitate consumers by providing them with essential commodities at affordable prices, and not merely to provide commercial opportunities to hawkers and if the management of such Bazaars is entrusted to hawkers or their association, consumer rights may be compromised and the effective enforcement of the applicable rules and regulations may be undermined; that the Petitioner-Association pays only nominal rent and discloses approximately 20% of the actual area occupied by the Bachat Bazaars, thereby causing substantial loss to the public exchequer, while retaining the entire income generated from their operations; that the Petitioner-Association operates the Bachat Bazaars purely on a commercial basis, without extending any tangible benefit either to the hawkers or to the consumers, contrary to the very purpose for which such Bazaars are established; that the Bachat Bazaars are not owned by the Petitioner-Association, whereas the competent authority responsible for organizing and regulating such Bazaars, under the supervision and control of the District Administration, is the Bureau of Supply and Prices, Government of Sindh; that the Bachat Bazaars are organized on both private and Government-owned land situated in the vicinity of important Government offices, hospitals, and residential localities and their operation results in obstruction of traffic and unauthorized encroachments upon roads, thereby causing inconvenience to public offices, visitors, and local residents; that the management of the Bachat Bazaars intimidates and obstructs the lawful owners of vacant plots situated in the vicinity, thereby preventing them from raising construction on their respective properties in accordance with law; that the Bachat Bazaars have become a persistent source of nuisance and inconvenience to residents and public institutions, as the hawkers

encroach upon public spaces, including service roads, resulting in traffic congestion and other adverse effects on the surrounding neighbourhood; that, in response to public complaints, the NOC granted for the Bachat Bazaars was suspended and the Bazaars were closed by the District Administration on purely administrative grounds and in the public interest and the said action was not motivated by any personal grudge or animosity against the hawkers or the Petitioner-Association; that the instant Petitions being devoid of merit, are liable to be dismissed.

5. We have heard learned counsel for the Petitioner, learned counsel for KMC, and learned AAG, and have perused the material available on record.

6. The Petitioner's case rests primarily on three grounds: the order passed by the then Chief Minister, Sindh, allowing its appeal in 1994; the decree dated 16.02.1999 passed in Civil Suit No. 463 of 1994; and the interim orders passed by this Court from time to time in earlier constitutional petitions. None of these, however, confers upon the Petitioner any vested or perpetual right to organize Bachat Bazaars at particular locations. The order of the Chief Minister and the decree arose from a permission granted in 1991 and its subsequent cancellation. Neither can be construed as precluding the competent authorities from regulating the use of public or private land, or from withdrawing or suspending permissions in the public interest in the future. The interim orders relied upon by the Petitioner were passed in separate petitions at different stages and were, by their very nature, temporary. Some of those petitions were disposed of with directions to the Respondents to act in accordance with law, while one was withdrawn by the Petitioner itself. None of these proceedings resulted in an adjudication conferring upon the Petitioner a permanent or indefeasible right to organize Bachat Bazaars at the locations in question.

7. A permission or NOC to organize a Bachat Bazaar on public land does not, by itself, confer any proprietary or possessory right and remains subject to lawful regulation by the competent authorities. Payment of charges or challans in respect of such use does not transform the permission into a right of ownership, tenancy, or permanent occupation. The Petitioner has not referred to any statutory provision, rule, or policy conferring upon an association of hawkers an enforceable right to organize Bachat Bazaars or to continue such activity notwithstanding a decision to the contrary by the competent authority. It is also an admitted position that the Bureau of Supply and Prices, Government of Sindh, is the competent authority for organizing and regulating Bachat Bazaars under the

control of the District Administration. The Petitioner has not demonstrated that it holds any authorization from the said Bureau. Consequently, the permissions relied upon by the Petitioner cannot override the applicable statutory and administrative framework governing the organization and regulation of Bachat Bazaars.

8. The Respondents claim that the Bachat Bazaars cause traffic obstruction, encroach upon service roads, and create nuisance for nearby Government offices, hospitals, and residents, and that the NOC was suspended in the public interest in response to complaints received in this regard. The allegations that the Petitioner operates the Bazaars as a commercial enterprise, collects and retains money from stallholders, declares only a portion of the actual area occupied, and obstructs the owners of vacant plots raise disputed questions of fact requiring evidence. Such questions cannot appropriately be determined in the exercise of constitutional jurisdiction. Similarly, the allegations of collusion between the administration and police officials, extortion from hawkers, and favouritism towards other Bachat Bazaars are serious in nature; however, no cogent particulars or material have been placed on record to substantiate them. Mala fides cannot be presumed and must be established through specific pleadings and convincing evidence. The Petitioner has also failed to demonstrate that the other Bachat Bazaars allegedly operating in New Karachi Town are similarly situated or are being conducted on comparable land and under permissions of a similar nature. Article 25 of the Constitution guarantees equal treatment to persons similarly placed; however, it does not entitle a person to insist upon the continuation or extension of an unlawful or unauthorized activity merely because similar activity is allegedly being carried on by others. Accordingly, the plea of discrimination is not substantiated.

9. As regards the plea of denial of a hearing, the Petitioner has failed to establish any vested right to organize the Bachat Bazaars at the locations in question. The suspension of an NOC on grounds of public interest, particularly in response to complaints concerning obstruction, encroachment, and public nuisance, is an administrative measure intended to regulate the use of the affected premises and surrounding areas. The Petitioner's own case reflects that it has repeatedly approached this Court and that, on various occasions, the operation of the impugned letters was suspended or the Respondents were directed to act in accordance with law. In the circumstances, no violation of Articles 4, 9, 18, or 25 of the Constitution has been established. The right to carry on a lawful trade or

business under Article 18 is subject to regulation in accordance with law and does not confer an unrestricted right to occupy public roads or land, or to establish and operate a market thereon, without the requisite authorization from the competent authority. The individual members of the Petitioner-Association, being hawkers, remain at liberty to seek stalls in Bachat Bazaars lawfully organized or authorized by the competent authorities, subject to the applicable rules and conditions.

**10.** For the foregoing reasons, we find no merit in these Petitions, which are accordingly dismissed, along with the pending application(s), if any. It is, however, clarified that the competent authorities shall act strictly in accordance with law and shall not subject the hawkers to harassment or extortion. Any hawker aggrieved by an unlawful act on the part of any public official shall be at liberty to seek redress before the appropriate forum in accordance with law.

**11.** The above are the reasons for our short order dated 11.11.2024.

JUDGE

JUDGE

*Athar Zai*