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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8641/2007

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PRATAP SINGH & ANR.

..... Petitioner

Through Mr. M.M. Kashyap, Adv.

versus

D.D.A. & ORS.

..... Respondent

Through Ms. Sangeeta Chandra, Adv. for DDA.

Mr. Amit Paul, Adv. for the MCD.

Ms. Amita Arora, Adv. for Ms. Meera

Bhatia, Adv. for the Respondent.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

O R D E R

10.11.2009

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1. This writ petition was filed originally by 21 persons seeking issuance of appropriate writ or direction to the Municipal Corporation of Delhi, Delhi Development Authority and the police authorities prohibiting them from displacing the petitioners from the place they were hawking in the Nehru Place area.
2. The respondents have contested the maintainability of the writ petition inter alia on the ground that the petitioners have no legal right, title and interest to the site at which they were allegedly hawking. The specific counter stands filed by the MCD and the DDA to the effect that the petitioners stood removed and there was no hawking at Nehru Place. In addition, the MCD has filed an affidavit dated 21st October, 2008 pointing out that Smt. Sheela Devi, Shri Gurmukh, Shri Madan Lal and Shri Sumeet Chand, who are petitioner nos.14, 15, 16 & 17 respectively in this writ petition, were the only eligible

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tehbazari holders of the MCD. It is further submitted that they were allotted tehbazari sites in the year 2002 at East of Kailash and they had also taken physical possession of the allotted sites. The MCD has placed a copy of the allotment/possession letters relating to Shri Gurmukh and Shri Madan Lal dated 9th July, 2002 and the letter dated 23rd May, 2002 in respect of Sumeet Chand on record.

So far as the remaining petitioners were concerned, it is contended that they were unauthorised vendors in the area.

3. It is to be noted that by the order dated 13th January, 2009, the writ petition qua the other petitioners was also dismissed and consideration of the present matter was confined to these four petitioners alone.

4. The MCD has also taken a stand that in the year 2003, the area of Nehru place was transferred to the jurisdiction of the Delhi Development Authority.

5. Perusal of the record of the writ petition would show that the writ petitioners had failed to disclose the material facts of allotment of the tehbazari to the petitioner nos.14 to 17 in the year 2002 by the MCD in the writ petition. In this background, by the order dated 24th August, 2009, the court noticed the objection of the respondents with regard to the concealment of the material facts by these petitioners in the writ petition which was also unexplained. The matter was adjourned to today only to enable the learned counsel for the petitioners to take instructions with regard to the subject matter of the writ petition.

6. Affidavits have been filed by the petitioner nos.14 to 17 contending that

they were not put in possession of the tehbazari sites at East of Kailash on account of certain objections by the Residential Welfare Association. Whatever be the position, the fact that the persons who were actually allotted sites in the year 2002 was by itself material fact which had bearing on the question which has been raised. The writ petitioners have failed to even remotely suggest such allotment in the writ petition and asserted right and claim over alleged hawking sites in the Nehru Place area. Apart from the concealment of the material facts, it, therefore, remains an admitted position that the petitioners were only practicing unregulated hawking in the Nehru Place area and in the face of the allotment of the sites in East of Kailash, they had no legal rights whatsoever to continue to hawk in the Nehru Place area.

7. Mr. Kashyap, learned counsel for the petitioner has urged that these petitioners are poor hawkers and submits that they are entitled to continue to hawk in the Nehru Place area in view of the judgment dated 17th April, 2009 rendered in LPA No.766/2008 entitled Manushi Sangathan, Delhi Vs. Delhi Development Authority & Ors.

8. Perusal of the judgment would show that this appeal was filed against the judgment dated 4th September, 2008 of the learned Single Judge dismissing the writ petition relating to a pilot project for regulated hawking which was effectuated by the appellant which was an NGO in conjunction with the statutory authorities. The pilot project for 67 hawking sites was reduced to hawking sites in the Nehru Place area which was regulated by the NGO as well as by the authorities. For the reason that the DDA was arbitrarily removing

hawkers who were operating under the pilot project and who were complying with the imposed terms without compliance of principles of natural justice in a post haste manner and without following any of the guidelines of the Supreme Court, the Master Plan of Delhi 2021 and the guidelines laid down under the National Policy on Urban Street Vendors and the scheme of the MCD for Squatters/Hawkers, 2007. In this view of the matter, the court had directed the DDA to continue with the pilot project and had permitted the stay of only 67 vendors to hawk in the area which was demarcated by the DDA prior to their removal on 19th April, 2008.

9. My attention is drawn, however, to the observations in para 40 of the judgment whereby the Division Bench left open the question as to whether Nehru Place should be declared a no hawking zone and the question of demarcating non-vending areas decided by the DDA after making reference to the Ward Vending Committee and on the basis of the directions issued by the Supreme Court and in terms of the scheme of the MCD. It is to be noted that the Division Bench had also directed that if any of the hawkers had also opted for a new site, they would not be entitled for the benefit of the order.

10. It requires to be borne in mind in the instant case that the scheme of making allocation of tehbazari is worked out by the MCD and the DDA is only the land owning agency.

11. It is stated by Mr. Sangeeta Chandra, learned counsel for the DDA that a considered decision has been taken at the level of Lieutenant Governor of Delhi in terms of the directions made in the judgment dated 17th April, 2009

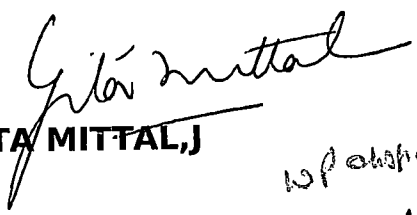
that Nehru Place is a no hawking zone. This decision, however, would have no bearing in any case on the outcome of the present writ petition.

12. In view of the directions made by the Division Bench, the petitioners have been allotted tehbazari rights in the East of Kailash area and would have no right to hawk in the Nehru Place area and are not entitled to any relief in this petition.

13. The petitioners were admittedly found entitled to allotments of hawking sites in 2002. A submission is made on behalf of the petitioners that they were not given possession of the sites in East of Kailash, it shall be open for the petitioner nos.14 to 17 to approach the concerned authorities including the MCD or the Zonal Vending Committee with regard to the tehbazari sites which were allotted to them in the year 2002 or for any other available sites. The petitioners grievance with regard to the 2002 sites be considered by the authorities. In case the earlier allotted sites are not available, these four petitioners shall be considered for allotment under any appropriate scheme. In case these petitioners are aggrieved by the decision which is taken, it shall be open for the petitioners to assail the same by appropriate proceedings.

This writ petition is disposed of in the above terms.

NOVEMBER 10, 2009
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GITA MITTAL, J

WP disposed of
fresh CN 15592/07 (0/646 Petitioners
Nos. 14 to 17 v/State 151 etc)

+ W.P.(C) 8641/2007

PRATAP SINGH & ANR. Petitioner
Through Mr. B.L. Wali, Mr. Suraj Kumar and
Mr. Sarul Jain, Adv.

versus

D.D.A. & ORS. Respondent
Through Ms. Sangeeta Chandra, Adv. for
R-1
Mr. Ravi Bassi, Adv. for MCD
Ms. Amita Arora for Ms. Meera Bhatia, Adv.
for R-3

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL

ORDER
11.12.2009

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CM No.15592/2009

The prayer made in this application praying for a direction to the respondents to permit the petitioner to hawk at the site in Nehru Place is the same prayer which was made in the writ petition. Such prayer stands rejected by the order passed on 10th November, 2009 when the writ petition was rejected.

Counsel for the petitioner contends that despite the directions made on 10th November, 2009, the respondents are not considering the representation made by petitioner nos. 14 to 17. Mr. Ravi Bassi who represents the MCD in other cases and is present in court has been directed to appear in the present

matter.

It is accordingly directed that the respondents shall ensure that the representation of the petitioner made pursuant to the order dated 10th November, 2009 is positively considered and a view taken thereon within a period of six weeks from today.

This application is disposed of in the above terms.

Dasti to parties.



GITA MITTAL,J

DECEMBER 11, 2009
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