

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 3931/2011 and C.M. No.8163/2011**

Decided on 06.09.2011

IN THE MATTER OF :
JAGDISH PRASAD GUPTA

..... Petitioner

Through: Mr. Anil K. Aggarwal and
Mr. Abhay Kumar, Advocates

versus

MCD

..... Respondent

Through: Mr. Dev P. Bhardwaj, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing of an order dated 25.02.2011 passed by the Appellate Authority constituted under the directions of the Supreme Court of India for dealing with the cases of vendors in appeal.
2. The brief facts of the case, as per the petitioner, are that since the year 1982, he has been conducting his vending activities from in front of

Vishal Cinema, Rajouri Garden and that he has been regularly paying the *tehbazaar*i fee to respondent/MCD. In the year 1995, without affording a hearing to the petitioner, respondent/MCD allotted to him an alternate vending site at Khayala Village near Tilak Nagar. However, as the new site was found unsuitable by the petitioner, he continued to vend from his old site. Further, as per the petitioner, in the year 2000, respondent/MCD started issuing him receipts of *tehbazaar*i fees showing that he was vending from two other sites, namely Raghbir Nagar and Tilak Bazaar. The petitioner contends that on inspection of both the sites, he found them unsuitable for vending and continued vending from his old site in front of Vishal Cinema.

3. The petitioner claims that he was forcefully removed by respondent/MCD from his vending site in front of Vishal Cinema, Rajouri Garden in the year 2008. Aggrieved by the said removal action, the petitioner filed WP(C) No. 8231/2008, wherein an order dated 24.11.2008 was passed directing respondent/MCD to ensure that the site allotted to the petitioner at Raghbir Nagar be handed over to him. As per the petitioner, the said site was never handed over to him, and in spite of that, respondent/MCD continued to issue *tehbazaar*i receipts to him for the site at Raghbir Nagar.

4. Subsequently, the petitioner filed another petition, registered as WP(C) No.10244/2009, praying *inter alia* that in case he is not permitted

to vend from his original site at Rajouri Garden, he be allotted an alternate site. Vide order dated 20.07.2009, passed in the aforesaid petition, the petitioner was granted liberty to approach the Zonal Vending Committee to agitate his grievance therein. On approaching the Zonal Vending Committee with the prayer that the vending site allotted to him at Raghbir Nagar be changed to a site either at Vishal Cinema or on Chaudhary Balbir Singh Marg or in Janakpuri or Karampura, vide order dated 29.1.2010, the Presiding Officer held that only the Appellate Authority constituted under the scheme laid down by the Supreme Court would be competent to consider a change in the *tehbazaari* site.

5. Thereafter, the petitioner filed a third writ petition, registered as W.P.(C) 6612/2010 praying *inter alia* for restraining the respondent/MCD from forcibly dispossessing him from the hawking/squatting site opposite Vishal Cinema. Vide order dated 28.09.2010, the relief sought by the petitioner in the aforesaid writ petition was declined by observing that the petitioner could not claim any right to hawk/squat particularly opposite Vishal Cinema and further that the said right could have been agitated by him only before the Zonal Vending Committee, which Committee, having decided not to allot him the specific site sought by the petitioner, he cannot now insist on the said allotment before this Court. It was further held that the petitioner had legitimately been allocated a hawking/vending site, which he chose to abandon of his own volition hence now he cannot

be permitted squat at a site of his choice. As a result, the aforesaid writ petition was dismissed. However, the Zonal Vending Committee was directed to decide the application of the petitioner for change of site in a time bound manner. As the Presiding Officer of the Zonal Vending Committee held that the application of the petitioner for change of the site was to be moved before the Appellate Authority, the petitioner approached the Appellate Authority by filing appeal bearing No.140 of 2010.

6. By the impugned order dated 25.02.2011, the appeal preferred by the petitioner was dismissed by the Appellate Authority on the ground that he had been unauthorizedly squatting in front of Vishal Cinema, Rajouri Garden and even after being allotted an alternate site at Raghurir Nagar, he continued to unauthorizedly vend from the old site. Aggrieved by the said order, the petitioner first approached the Supreme Court by filing W.P.(C) No.216/2011. Vide order dated 6.5.2011 passed by the Supreme Court, the aforesaid petition was dismissed as withdrawn while giving liberty to the petitioner to approach the High Court, if so advised. Now the petitioner has filed the present petition.

7. Learned counsel for the petitioner contends that the impugned order has denied the petitioner his right to squat on a public street by dismissing his appeal. It is further urged that in the case of 'Gainda Ram & Ors. Vs. MCD & Ors.' reported as **(2010) 10 SCC 715**, the Supreme

Court has held that conducting hawking and street vending activities to earn a livelihood is a fundamental right and in the present case, the same has been violated by the respondent/MCD and, therefore, the impugned order dated 25.02.2011 is liable to be quashed.

8. A perusal of the facts of the case suggests that over the years, the petitioner had been given the option of more than one alternate site, however he insisted on continuing his vending activities unauthorizedly from the site in front of Vishal Cinema. Even after a direction was passed in W.P.(C) 8231/2008 on 24.11.2008, the petitioner refused to take possession of the site allotted to him at Raghubir Nagar. This is inspite of repeated communications of respondent/MCD to him, in this regard. It is thus evident that the petitioner was intentionally avoiding shifting to the alternate site offered to him at Raghubir Nagar. Instead, he has been making repeated requests to respondent/MCD to grant him a site of his choice, which is not permissible. It does not lie in the mouth of the petitioner to claim a right of squatting/hawking at a particular site, after having willfully avoided taking possession of the site duly allotted to him by the respondent/MCD.

9. Furthermore, reliance placed by the petitioner on the decision of the Supreme Court in the Gainda Ram (Supra) case is misplaced, as the said judgment protects the rights of the citizens to squat/hawk in order to earn a livelihood. But the said judgment does not come to the aid of the

parties like the petitioner, who insist on conducting their vending activity from a site of their own choosing. In a city like Delhi, where the number of squatters/hawkers is very large, it is imperative that respondent/MCD regulate the allotment of vending sites in an impartial and fair manner, and the provisions of Article 226 of the Constitution of India cannot be invoked for the purpose of coercing the respondent/MCD to allot to the petitioner, a particular site of his choice. If this is allowed, this court would be flooded with a plethora of litigation by such other squatters/hawkers seeking a vending site of their choice, which is not permissible and contrary to the very object of the Supreme Court in setting up a three Tiered Redressal Forum for addressing the concerns of hawkers/squatters. Furthermore, learned counsel for the petitioner has not been able to point out any illegality, arbitrariness or perversity in the impugned order dated 25.02.2011, passed by the Appellate Authority, for this Court to exercise its discretion in favour of the petitioner.

10. In light of the facts and circumstances of this case, this petition is dismissed in *limini* as being devoid of merits, alongwith the pending application.

HIMA KOHLI,J

SEPTEMBER 06, 2011
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