

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2198/2011**

Decided on: 10.02.2012

IN THE MATTER OF
GOMTI PRASAD AND ORS.

..... Petitioners

Through: Mr. M.M. Kashyap, Advocate

versus

MCD AND ORS.

..... Respondents

Through: Ms. Mansi Gupta, Advocate for R-1/MCD.
Ms. Shobhana Takiar, Advocate for R-2/DDA.

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HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. The present petition is filed by eight petitioners praying *inter alia* for directions to the respondents, MCD, DDA and Delhi Police to permit them to carry on their vending activities from the sites at Nehru Place Complex, till verification of their claims or till alternate allotments are made in their favour.

2. On 01.04.2011, when the matter came up for admission, counsel for respondent No.2/DDA, who had appeared on advance notice, had stated that Nehru Place is a No Hawking Zone and the petitioners cannot place

reliance on the judgment of a Division Bench of this Court dated 17.04.2009 in **LPA No.766/2008** entitled Manushi Sangathan, Delhi vs. Delhi Development Authority or that of the Single Judge dated 02.06.2010 in **W.P.(C) 2545/2010** entitled Virender & Ors. vs. DDA. It was also noticed that the eligibility of the petitioners herein had not been determined as yet. Thereafter, counter affidavits were sought from the respondents. As per the first affidavit filed by respondent No.1/MCD, it was stated that none of the petitioners were recognized *Tehbazari* holders and they were not paying any *Tehbazari* fee. It was further averred that the receipts enclosed with the writ petition were merely festival receipts issued for 1-3 days during the festive season and the same cannot create any *Tehbazari* right in favour of any of the petitioners. As regards petitioner No.1, respondent No.1/MCD had stated that even as per the said petitioner, his case had already been rejected by the MCD. In respect of the remaining petitioners No.2 to 8, it was asserted that they had not taken any steps to approach respondent No.1/MCD for allotment of *Tehbazari* sites.

3. In view of the aforesaid averment made by respondent No.1/MCD in its affidavit which was refuted by the counsel for the petitioners who asserted that the remaining petitioners No.2 to 8 had submitted their applications before the Ward Vending Committee, MCD which were pending

disposal, counsel for the petitioners was granted permission to file an additional affidavit furnishing the details of the dates on which such applications were submitted by petitioners No.2 to 8 before the Ward Vending Committee, MCD alongwith other relevant details.

4. Aggrieved by the aforesaid order, the petitioners had preferred an *intra*-court appeal before the Division Bench, registered as LPA No.880/2011. In its order dated 24.10.2011, the Division Bench had noted that time had been granted to the appellants/petitioners herein to file an additional affidavit at their own instance and therefore, the only course open to them was to file the affidavit. In view of the submission made by the counsel for the appellants (petitioners herein) that they would be filing the affidavit in the present proceedings, the aforesaid appeal was dismissed as withdrawn.

5. On 29.11.2011, the additional affidavit filed by petitioner No.2 was examined. The statement of the counsel for the petitioners was also recorded to the effect that the petitioners did not have any other document in their power and possession and the receipts enclosed with the additional affidavit were an acknowledgement of the fact that applications had been submitted by petitioners No.2 to 8 to the respondent No.1/MCD. In view of the aforesaid affidavit and the submission made on behalf of the petitioners

No.2 to 8, counsel for respondent No.1/MCD was directed to verify as to whether the photocopies of the receipts submitted by the petitioners could be linked with their applications to establish as to whether their applications are pending before the Ward Vending Committee of the MCD.

6. Now an additional affidavit has been filed by respondent No.1/MCD confirming *inter alia* that petitioners No.2 to 8 had applied under the National Vending Policy 2007. It is further averred that approximately 12000 applications have been received under the aforesaid policy and since no identified sites are available in the Central Zone, MCD under the Scheme, all the applicants have been waitlisted. As regards the Central Zone, respondent No.1/MCD states that 413 sites were identified in 29 municipal wards in the Central Zone and out of these 413 sites, only 80 sites were approved by the police authorities for allotment of *Tehbazari*. Subsequently, 832 sites identified and recommended by the MCD for clearance to be given by the police authorities but, all the said sites were rejected in totality by the police authorities. It is lastly stated that 349 authorised *Tehbazari* holders, who had been allotted *Tehbazari* sites in different areas in Central Zone have been removed by MCD in the wake of the development works that were being executed by the government agencies, including Commonwealth Games 2010 and that these 349 *Tehbazari* holders are under category-I and

are entitled to be adjusted in the first instance. Thus, it is submitted by the counsel for respondent No.1/MCD that as the petitioners are waitlisted candidates before the Ward Vending Committee, they have to wait for their turn to mature alongwith other similarly placed applicants under the Scheme. It is also pointed out that Nehru Place District Centre had been transferred by MCD to the DDA on 04.06.2002 and ever since then, DDA has been managing the said area.

7. In view of the position as has emerged above, this Court is not inclined to grant any order in favour of the petitioners as claimed by them as it would jeopardize the interest of all other waitlisted candidates, who are patiently awaiting their turn for allotment of a vending site in terms of the directions of the Supreme Court. Even as per respondent No.1/MCD, authorized *Tehbazari* holders falling under category-I, who are to be given first priority, are also waiting allotment of vending sites in the MCD jurisdiction. The petitioners cannot claim priority over them and nor can they take advantage of the decision of the Division Bench in the case of Manushi Sangathan (supra) or that of the Single Judge in the case of Virender & Ors. (supra), as much water has flown under the bridge ever since then. Further, it may be relevant to note that a status *quo order* dated 15.07.2011 had been passed by the Supreme Court on some miscellaneous

applications presented by parties in **W.P.(C) 1699/1987** entitled Gainda Ram & Ors. vs. NDMC & Ors., which was examined by this Court and it declined to pass any interim orders in a batch of matters relating to vendors, who had sought identical relief as the petitioners herein. A detailed judgment dated 24.10.2011 in this regard has already been delivered by this Court in the said batch of matters, lead matter being **W.P.(C) 4743/2011** entitled Shiv Nath Choudhary vs. NDMC & Ors., holding inter alia that it would not be appropriate for the Court to grant stay orders in the face of the status quo order dated 15.07.2011 passed by the Supreme Court. It was further reiterated that any such order shall be an anti-thesis to the orders of the Supreme Court, which must be respected both, in letter and spirit. The aforesaid decision was challenged by the petitioners therein in an *intra* court appeal registered as **LPA No.998/2011** and connected matters and has been duly upheld vide order dated 02.02.2012. Aggrieved by the dismissal order, the parties have approached the Supreme Court. Such an option is also available to the petitioners herein.

8. This Court is therefore not inclined to entertain the present petition in respect of any of the petitioners or direct the respondents to grant them any interim vending sites till completion of verification of their claims. The petitioners are not differently placed from other waitlisted applicants in

the MCD jurisdiction and have to therefore wait for their turn to mature. The petition is accordingly disposed of. However, it is clarified that the petitioners shall be entitled to approach the Ward Vending Committee, MCD for verifying the status of their pending applications.

Parties are left to bear their own costs.

FEBRUARY 10, 2012
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(HIMA KOHLI)
JUDGE