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

+ ***W.P.(C) 5628/2011***

% **Judgment dated 13.02.2013**

QAMRUDDIN Petitioner
Through Mr. Sanobar Ali Quereshi, Advocate
versus

THE COMMISSIONER (MCD)AND ORS. Respondents
Through Mr. Nalin Tripathi, ASC for MCD

+ ***W.P.(C) 5629/2011***

MEHRAJ AHMAD Petitioner
Through Mr. Sanobar Ali Quereshi, Advocate
versus

THE COMMISSIONER (MCD)AND ORS. Respondents
Through Mr. Nalin Tripathi, ASC for MCD

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Counsel for the parties submit that both these writ petitions can be disposed of by a common order. For the sake of convenience the facts of the Writ Petition No.5629/2011 are being noticed. As per the petitioner, 132 shops / stalls at F-1/G, Sundar Mandi (Murga Market), Nand Nagri, Delhi were allotted to squatters of EWS categories measuring 6' x 8', under Survey Scheme in the early eighties by the Slump and J.J. Department of the MCD Office of the Deputy Director (SCP), for selling/ trading fish, chicken, meat, vegetable, medicine, general store and repair etc.; and 14 persons were allotted shops at Sundar Nagri for sale of

chicken/meat/fish remaining 118 allottees were allotted shops for the purposes of other than the above trade.

2. Counsel for the petitioner submits that the entire market is popularly known as “Murga Market” and many allottees in the market had applied for running chicken/ meat shops although they were allotted shops for selling vegetable, medicines etc. Option was granted by the MCD for change of use of the shops, so that the licences can be granted to them as well.
3. As per the writ petition under the aforesaid scheme on 24.5.2006 petitioner came in possession of shop No.117, G-Block, Sunder Nagri, Nand Nagri, Delhi, by virtue of a GPA executed in his favour. Petitioner was using the shop for selling chicken. Similarly, the petitioner in the writ petition No.5628/2011 came into possession of the shop No.16, G-Block, Sunder Nagri, Nand Nagri, Delhi, by virtue of GPA and he was also using the said shop for selling chicken. On 1.2.2007 the MCD provided an ad-hoc registration certificate of shops/ commercial establishment bearing registration No.1110036353 in favour of the petitioner under the category of trade of “meat/ poultry”. The petitioner deposited licence fee of Rs.1000/- in cash, a copy of the ad-hoc registration certificate dated 1.2.2007 has been placed on record in both the writ petitions. The petitioners had also applied to the MCD for grant of health trade licence for which registration fee of Rs.250/- each was deposited with the object of running a chicken shop from the premises. Copies of the receipts have also been filed by the petitioners.
4. Since the shops of the petitioners were not being regularized by the respondents, petitioners filed applications dated 27.6.2007 for regularization of the shops. No response was received, however, subsequently the respondent no.4, Veterinary Officer called upon the

petitioners to place documents on record within 15 days of receipt of the communication dated 3.11.2008, Consequently, both the petitioners submitted documents as desired by respondent no.4 except the document mentioned at serial no.16, which was NOC from the DDA and Slum and J.J. Department, which was not made available as the concerned employees of the department were busy in election duty. Since no response was received, the petitioners filed Writ Petition No.11591/2009 and 10526/2009 *inter alia* praying for regularization of the shops and for issuing municipal trade licence at the aforesaid shops. Both the writ petitions were disposed of on 30.7.2009 & 10.9.2009 respectively with a direction to the MCD to process the pending applications within four weeks. Subsequently a provisional demand letter was issued to the petitioners and they were called upon to deposit Rs.81,626/- which were deposited vide challans dated 11.11.2009 and 24.11.2009 and 10.11.2009 and 11.11.2009.

5. On 4.1.2010 in both the writ petitions the Slum and J.J. Department of MCD issued a letter of regularization with respect to the shops of the petitioners, but no response was received from respondent no.1 for the issuance of licence. Thereafter representations were also made by petitioners on 12.1.2010 and on 5.8.2010 to the respondent no.4. The petitioners learnt that the respondents were denying grant of licence on the plea that the shops existed within 50 meters of a place of worship. It is submitted that the shops in Murga Market were allotted for meat trade in the year 1987 and thus, place of worship, if any, could not have been allowed to be constructed, to take away the fundamental rights of the petitioners to carry on their trade and business. Even otherwise, it is submitted that the temple if any was an encroachment on public land and was initially only 8' x 12' and was never at a distance of 50 metres from

the shops, or else at the first instance itself a Murga mandi would not have been created.

6. It is further the case of the petitioner that till the year 2007 the area of place of worship was less than 400 sq. ft. and hence, could not have been covered under the definition of Religious Place, as per the meat shop licencing policy, when the petitioner applied for trade licence on 28.7.2006. Counsel further contends that the religious place was extended beyond 400 sq. ft. only in the year 2009. It is also contended by counsel for the petitioner that the Religious Place existed adjacent to the dumping site and only when the dumping was removed, the temple extended to an area of 365 sq. ft., which is less than 400 sq. ft. Reliance is placed on a certificate issued by a structural consultant in this regard.
7. Counsel for the petitioner also submits that the petitioners have been running from pillar to post by filing the writ petitions, contempt petitions, but the trade licence has not been granted to them. It is also the case of the petitioners that the respondents have not acted in a fair, just and in a uniform manner, as the municipal trade licences have been granted, to allottees of the adjoining shops of the petitioners i.e. shop No.126 on 19.9.2001, shop No.17, shop No.56, shop Nos.8 & 9. Counsel also submits that there is discrimination to such an extent that the licences were granted with respect to the shop Nos.8 and 17 without seeking change of use. Counsel also contends that there is nothing on record nor the MCD ever granted permission for carrying the construction over the land where the religious place exists which information has been received by them under the RTI Act.
8. It is also the case of the petitioner that by an order dated 8.12.2010 passed in Writ Petition No.8191/2010, 8194/2010 and 8152/2010 the High Court had directed the MCD to decide the application of the petitioners for grant

of meat trade licence within six weeks. By an order dated 13.1.2011 the petitioners were denied grant of meat trade licence on the plea that the shops are situated within a distance of 50 meters from the gate of the religious place.

9. Aggrieved by the aforesaid order the petitioners approached this court, again seeking quashing of the letter dated 13.1.2011. The Writ petitions were disposed of granting liberty to the petitioner to prefer an appeal before the Director (Veterinary Services), as per rules. Since the Director (Veterinary Services) did not pass a specific order, nor the appeal was dismissed, nor licence was granted, the petitioners filed another writ petition being WP(C)No.2183/2011 & 2185/2011. Court issued notice in the writ petitions and granted time to counsel for the MCD to name the officer who would decide the appeal of the petitioners. The writ petitions were disposed of on 1.4.2011, to enable the MCD to constitute a Committee to consider the case of the petitioners. The said Committee also declined the request of the petitioners on the same ground, which has led to the filing of the present writ petitions.
10. Mr.Tripathi, counsel for the respondent has opposed this petition on the ground that while deciding the application of the petitioners for a trade licence, the respondents have placed reliance on the policy of the MCD with regard to the issuance of licence for meat shops, according to which a shop should not be within 50 meters from the gate of religious place. In this case the petitioners' meat shop is situated at a distance of 44 meters and as such the licence cannot be granted to the petitioners for running the meat shop.
11. I have heard counsel for the parties and considered their rival submissions. It is not in dispute that 132 shops / stalls at F-I/G, Sunder Mandi (Murga Market), New Delhi were allotted to squatters of the

Economically Weaker Sections category measuring 6' x 8', under Survey Scheme in the early eighties by the Slum and J.J. Department of the MCD for selling / trading in fish, chicken, meat, medicine, general store, repair etc. A communication dated 7.7.2006 addressed to the General Secretary from the Slum and J.J. Department of the MCD, reads as under:

**“SLUM & J.J. DEPARTMENT
MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE DY. DIRECTOR (SCP)**

No.D-862/DD (SCP)/2006

DATED: 07.07.2006

This is with reference to the representation of Sh. Kamruddin (General Secretary) of F-I/G Fish Chicken & Veg. Market Association (Regd.) F-I/G Sunder Nagri, Nand Nagri, Delhi-93 and representation of Sh. Vir Singh Dhingan M.L.A. Delhi., regarding de-sealing of 132 allotted stalls/Tharas. In this regard the information is related to Slum and J.J. Dept. M.C.D. is as under:-

The 132 Shops/stalls/tharas at F-I/G Sunder Nagri (Murga Mkt.) Nand Nagri were allotted to squatters of E.W.S. category measuring 6' X 8' under survey scheme in early eighty for selling/trading fish, Chicken, Meat, Vegetable medicine, General Store and repair etc. as per list attached. The information is being issued on the request of Sh. Kamruddin (General Secretary) and Sh. Vir Singh Dhingan, MLA, Delhi.

Sd/-
06.07.2006
Slum & J.J. Deptt.
M.C.D., New Delhi

Encl:- As above.
Sh. Kamruddin
(Gen. Sect.)
F.I./G Sunder Nagri,

Delhi.”

12. It is also not in dispute that various shops are running for selling meat, chicken, fish, etc.; request for licence was made by the petitioners; and shops of the petitioners stand duly registered, receipts have been placed on record. It is also not in dispute that pursuant to the directions contained in the writ petitions filed by the petitioners, the MCD regularized the occupation of the petitioners and accepted a sum of Rs.81,626/- from the petitioner.
13. Counsel for the petitioner submits that 132 shops / stalls / thadas were allotted to squatters of Economically Weaker Sections categories under the Survey Scheme in the early eighties for selling/ trading in fish, chicken, meat, vegetable, medicines, general store, repair etc. It is thus submitted that at the time when the allotments were made no religious place was in existence, moreso, the religious place has been constructed on public land and that too without any sanctioned plan, thus the policy of the respondent cannot be made applicable to the facts of the present case, as the mere existence of the religious place is unauthorized. It is also the case of the petitioner that similarly situated persons have been granted permission. The consistent stand of the respondent is that permission was declined to the petitioner to run the trade of selling meat and chicken on the ground that the shop is at a distance of less than 50 meters from the temple gate.
14. During the course of hearing of this matter, this Court had directed the MCD to file an affidavit clearly stating as to whether the religious place which is in existence is a public land or not and as to whether the construction has been carried out after seeking permission from the MCD.
15. The respondent has handed over in court affidavit of Dr.M.Lal Deputy Director (V.S.), Shahdara (North) Zone, East Delhi. The deponent has

deposed as under:

“No building plan has been sanctioned for the construction of the temple. As per site inspection the temple is in the premises of the campus of the office of Deputy Commissioner Revenue (North-East), Shahdara located in the Sunder Nagri, Shahdara. The status of land can be obtained from the office of Deputy Commissioner (Revenue). Further, as per local enquiry, the construction of the temple is around 7-8 years old.

Report submitted for onward submission.”

16. As per the affidavit, no building plan has been sanctioned for the building of the temple. The temple is also situated in the campus of the office of the Deputy Commissioner (Revenue) North- East Zone, which shows that the temple is an encroachment on public land and has come into existence only 7- 8 years back. Based on the affidavit it can safely be said that at the time when the petitioners were displaced in eighties this temple was not in existence. Moreso, since the temple is on government land and is an encroachment on public land and has been erected without a sanctioned plan, in my view to reject the application of the petitioners would only amount to encouraging persons to encroach public land in comparison to a law abiding citizen, who wants to carry on his business to feed his family. Moreover, there was no religious structure in existence when application was made for grant of a licence. The religious place will not be covered by the licencing policy of the Corporation. As per clause 6 of the Policy, a religious place should have a pucca structure with a covered area of more than 400 sq. ft. Since the religious place is the encroachment on public land and there is no sanctioned plan for the structure, it cannot be treated as a fetter on the right of the petitioners to carry out their trade and business and they cannot be deprived of their

right to livelihood as enshrined in the Constitution of India. Accordingly, both the petitions are allowed. The impugned order dated 21.7.2011 of rejection is quashed. The respondents will consider the request of the petitioners, in accordance with law within four weeks of receipt of the order.

17. Needless to say that at the time of considering the request of the petitioners the observations of the Court will be taken into consideration. In case the petitioners are aggrieved by the final order, they may take recourse to such remedies, as may be available in accordance with law.
18. Both the petitions stand disposed of, in above terms.

G.S.SISTANI, J

FEBRUARY 13, 2013

rs/ssn