

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

Reserved on: 30.09.2014
Date of Decision: 13.11.2014

+ LPA No.675/2014

SH.DHARAM CHAND Appellant

Through: Mr. Tripurari Ray &
Mr. Rajinder Singh, Advs.

versus

CHAIRMAN, NDMC & ORS. Respondents

Through: Mr. Vivek B. Saharya, Additional
Standing Counsel for R-1 & 2.
Mr. Kirtiman Singh, CGSC with
Mr. Waize Ali Noor, Adv. for R-3.
Mr. Arun K. Sharma, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This appeal impugns the judgment dated 22nd September, 2014 passed by the learned Single Judge whereby the appellant's challenge is to the NDMC's order dated 03.12.2013. The said order had relocated the appellant from his existing vending site outside the Supreme Court of India to a site near the gate of Baroda House, adjacent to the existing stalls, due to security reasons. The learned

Single Judge was of the view that under Section 388(D) (5) of the New Delhi Municipal Council Act, 1994, the NDMC was empowered to impose terms and conditions while granting Tehbazari rights and the letter dated 20th May, 1999 by which Tehbazari/kiosk rights had been granted to the appellant contained terms and conditions which read *inter alia*, that:

“1. Tehbazari permission shall be purely temporary and on month to month basis.

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7. The permittee shall vacate the site in a peaceful manner and without any murmur on cancellation of the permission so granted on account of violation of the terms and conditions of the grant of permission or any security reasons, or any other circumstances justifying such action in public interest.”

2. The learned Single Judge was of the view that the order of relocation was issued due to security reasons, which was in public interest and the aforesaid terms could never be said to be illegal or unconstitutional. The learned Judge was also of the view that matters of security must be left to the wisdom and decision of the police. The Court was conscious that the decision to remove vendors from the vicinity of the Supreme Court of India was taken in view of the bomb

blast right on the perimeter of the Delhi High Court complex. It was noted that the said decision to remove all squatters, vendors and kiosk owners was taken in a meeting attended by security experts.

3. Before the learned Single Judge the appellant had contended that under Article 14 of the Constitution of India (Constitution), the Court would strike down an unfair and unreasonable contract and such clauses of a contract entered into between the parties who are not equal in bargaining power without hearing the affected party, and the weaker parties' rights cannot be curtailed in an unreasonable, capricious or arbitrary manner.¹ The learned Judge was of the view that the aforesaid propositions were unexceptionable apropos Articles 19(1)(g) and 19(6) of the Constitution; however, neither of them applied to the facts and circumstances of the present case. The learned Judge reasoned that the right of hawkers, kiosk-users and vendors can never be absolute, such rights would be subservient to public interest and can be cancelled for germane, legal and valid reasons. It was noted that although the allotment of kiosk may be in accordance with Article 39 (a) of the Constitution but it would not be in perpetuity. The

¹*Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600*

learned Judge relied upon a Supreme Court judgment² which held that certain areas may be required to be kept free from hawkers for security reasons. The said decision had also held that hawkers' right under Article 19 (1) (g) of the Constitution is subject to reasonable restrictions under Article 19 (6) and further that there is no fundamental right under Article 21 to carry on any hawking business.

4. The learned Single Judge was constrained to observe "*that the petitioner had deliberately suppressed the terms and conditions on which tehbazari permission had been granted by respondent-NDMC. It is unbelievable that petitioner did not have a copy of the same as security deposit and tehbazari monthly charges had been paid by the petitioner only in accordance with the said letter*". The Court found that the appellant's right under Article 19(1)(g) of the Constitution had not been violated since he was allotted an alternative site, not far away from the existing site.

5. The learned counsel for the appellant strongly argued that the learned Single Judge has failed to appreciate that the right to trade and profession under Article 19(1)(g) of the Constitution is a constitutionally guaranteed right and can be restricted only in

² *Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai Anr.*, 2013 (11) SCALE 329

accordance with Article 19(6) of the Constitution and it cannot be diluted at the wish of the State; that such restriction would need to be tested before the Court and the impugned judgment has erred in not holding that the appellant's relocation was unreasonable; that there was no basis for the relocation which was otherwise not issued by the police on its own assessment of the security conditions but upon the intervention of the Supreme Court on the administrative side; that the impugned judgment is erroneous since neither the NDMC's counter affidavit nor the letter dated 10.09.2011 (issued by the Addl. C.P., Delhi Police) indicate that the appellant's shop was a security hazard; that the learned Single Judge had travelled beyond the pleadings and without giving an opportunity to the appellant to explain the non-disclosure of the Tehbazari letter of 20.05.1999, erroneously concluded that there was suppression of facts. The learned counsel further contended that in any case, the said letter would not be applicable to the appellant since he is the allottee of a constructed/covered kiosk; that the said letter itself provides that allotment of built-up units including covered Tehbazari shall be governed and regulated by separate terms and conditions which are applicable from time to time. He relied upon the Supreme Court dicta

in *Municipal Corporation of the City of Jabalpur v. State of Madhya Pradesh*³ to contend that strict adherence to the pleadings was necessary, not only for the orderliness of the proceedings but also to avoid surprise to the other party in Court proceedings. He also relied upon *Maharashtra Ekta Hawkers Union (supra)* in support of his contention that the appellant's right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions under Article 19(6) but this reasonableness must be tested by the Court.

6. At this juncture, a few observations are necessary. Site No. 213 being a stall of 6'x4', opposite the Supreme Court of India on Bhagwan Das Road was offered to Sh. Dharam Chand (Appellant herein) vide letter dated 06.05.1999 on such terms and conditions as may be made. Thereafter, the appellant was granted Tehbazari permission vide letter dated 20.05.1999 which contained the terms and conditions. On 19th September, 2011, the NDMC suspended the Tehbazari rights of the five persons hawking opposite the Supreme Court of India as per the observation of the Additional Commissioner of Police, New Delhi District which was under approval of the competent authority. One of the affected parties, namely Sh. Laxmi

³ (1963) 2 SCR 135

Narayan filed a writ petition in this Court under Article 226 of the Constitution of India for restoration of the earlier site or for rehabilitation. The said writ petition was disposed of on 12.12.2013, in view of the submission of the counsel for the NDMC that the petitioner therein would be allotted a fresh site within six weeks therefrom. In terms of an order dated 03.12.2013, all five affected persons including Sh. Laxmi Narayan were allotted fresh/alternative sites.

7. This Court notices that the letter of 20.5.1999 clearly spells out that Tehbazari rights would be purely temporary and on a month-to-month basis. It further reads as under:

“7.The permittee shall vacate the site in a peaceful manner without any murmur on cancellation of the permission granted on account of violation of the terms and conditions of the grant of permission or for any security reasons or for any other circumstances justifying such action in public interest”.

Quite clearly, the appellant's permission could be cancelled for security reasons, which is undoubtedly covered under paragraph 7 of the aforesaid letter granting the Tehbazari permission. The appellant has no absolute or fundamental right to hawk in a public place. Even though he traces such right to Article 19(1)(g) but the same would be

subject to reasonable restrictions under Article 19 (6) of the Constitution.

8. The appellant's contention that the terms apropos a built-up kiosk would be governed by separate terms and conditions and not by the terms as mentioned in the aforesaid letter dated 20.05.1999 is liable to be rejected as untenable because the appellant has not shown any other terms which would govern his license to hawk. In any case, relocation of hawkers from the vicinity of the Supreme Court of India for security reasons is definitely in public interest and is unexceptionable in the context of a bomb blast on the perimeter of the Delhi High Court. It cannot be deemed to be an unreasonable restriction and is not a foul of Article 19(6) of the Constitution of India. An assessment to this effect had been done by the local police. Furthermore, paragraph 7 of the Tehbazari permission letter dated 20.05.1999 clearly provides that the permittee shall vacate the site for security reasons or other circumstances in public interest. The appellant ought to have disclosed this information to the Court. Insofar as he had defaulted in doing so, the conclusion of the learned Single Judge that the appellant had suppressed material facts cannot be faulted.

9. This Court is further of the view that when reasonable restrictions under Article 19(6) of the Constitution on the ground of security or threat perception are adjudicated, it would be wise to give due weightage to the assessment of the police or the security agency concerned. This Court finds that the appellant's relocation due to security reasons was in terms of the letter dated 20.05.1999 which had granted Tehbazari rights to him. He has no absolute right to hawk and the said letter itself granted only a temporary and terminable right to trade. Indeed, the appellant has a right under Article 19(1)(g) of the Constitution but undoubtedly it is subject to reasonable restrictions under Article 19 (6). The reason for such restriction was justified and the appellant had no case. Therefore, the writ petition was liable to be rejected.

10. In view of the aforesaid discussion, this Court finds no infirmity in the impugned judgment of the learned Single Judge. This appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

NOVEMBER 13, 2014
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KAILASH GAMBHIR, J.