

\$~11.

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

+ W.P.(C) No.735/2011

ANANDA KUMAR THAKUR Petitioner

Through: Mr. F.I. Choudhury, Adv.

versus

PWD AND ORS Respondents

Through: Mr. Kush Sharma, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

23.09.2015

1. The petition seeks a mandamus to the Public Works Department (PWD) of the Government of National Capital Territory of Delhi (GNCTD) to allot "an alternate shop to the petitioner at the subway of South Extension, New Delhi or any other appropriate place".
2. Notice of the petition was issued and counter affidavit has been filed by the respondent no.1 and to which a rejoinder has been filed by the petitioner. The counsels have been heard.
3. It is the case of the petitioner, (i) that he is in possession of a shop bearing no.4 located at subway, across Mall Road Extension, opposite In-Gate of Azadpur Mandi, Delhi; (ii) the said shop was allotted to him in lieu of his earlier shop no.5, GTB Nagar subway, across Ring Road, Mall Road, Delhi which was demolished due to the development project of the respondent no.5 Delhi Metro Rail Corporation (DMRC); (iii) that the petitioner had earlier filed W.P.(C) No.5319/2006 in this Court with respect to demolition of his shop near GTB Nagar and during the pendency of which writ petition, the petitioner was allotted the present shop near Azadpur

Mandi; (iv) that the petitioner has been carrying on his business in the name and style of M/s Ananada Moyee Bastralaya from the said shop; (v) that the said shop is ill-maintained and is the only lone shop out of 11 office and 4 shops in the subway and all of which is making the petitioner's business of selling readymade garments unviable; and, (vi) that though the petitioner thus applied to the respondent no.1 for relocating his shop but the respondent no.1 had failed to do so.

4. The respondent no.1 in its counter affidavit has pleaded that the rates of shops in South Extension are entirely different from the rates of shop in GTB Nagar or Azadpur and the petitioner has not disclosed any right to allotment of a shop at South Extension in lieu of his existing shop at Azadpur Subzi Mandi.

5. I may record that in pursuance to the orders in this petition from time to time, in an attempt to explore the possibility of relocating the petitioner, certain other affidavits have been filed by the respondents disclosing the number of shops available with the respondent and the number of shops lying vacant etc. The same were however only by way of exploring the possibility and in the event of finding any right in favour of the petitioner.

6. Though the counsel for the petitioner has, on enquiry, been unable to disclose the title of the petitioner to either of the shops i.e. the shop earlier in his possession and the shop now in his possession but from the record brought by the respondent no.1 to the Court it transpires that the petitioner had bid for leasehold rights in the aforesaid shop at GTB Nagar and being the highest bidder, was allotted the said shop in the year 2003 and a perpetual lease deed executed in favour of the petitioner. However for the

purposes of the work of the respondent no.5 DMRC, the said perpetual lease was predetermined on 29th March, 2006 and which led to the petitioner filing the writ petition aforesaid in this Court. The record brought by the respondent no.1 also shows that the petitioner, during the pendency of the said writ petition, applied to the respondent no.1 for allotting him the subject shop at Azadpur Mandi in lieu of his earlier shop at GTB Nagar and which request of the petitioner was accepted by the respondent no.1 and a perpetual lease deed dated 19th July, 2006 executed in favour of the petitioner with respect to the shop now in his possession being the shop at Azadpur Mandi.

7. The petitioner, nowhere in the petition or otherwise during the hearing, has been able to disclose any right to a shop at South Extension or at any other place in lieu of the shop at Azadpur Mandi presently in possession of the petitioner. The perpetual lease deed dated 19th July, 2006 executed in favour of the petitioner with respect to the Azadpur Mandi shop also does not disclose any such right in the petitioner, to have his shop changed to another location if unable to profitably carry on business therefrom. In the absence of any right, the availability of any other shop with the respondent no.1 at other places is immaterial.

8. The counsel for the respondent no.1 has also contended that the petitioner is a resident of Mukherjee Nagar and had opted for the shop initially at GTB Nagar and thereafter at Azadpur Mandi owing to both locations having proximity to the residence of the petitioner and on the ground of being a heart patient.

9. Merely because certain markets in the city may have more footfalls than other markets, is no ground for the shopkeepers of the market with the

lower footfalls seeking a mandamus to shift them to a more lucrative market.

10. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 23, 2015

‘pp’..