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

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Date of Decision : March 13, 2015

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LPA 141/2015

PREM SINGH

..... Appellant

Represented by: Mr.Ramesh K.Mishra, Advocate

versus

MUNICIPAL CORPORATION
OF DELHI AND ORS

..... Respondents

Represented by: Ms.Kuldip Kumar, Advocate for R-1
Ms.Sana Ansari, Advocate for R-2
and R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

CM NO.4441/2015

Allowed.

LPA 141/2015

1. The undisputed facts are that the appellant was holder of permanent tehbazari rights granted by the erstwhile Municipal Corporation of Delhi at sites near Prem Nagar Nala within the jurisdiction of PS Kotla Mubarak Pur.
2. For the ensuing Common Wealth Games to be held in the year 2010, the traffic police was of the opinion that road widening would require the area occupied by the appellant to be freed from any kind of occupancy rights, resulting in the appellant being evicted from the site occupied by him somewhere in October, 2009.

3. The issue of relocation of the appellant was taken up and sites were identified at Madanpur Khadar which were not accepted by the appellant (and a few others) because the National Policy of the Street Vendors, 2009 which has now found statutory reflection in the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 envisaged the place where the street hawkers would be relocated or the fresh sites allotted have to be a '*natural market*', which means that the sites would be accessible to the consumers.

4. The respondents do not dispute that the site at Madanpur Khadar would not conform to a natural market area.

5. The position therefore would be that the appellant is without legal cover to vend since the year 2009.

6. In the writ petition filed before the learned Single Judge the relief prayed by the appellant was to direct the corporation to permit the appellant to resume vending activities at the original site at Prem Nagar Nala.

7. Relief has been declined vide impugned decision dated January 15, 2015, noting that the National Policy for street vendors and the Act of 2014 require a survey to be conducted by a Town Vending Committee and thereafter relocation of street vendors at sites falling in the vending zone. The learned Single Judge has noted that since Town Vending Committees have not been constituted no relief could be granted: specifically observing that once the Town Vending Committees are constituted the appellant would be free to make a representation to the Committee.

8. Learned Single Judge has failed to factor in a very relevant fact. The Street Vending Policy and the Act has a provision; the statutory provision being sub-section 3 of Section 3, that no street vendors shall be evicted or relocated till the survey is completed. But what happens to those like the

appellant who had valid vending rights for long years till the year 2009, when on requirement for public benefit, they were removed from the sites they were occupying.

9. Neither the policy nor the Act contemplated a situation of the kind which the appellant is faced with.

10. The Street Vending Policy and the Act recognizes that the street vendors constitute an important segment of the urban population and are unable to get regular jobs; street vending provides a source of self-employment and thus acts a measure of urban poverty alleviation. It recognizes the obligation of the State to try and strive to ensure adequate means of livelihood to the citizens of this country.

11. Meaning thereby, if there is a void in the enacted law, Executive Policy, Instructions and Orders needs to fill the void. It is trite that where a situation exists warranting exercise of discretionary power, failure to exercise the power would be an actionable cause of action.

12. The appellant cannot suffer due to bureaucratic inefficiency. The bureaucratic inefficiency is that notwithstanding the Act being promulgated on March 04, 2014, till today not even a single vending committee has been constituted in Delhi.

13. The appellant is without a source of livelihood for nearly six years. Time does not stop. If you have extra money and there is no avenue to invest the same for a business activity it can be parked in a bank and interest is earned. There are no banks where one can park one idle labour. Each day lost means each day labour lost. It would be an irretrievable situation for the appellant whose idle labour is being wasted each day. He has already wasted idle labour for six years.

14. We dispose of the appeal directing that as an interim measure the

appellant would be given temporary tehbazari rights in an area which has the features of a natural market. It would be permissible for the respondents to indicate therein that this allocation of temporary tehbazari would confer no right of permanency in the place and that when the Town Vending Committees would be constituted the appellant would have to file claim before the Committee concerned.

15. Needful shall be done within a period of 12 weeks from today.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 13, 2015
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