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

+ **W.P.(C) 3649/2013**

SHREE DURGA STORE Petitioner

Through: Mr. Bimal Roy Jad, Adv.

Versus

GOVT. OF NCT DELHI & ORS. Respondents

Through: Mr. Harsha Peechara & Mr. Manajay
Kr. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.04.2016**

1. The petition seeks direction to the i) Government of NCT of Delhi (GNCTD), ii) Commissioner (ND), Food & Supply Department, and iii) New Delhi Municipal Council (NDMC) to allow functioning of Shri Durga Store, Fair Price Shop (FPS) No.7804 from the precincts of Bhairon Mandir in Nehru Park, Chanakya Puri, New Delhi till alternative site is allotted to the petitioner and a direction to the respondents no.3&4 NDMC to de-seal the premises and allot an alternative site to the petitioner.
2. Notice of the petition was issued, though the application for interim relief dismissed as not pressed.
3. On 2nd February, 2015, it was recorded in the order of that date:

“The learned counsel for the respondent has referred to the order dated 07.05.2010 whereby the petitioner’s representation was disposed of by holding that the petitioner could not be relocated as it would be contrary to the policy. However, the policy has not been placed on record.

The learned counsel for the respondent is also unable to point out any difference between the petitioner's shop and other shops located in temples and other religious complexes. The learned counsel for the respondent seeks further time to file an additional affidavit to place the applicable policy as well as respond to the petitioner's allegation that he has been discriminated against, inasmuch as no action has been taken against other similarly situated shops, instances of which have been mentioned in the petition.

Let the said affidavit be filed on behalf of respondent nos.2 and 3 within a period of two weeks with an advance copy to the learned counsel for the petitioner.

List on 25.03.2015.”

4. Pleadings have been completed and the counsels have been heard.
5. The position which emerges is i) that the petitioner was granted a licence by the Food & Supplies Department (FSD) of the respondent GNCTD to run a FPS from the shop aforesaid and had since been running his shop therefrom; ii) that the respondent NDMC during the inspection of the Nehru Park, upon finding the said FPS running from the portion of the park licenced by the Land & Development Office (L&DO) to the temple and further finding that as per the Master Plan, FPS was not permitted to be run from the portion of the park licenced to the temple, enquired from the FSD as to how a licence had been given for running a FPS therefrom; iii) the FSD cancelled the licence of the petitioner to run a FPS from the said shop; iv) that the petitioner filed W.P.(C) No.7965/2008 which was disposed of vide order dated 20th November, 2008 recording that the petitioner had given an

undertaking to the NDMC that he would stop functioning from the said shop by 31st October, 2008 and thus the claim if any of the petitioner left was for re-location; accordingly, the petition was disposed of directing the NDMC to consider the case of the petitioner for re-location; v) that the NDMC vide its order dated 29th December, 2008 rejected the claim of the petitioner for re-location; vi) that again W.P.(C) No.9160/2008 was filed by the petitioner and which was disposed of vide order dated 8th March, 2010 directing the NDMC to pass a fresh order addressing the issue of re-location of the petitioner; vii) that in pursuance thereto, the order dated 7th May, 2010 rejecting the claim of the petitioner for re-location was passed.

6. This petition impugning the order dated 7th May, 2010 has been filed after three years therefrom.

7. I have enquired from the counsel for the petitioner, what is the claim of the petitioner for re-location against the respondent NDMC. Admittedly, the petitioner was occupying the said shop (which is reported to have been sealed by the NDMC) as a tenant of the Bhairon Mandir and not under the NDMC. The petitioner thus cannot have any right of re-location against the NDMC.

8. The counsel for the petitioner though is unable to disclose any right of the petitioner to such re-location, draws attention to letters dated 28th February, 2008 and 28th July, 2008 of the respondent NDMC in this regard.

9. Without going into the said letters, I am of the view that even if any official of the NDMC has promised re-location, the same would not entitle the petitioner to re-location unless the petitioner discloses a right therefor in law or under some policy. Both the letters aforesaid are addressed by the NDMC to the FSD and though undoubtedly the same talk of re-locating the

FPS but it is the stand of the NDMC that the same was not a commitment of the NDMC to re-location but only to ensure that the distribution of food items through the FPS is not disturbed.

10. The petitioner, I am of the view, is misconstruing the said letters.

11. Without the petitioner disclosing any right against the NDMC for re-location, no relief as sought can be granted to the petitioner.

12. The contention of the counsel for the petitioner that the NDMC should be directed to place before this Court all its policies regarding re-location, for this Court to find out whether the petitioner fits in any of those cannot be accepted. The petitioner ought to have done the said exercise before it approached the Court and cannot use the jurisdiction under Article 226 of the Constitution of India in the manner sought to be done. Reference in this regard can be made to my judgment in *Suresh Kumar Vs. GNCT of Delhi* MANU/DE/3523/2011.

13. Thus, not only is the petition not maintainable for the reason of laches, acquiescence and waiver, even otherwise has no merit on its own.

14. Yet another argument of the counsel for the petitioner, of no action having been taken with respect to the other similar shops, is also misconceived. It is settled principle of law that Article 14 of the Constitution of India does not encompass within itself the concept of negative equality. Reference in this regard can be made to the dictum of the Supreme Court in *State of U.P. Vs. Rajkumar Sharma* (2006) 3 SCC 330 and *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59.

RAJIV SAHAI ENDLAW, J

APRIL 07, 2016/‘gsr’..