

\$~10

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

+ LPA 6/2017

KAMLESH KUMAR GUPTA

..... Appellant

Through Mr.Kirti Uppal, Sr.Adv. with
Mr.Shahzad Khan, Mr.Sohail Khan,
Ms.Sahiba Pantel & Mr.Sidharth Chopra,
Advs.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS

..... Respondent

Through Mr.Sri Harsha Peechara, ASC, NDMC
with Mr.Mananjay Mishra & Ms.Vidhi
Jain, Advs. for R-1 & 2.
Mr.Vinod Kr. Goyal, Adv. with
Mr.Abhinav Singh, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **04.01.2017**

C.M. No.66/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

LPA No.6/2017 & C.M. No.65/2017 (for stay)

This appeal is directed against the order dated 16.12.2016 passed in Review Petition No.727/2011.

The appellant had filed writ petition being W.P.(C) No.3859/2011 which was allowed by an order dated 31.05.2011. The order of 31.05.2011 reads as under:-

“The present petition is filed by the petitioner under Article 226 of the Constitution of India praying inter alia for directions to the respondent/NDMC not to disturb the petitioner from carrying on his trade at the hawking site as mentioned in the Memo of Parties, till 31.12.2011, as per the National Capital Territory of Delhi Laws (Special

Provision) Act, 2011, and further, to direct the respondent/NDMC not to disturb the petitioner from the aforesaid hawking site, till the final completion of verification of his claim for allotment, as made before the Vending Committee of the NDMC.

At the outset, counsel for the petitioner submits that the petitioner had earlier filed a petition registered as WP(C)No.8096/2010, which was disposed of vide order dated 23.12.2010. He states that when the order dated 23.12.2010 came to be passed, the National Capital Territory of Delhi Laws (Special Provision) Act, 2011 had not been enacted and as a result, the court had directed, amongst others, that the exercise of verification of the claim of the petitioner be completed on or before 31.01.2011.

Counsel for the petitioner further states that the petitioner is squatting opposite Gate No.3-4, Palika Bazar, Connaught Place, New Delhi, for a long time, and that he is also entitled to the same relief as granted to the petitioners in W.P.(C) 3364/2011 and other connected matters, vide order dated 25.05.2011 passed by this Court, as the facts of the present case are identical to those in the aforesaid batch of writ petitions.

Learned counsel for the respondent/NDMC does not dispute the above position. In view of the fact that the facts of the present case are identical to those in WP(C)No.3364/2011 and other connected matters, which were disposed of vide order dated 25.5.2011, it is directed that the order passed in those matters shall also govern the present petition.

The petition is disposed of alongwith the pending application.

DASTI to the counsel for the respondent/NDMC.

NDMC filed a review petition alleging that the appellant had categorically stated that he was squatting opposite Gate No.3-4, Palika Bazar, Connaught Place, New Delhi for a long time, whereas he was, in fact, squatting near Regal Building, Connaught Place, New Delhi which fact had been confirmed by the petitioner.

Mr.Kirti Uppal, learned Senior counsel appearing on behalf of the

appellant submits that in the writ petition, more particularly, paragraph 2(a), the appellant/petitioner had categorically stated that: *“The petitioner is a street vendor who has been carrying on his petty business of sale of readymade garments in area falling within the jurisdiction of NDMC for the past about 14 years. The Petitioner has since 1997 been carrying on his petty business of readymade garments at his vending site near Regal Building, Connaught Place, New Delhi. However, in the month of November, 2010 the Petitioner was requested by the NDMC to shift opposite Gate No.3 and 4, Palika Bazar, New Delhi due to project work.”* It is thus the contention of the learned counsel for the petitioner that there was no concealment by the petitioner.

The second grievance of the appellant is that the learned Single Judge has not rendered any finding on the ground of concealment and the review petition has been allowed on a completely different ground which was not urged in the review petition.

After some hearing in the matter, it is agreed that the order of 16.12.2016 be set-aside and the matter be remanded back to the learned Single Judge for hearing the review petition afresh.

With these directions, the LPA is disposed of. Pending application also stands disposed of.

Let the review petition be listed before the learned Single Judge on 06.01.2017.

G.S.SISTANI, J.

VINOD GOEL, J.

JANUARY 04, 2017/ka

LPA No.6/2017 /

3/3