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

+ W.P.(C) 4127/2017

GHANSHYAM MADAN

..... Petitioner

Through Mr. S.K. Singh and Ms. Renu Singh,
Advocates

versus

SOUTH DELHI MUNICIPAL CORPORATION (SDMC) AND ANR

..... Respondents

Through Ms. Mansi Gupta, Advocate for SDMC.
Ms. Neelam Kholia, Advocate for Mr.
Devesh Singh, Advocate for GNCTD
along with Inspector Mukesh and SI
Birender, P.S. Dwarka South.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

% **24.05.2017**

This is a petition filed under article 226 of the Constitution of India seeking a writ of *mandamus* against the respondents to allow the petitioner to continue squatting from his present vending site, i.e., Plot no.1, MLU Market, Sector 6, Dwarka, New Delhi. The petitioner is a fruit juice vendor. Counsel for the petitioner submits that the petitioner has been continuously vending from the site in question since 2006 without any interruption. Learned counsel submits that his complaint is primarily against respondent no.2 Delhi Police, who are harassing him and not allowing him to vend.

The counsel appearing for the SDMC submits that the SDMC has granted permission to the petitioner to vend from the site in question. Reliance is placed on a communication dated 04.01.2016.

Counsel for the Delhi Police submits that pursuant to the directions

contained in the order dated 12.05.2017 in the Cont.CAS(C).143/2017, an inspection was conducted to remove the encroachers and in view thereof, the petitioner was also asked to vacate. A copy of this order has been handed over to us in Court.

We have heard the learned counsel for the parties. The stand of the Delhi Police as per the submission made in Court is that they had acted upon the directions contained in the order dated 12.05.2017 passed in Cont.CAS(C).143/2017. We may note that in LPA no.80/2016, while rejecting the LPA, the following order was passed:

“16. Accordingly, we find no merit in the present LPA, however we make it clear that should the members of the appellant association approached the Town Vending Committee in the prescribed form, their applications would not be rejected merely because they were not found vending at the site in question provided, of course, they are able to place on record supporting documents in support of their plea that they have been vending since 2001. With these observations, the LPA and all applications are disposed of.

17. We also direct the statutory bodies to ensure that none of the shopkeepers encroach upon verandahs or public land. Counsel for respondent no. 6 also undertakes to the court that none of the members of the respondent no. 6 association will permit any shop keeper or any member of the association to encroach upon public land, extend their shops or encroach upon verandahs or public land. The statutory bodies are directed to take strict action in case of violation of this undertaking.”

The counsel for the petitioner and SDMC submit that the present petitioner would not be covered by the order of this Court passed in LPA no.80/2016 in view of the express permission granted to the petitioner by the SDMC by the communication dated 04.01.2016.

We have heard learned counsel for the parties. The petitioner has relied upon letter dated 04.01.2016 issued by the SDMC. The letter dated 04.01.2016

reads as under:

“SOUTH DELHI MUNICIPAL CORPORATION
OFFICE OF THE DY. COMMISSIONER
NAJAFGARH ZONE

No.AC/NGZ/2015/D-887

Dated 04-01-2016

To,
Sh. Ghanshyam Madan
R/0 Flat No.10, Sector -11, Pocket-4,
Dwarka, New Delhi-110085.

Subject: Regarding permission to allow the squatting/selling fruit juice at in front of Sector-6 Market, Plot No.1, Dwarka.

Reference your application dated 10.12.2015 on the above mentioned subject and to say that the matter has been examined in this office and it has been decided to allow you to squat (selling fruit juice) at in front of Sector-6 Market, Plot No.1, Dwarka till the extant guidelines of Town Vending Committee be received.

This issues with the prior approval of Dy.Commissioner/NGZ, SDMC.

Sd/-
Admn. Officer
Najafgarh Zone

Copy to: SHO, Sector-9, Dwarka for information.”

The SDMC has recognised the petitioner and granted him permission to sell fruit juice in front of Plot no.1, MLU Market, Sector 6, Dwarka, New Delhi. Thus, the petitioner would not be covered by the order dated 12.05.2017 and he cannot be treated as an encroacher. This we say as we expect that SDMC would have granted permission in accordance with law till the functioning of the TVC.

Resultantly, the writ petition is allowed. Rule is made absolute.

In view of the stand taken by the SDMC, the petitioner would not be

removed and his possession will not be disturbed by respondent no.2 Delhi Police.

The writ petition stands disposed of.

Dasti.

G.S.SISTANI, J

PRATHIBA M. SINGH, J

MAY 24, 2017

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