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

+ W.P.(C) 6347/2017

% ***Judgment dated : 13th September, 2017***

RAM GOPAL TIWARI Petitioner

Through: Mr. N.K. Sahoo, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through: Mr. Mananjay Kumar Mishra & Mr.
Chetan Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J (ORAL)

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India. The petitioner seeks a direction to quash the order dated 15.6.2017 passed by Mr. N.L. Chawla, Joint Director (Enforcement), NDMC, by which the representation made by the petitioner stands rejected.
2. Mr. N.K. Sahoo, learned counsel for the petitioner submits that the impugned order is bad in law and the respondent has failed to take into consideration that the sites are available at Khan Market, near Police Booth, Janpath and Palika Bazar (Gate No.4), but the petitioner is being singled out and is not being granted an alternate site to vend. It is the complaint of the petitioner that the site allotted to him is financially not viable and it is thus imperative that the NDMC should grant an alternate site at either of the three locations, as demanded by him.
3. Learned counsel for the NDMC submits that the two sites mentioned by the petitioner are overcrowded, being Khan Market and Janpath and as far as Palika Bazaar is concerned, it has been declared a “no vending no

hawking zone.”

4. Mr. Sahoo has contended that the respondent is allowing street vendors to vend even at Palika Bazar. Mr. Mishra clarifies that only 40 street vendors, who were given licenses, are allowed to vend and none else.
5. We have heard the learned counsel for the parties and considered their rival submissions.
6. We had, at the beginning of the hearing, asked the learned counsel for the petitioner as to whether he seeks an alternate site at any other place, other than the sites so mentioned by him. His answer is that, since others have been accommodated at Khan Market, Janpath and Palika Bazar, the petitioner should also be accommodated at either of the three sites and the petitioner would not accept any other alternate site.
7. It may be noted that the petitioner had approached this Court earlier by filing WP(C) No.3829/2017. The order dated 3.5.2017 passed in the aforesaid writ petition reads as under:

“The petitioner, who is a licenced Tehbazari holder, has again approached this court on the ground that the site allotted to him is not financially viable and an alternate site be allotted to him. We may note that an LPA No. 318/2016 was disposed of by this court by order dated 06.02.2017 with the following agreed directions: -

“(i) The appellant will submit a detailed representation within two weeks from today; and

(ii) The Town Vending Committee will decide the representation of the appellant within two months thereafter after granting one personal hearing to the appellant.”

We are informed that although Town Vending Committee has been formed, but it is not functional. Mr. Sahoo submits that consequent to the order dated 06.02.2017, he had made a representation addressed to the Director. This representation admittedly has not been decided till now. We direct the Director (Enforcement) to decide the representation of the petitioner within a period of two

weeks from the receipt of this order. Needless to state that if the petitioner is aggrieved, it would be open for the petitioner to seek appropriate remedy. With these directions, the petition is disposed of.

Order dasti, as prayed.”

8. We may note that initially the petitioner had filed WP(C)Nos.6633/2013, 9420/2015 and 3101/2016 and thereafter LPA No.318/2016.
9. After the three writ petitions filed by the petitioner, a Division Bench of this Court, by an order dated 6.2.2017, disposed of the LPA, granting leave to the petitioner to make a detailed representation within two weeks, which was to be decided by the Town Vending Committee ('TVC') after granting a personal hearing to the appellant. The NDMC did not consider the representation of the petitioner as the TVC is not functional. This led to the filing of WP(C) No.3829/2017.
10. Although when the LPA was decided, no objection was raised by the learned counsel, for the representation being decided by the TVC. The learned counsel was well aware that the TVC is not functional, in view of the interim orders passed by this Court. The order dated 6.2.2017, in our view, had attained finality. However, in order to accommodate the petitioner, this Court had passed the order dated 3.5.2017 allowing the petitioner to make a representation to the respondent and a direction was issued to the respondent to decide the representation of the petitioner.
11. We have examined the order dated 5.6.2017 passed by Mr. N.L. Chawla, Joint Director (Enforcement), by which the representation made by the petitioner stands rejected. Operative portion of which reads as under:

“4. Sh. Ram Gopal Tiwari being aggrieved by the aforesaid communication preferred to file a fresh writ petition as referred to in para-1 for the same relief i.e. for change of site. During the course of proceedings, Hon'ble Court was informed that the Town Vending Committee was not functional and the Counsel for the

petitioner, Sh. Ram Gopal Tiwari, submitted before the Court that he had made representation addressed to the Director (Enforcement) and the same has not been decided. Hence, the present representation. In the present representation Sh. Ram Gopal Tiwari, a tehbazari holder presently squatting at site opposite Connaught Hotel, Near Shivaji Stadium, New Delhi has requested for change of site to any of three sites, i.e., Khan Market (Near Police Booth under Bargad Tree), Janpath (Jeevan Bharti Building), Palika Bzar (Gate No.4).

5. In all three areas, as referred to in representation of Sh. Ram Gopal Tiwari, a large number of tehbazari holder have already been squatting and as of now, no vacant and identified site is available to accommodate Sh. Ram Gopal Tiwari. Therefore, at present Sh. Ram Gopal Tiwari cannot be accommodated at either of the three sites opted by him in his representation, however, as and when the site would be available, the same may be offered to Sh. Ram Gopal Tiwari or his representation would be placed before the Town Vending Committee whenever it becomes functional, whichever is earlier. Meanwhile, Sh. Ram Gopal Tiwari may continue to squat at his allotted place of squatting.”

12. Taking into consideration that the grant of alternate site only lies in the domain of the respondent and it is not for this Court to sit in appeal against the order passed by the Joint Director (Enforcement), NDMC, we find no infirmity, impropriety or unreasonableness in the order so challenged.
13. The writ petition is without any merit and the same is dismissed. Needless to say, after the TVC is functional, the request of the petitioner for grant of an alternate site would be considered.

G.S.SISTANI, J

CHANDER SHEKHAR, J

SEPTEMBER 13, 2017 tp