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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 31th August, 2017

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LPA No.512/2017

JAI KARAN & ORS

..... Petitioners

Through

Mr.Kamlesh Kr. Mishra, Adv. with
Ms.Vishal Kalra, Adv.

versus

DEPUTY COMMISSIONER & ORS

..... Respondents

Through

Mr.Mukesh Gupta, Standing
Counsel, NDMC with Ms.Shashi
Gupta and Mr.Abhishek Sharma,
Adv. for NDMC.
Mr.Sanjoy Ghosh, ASC, GNCTD
with Ms.Urvi Mohan, Adv. for R-3,
4 & 5, along with SI Prakash, PS
Sadar Bazar, in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

C.M. Nos.27085/2017 & 27088/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

LPA No.512/2017 & C.M. No.27087/2017 (condonation of delay)

1. This LPA is directed against the order dated 04.11.2016 passed by a learned Single Judge in W.P. (C) No.10461/2016 and the order passed in review petition, dated 28.04.2017.

2. Eight petitioners had approached this Court by filing the aforesaid writ petition. The stand of the petitioners before the learned Single Judge and before this Court is that they are regular squatters and have been squatting in Sadar Bazar area for the past many years.
3. Learned counsel for the petitioners has drawn the attention of the Court to the Allotment Letters issued to the petitioners, on different dates in the year 2009 including the letter dated 13.02.2009. The grievance of the petitioners is that no allotment has been made pursuant to the Allotment Letters so issued and on the other hand, the officials of the respondents continue to harass the petitioners and are not allowing them to squat and hence, their livelihood is being hampered.
4. Mr.Gupta, learned counsel for the NDMC submits that the present LPA is not maintainable; firstly, on the ground that the writ petition was dismissed with cost of Rs.10,000/- and in the absence of payment of the cost, the appeal cannot be heard; and secondly, there is no infirmity or illegality in the orders passed by the learned Single Judge. Mr. Gupta further contends that the learned Single Judge has taken into account the fact that the petitioners had firstly approached this Court in the year 2015 by filing a writ petition being W.P. (C) No.2340/2015 and the said writ petition was disposed of by a Single Judge by an order dated 11.03.2015. Leave was granted to the petitioners to approach the Town Vending Committee (“TVC”) as and when it is functional. Mr.Gupta further contends that almost identical relief has been prayed in the subsequent writ petition which rightly also stands dismissed.

5. Mr.Gupta has also highlighted the fact that the Sadar Bazar area has been declared as “No Hawking No Vending” zone and an affidavit to this effect was filed by the MCD before the Supreme Court of India in the case of *Gainda Ram v. Municipal Corporation of Delhi*, W.P. (C) No.1699/1987. It is further submitted that while dealing with an interim application in the said writ petition, the Supreme Court by an order dated 05.05.2006 had directed the Delhi Police to ensure that the hawkers are removed from the no-hawking zone and to ensure that the same is not re-occupied by them. It is contended by Mr.Gupta that any order allowing hawking and vending in the area in question would amount to contempt of the order passed by the Supreme Court.
6. Another ground raised by Mr.Gupta is that in the year 2010, the petitioners had approached the Zonal Vending Committee, however, the relief so prayed was declined and the order dated 18.06.2010 passed by the Presiding Officer of the Zonal Vending Committee has attained finality. It is, thus, submitted that from 2010 onwards, it can safely be stated that the petitioners are not hawking or vending at the respective sites so claimed by them.
7. In response to the submissions made by Mr.Gupta, Mr.Mishra – learned counsel for the petitioners submits that having regard to the financial status of the petitioners, the petitioners cannot be faulted; in fact, they have been running from pillar to post to ensure that their livelihood is protected. It is submitted that no doubt, the relief sought to be claimed in the second writ petition was available to them, but in the absence of proper legal advice, no relief was sought with regard to the Allotment Letters so issued. Mr.Mishra contends that firstly, the

order imposing the cost of Rs.10,000/- may be waived and the petitioners may be granted an alternate site till the TVC is functional.

8. We have heard the learned counsels for the parties and considered their rival submissions. It is not in dispute that the petitioners had approached the Zonal Vending Committee and by an order dated 18.06.2010, the relief sought was declined. It is also not in dispute that the aforesaid order has attained finality. Copy of the order dated 11.03.2015 would show that the petitioners had filed an earlier writ petition being W.P. (C) No.2340/2015 which already stands disposed of, permitting the petitioners to approach the TVC for redressal of their grievances. It is not in dispute that the TVC is not functional till date.
9. While we are not satisfied with the explanation rendered by the learned counsel for the petitioners for filing a second writ petition and accordingly, we find no infirmity in the order passed by the learned Single Judge, however, taking into consideration the submissions made and the financial status of the petitioners, we modify the order dated 04.11.2016 as far as it relates to payment of cost. The Allotment Letters, on which reliance is placed, in our view, cannot be enforced, firstly for the reason that there is no explanation for the delay and laches in approaching this Court and secondly, post issuance of these Allotment Letters, the Supreme Court had granted stay on all further proceedings in the High Court and resultantly, the Allotment Letters were not given effect to universally by the MCD.
10. As prayed, we dispose of this LPA while waiving the cost of Rs.10,000/- imposed. The petitioners would be free to approach the TVC as and when it is functional. The TVC will consider the case of

each petitioner based on the documents filed by them, unaffected by any observations made by the Zonal Vending Committee or the learned Single Judge in the impugned orders.

11. With these directions, the LPA is disposed of.

12. C.M. No.27087/2017 also stands disposed of.

C.M. No.27086/2017 (for interim relief)

Application stands disposed of in view of the order passed in the writ petition.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

AUGUST 31, 2017/ka