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

+ W.P.(C) 8070/2017

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Date of Judgment : 12th September, 2017

RAM PRAKASH GUPTA

..... Petitioner

Through

Mr. Satish Kumar Tripathi and Mr. Amit
Kumar Dubey, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through

Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Mananjay Mishra and
Ms. Vidhi Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J (ORAL)

CM.APPL No.33209/2017(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking following prayers:

“a. admit the writ petition against the respondents;

b. direct the NDMC to allow the petitioner to carry on his business fruit vender(or of any permissible items) from a suitably fixed site near gate no.2, Palika Bazar or to some other workable place in vicinity of the same as he used to be doing his business from said place for decades and

having his walking customers there;

c. pass any other order/relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of petitioner and against the respondent."

4. Petitioner claims to be a street vendor and was granted a hawking licence w.e.f. 01.04.2011 to 31.03.2014 within NDMC area in respect of hawking of uncut fruits. The petitioner claims to have made several representations allowing him to carry on his trade from a fixed site due to old age and health problems, but the NDMC have not considered the request made by the petitioner, which had led to the filing of the W.P.(C).9102/2011 wherein directions were issued to the respondent NDMC to consider and decide the pending representations of the petitioner as per law as expeditiously as possible and preferably within a period of four weeks from the date of the order. Counsel submits that the respondent have failed to consider the request of the petitioner in view of the observations made by the Hon'ble Court on 02.01.2012 in W.P.(C).9102/2011, which has led to the petitioner filing another W.P.(C).4688/2016, wherein the Hon'ble Court by an order dated 20.05.2016 had observed that any dismissal of this petition would not come in the way of the respondent NDMC, if it is of the opinion that the petitioner can be permitted to vend uncut fruits from any fixed site anywhere in Delhi if the permission is so granted. It is claimed that the respondent have not considered the request of the petitioner which has led to the filing of the present petition.
5. Notice. Mr. Harsha Peechara, learned counsel for the respondent enters appearance on an advance notice and accepts notice.
6. Learned counsel for the respondent contends that the present petition is not maintainable. It is gross abuse of the process of law as identical

prayers have been made by the petitioner in the W.P.(C).9102/2011 which was decided on 02.01.2012 and W.P.(C).4688/2016 which was dismissed on 20.05.2016. He submits that post this order, no representation has been made by the petitioner and this writ petition should be dismissed.

7. We have heard learned counsels for the parties and considered their rival submissions.
8. This is the third round of litigation between the petitioner and the respondent. The W.P.(C).9102/2011 which was disposed of on 02.01.2012, the following directions were issued:

“4. In view of the limited relief sought in the present petition, the same is disposed of along with pending application, at the stage of admission with directions to the respondent/NDMC to consider the pending representations of the petitioner mentioned hereinabove and respond to them as per law as expeditiously as possible and preferably within a period of four weeks from today.”

9. A reading of the order dated 21.01.2012 passed in W.P.(C).9102/2011 would show that the petitioner had *inter alia* prayed for directions to the respondent to permit him to carry out his trade of selling uncut fruits by providing him a fixed vending site. An almost identical prayer was made by the petitioner in W.P.(C).4688/2016 wherein following order was passed on 20.05.2016:

“10. All that can be observed is that the dismissal of this petition would not come in the way of the respondent NDMC, if is of the opinion that the petitioner can be permitted to vend uncut fruits from any fixed site anywhere in Delhi, permitting so.

11. Dismissed.”

10. In our view, the present petition is not maintainable as the prayers sought in both the earlier writ petitions stand rejected. At this stage, Mr. Tripathi

submits that post 20.05.2016, he has not made any representation and he would do so within two weeks. In case such a representation is made, the respondent would consider the same in accordance with law. Barring the observations made hereinabove, we find no merit in the writ petition.

11. The writ petition stands dismissed.

G.S.SISTANI, J

CHANDER SHEKHAR, J

SEPTEMBER 12, 2017

pst