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

% *Date of Judgment: 13th September, 2018*

+ W.P.(C) 8328/2018 & C.M.31948/2018
DEVENDRA

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL (NDMC) AND ORS.

..... Respondents

+ W.P.(C) 8885/2018 & C.M.34183/2018
DEVI PRASAD

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. Respondents

Present: Mrs.Rani Chhabra, Mr.Sagar Kumar and Mr.Priyal Agarwal,
Advocates for the petitioner in W.P.(C) 8328/2018.

Mr.Kamlesh Kumar Mishra, Mr.Rahul Kumar and Mr.Mutiur
Rehman, Advocates for the petitioner in W.P.(C) 8885/2018.

Mr.Nilesh Sahwney, standing counsel for NDMC with
Mr.Tushar Sannu, ASC and Mr.Ankit Jain, Advocate in both
the matters.

Mr.Jawahar Raja, ASC for R-3 in W.P.(C) 8328/2018.

Ms.Mrinalini Sen Gupta and Ms.Nihaarika Jauhari, Advocates
for respondents no.2, 3 & 4 in W.P.(C) 8885/2018.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Both the writ petitions are being decided by a common order as both the writ petitions relate to a kiosk, which was allotted in favour of late Smt.Shyama Devi, opposite B Gate of the Supreme Court, near College of Arts at Tilak Marg, New Delhi. W.P.(C) 8885/2018 has been filed by the son of late Smt.Shayma Devi, the original allottee. For the sake of convenience, the petitioner in W.P.(C) 8885/2018 shall be referred to

as Devi Prasad and the petitioner in the W.P.(C) 8328/2018 shall be referred to as Devender.

2. The kiosk, in question, was sealed by the respondent no.1/ New Delhi Municipal Council (NDMC) on 13.07.2018 while relying on an order dated 11.07.2018 passed by the Supreme Court of India. Both the writ petitioners i.e. Devi Prasad and Devender claim to be the legal heirs of late Smt. Shyama Devi. Devender claims his rights on the basis of a Will and on the ground that he had been running the kiosk initially during the lifetime of late Smt. Shyama Devi and even post her demise. Additionally, it is the case of Devender that late Smt. Shyama Devi during her lifetime disowned Devi Prasad and thus, Devender is the lawful legal heir, to whom the Tehbazari site is to be transferred and mutated.
3. The order of sealing is challenged by both the petitioners on the ground that there is no order passed by the Supreme Court of India, specifically, directing the respondent no.1/NDMC to seal the kiosk of the petitioners. Mr. Kamlesh Kumar Mishra, advocate, who represents Devi Prasad, contests the letter disowning Devi Prasad and Will and submits that Devender has no right, title or interest over the kiosk, in question. Mr. Mishra submits that Devi Prasad is the only lawful claimant as all other brothers and sisters have given 'no objection' in his favour. It is further contended that all the relevant documents have been provided to the office of the NDMC. Mr. Mishra, thus, seeks a direction for mutation of the kiosk in favour of Devi Prasad and also a direction for de-sealing of the kiosk on the same grounds as raised by Devender i.e. there is no order passed by the Supreme Court of India

calling upon the respondent no.1/NDMC to seal the kiosk. It is further submitted that the kiosk does not cause any threat to the building of the Supreme Court of India and the persons who frequent the Apex court. Per contra, learned counsel appearing for the NDMC relies upon an order passed by the Supreme Court of India dated 29.07.2015 in Civil Appeal No.5779/2015 arising out of S.L.P. (C) No.3632/2015 in the case of ***Dharam Chand vs. Chairman, New Delhi Municipal Council and others***. The aforesaid appeal was directed against the judgment dated 13.11.2014 passed by a Division Bench of this Court, which dismissed the Letters Patent Appeal preferred by the appellant against the decision of the learned Single Judge, who dismissed the appellant's writ petition challenging the order passed by the Enforcement Department of NDMC deciding relocation of the appellant from his existing site outside the Supreme Court of India to a site near gate of Baroda House due to security reasons. Reliance has been placed on para 20 of the order dated 29.07.2015 in support of his contention that a decision to seal the kiosk was taken keeping in mind the order passed by the Supreme Court of India. It is also contended that the order was firstly general in nature, which is evident upon reading of para 21, which refers to the Supreme Court and its vicinity. Additionally, he submits that it is for the respondent to assess as to the security of the surrounding areas and this would not fall in the domain of the petitioners. Additionally, it is contended that even otherwise on account of the ongoing litigations between the legal heirs of the deceased Smt. Shyama Devi, offer for an alternate allotment cannot be made. It is also contended that since the grandmother of Devender and

mother of Devi Prasad was an allottee of the kiosk, her legal heirs would also be entitled to an alternate site based on the resolution of the NDMC which takes into account humanitarian grounds and in the absence of any dispute.

4. Having regard to the observations made by the Supreme Court of India in the case of ***Dharam Chand*** (supra), we are of the considered view that there is no illegality or infirmity in the order of sealing passed by the NDMC. However, we find that post the order of sealing, the NDMC has not made any alternate allotment to the legal heirs of the deceased. Learned counsel for the respondent/NDMC has clarified that the alternate allotment could not have been made on account of the ongoing fight between the legal heirs. Counsel further submits that the request for alternate allotment by the legal heirs of late Smt. Shyama Devi would be considered within a period of six weeks after considering the rival claims of Devender and Devi Prasad and any other person who asserts his/her right over the kiosk. However, we make it clear that we have not expressed any opinion with regard to the dispute and as to who would be surviving legal heir of late Smt. Shyama Devi. Needless to say that in case either of the two parties has produced documents in their support, an order would be passed after hearing both the sides and thereafter an alternate allotment would be made.
5. With the aforesaid directions, both the writ petitions stand disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 13, 2018/rb