

\$~49

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

% *Date of Judgment: 9<sup>th</sup> October, 2018*

+ W.P.(C) 10787/2018

RAM KUMAR

..... Petitioner

Through Mr. M. Saif Islam Israili & Mr. M.  
Mohsin Israili, Advocates.

versus

GNCT OF DELHI AND ORS

..... Respondents

Through Mr. Darpan K.M. & Mr. Hetu Arora  
Sethi, Advocates for R-1 & R-4.  
Mr. Ramkumar, Standing Counsel for  
North MCD with Mr. Sushil Kumar,  
Advocate for R-3 & R-4.

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S. SISTANI, J. (ORAL)**

1. Challenge in this petition is to the orders dated 22.05.2018 and 29.05.2018 passed by Public Grievances Commission (hereinafter referred to as the 'Commission'). By order dated 29.05.2018, following direction has been issued:

“4. **Directions of the PGC**

Hon'ble Delhi High Court has also vide its orders dated 28.5.2018 ordered for removal of barbar shop. The action has already been taken by the MCD authorities. In the light of the ATR and High Court order no such encroachment, once removed by the MCD should be allowed to re-occur.”

2. This case has a long history. Some necessary facts required to be

noticed are that the petitioner herein claims to be a regular street vendor. He claims to be carrying on his business as a barber behind shop no.210, Library Road, Azad Market, Delhi. The occupier of shop no.210 and the petitioner have been locked in litigation for the past 5 years. Claims and counter claims have been filed. While the occupier of the shop had opened a shutter towards the backside where the petitioner was carrying on his business. The attempt of the occupier of the shop was that the petitioner should be removed while the petitioner has been resisting the action of the shop owner and the MCD.

3. Counsel for the petitioner submits that the Commission has exceeded its jurisdiction. The order passed by the Commission should be set aside as the question with regard to petitioner's carrying out his vending activities is already pending adjudication before the Town Vending Committee (TVC) and it is the only TVC, who can decide this issue. Additionally, it is contended that the Commission has wrongly relied upon orders dated 16.05.2018 and 28.05.2018 passed by this Court in W.P. (C) 4787/2018. Mr. Israili further submits that in both these orders, no direction had been issued either to the MCD or any other statutory body for removal of the petitioner.
4. Mr. Ramkumar, counsel for North MCD submits that the petitioner is illegally occupying public land and he has been removed on many occasions but he returns at the same place.
5. Counsel for the Commission submits that based on the material available and the stand of the MCD, the impugned orders have been passed. However, he submits that the Commission has also taken note of the order passed by learned Single Judge of this Court in W.P. (C)

5809/2017 dated 18.12.2017.

6. Heard counsel for the parties. We deem it appropriate to reproduce below the orders passed by the Division Bench of this Court, which have been relied upon by the Commission:

“ORDER  
16.05.2018

Notice to show cause as to why this petition be not admitted. Ms. Jyoti Taneja, Advocate accepts notice on behalf of respondents no.1 & 3. Issue notice to respondent no.2 by all modes including *Dasti*, returnable on 28.05.2018.

Ms. Taneja submits that repeated action has been taken to remove respondent no.2 as he is occupying public land. However, respondent no.2 returns to the existing site. Respondent no.2 is directed to remain present in Court.”

“ORDER  
28.05.2018

Counsel for respondent No. 2 enters appearance on an advance copy along with respondent No. 2. Time is sought to file reply. Reply be filed within four weeks. Rejoinder(s), if any, be filed within two weeks thereafter. Status report be also filed by the MCD. List on 08.08.2018.”

7. Reading of the aforesaid two orders would show that this Court had nowhere issued any direction to any public authority for removal of the petitioner herein. However, we may add that it is the consistent stand of the MCD as reflected in the order dated 16.05.2018 that the petitioner is occupying the public land.

8. Order dated 18.12.2017 passed in W.P. (C) 5801/2017 by learned Single Judge of this Court reads as under :

“1. The petitioner has filed the present petition, inter alia, impugning the orders dated 17.10.2016 and 05.12.2016 passed by the Public Grievance Commission (hereafter ‘the PGC’) holding that the space at the rear portion of the shop of the complainant (respondent no.2) has been encroached upon.

2. The learned counsel for the petitioner points out that respondent no.2 had preferred a suit (being suit no.CS 217/2014 which is renumbered as CS No.99191/2016) and the application for interim relief filed by the plaintiff therein for a similar relief was rejected on 15.05.2014. She pointed out that an appeal was also preferred by the plaintiffs therein (including respondent no.2) but the said appeal was also rejected by an order dated 09.11.2015. The petitioner’s grievance is that the aforesaid orders have not been considered by the PGC.

3. In view of the above statement, this Court consider it apposite to remand the matter to the PGC to reconsider afresh after affording the concerned parties a reasonable opportunity to be heard. Accordingly, the impugned orders are set aside and the PGC is directed to reconsider the matter afresh and pass an appropriate order after hearing the parties.

4. It is clarified that this Court has not expressed any opinion as to the merits of the petitioner’s contention and all contentions of the parties are kept open.

5. It is also clarified that this order would not preclude the concerned authorities from removing the petitioner from the site in question, if not already so done, if they are otherwise entitled to do so in law.

6. The petition alongwith the application is disposed of.”

9. Reading of the order passed by learned Single Judge would show that

after noting the submissions of the parties, the matter was remanded back to the Public Grievance Commission to consider the matter afresh after affording reasonable opportunity to all the parties.

10. Counsel for the petitioner has also placed reliance on the order dated 29.09.2014 passed by NDMC.
11. Counsel for the respondent submits that much water has flown thereafter and as of now no protection can be granted to the petitioner.
12. Counsel for the petitioner contends that the MCD has been shifting their stand in their counter affidavit filed in W.P. (C) 7680/2013.
13. After some hearing in the matter, there is unanimity that TVC has been formed and the appropriate authority to redress the grievance of the petitioner would be the TVC. Accordingly, liberty is granted to the petitioner to approach the TVC with all supporting documents. We direct the TVC to consider the case of the petitioner in the light of the documents, which may be produced, unaffected by any of the observations made in the orders passed from time to time.
14. Without expressing any opinion on the merit of the matter, the writ petition is disposed of.

**G.S.SISTANI, J.**

**SANGITA DHINGRA SEHGAL, J**

**OCTOBER 09, 2018/ck**