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

+ **W.P.(C) 12489/2018**

KISHAN SINGH TOMAR

..... Petitioner

Through: Mr Vikrant Yadav, Mr Rajesh Chhetri, Ms Meenakshi Rawat and Mr Rajeev Chhetri, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel, GNCTD with Mr Chirayu Jain and Ms Nikita Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.11.2018

CM No.48474/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 12489/2018 & CM No.48473/2018

2. The petitioner has filed the present petition impugning an order dated 12.11.2018 passed by respondent no.2 – Deputy Commissioner (Excise) – directing respondent no.3 (Delhi State Civil Supplies Corporations Limited) (hereafter ‘DSCSC’) to shift the liquor vend being operated from the premises bearing no.C-183/1, Gali No.2, Main Road Brahampuri, Chauhan Banger, Delhi-110053.

3. The petitioner is the owner of the aforementioned premises.

4. The petitioner states that in terms of the agreement entered into

between the petitioner and DSCSC, the petitioner is entitled to 15% of the gross profits earned by DSCSC from the sale of liquor from the vend operated from his premises. The petitioner thus, claims that he is aggrieved by the impugned order and has the locus to challenge the same.

5. This Court is of the view that the petitioner has no *locus* to challenge the order passed by respondent no.2 as the licence issued is not in favour of the petitioner. The question whether DSCSC is entitled to a licence is between the Excise Department and the DSCSC. This is also the view expressed by this Court in ***Dharmendra Kumar Sharma v. Govt. of NCT of Delhi & Ors.: W.P.(C) 8175/2018 decided on 06.08.2018.***

6. It is relevant to note that DSCSC has not objected to the impugned order and has accepted the same. It is also relevant to note that the said order had been passed by the respondent no. 2 on account of various complaints alleged to have been received in respect of liquor vend. The impugned order indicates that an enquiry was conducted by the Assistant Commissioner (Excise) on 11.11.2018 along with certain several officials for ascertaining the views of the local residents as well as stake holders with regard to the complaints and their demand for shifting the liquor vend from the location in question. It is stated that during the public enquiry, the local residents expressed their grievances on the ground of safety of women and children as well as traffic congestion. They also complained that there was a nuisance and open drinking around the said liquor vend. Keeping the view of the majority of the persons at the said enquiry, respondent no. 2 has passed the impugned order.

7. The learned counsel for the petitioner has referred to the decision of

the Coordinate Bench of this Court in ***Madan Lal v. Lt. Governor & Ors.: W.P.(C) 7316/2016 decided on 24.08.2016*** in support of the contention that the petitioner would have a locus to challenge the impugned order since the petitioner and DSCSC have entered into a revenue sharing arrangement amongst themselves and closure of the liquor vend would affect the said stream of revenue. This contention is unmerited. Indisputably, the payments received by the petitioner from DSCSC is in the nature of license fee/rent. The fact that the revenue generated is the measure of such rent does not in any manner alter the nature of the payment received by the petitioner. Undisputedly, the petitioner itself is not carrying on the business of selling liquor and license issued by the Excise Department is not in favour of the petitioner.

8. It is also important to note that the order sought for by the petitioner would in effect not only mean that the Excise Department is compelled to continue the licence in favour of DSCSC but that DSCSC is also compelled to continue with the liquor vend. Plainly, the said cannot be accepted.

9. In view of the above, this Court finds no ground to interfere with the impugned decision.

10. The learned counsel for the petitioner has also referred to three other decisions rendered by this Court – ***Shri Raj Kumar Sharma v. Commissioner of Police and Ors.: W.P.(C) 8211/2018 decided on 06.08.2018***; ***Krishan Kumar v. Commissioner of Police & Ors.: W.P.(C) 7303/2018 decided on 17.07.2018***; and ***Resident Welfare Association v. Govt. of NCT of Delhi and Ors.: W.P.(C) 8053/2012***. The said decisions are having no application in the facts of the present case. In the first two

cases (*Raj Kumar Sharma's case and Krishan Kumar case*), the petitioner had complained that certain local residents were obstructing access to the shop in question. In that background, the Court had directed the authorities to take necessary steps to ensure that the access to the shops in question are not obstructed. In *Residents Welfare Association v Govt. of NCT of Delhi* (*supra*), this Court had rejected the petitioner's claim that liquor vend in Community Shopping Centres, were illegal. Plainly, the said decisions have no application in the facts of the present case.

11. In view of the above, the petition is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 22, 2018
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