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

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Date of Judgment: 30.04.2019

+ **LPA 213/2016**

GOPAL SRIVASTAVA

..... Appellant

Through: Mr. M.M. Kashyap and Mr.
Mushtaque Ahmad, Advocates.

versus

THE GOVT (NCT OF DELHI) & ORS

..... Respondents

Through: Mr. Sanjoy Ghose, Advocate for
GNCTD.
Mr. Akhil Mittal, Advocate for
NDMC.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. This appeal lays challenge to an order passed by a learned Single Judge of this Court dated 30.10.2015.
2. Mr. M.M. Kashyap, learned counsel appearing for the appellant submits that the appellant is a regular street vendor and he has been vending outside Shani Mandir, Chandni Chowk for the past many years. It is also the case of the appellant that he had applied under the Scheme of 2007. The officers of the respondent have been threatening to remove him and he is not allowed to carry out his trade and business without obstruction. Additionally, he submits that since he had applied in the year 2007, till the

TVC is formed and the survey is carried out, his possession should not be disturbed.

3. Learned counsel appearing for the MCD submits that the appellant is not a regular street vendor. He submits that an affidavit has been filed in which the respondent has clearly disputed that the appellant is vending at Gate No. 5, Metro Station near Shani Mandir, Chandni Chowk, as claimed by the appellant. It is submitted that an inspection was carried out by the officials of the North Delhi Municipal Corporation and as per the inspection report, the appellant was not found anywhere near the place where he claims to be squatting. It is further submitted that the challans filed by the appellant pertain to Esplanade Road.

4. The next contention of the counsel for the respondent is that in any case, now the TVC has been formed and a scheme has been notified by the Delhi Government on 15.04.2019. Thus the appellant can approach the TVC for verification of his documents. He, however, adds that as per the records of the MCD, no application was made by the appellant in the year 2007 and hence no protection can be granted to him. He also points out that the site in question is a congested area and a non-hawking and non-vending zone and has been handed over to OMEX for redevelopment of a parking site.

5. Mr. M.M. Kashyap, learned counsel for the appellant relies on an order passed by the Supreme Court of India dated 18.5.2018 in W.P. (C) 4677/1985 in a case titled as ***M.C. Mehta Vs. Union of India and Ors.***, and more particularly the following paragraph:-

“(ii) He further says that those vendors who come in the day time and go away in the evening or at night or who may be moving from place to place will not be disturbed provided they

have any authorization or permission for vending at a specific location or who have applied under the 2007 scheme.”

6. Reacting to the said order, learned counsel for the respondent submits that the said order would not apply to him as the site in question in the present case is a non-hawking and non-vending zone. Mr. Kashyap submits that assuming what the respondent says is correct for the sake of arguments, it is only the petitioner, who has been singled out, while the others continue to squat.

7. We have heard learned counsels for the parties.

8. In a nutshell, the grievance of the appellant is that despite being a regular street vendor and having applied under the 2007 scheme, his possession has been disturbed. While on one hand, the appellant claims that he is a regular street vendor, near Metro Station Shani Mandir, Chandni Chowk, the counsel for the respondent submits that the two challans placed on record by the appellant himself do not support the stand of the appellant. Learned counsel, therefore, also argues that these are disputed questions of fact and which should not be decided in a LPA.

9. We are persuaded by the submissions made by learned counsel for the respondent. There is nothing on record to show conclusively that the appellant has been regularly squatting at the site claimed by him. Even otherwise, now the TVC has been convened and the scheme stands notified by the Delhi Government on 15.04.2019. We, thus, dispose of this appeal with the direction that in case the appellant approaches TVC with all supporting documents, the TVC will consider the case of the appellant in accordance with law and unaffected by any observations made by us in this order.

10. With these directions, the LPA stands disposed of accordingly.

G.S.SISTANI, J

JYOTI SINGH, J

APRIL 30, 2019

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