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

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Date of Judgment: 11.03.2019

+ W.P.(C) 4596/2018 & CM APPL. 17760, 27817/2018 &
CRL.M.A. 12728/2018

BAPU MARKET ASSOCIATION Petitioner

Through: Mr. Ravinder Tyagi, Advocate
versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. H.S. Phoolka, Sr. Advocate with
Mr. Mukesh Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The petitioners claim to be the members of the petitioner association. They also claim to be regular Teh-bazari holders of Kiosks at Bapu Market, Gandhi Maidan, Chandani Chowk, Delhi. The members of the petitioner association received a notice dated 24.04.2018 calling upon them to vacate the Teh-bazari sites by 30.04.2018 failing which eviction action would be taken by the Department.

2. The members of the petitioner association have filed this writ petition seeking the following prayers:

“a) Kindly issue a Writ Of Mandamus Or Any Other Appropriate Writ, Order and/or direction in favour of members of the Petitioner and against the Respondent restraining the officers of Respondent to evict the members of the Petitioner from the sites of 7'5” of the Petitioners at Bapu Market in front of Gandhi Maidan, Chandani Chowk, Delhi by staying the vacation notice

dated 24.04.2018 issued by Administrative Officer City SP Zone of the Respondent and/or

- b) Kindly issue a Writ Of Mandamus Or any other appropriate Writ, Order and/or direction in favour of petitioner and against the Respondent to pass necessary orders for keeping the Petitioners at the present Teh-bazari site of Bapu Market, Gandhi Maidan, Chandani Chowk, Delhi and/or
- c) Kindly issue a Writ Of Mandamus Or Any Other Appropriate Writ, Order and/or Direction in favour of Petitioner And Against the respondent to give direction to the officers of the Respondent to consider the allotment of alternate site to the Petitioners in case it is required shifting of the Petitioners”

3. By an order of 27.04.2018, the respondents were restrained from taking coercive action against the petitioners till the next date of hearing. Thereafter, this Court by an order dated 18.05.2018, after hearing counsel for the parties, had vacated the interim order so granted primarily on the ground that the land on which the Kiosks of the petitioner were situated, was required for a public purpose. Mr. Phoolka, learned senior counsel has drawn the attention of the Court to an order dated 04.05.2018 passed in the case of *Manushi Sangathan, Delhi vs. Government of Delhi & Ors.* in W.P.(C) 4572/2017 which order is reproduced below:

“Gandhi Maidan Parking

23. The Court has perused the affidavit filed by Ms. Ruchika Katyal, Deputy Commissioner, North DMC, in which it is stated that Omaxe Limited is the eligible successful bidder and a decision to award it the contract has been taken by the Commissioner on 23rd April 2018. Annexed with the affidavit as Annexure C is a copy of the communication sent by the

Additional Commissioner (Revenue) on behalf of the Commissioner to the Municipal Secretary, North DMC for being placed before the Standing Committee. Ms. Tewatia clarifies that the affidavit wrongly describes this document as 'Standing Committee Resolution' when in fact the Standing Committee is yet to grant its approval.

24. In terms of the timeline submitted by the North DMC itself to this Court along with its affidavit dated 30th January 2018 in relation to the Gandhi Maidan project, the bid had to be placed before the Standing Committee by 12th April 2018. That time limit has been crossed. Ms. Tewatia explains that the term of the Standing Committee before which the bid had to be placed for approval came to an end on 13th April 2018. A new Standing Committee is yet to be constituted. She is unable to provide any timeline as regards the constitution of the Standing Committee.

25. The outlay of the Gandhi Maidan parking project is Rs. 445 crores and is being done on a public-private partnership ('PPP') basis. Nevertheless, considering the importance of the project for the redevelopment of Chandni Chowk and the numerous orders that have been passed from time to time by this Court, it is directed that the Commissioner will immediately bring to the notice of the Mayor of the North DMC all the orders passed by the Court in regard to the Gandhi Maidan parking from time to time, including today's order. The Mayor will ensure that the Standing Committee which has to approve the bid is constituted within a period of ten days and in any event not later than 20th May 2018. If it involves convening the House then it should be done on priority basis since every day's delay would entail avoidable losses.

26. A further affidavit in this regard be filed by Ms. Katyal at least three days before the next date of hearing with advance copy to learned counsel for the other parties.”

4. It is further pointed out by Mr. Phoolka, learned Senior Counsel that the area was required for construction of a multi level parking. The interim order was accordingly vacated. We had, instead of dismissing the writ petition, called upon the respondents to place photographs of the area where relocation of the petitioners was to be made. It may also be noted that Mr. Tyagi, counsel for the petitioner had submitted that he would make an application under Order 1 Rule 10 of CPC in proceedings pending in the case of *Manushi Sangathan* (*supra*). An application was made and rejected by a detailed order of 31.05.2018, which is reproduced as below:

“2. The Bapu Market is on the boundary wall of the Gandhi Maidan which is situated at HC Sen Road, Chandni Chowk, Delhi. It is situated between the entry and exit gates of the Gandhi Maidan Car Parking. As of date, there is a huge surface area on Gandhi Maidan where cars and motorcycles are parked. The Court is informed that this site was earlier used for holding the Ram Leela festivities.

3. As a part of the overall redevelopment of the Chandni Chowk area and with a view to de-congesting the main arterial roads in Chandni Chowk, it was proposed to have a multi level car parking at the present site of the Gandhi Maidan Car Parking. In an order passed by this Court in the main matter i.e. W.P. (C) 4572/2007 on 12th October 2012 a direction was issued to the Municipal Corporation of Delhi (‘MCD’) and GNCTD to report to the Court the time frame within which the said multi level car parking would be developed. On 23rd February 2016, the Court was informed by the North Delhi Municipal Corporation (‘North

DMC') that a preliminary estimate for the project had been approved. The Court was constrained and observed that in more than three years very little progress had been made on the issue.

4. In a subsequent order dated 28th March 2016 the Court recorded the submissions of the North DMC that it was proposed to demolish the existing single basement car parking having the capacity of 600 cars and construct a multi level car parking facility with the capacity of around 1,080 cars. Subsequently, on 12th May 2016, the Delhi Development Authority ('DDA') informed the Court that a notification had been issued inviting objections for change in the use of the land. A status report was filed by the DDA in this Court on 24th August 2016, approving the proposal for the change of land use from 'recreation' (neighbourhood park/open space) to 'transportation' (multi level parking) located at Gandhi Maidan. The precise text of the resolution has been set out in a document enclosed with the status report. Inter alia, the conditions on which the change was approved was that the North DMC "should design the multi level parking and allied buildings on this site with all components of green buildings (such as use of solar panels, recycling of water, zero waste discharge etc.)" and that the design including the colour scheme should ensure "blending with the surroundings in view of the heritage value of the area." The multi level parking had to be developed "as per the norms available for existing/earmarked parking sites." The above change was approved pursuant to the procedure under Section 11 A of the Delhi Development Act.

5. The Court was informed at the hearing on 10th August 2017, that financial sanction for the project at a cost of Rs. 300 crores has been approved. This was revised to Rs. 390.39 crores as informed to the Court at the hearing on 31st January 2018. The date for completion of the project was 15th September 2020.

On 4th May 2018, the Court was informed that the outlay of the Gandhi Maidan project was Rs.445 Crores and the project was expected to be executed upon public private partnership basis.

6. xxx xxx xxx

7. xxx xxx xxx

8. xxx xxx xxx

9. xxx xxx xxx

10. It was submitted to the Court hearing W.P. (C) 4596 of 2018 that there was no necessity to remove the said tehbazari holders constituting the Bapu Market Association in view of the orders passed by this Court in the present Writ Petition since, inter alia, “the Petitioners do not come in the way of the construction and functioning of the car parking.” It was submitted that no purpose would be achieved by utilizing public funds for erecting a Multi Level Car Parking as the existing car parking was sufficient. It was further submitted that existence of the metro track and heritage building close by made it impossible for the project to be executed in accordance with law.

11. In an order dated 18th May 2018 passed in the said W.P. (C) No. 4596 of 2018, the Division Bench of this Court noted the submission of learned Senior Counsel appearing for the North DMC that one of the conditions of the tender was to hand over the site free from all encroachments including the removal of the Bapu Market. An affidavit was filed by the North DMC in the said W.P.(C) 4596/2018 informing the Court that the North DMC had already issued “offer cum relocation letter” providing “alternative tehbazari sites to the regular tehbazari site holders who got the verification of the documents done.” For the other category i.e. Tehbazari holders who had not got the verification done despite prior notice, they were also being intimated “to apply for change of hand as per the policy for consideration of their cases for alternative sites.” It was mentioned in para 4 of that affidavit that “the relocation of the Petitioners at Mata

Sundari Road in view of the removal of present Tehbazari sites at Bapu Market has arisen as the North DMC requires the land at Bapu Market for public purpose.” In para 13 of the same affidavit it was stated that “the Department has made all sincere and bonafide efforts to find some place for relocation of the Petitioners Association at Mata Sundari Road”.

12. In a subsequent affidavit dated 18th May 2018 filed in W.P. (C) 4596 of 2018, the North DMC informed this Court that a relocation plan had already been prepared and was being filed before the Court. Photographs showing the vacant status of the land at Mata Sundari Road for relocation of the eligible tehbazari holders from Bapu Market were also enclosed with the affidavit. It was assured by the North DMC that “endeavour shall be made to improve the basic civic amenities in the area after relocation of tehbazari of Bapu Market in the area whatever (sic) is necessary.” The Court was further informed that after the completion of the Multi Level Car Parking at H.C. Sen Road Delhi, “in the event the Corporation in future intends to allot on tehbazari basis at the said site in question, the relocated tehbazari eligible holders on H.C.Sen Road shifted to Mata Sunderi Road will be given preference.”

5. By a detailed order, the application filed in W.P.(C) 4572/2017 titled ***Manushi Sangathan, Delhi vs. Government of Delhi & Ors.*** by the petitioner herein has been rejected, which order has attained finality. Mr. Tyagi submits that on account of subsequent events, the scope of the writ petition should be enlarged since their licenses have not been revoked and their allotment letters have not been cancelled. Accordingly, all the persons who have been displaced should be granted alternate sites.

6. We do not find any force in this submission made by Mr. Tyagi. Since prayer (a) and (b) of the writ petition have already become infructuous

as the area has been taken over and handed over to the contractor for construction of the parking site. As far as prayer (c) is concerned, alternate sites have been awarded. As far as the question of allotment of alternate sites to all the members is concerned, the same is kept open. Liberty granted to the petitioners to approach the MCD at the first instance in case there is any grievance, it would be open to seek such remedy as available in accordance with law.

7. With these observations, the writ petition, along with the accompanying applications, is disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 11, 2019

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