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

+ **W.P.(C) 15989/2022 & CM APPL. 51284/2023**

MOHD HUSSAIN & ORS.

..... Petitioners

Through: Mr. Sarfaraz Khan, Mr. Abdul Wahid
and Ms. Mirza Baig Amir, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Ms. Puja Kalra, Advocate for MCD.
Mr. Pushkar Sood, Advocate for
DMRC.
Ms. Rajkumari Yadav, Advocate for
R-4.

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Date of Decision: 06th November, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present writ petition has been filed with prayer for issuance of directions to the respondents *inter alia* to initiate the relocation process of the petitioners to the original sites at Recruitment Office, Red Fort, Delhi from where they were removed in the year 2012 by way of notice dated 19th June, 2012 issued by the then North Delhi Municipal Corporation, now Municipal Corporation of Delhi ("MCD").

2. It is the case on behalf of the petitioners that they were allotted



Tehbazari shops in the year 2008 admeasuring 6'x4' by the respondent no. 1/ Municipal Corporation of Delhi ("MCD") at the Recruitment Office, Red Fort, Delhi-110006, market known as Azad Hind Market.

3. During the year 2011-2012, the respondent no. 3/ Delhi Metro Rail Corporation ("DMRC"), in furtherance of construction project for extension of metro line, proposed to lay down the underground corridor from Central Secretariat to Kashmere Gate with 3 metro stations at Delhi Gate, Jama Masjid and Lal Quila. Thus, the land in question where the Tehbazari shops of the petitioners were situated was required to be handed over to the DMRC for the aforesaid project. In view thereof, the MCD decided to shift the Tehbazari shops existing from the aforesaid site to some other alternate location temporarily. Consequently, vide notice dated 19th June, 2012, the MCD directed the Tehbazari holders in question to vacate the land for the purposes of handing over the same to the DMRC for the metro project.

4. It is the case of the petitioners that they vacated the Tehbazari site in question at Recruitment Office, Red Fort, Delhi, but no alternative site/shop was given by the respondent no. 1 to them. Aggrieved by the same, some of the Tehbazari holders approached this Court by way of writ petition being *W.P. (C) 1213/2014*. By order dated 29th August, 2014, this Court disposed of the said writ petition thereby binding the MCD by the terms and conditions as mentioned in its letter dated 19th June, 2012.

5. It is submitted on behalf of the petitioners that after filing of the aforesaid writ petition, the Tehbazari holders in question were shifted to Meer-Dard Road purely on temporary basis. The MCD was bound down to relocate the petitioners at their original Tehbazari site at Recruitment Office, Red Fort, Delhi after completion of Delhi Metro Station work at the site. It



is the case on behalf of petitioners that the work of Delhi Metro regarding construction of metro station at the site in question has already been completed. Thus, by letters dated 3rd August, 2017, 29th August, 2017 and 01st November, 2017, the petitioners have requested the respondents to accommodate/relocate them at their original Tehbazari site.

6. Since the petitioners were not relocated at their original Tehbazari site, some of the petitioners filed suit for permanent and mandatory injunction in Tis Hazari Court, which was subsequently withdrawn. It is further submitted that the petitioners came to know that instead of relocating them at their original Tehbazari site, Tehbazari has been allotted to 7 other persons by way of letter dated 29th December, 2021 in the area in question. Fearing that the respondents may adopt pick and choose process for relocating the Tehbazari holders, the present writ petition has been filed.

7. Responding to the present petition, it is submitted on behalf of the respondents that there were originally eighty Tehbazari holders at the site in question. Since the land was to be handed over to the DMRC, the said Tehbazari holders were given alternate sites. Out of the Tehbazari holders relocated from the site in question, fifty Tehbazari holders shifted to Meer-Dard Road, while thirty Tehbazari holders, including the present petitioners did not shift. It is submitted that it is not possible to relocate the petitioners at their original Tehbazari site, as the same is within 300 meters of the Red Fort which is a protected monument of the Archeological Survey of India (“ASI”).

8. It is further submitted on behalf of respondents that two of the petitioners who are before this Court, had earlier filed writ petition *W.P. (C) 5166/2019* with similar prayer, which has already been disposed of with



certain directions. Therefore, the petitioners cannot seek similar relief in the present proceedings.

9. Having heard learned counsel for the parties and having perused the record, it transpires that the petitioners were removed from their original Tehbazari site by way of notice dated 19th June, 2012 by the MCD, which reads as under:

*“North Delhi Municipal Corporation
Office of the Assistant Commissioner,
City Zone, M.L.U.G. Car Parking, Asaf
Ali Road, New Delhi-110002*

No. AC(CZ)/2012/6500

Dated: 19-06-2012

Notice

All the Kiosk holders and tehbazari holders in the Recruitment Centre, Azad Hind Market near Red Fort, Delhi are directed to vacate the land so that the possession of the land can be handed over the DMRC for their project. The tehbazaries will be shifted to another place on purely temporary basis. Further these tehbazaries will be shifted back at the same place after the completion of DMRC Project work, however, the feasibility of shifting back will be examined only after completion of Metro Work depending upon the availability of space.

You are, therefore, directed to vacate the land and handover the possession of the land to this department within 7 days.

*Zonal Supdt.
City Zone”*

10. Perusal of the aforesaid notice makes it clear that the petitioners and other similarly placed Tehbazari holders were shifted to another place for the purposes of the DMRC project. The said letter categorically records that the feasibility of shifting back the petitioners at the same place after completion of DMRC project work shall be examined only after completion of the metro work. Therefore, there is no vested right in the petitioners to be



shifted back to the original site, as the same was conditional upon examining the aspect of feasibility of shifting back to the said site. Further, attention of this Court has been drawn to the letter dated 18th March, 2019 issued by the ASI, wherein it has been mentioned in clear terms that the site under reference falls within 300 meters of the Red Fort, which is a centrally protected monument and that allotment of Tehbazari in this area will create congestion. Thus, the ASI categorically stated in the aforesaid letter that it would not be appropriate to allot the Tehbazari site at Recruitment Office, Red Fort, Delhi. Accordingly, no case is made out by the petitioners for passing any directions by this Court for relocating them at the aforesaid site.

11. It is also noted that petitioner nos. 7 and 8 i.e. Dalbir Singh and Smt. Bimla Devi were petitioner nos. 3 and 4 in an earlier writ petition filed before this Court, being *W.P.(C) 5166/2019, Kama-Rudin @ Kamruddin and others versus Municipal Corporation of Delhi and others*. The same was filed with similar prayer for relocating the said petitioners to the original Tehbazari site at Recruitment Office, Red Fort, Delhi. The said writ petition was disposed of vide judgment dated 16th May, 2019 by this Court thereby directing the petitioners therein to approach the Town Vending Committee (“TVC”) with all supporting documents to seek an alternative site, including the site from where they were relocated.

12. This Court also notes that the petitioners were removed from the Tehbazari site in question in the year 2012. As per the submissions advanced on behalf of the petitioners, they have not been allotted any alternate site since then. This Court also notes that majority of the Tehbazari holders who were removed from Recruitment Office, Red Fort, Delhi have been carrying out their business from Tehbazari sites at Meer-Dard Road.



13. In view of the aforesaid discussion, the petitioners are directed to approach the TVC with all the requisite documents. The TVC shall consider their representation for allotment of an alternate site at a feasible place, including an alternate site in the nearby vicinity of their original Tehbazari site.

14. The present writ petition is disposed of with the aforesaid directions.

MINI PUSHKARNA, J

MANMOHAN, J

NOVEMBER 6, 2023

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