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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2749/2023 CM APPL. 10586/2023

WAKIL PRASAD

..... Petitioner

Through: Mr. K.S. Negi, Mr. Mohit Kukreja
and Ms. Prakriti Joshi, Advs.

versus

CENTRAL PUBLIC WORKS DEPARTMENT & ANR.

..... Respondents

Through: Mr. Ankit Raj, Senior Panel Counsel
with Mr. Rajnish Kumar, Mr. Ankur
Kashyap and Mr. Rudra Paliwal,
Advs. for R-1.

Mr. Simran Jyot Singh, Additional
Standing Counsel for MCD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

01.04.2024

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1. The petitioner has filed the present petition, *inter alia*, impugning the notices dated 13.09.2022, 15.11.2022 and 02.01.2023 (hereafter *the impugned notices*) issued by respondent no.1 (Central Public Works Department) calling upon the petitioner to demolish the unauthorized construction built on public land failing which, action would be taken against the petitioner.

2. The petitioner claims that he has been carrying on his business from a *Tehbazari*/vending shop located in the main market area of R.K. Puram, Sector-1 market, New Delhi. The petitioner describes the site as located just opposite to shop no. 26 in the main market of R.K. Puram Sector-1, New Delhi. The petitioner has also annexed photographs with the present petition, which indicate that a permanent/semi-permanent structure has been



constructed. The petitioner, *inter alia*, claims that he is carrying on his business of photo frames repair from the said premises. The petitioner had participated in the survey conducted by the Town Vending Committee (TVC) and thereafter, a Certificate of Vending (COV) was issued to the petitioner.

3. The COV which is annexed with the present petition indicates the petitioner's area of vending as 'South Zone, Ward S-66'. It is the petitioner's case that the area has been transferred to respondent no. 2 (Municipal Corporation of Delhi) and therefore, respondent no.1 has no authority to take any action in respect of the site where the petitioner's shop is located.

4. It is necessary to note that the stand of respondent no.1, in regard to the petitioner's right to carry on vending activities, is not in variance with that of respondent no.2. According to the respondents, the petitioner has been carrying on its business activities illegally as he has not been allocated any *Tehbazari* site.

5. Whilst the petitioner has been issued a COV, the terms and conditions of the same requires that the petitioner does not carry on its vending activities from a site at a given place for more than 30 minutes or such time as may be fixed by the TVC. Since, it is not disputed that the petitioner has not been allocated any fixed *Tehbazari* site, the petitioner cannot be permitted to carry on vending activities from a permanent/semi-permanent structure constructed by him.

6. The issue, whether street vendors, who are issued COVs, can claim any right to vend from a fixed place has been considered by the Courts in several decisions. In ***Ganga Ram v. Municipal Corporation of Delhi and***



Ors.; W.P.(C) 12571/2023 dated 22.09.2023, a Coordinate Bench of this Court had considered a similar question. The relevant extract of the said decision is set out below:

“6. In terms of the Certificate of Vending issued to the petitioner, it is clearly stipulated that he cannot vend from any particular location, contrary to the express terms of **Clause no. ‘11’**, of the said Certificate of Vending. It is further observed that since the Town Vending Committee (TVC) is yet to fix a time limit, providing for a period, during which a vendor can vend from any particular spot, the stipulation of 30 minutes time, contained in the said clause, is binding on the petitioner, at this stage.....”

7. The Court had considered the grievance of the street vendors regarding being called upon to move every 30 minutes (or such time as may be determined by the TVC). And, held that till the TVC fixes the time limit during which a vendor can vend from a particular spot, the stipulation that the street vendor does not carry on vending activities from a fixed place for more than 30 minutes, as set out in Clause 11 of the terms and conditions applicable to the COV, would necessarily have to be adhered to.

8. It is also relevant to note that the impugned notices call upon the petitioner to demolish the structure constructed on public land. Clearly, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 does not entitle street vendors to erect a permanent/semi-permanent structure on public land.

9. We are also not persuaded to accept that the controversy whether it is respondent no.1 or respondent no.2 that is required to take necessary action, ought to detain this Court. Respondent no.1 has filed an affidavit, *inter alia*, affirming as under:

“6. It is submitted that the Land & Development Officer, Ministry of Housing and Urban Affairs, Govt. of India, vide its



reply dated 05.04.2023 to the letter dated 21.03.2023 has specifically mentioned that, a joint inspection team was constituted by the Land & Development Officer, Ministry of Housing and Urban Affairs, Govt. of India, which made a physical visit to the said site wherein it has been ascertained that the said area of land belongs to the Land & Development Officer, Ministry of Housing and Urban Affairs, Govt. of India and is under the care and maintenance of the CPWD (Respondent no.1 herein). (A copy of letter dated 05.04.2023 by the Land & Development Officer, Ministry of Housing and Urban Affairs, Govt. of India is annexed as Annexure R-1-2 at page 6)”

10. Thus, in view of the above, we find no reason to disbelieve respondent no. 1’s contention that it is now charged with the function of taking care and maintaining the land on which the petitioner has erected his shop. Even if the petitioner’s contention is accepted that the action is required to be taken by MCD, it would make little difference as it is also the MCD’s stand that the petitioner cannot be permitted to carry on vending activities from a permanent/semi-permanent structure.

11. In view of the above, the present petition is dismissed. Pending application also stands disposed of. However, we clarify that if the petitioner carries on its vending activities in the given zone (South Zone, Ward S-66) strictly in compliance with the terms and conditions of the COV– which also, *inter alia*, provides that the petitioner would not carry on vending activities from a given place for more than 30 minutes – he would not be interdicted from carrying on its vending activities

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 01, 2024/r