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

+ **CONT.CAS(C) 535/2024 & CM APPL. 28910-28911/2024**

NARESH TREHAN

..... Petitioner

Through: Mr. Hari Kishan, Adv. with Mr.
Akarsh Sharma, Adv.
M: 9818038911
Email: hka.delhi@gmail.com

versus

KULDEEP SINGH TONI AND ORS.

..... Respondents

Through: Ms. Puja Kalra, SC for MCD
M: 9312839323
Mr. S.I. Israily, Mr. M.M. Israily and
Mr. Gaurav Raj Sharma, Advs. For
applicant.
SI Satish Kumar, PS Bara Hindu Rao

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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27.05.2024

CM APPL. 28911/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

CONT.CAS(C) 535/2024

3. The present petition has been filed seeking initiation of contempt proceedings against the respondents alleging willful disobedience of the orders dated 08th April, 2021, 06th July, 2021 and 09th September, 2021 passed by the Division Bench of this Court in *W.P.(C) No. 2228/2020*, whereby, directions had been issued for removal of encroachments from the Library Road, Crockery Market, which area has been declared as a 'No-Hawking Zone'.
4. An application being *CM APPL. 28910/2024* has come to be filed on behalf of an intervener, i.e., Ram Kumar, wherein, it is stated that the said



applicant has been squatting at the backside of Shop No. 210, Library Road, Azad Market, Delhi, since 1970 and earning his livelihood by running a barber shop.

5. Learned counsel appearing for the applicant submits that the petitioner herein had earlier filed a writ petition being *W.P.(C) No. 4354/2019*, which was dismissed as withdrawn vide order dated 30th July, 2019. He has further drawn the attention of this Court to the order dated 22nd August, 2019 passed in Civil Suit bearing *C.S. No. 99191/2016*, to submit that a suit has been filed by the petitioner herein, wherein, there are directions to the parties to maintain *status quo*. Thus, it is submitted that the applicant in *CM APPL. No. 28910/2024* has stay order in his favour.

6. Learned counsel appearing for the intervener further submits that the petitioner herein had moved an application under Order 39 Rule 1 and 2, of Civil Procedure Code (“CPC”), praying for interim relief in his favour. However, by order dated 15th May, 2015, the said application of the petitioner was dismissed. The said order was upheld by the learned Additional District Judge vide order dated 09th November, 2015 passed in *MCA No. 8/2015*.

7. It is submitted that subsequently the petitioner filed another writ petition being *W.P.(C) No. 7986/2013* which was again dismissed as withdrawn vide order dated 27th January, 2016.

8. Per contra, learned counsel appearing for the petitioner has disputed the aforesaid submissions made by learned counsel appearing for the intervener/applicant and has handed over a copy of order dated 18th December, 2017 passed in *W.P.(C) No. 5801/2017* to submit that the applicant/intervener herein had filed the said writ petition, which was disposed of with a clear direction that the concerned authorities are not precluded from removing the petitioner from the site in question, if they are



otherwise, entitled to do the same as per the law.

9. Learned counsel appearing for the petitioner further submits that the applicant herein had also filed a suit claiming Tehbazari Rights, which was dismissed by order dated 06th July, 2013, appeal against the aforesaid order was also dismissed by order dated 04th October, 2013.

10. Be that as it may, this Court, in the present proceedings, is not concerned with the private disputes between the intervener and the petitioner herein.

11. In the present petition, the Court is only concerned with compliance of the directions passed by the Division Bench, as aforesaid.

12. This Court notes that a Status Report dated 09th May, 2024 has been filed on behalf of the Municipal Corporation of Delhi (“MCD”), wherein, it has been stated as follows:

“xxx xxx xxx

5. That it is respectfully submitted that regular actions are undertaken in Azad Market, Library Road area of City-S.P.Zone, MCD for removal of temporary encroachment. Further, continuous efforts are also being made to keep the area encroachment free. During the drives articles of encroachers are also being seized and penalty imposed. The actions were taken on 05.04.2024, 16.04.2024, & 30.04.2024 Annexure-'A' (COLLY) after encroachment removal action, prevention letters dated 16.04.2024 & 01.05.2024 have been sent to the SHO, P.S. Bara Hindu Rao to ensure that no re-encroachment takes place at the cleared site in compliance of order dated 05.05.2006 in W.P.(C) No. 2028/2020 passed by Hon'ble Supreme Court of India. Copies of letters dated 16.04.2024 & 01.05.2024 addressed to SHO P.S. Bara Hindu Rao are being filed herewith as Annexure-'B' (COLLY). Photographs taken during encroachment removal action on the aforesaid dates are being filed herewith as Annexure-'C' (Colly).

6. That it is submitted that the deponent has already taken remedial measures for removal for encroachment in the area of Azad Market, Library Road, Delhi. The remedial measures taken by the deponent for removal of temporary encroachment in the area of Azad Market, Library Road, are as follows:-

A) That the area of the Azad Market, Library Road has already been declared no hawking zone/no squatting zone and the various display boards have been installed/ fixed in the area of the Azad Market, Library



Road, wherein it has been strictly mentioned that these area are no hawking/no squatting zone.

B) That in order to keep the area clean and encroachment free, the concerned officials of the MCD always keep an eye in the area of Azad Market, Library Road and if there is any temporary encroachment found in that area, then the concerned officials of the MCD conduct encroachment removal action in the area of Azad Market, Library Road and after encroachment removal action is taken, the officials of the deponent immediately send the letter to the SHO, Police Station, Bara Hindu Rao for prevention of re-encroachment.

7. That it is further submitted that Hon'ble Supreme Court of India in W.P. (C) No.1699 of 1987 dated 05.05.2006 was pleased to issue direction that "we further direct the Delhi Police that whenever hawkers are removed from the non-hawking zones they shall see it that those areas are not reoccupied by them. We, hereby declare that every station house officer shall be held personally responsible if such hawkers reoccupy the areas from which they have been evicted".

13. Perusal of the aforesaid shows that the MCD has been taking routine and regular actions for removal of hawkers from the 'No-Hawking/No-Vending Zone'.

14. On the issue of substantial compliance of the judgment in question, the Hon'ble Supreme Court in ***Bihar State Government Secondary School Teacher Association Versus Ashok Kumar Sinha and Others, (2014) 7 SCC 416***, has held as under:

“xxx xxx xxx

At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out.

xxx xxx xxx”

15. In view of the aforesaid, this Court is of the view that substantial compliance has been done by the MCD. Thus, no further orders are required



to be passed in the present matter.

16. Needless to state any private dispute between the parties, shall be adjudicated by the concerned Court on its own merits.

17. Accordingly, the present petition is disposed of.

MINI PUSHKARNA, J

MAY 27, 2024/kr