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

+ W.P.(C) 7982/2019 & CM APPL. 33166-33167/2019

BHAJAN LAL AND ORS.

..... Petitioners

Through

Mr. Abhay Kumar, Mr. Saurabh Mishra, Mr. Vineet Kumar Singh, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION
AND ORS.

..... Respondents

Through

Ms. Mini Pushkarna, Standing Counsel for Nr.D.M.C along with Ms. Swagata Bhuyan, Ms. Shiva Pandey, Ms. Rikita Ganju.
Ms. Nandini Aishwarya, Advocate for R3 & R4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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24.07.2019

CM APPL. 33167/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 7982/2019 & CM APPL. 33166/2019 (stay)

2. The present petition has been filed by 12 petitioners praying *inter alia* for quashing a Circular dated 01.07.2019, issued by the respondent no. 1/ North Delhi Municipal Corporation (in short 'Nr.DMC') stating *inter alia* that in view of the ongoing pedestrianisation project in and around Karol Bagh, a survey of the area was conducted on 26.06.2019 and it was observed

that 54 *tehbazari* holders who were allotted squatting/hawking sites at places other than Ajmal Khan Road, were squatting at Ajmal Khan Road without any permission.

3. All the 54 *tehbazari* holders, whose names feature in the Circular dated 01.07.2019, have been called upon by the respondent no.1/Nr. D.M.C. to shift their *tehbazari* to the alternate sites allotted to them, as indicated in the last column of the tabulated statement, within 48 hours. Appended to the said Circular is a caveat that the list of squatters mentioned therein, is provisional and the *tehbazaris* mentioned therein are subject to final verification of original allotment letters along with the site numbers and other relevant documents such as Aadhaar Card of the original allottee.

4. Mr. Abhay Kumar, learned counsel for the petitioner submits that the erstwhile MCD had allotted 90 sites for open *tehbazari* 6'x4' to eligible squatters of category-C, including the petitioners herein, adjoining the wall of DMS Road No.8, Baljeet Nagar. However, none of the squatters, including the petitioners herein were allowed to squat at the allotted site by the DMC and aggrieved thereby, they had approached the local authority. He refers to the minutes of the meeting dated 10.12.2004 (Annexure P-12) conducted in the chamber of Deputy Commissioner, Karol Bagh Zone, regarding the problem of the 90 *tehbazari* holders who had been given alternative sites near the wall of DMS Shadipur Depot, wherein it was decided that it was not feasible to locate new sites immediately and therefore the 90 *tehbazari* holders would not be disturbed from their present place of squatting by the police department till possession of new sites are given to them. It was also made clear that this was only a temporary arrangement. It is submitted that ever since then, the petitioners have been squatting at

Ajmal Khan Road.

5. Learned counsel for the respondent no.1/Nr.D.M.C. states that an affidavit was filed by the MCD in December, 2006 before the Supreme Court in **W.P.(C) No.1699/1987** titled “Gainda Ram and Ors. vs. MCD and Ors.” wherein it was stated that vide an earlier order dated 14.11.2006, the Supreme Court had directed the MCD to prepare a final list of squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of the MCD and on conducting such an exercise, a comprehensive list was prepared and filed with the said affidavit. She refers to the “List of zone wise squatting/non-squatting and hawking /non-hawking Areas” under the jurisdiction of the MCD and states that in the Karol Bagh Zone, except for two specific sites on Ajmal Khan Road, all the main roads, major roads and areas in the Zone were declared as non-squatting areas. She further states that a public notice was issued by the MCD in December 2006 whereunder the public was informed that squatting and hawking will be allowed only in the approved squatting and hawking areas as mentioned in the list and the persons carrying on their business through squatting/hawking were called upon to clear from the non-squatting and non-hawking areas with immediate effect.

6. Learned counsel for respondent No.1/Nr.D.M.C. further submits that several orders have been passed by a co-ordinate Bench in **W.P.(C) No.5023/2015** entitled “Pardarshita Public Welfare Foundation (NGO) vs. Commissioner South Delhi Municipal Corporation & Ors.” wherein it has been made clear that for proper utilisation of roads and footpath/pavements, squatting by unauthorised occupants should be stopped forthwith and limited to a bare minimum so that pavements can be used by the pedestrians. In the

said petition, the Division Bench has been monitoring the extent of encroachment, particularly on Arya Samaj Road, Ajmal Khan Road, Green Park, Green Park Extension, Yusuf Sarai, Vikas Marg and the respondent/authorities have been directed from time to time to spell out the measures taken by them to remove encroachment on pavements in the said areas and ensure hindrance free movement of pedestrians. In the said matter, orders have been passed from time to time and Status Reports setting out the action taken have been filed by the civic authorities and the Delhi Police etc., A Co-ordination Committee has also been directed to be setup for suitable enforcement action to clear encroachments on roads.

7. Another relevant order that learned counsel for the respondent no.1/Nr.D.M.C. has referred to is dated 05.10.2016, passed in **W.P.(C) No.6130/2016** entitled “Hawkers Adhikar Suraksha Samiti vs. Union of India & Ors.” wherein, the Division Bench had observed as follows :

“29. Having regard to the fact that declaration of non-squatting zones and non-vending areas is not inconsistent with the provisions of the Act of 2014 which expressly prohibits carrying out vending activities by street vendors in no-vending zones, we consider it appropriate to direct as an interim measure that non-squatting zones declared under the schemes existing prior to enforcement of the Act of 2014 shall continue to be non-squatting zones for the time being so as to balance the larger interest of the general public.”

8. It is thus stated that it is in terms of a series of orders passed by the Supreme Court and the High Court over the years that the civic authorities, in co-ordination with the local police, have been taking concerted steps and regular drives to remove encroachment in non-hawking and non-squatting zones, and Ajmal Khan Road being one such road, the petitioners cannot

claim any vested right to continue squatting at the said site.

9. On a perusal of the impugned Circular, we find that the names of all the 12 petitioners herein find mention at serial nos.28, 29, 30, 33, 34, 35, 36, 37, 38, 41, 42, and 43. The petitioners herein are similarly situated as the petitioners in W.P.(C) No.7259/19, entitled "Shyam Kapoor & Ors Vs. North Delhi Municipal Corporation & Ors.", that was decided on 11.07.2019. After hearing learned counsel for the parties in the said petition, the following order was passed :-

“(i) The petitioners shall appear before the Assistant Commissioner, Karol Bagh Zone at the address mentioned in the Circular dated 01.07.2019, along with all the relevant documents as directed, on 13.07.2019 at 10 a.m. The said documents shall be verified in accordance with the procedure prescribed in this regard.

(ii) Once the petitioners satisfy the respondent no.1/Nr.D.M.C. on producing the original allotment letters etc. as demanded, they shall be intimated of the specific site allocated to them by way of a dated site plan, to enable them to relocate to the said site, as mentioned in the last column of the tabulated statement that forms a part of the Circular dated 01.07.2019.

(iii) The period of 48 hours granted to the petitioners to relocate in terms of the Circular dated 01.07.2019, shall start running from the date and time endorsed on the site plans that shall be handed over to each of them by the officers of the respondent no.1/Nr.D.M.C., after scrutinizing the documents furnished by the petitioners.

(iv) In the event any of the petitioners fails to turn up before the competent authority on the assigned date and time as directed above, then the respondent no.1/Nr.D.M.C. shall be at liberty to proceed against them in terms of the Circular dated

01.07.2019 and in accordance with law.”

10. Further, in view of the stand taken by the petitioners therein that the alternate sites mentioned in the tabulated statement forming a part of the impugned Circular are not under the control of the respondent no.1/Nr.D.M.C. and there is a likelihood of their facing resistance from the Land Owning Agency, as had happened on an earlier occasion, the respondent no. 1/Nr.D.M.C. was directed to undertake an exercise by approaching the concerned Land Owning Agency of the sites mentioned in the last column of the impugned Circular, for obtaining NOCs so that the petitioners do not find themselves in a predicament on being relocated to the said sites from Ajmal Khan Road.

11. In the instant case, we are informed that all the petitioners herein have already been removed by the respondent no. 1/Nr.D.M.C. from Ajmal Khan Road on 11.07.2019. Learned counsel for the petitioners states that immediately on being apprised of the impugned Circular, the petitioners had submitted a joint representation dated 02.07.2019 to the respondent no. 1/Nr.D.M.C. requesting that they be given one week's time to file a detailed reply and to place all the relevant documents before the Corporation to establish that they had permission to squat at Ajmal Khan Road.

12. On enquiring from learned counsel for the respondent no. 1/Nr.D.M.C. as to whether any response was given by the local authority to the joint representation dated 02.07.2019, Ms. Pushkarna, learned counsel for the respondent no. 1/Nr.D.M.C. states on instructions that no reply was given. She however states that they had stayed their hands for a period of 8 days reckoned from 02.07.2019 and the drive to clear the area was

undertaken only on 11.07.2019, which position is not disputed by the other side.

13. We may also note that though the petitioners had stated in their joint representation that they be given a week's time to file a reply and produce the relevant documents, no steps were taken by them in that direction. Even the present petition has been filed after a week from the date when the petitioners were removed from Ajmal Khan Road.

14. Since the petitioners herein are similarly placed as the petitioners in W.P.(C) No.7259/19, they are entitled to the same relief as was granted to the said petitioners vide order dated 11.07.2019. Purely as an interim measure and without expressing an opinion on the merits of their claims, it is deemed appropriate to pass the following orders in respect of the 12 petitioners herein:

(i) The petitioners shall appear before the respondent no. 2/ Assistant Commissioner Karol Bagh Zone at the address mentioned in the impugned Circular dated 01.07.2019, along with all the relevant documents on 26.07.2019, at 10.00 a.m. The said documents shall be verified in accordance with the procedures prescribed in this regard.

(ii) Once the petitioners satisfy the respondent no.1/Nr.D.M.C. on producing the original allotment letters etc. as demanded, they shall be intimated of the specific site allocated to them by way of a dated site plan, to enable them to relocate to the said site, as mentioned in the last column of the tabulated statement that forms a part of the Circular dated 01.07.2019.

(iii) To obviate any scope of any objection from any quarter at a later date, the respondent no.1/Nr.D.M.C. shall ensure that NOCs are obtained from the concerned Land Owning Agencies in respect of the proposed sites at the earliest.

15. We may clarify here that the aforesaid order is limited to testing the legality of the impugned Circular dated 01.07.2019 and we have not undertaken any exercise to examine the documents that the petitioners have annexed with the present petition in support of their stand that they are recognized *tehbazaari* holders.

16. As far as determining the *tehbazaari* rights of the petitioners are concerned, it is for them to approach the TVC along with all the supporting documents. The TVC will consider their claims in accordance with law and while doing so, their claims will not be rejected solely on the ground that due to their relocation to alternative sites, they were not found vending at the existing sites at Ajmal Khan Road, when the survey is conducted.

17. In view of the observations made hereinabove, we do not propose to quash/set-aside the impugned Circular dated 01.07.2019, which has primarily been issued by the respondent no.1/Nr.D.M.C. in pursuance to the ongoing pedestrianisation project in and around Karol Bagh Area, in terms of orders passed by a co-ordinate Bench in W.P.(C) No.5023/2015.

18. The writ petition is disposed of on the above terms along with the pending application.

HIMA KOHLI, J

ASHA MENON, J

JULY 24, 2019/MK