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

% *Date of Judgment: 16<sup>th</sup> May, 2019*

+ W.P.(C) 5166/2019, C.M.22899/2019

KAMA-RUDIN @ KAMRUDDIN & ORS. .... Petitioners

Through: Mr.Bhuvneshar Tyagi and  
Mr.Vinayak Kamra, Advocates

versus

MUNICIPAL CORPORATION OF DELHI & ORS. .... Respondents

Through: Mr.Akshay Verma and Mr.Abhinav  
Singh, advocates for R-1 and R-2.  
Mr.Pushkar Sood, Adv. for DMRC/R-  
3 with Ms.Garima, Law officer,  
DMRC.

**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 regular street vendors. The grievance of the petitioners is that in the year 2012, a communication dated 01.05.2012 was issued to them to vacate the land at the Recruitment Centre Azad Hind Market, Near Red Fort, Delhi to enable the area to be handed over to Delhi Metro Rail Corporation (DMRC) for their project. The Tehbazari holders were then shifted to another place on temporary basis. Learned counsel has also drawn the attention of the Court to a communication dated 04.08.2017 received from DMRC addressed to the

Assistant Commissioner, City Zone informing him that the construction of Lal Qila Metro Station has been completed. Referring to the letter dated 19.06.2012, it was noticed that the Tehbazari holders of Azad Hind Market were informed that their tehbazari site would be shifted back at the same place after the construction of the metro station. In the light of these communications, learned counsel for the petitioners seeks a direction to the respondents to re-locate the petitioners back to their place from where they were removed.

2. Counsel for the respondents no.1 and 2 has handed over a communication dated 18.03.2019 addressed to the Administrative Officer, City SP Zone, North Delhi Municipal Corporation by the Superintending Archaeologist informing the administrative officer that the site in question was surveyed by the officials of the Archaeological Survey of India with the representative of the North Delhi Municipal Corporation and it was found that the said site falls in the regulated area (within 300 metres) of Red Fort, a centrally protected monument. Learned counsel for the respondents further submits that being a highly congested area, petitioners cannot be relocated back to the existing site.
3. We have heard learned counsels for the parties.
4. The communications dated 19.06.2012 and 04.08.2017 read as under:

**Notice dated 19.06.2012**

“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 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.”

**Letter dated 04.08.2017**

“With reference to above mentioned letters, it is to inform that construction of Lal Quila Metro Station has been completed. As per notice issued vide letter dated 19.06.2012, Tehbazari holders of Ajad Hind Market near Red Fort, Delhi were informed that Tehbazari will be shifted back to the same place subject to availability of the space after construction of Metro Station is completed.

In this regard, it is to inform that as per the site conditions, 44 Tehbazari shops of size 6’ x 4’ can be accommodated as per the enclosed plan. It is requested that it may be examined and your concurrence may be communicated so that construction of Tehbazari shops can be taken by this office.

This information was earlier sent to the Asstt. Commissioner, 16, Rajpur Road, Civil Lines zone vide this office letter dated 24.07.2017.”

5. A careful reading of these communications would show that while removing the petitioners in the month of June, 2012, it was made clear that feasibility of shifting back would be examined only after completion of the metro station work depending upon availability of space. In the communication dated 04.08.2017 also this aspect of availability was made clear. Communication dated 18.03.2019 reads as under:

**Letter dated 18.03.2019**

“With reference to this office letter no.AC/C-SPZ/2019/D-338 dated 21.02.2019 on the subject cited above, the site under reference has been measured/surveyed by the officials of Archaeological Survey of India and the representative of North Delhi Municipal Corporation and said that the above said site falls in the regulated area (within 300 mtrs) of Red Fort, a centrally protected monument.

Further, it is to inform that Red Fort is a iconic Monument and UNESCO has declared it a World Heritage Site except minimum tourist amenities related to the monument. Further large number of tourists from across the world are visiting this monument including regular visit of VIP's and VVIP's. Number of national as well as other important functions are organized in both the parks in front of Red Fort throughout the year. Two national festivals i.e. Independence Day Celebration, Republic Day is also celebrated here and ambience of the vicinity is not presentable. Allotment of this area for tehbazari will create congestion in front of Red Fort and ambience will be badly affected.

In view of the above facts and circumstances, it would not be appropriate to allot the tehbazari site at Recruitment office, Red Fort. Hence any alternate site may be explored for tehbazari.”

6. Reading of this communication would show that not only does the area falls within 300 metres of a centrally protected monument, the other factors which would not make the area suitable and feasible for tehbazari site has been explained.

7. The petitioners have already been allotted a temporary site from where they are carrying out their activities. We are informed that the scheme under the Act has since been notified on 15.04.2019; Town Vending Committee (TVC) has become functional. Accordingly, it would be open for the petitioners to approach the TVC with all supporting documents to seek an alternate site including the site from where they were relocated. Needless to say, it would be the responsibility of the respondents to keep the area in question i.e. from where the petitioners were removed due to construction of the metro station, encroachment free and would not allow any other tehbazari holder to occupy the area. This we say for the reason as the petitioners have been removed, who have a vested right over the area in question and in case any other person is allowed to encroach the land, it would lead to travesty of justice.
8. The writ petition and C.M.22899/2019 stand disposed of with the above directions.
9. At this stage, we are informed by Mr.Pushkar Sood, counsel for the DMRC, that this petition would not be maintainable as identical prayers have been sought in the civil suit filed by the petitioners.
10. Counsel for the petitioners undertakes to withdraw the civil suit.
11. *Dasti.*

**G.S.SISTANI, J**

**JYOTI SINGH, J**

**MAY 16, 2019/rb**