

(1998) 04 DEL CK 0018

In the Delhi High Court

Case No : C.Ms.967/97, 1622/97, 999/98 and CW.3621/91

Chhedi Singh

APPELLANT

Vs

Administrator, A.P.M.C.Panchwati and Others

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Citation : (1998) 04 DEL CK 0018

Hon'ble Judges : N.G. Nandi, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Shakeel Ahmed, for the Appellant; Mr. A.K. Verma and Ms.Sushmita Lal for M.C.D., for the Respondent

Judgement

Devinder Gupta, J.

1. The writ petition was dismissed for non-prosecution on 8.1.1997. Application for restoration (C.M.967/97) was filed, which was also dismissed on 10.2.1997 for non-prosecution. On fresh application, the order dated 10.2.1997 was recalled on 20.2.1997.

2. Keeping in view the facts and circumstances, learned counsel for the parties were heard on merits as well as on the main petition and we were also taken through the affidavits exchanged.

3. For the reasons disclosed in C.M.967/97, we find it to be a fit case for recalling the order 8.1.1997 accordingly, the said order is recalled and the petition is ordered to be restored to its original number. C.M.967/97 stands disposed of.

4. The petitioner alleged that he was running a Rickshaw Stand in Malka Ganj from 1968 to 1976. In December, 1976 when Subzi Mandi was shifted to its present site at Azadpur, Municipal Corporation of Delhi and Agricultural Produce Marketing Committee allotted him place for running his Rickshaw Stand near Mata Ka Mandir, B-Block in New Subzi Mandi, Azadpur, Delhi. In 1983 his Rickshaw Stand was shifted to the park near D-block in Azadpur Subzi Mandi. It

is alleged that the petitioner thus acquired equitable right to run his Rickshaw Stand at the present site but the officials of respondent No.1 along with several policemen occasionally made attempts to dispossess him and to deprive him of his valuable goods. In this background the petitioner sought direction against the respondents restraining them from dispossessing him from his Rickshaw Stand near D-block, New Subzi Mandi, Azadpur, Delhi with further direction to the respondents to make allotment to him of suitable alternative site, in case the site in question was essentially required by the authorities for public purpose. It was alleged that his name is duly entered in the register maintained by Agricultural Produce Marketing Committee, which enlists the persons, who run stalls, kioks, pan shop, rickshaw stand etc. or who have tehbazari rights.

5. Agricultural Produce Marketing Committee filed its reply on the affidavit of Shri Z.H.Usmani, Prosecuting Inspector/Legal Assistant of Agricultural Produce Marketing Committee, Azadpur, Delhi emphatically denying the petitioner's case that he was ever allotted by Agricultural Produce Marketing Committee any site for carrying on his business of Rickshaw Stand. It is stated that the Market Committee do not grant any tehbazari to any person and do not allow squatting on the road and road berms. It is denied that the petitioner was having any Rickshaw Stand either at Malka Ganj or at Azadpur, when old Subzi Mandi was shifted by A.P.M.C. to Azadpur. It is stated that the Delhi Development Authority developed New Subzi Mandi at Azadpur and allotted shops/plots to traders/commission agents, who were found to be carrying on the business in Old Subzi Mandi. Such allottees constructed shops in New Subzi Mandi, Azadpur. In the wake up of emergency, entire trade of fruit and vegetable was shifted from Old Subzi Mandi to New Subzi Mandi, Azadpur. The old market was demolished and converted into public park. Infrastructural facilities like roads, pathways, walkways, parks and parking lots in New Subzi Mandi, Azadpur were transferred to the Market Committee for maintenance and no tehbazari rights were granted to any person. Nobody is allowed to squat on the roads. As far as the receipts, on which the petitioner placed reliance about valid authorization, it is submitted that the amount mentioned in the receipts was recovered from the petitioner by way of penalty and the recovery of penalty does not amount to granting license in the form of tehbazari.

6. In the light of the aforementioned case set up by the petitioner and the respective stand taken in the affidavits, in the absence of any authorization or allotment, we do not find any case having been made out for grant of any relief to the petitioner. We have examined the receipts, which have been produced on record collectively as Annexure-I, which reflect payment of the amounts as fine u/s 41 of the Agricultural Produce Marketing Committee Act. During the course of arguments also a question was posed to learned counsel for the petitioner that whether there was any authorization in petitioner's favour. Learned counsel for the petitioner was unable to support the petitioner's version that there was any authorization. To the contrary, it was submitted that there is an application (CM.999/98) filed seeking amendment of the petition on the ground that several

other similarly situate Rickshaw Stands are being allowed to be run inside Azadpur Subzi Mandi, whereas the petitioner was being discriminated against.

7. There can be no question of discrimination in the absence of valid authorization. It is not the petitioner's case that the other persons carrying on the trade of having Rickshaw Shed are not having a valid authorization in their favor like him. Rather the petitioner's case is that the others "have been allowed to have their rickshaw stand". Admittedly, there is no permission granted or allotment made in petitioner's favour. In case no such permission was ever granted to the petitioner to have his rickshaw stand, he cannot seek directions, as prayed for in this petition. It was pointed out by learned counsel for the respondent that after the writ petition was dismissed in default, the earlier interim order of stay stood vacated and the petitioner's unauthorized rickshaw stand was removed from the site in question. We do not find any equity in petitioner's favour. Accordingly, the writ petition along with C.Ms.1622/97 and C.M.999/98 are dismissed.