

(2013) 02 DEL CK 0354

In the Delhi High Court

Case No : LPA 96 of 2013 and C.M. No. 3000 of 2013

New Delhi Municipal Council

APPELLANT

Vs

Ashok Kumar Gupta and Another

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0354

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Arvind Sah, for the Appellant; B.B. Sawhney and Mr. Lawkesh Sawhney, Sunil Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Caveat No. 152/2013

Since learned counsel for the respondent/caveator has entered appearance, the caveat is discharged.

C.M.No. 3001/2013(exemptions)

Exemptions allowed subject to all just exceptions.

LPA No. 96/2013

1. The respondent No. 1 Shri Ashok Gupta was granted a licence by the appellant for running a kiosk at the gate of Kidwai Bhawan, Janpath Road, Connaught Place, New Delhi. The respondent No. 2--Delhi Metro Rail Corporation asked respondent No. 2 to close down the kiosk since a Metro Station was planned in the area. Initially, a site towards Church Road was identified for temporary relocation of respondent No. 1, but had to be cancelled. Another site was then identified at Dr. Rajendra Prasad Road, which also had to be cancelled on account of possible security risk to Shastri Bhawan and neighboring offices. Yet another site, situated behind Bank of Baroda at Janpath Lane, was then identified for respondent No. 1. Since there was delay by DMRC in construction of the

temporary kiosk of respondent No. 1, he filed a writ petition, seeking a direction to DMRC to construct a temporary stall for him at the site behind Bank of Baroda at Janpath Lane. It transpired that the site near Bank of Baroda required prior permission from ASI for construction of a kiosk. It was, therefore, suggested that respondent No. 1 may be shifted to a location near Eastern Court, as was proposed in an earlier letter dated 02.08.2011. The said suggestion was accepted by NDMC and accordingly a letter was issued by NDMC to DMRC for temporary construction of a kiosk at the aforesaid site. The writ petition was disposed of on 01.06.2012, with a direction to DMRC to undertake construction of kiosk at the location near the Eastern Court.

2. A Review Petition was then filed by respondent No. 1, informing the Court that the site near the Eastern Court was not suitable since the stretch of road between Tolstoy Marg and Windsor Place had been closed down due to ongoing construction activity. Respondent No. 1 also claimed to have received a letter from ASI granting permission for construction of a kiosk at Janpath, New Delhi. The learned Single Judge vide impugned order dated 20.12.2012 observed that the kiosk at the location identified in the order dated 01.06.2012 would hardly attract customers and, therefore, running of kiosk at that place would be unviable for respondent No. 1. The appellant was, therefore, directed to relocate respondent No. 1 behind Bank of Baroda, Janpath Lane, New Delhi.

3. The learned counsel for the appellant submits that there are three other kiosks on the road, where the site, subject matter of the order dated 01.06.2012, is situated and those stalls are doing good business. He further submits that Janpath Lane being a "No Hawking Zone", it would not be practicable to construct a temporary kiosk at the aforesaid place. In our opinion, it is for the NDMC and not for the Court to decide as to which would be the appropriate site for temporary relocation of respondent No. 1. The Court, therefore, should not interfere with the decision taken by NDMC with respect to the site, to be allotted to respondent No. 1. It is for the appellant to decide, on consideration of all the relevant facts and circumstances, as to where the licensee, seeking relocation should be relocated and it would not be appropriate for the Court to substitute its own decision with the decision of the licensor in this regard. Therefore, in our opinion, the impugned order, passed by the learned Single Judge, cannot be sustained. We, therefore, allow the appeal and direct the appellant to take a decision, after considering all the facts and circumstances, including such documents as the respondent No. 1 may like to submit to it, as to where respondent No. 1 should be temporarily relocated. An appropriate decision in terms of this direction shall be taken by the appellant and communicated to respondent No. 1, within four weeks from today. We permit respondent No. 1 to submit such documents as he may deem appropriate to the appellant NDMC, within a week from today.

The appeal stands disposed of accordingly.