
(2005) 08 DEL CK 0002

In the Delhi High Court

Case No : WP (C) 2123 and 2124 of 2004

Prem Nath and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2005) 08 DEL CK 0002

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Suruchi Aggarwal, for the Appellant; Anoop Bagai, for the Respondent

Judgement

Pradeep Nandrajog, J.—Issue raised in the two petitions being common, the two are being disposed of by and under a common order. Petitioner No. 2 in WP(C) No. 2123-24/2004 is Amarjeet Singh. Petitioner in WP(C) No. 3893/2003 is his brother Balvinder Singh. As per Amarjeet Singh, he and Prem Nath, petitioner No. 1 in WP(C) No. 2123-24/2004 entered into a partnership on 14.10.1986 to carry on business from the site allotted on tehbazari to Prem Nath by the MCD. Site being the one opposite Eros Cinema, Jungpura Extension, New Delhi granted on tehbazari to Prem Nath pursuant to letter dated 22.9.1980 issued by the Municipal Corporation of Delhi. Prem Nath took possession of the site and commenced business there from. He paid the tehbazari charges. On 14.10.1986, as noted above, he and Amarjeet Singh entered into a partnership to carry on business from the site. It is alleged by Prem Nath and Amarjeet Singh that in compliance with the terms of the grant of the tehbazari, they did not cover the site of the tehbazari, but notwithstanding that MCD falsely alleged that the two had covered the site of tehbazari granted.

2. In his petition, Balvinder Singh alleges that one Roshan Lal was granted tehbazari of a site opposite Eros Cinema, Jungpura somewhere in the year 1977. That he and Roshan Lal entered into a partnership vide deed of partnership dated

18.2.1986. He states that thereafter Roshan Lal left and his whereabouts are not known. Balvinder Singh also alleges that MCD falsely notified to him that the site of tehbazari was covered. He states that the site of tehbazari was kept open to the sky in conformity with the terms of the grant of tehbazari site.

3. In both the petitions it is alleged that on 23rd August, 2001, officials of MCD came to the site and forcibly dispossessed the petitioners from the site which they were occupying. It is alleged in both the petitions that re-possession of the site was without issuing any show cause notice. It is alleged that petitioners were earning their bread and butter by carrying on business from the site of tehbazari.

4. After the complained action of the MCD was taken on 23rd August, 2001, petitioners alleged that they made representations to the Dy.Commissioner, MCD of the concerned zone. They sought his intervention to undo the justice. Petitioners allege that unfortunately, municipal authorities turned a blind eye. Accordingly, petitioners claim that they are entitled to carry on business from the site from where they were illegally removed.

5. In the counter affidavit filed by the MCD, it is stated that unauthorized constructions were raised by the petitioners on the site of tehbazari. Not only that, they encroached on the public path adjoining the site of tehbazari. Accordingly, action was taken against the petitioners.

6. It is additionally urged against Balvinder Singh that he was not the person to whom site was allotted on tehbazari. It is alleged that Roshan Lal could not have parted possession of the site to him. It is alleged by the MCD that Balvinder Singh would have no locus standi to even maintain the petition.

7. At the outset, I may note that the MCD has not placed any document on record to show that before proceeding against the petitioners, it issued a show cause notice to them. I may, however, note that on 10.4.1991 a show cause notice was issued to Prem Nath. It was alleged against him that he had violated the terms of tehbazari granted by erecting a structure on the site of tehbazari granted.

8. Notice dated 10.4.1991 issued to Prem Nath would be too stale for the MCD to take action in the year 2001.

9. Valuable rights of Prem Nath to whom site was allotted on tehbazari have been affected by the impugned action of the MCD. Admittedly, MCD granted tehbazari in favor of Prem Nath in respect of the site opposite Eros Cinema, Jungpura.

10. Qua Balvinder Singh, admittedly, a site was allotted on tehbazari to Roshan Lal. Roshan Lal may not be a petitioner before this court, but Balvinder Singh relies upon a circular dated 9.9.1999 numbered 27b/CLandEC/99 issued by the Licencing and Enforcement Cell of MCD. The said circular regularizes transfer of tehbazari sites provided the same have changed hands up to 31.12.1993.

11. Dealing with the said circular, Sh. Anoop Bagai, learned counsel for the MCD urged that case of Balvinder Singh was that he and Roshan Lal entered into a partnership. Sh. Anoop Bagai urged that Balvinder Singh could not rely upon the circular dated 9.9.1999.

12. The terms "life" used in Article 21 of the Constitution of India has a wide and far-reaching concept. It includes livelihood See *Kapila Hingorani v. State of Bihar* (2003) 6 SCC . Decisions of the Supreme Court reported as *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, ; *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and *Welfare Asscn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others*, . bring out the duty of the State to promote social justice which includes the economic welfare of the citizens of India.

13. Systems in a democratic society ought not to operate to the detriment of individuals. Fairness in action is an essential attribute of the rule of law.

14. Tehbazari sites are granted by the municipal authorities to enable the less fortunate strata of society to earn a decent living. Tehbazari schemes are in furtherance of policies of the government to further social justice. Implementation of the said policy requires compassion. To all of a sudden deprive a person the site granted on tehbazari would mean to shut the fire in the kitchen one fine day.

15. Petitioners allege that they did not violate the terms of tehbazari. MCD alleges violation. Neither party has any proof. As of today, unfortunately the site has been amalgamated with a park. Petitioners cannot be put back to the site which was allotted to them.

16. Impugned action was not preceded by any show cause notice to Prem Nath. Show cause notice issued to him in the year 1991 is too stale to take action in the year 2001. Amarjeet and Prem Nath claim to be in partnership with each other.

17. MCD is thus liable to restore the benefit to Prem Nath, but at a different site.

18. WP(C) No. 2123-24/04 is accordingly disposed of with a mandamus to the Municipal Corporation of Delhi to treat Prem Nath as the senior most wait listed person. As and when a site is available to be granted on tehbazari, same be granted in favor of Prem Nath.

19. As regards the writ petition filed by Balvinder Singh, admittedly, when he filed the petition he had not applied to the MCD claiming benefit of the circular dated 9.9.1999. It is only during the pendency of the petition that Balvinder Singh has chosen to apply under the said circular.

20. MCD has not allotted any site to Balvinder Singh. The right staked by Balvinder Singh pertains to the site allotted to Roshan Lal. Balvinder Singh claims that he and Roshan Lal entered into a partnership and thereafter Roshan Lal

withdrew from the partnership, leaving the site to him.

21. Relief which can be granted to Balvinder Singh is a direction to the MCD to consider his request for transfer of tehbazari from the name of Roshal Lal to him.

22. WP(C) No. 3893/2003 is accordingly disposed of with a direction to MCD to consider the application dated 7.10.2004 made by Balvinder Singh to transfer the tehbazari granted to Roshan Lal in his favor. Decision would be taken within 3 months from today. If MCD decides in favor of Balvinder Singh and holds that he is entitled to the benefit of the circular dated 9.9.1999, Balvinder Singh would also be treated as wait-listed for allotment of a tehbazari immediately after Prem Nath. As and when site tehbazari would be available, same be allotted to Balvinder Singh.

23. No costs.