

(2011) 03 DEL CK 0106
In the Delhi High Court
Case No : Writ Petition (C) 14196 of 2006

Ram Piyari

APPELLANT

Vs

New Delhi Municipal Council and Another

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0106

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ravi Gupta and Swaty Malik and Swastik Singh, for the Appellant;
Arjun Pant, for R-1, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

CM No. 2823/2011 (for restoration of the writ petition dismissed in default on 15th February, 2011).

The counsel for the Respondent NDMC has been heard. For the reasons stated in the application the same is allowed and the writ petition is restored to its original position.

CM No. 2824/2011 (for exemption).

Allowed, subject to just exceptions.

W.P. (C) No. 14196/2006.

1. The counsels have been heard.

2. This writ petition was filed impugning the order dated 4th September, 2006 of Director (Enforcement) of the Respondent NDMC cancelling/withdrawing the tehbazari permission granted for putting up a taxi booth at Laxmi Bai Nagar, New Delhi. Notice of the petition was issued and the parties directed to maintain status quo. The said order has continued in force till now and whereunder the taxi stand continues to exist.

3. The cancellation aforesaid was effected for the reason of breach of the tehbazari permission. The breach as borne out from the show cause notices dated 9th June, 2006 & 6th July, 2006 preceding the cancellation, was of the Petitioner herein namely Smt. Ram Piyari being the illegal and unauthorized occupant of the tehbazari site for taxi stand originally granted to one Sh. Harbans Lal.

4. The arguments in the writ petition were heard partly on 13th July, 2010. It was then enquired from the counsels as to till when the license with respect to the said taxi booth was valid in as much as it was felt that if the term of the license had expired, there is no need to go into the question of breaches. The counsels had sought adjournment to report back.

5. The counsel for the Respondent NDMC on 2nd February, 2011 informed that the license granted to the Petitioner had expired as far back as in the year 2000 and had not been renewed thereafter.

6. The senior counsel for the Petitioner has today contended -

(i) that the permission for setting up a taxi stand is granted by the District Magistrate and not by the Respondent NDMC and the Respondent NDMC was concerned only with granting permission for erection of a booth at the site allotted by the District Magistrate;

(ii) thus the question of expiry of the license granted by the Respondent NDMC did not arise;

(iii) that the Respondent NDMC had not taken it as a ground in the show cause notice or in the cancellation order impugned in this petition;

(iv) that even in the counter affidavit no such plea has been taken and the license if any expiring in the year 2000 has not even been placed before this Court;

(v) that the District Magistrate had vide order dated 29th August, 1975 allotted the taxi stand to one Sh. Harbans Lal; that the said Harbans Lal had first entered into partnership with Sh. Om Prakash and thereafter partnership dated 30th December, 1995 with one Shri Vinod Kumar; that the said partnership was dissolved on 23rd March, 1996 and Sh. Harbans Lal withdrew from the partnership and released all his rights in the partnership including the taxi booth aforesaid in favour of Sh. Om Prakash and Sh. Vinod Kumar; that the Respondent NDMC vide letter dated 20th August, 1997 regularized the taxi stand in the name of Sh. Om Prakash and Sh. Vinod Kumar and thus had recognized Sh. Vinod Kumar with respect to the said taxi stand; that Sh. Om Prakash retired from the partnership and Sh. Vinod Kumar continued to carry on the business of a taxi stand; that upon demise of Sh. Vinod Kumar, his widow i.e. the Petitioner herein applied for substitution in her name.

(vi) Upon it being put to the senior counsel for the Petitioner that even the order

dated 29th August, 1975 of the District Magistrate makes allotment of the taxi stand for a period of three years only, he contends that the Respondent NDMC/ District Magistrate has a Policy of continuing with the allottee unless cancelled, though the same is not available with the Petitioner.

(vii) It is further contended that after the demise of Sh. Vinod Kumar a change of location of the taxi stand was also allowed.

It is thus contended that the reason given in the show cause notice and cancellation order of unauthorized transfer of the taxi stand is bad.

7. The counsels have placed before this Court judgment dated 30th January, 2006 in W.P.(C) No. 2651/2005 titled Shri Hari Om v. NDMC wherein this Court held that tehbazari sites with respect to the taxi stand could not be transferred and the subsequent judgment dated 10th March, 2006 in W.P.(C) No. 2053/2006 titled Shri Uttam Singh v. NDMC where notwithstanding the earlier judgment, when partnership had been recognized, the transferee by way of such partnership was allowed to continue. The senior counsel for the Petitioner contends that the latter judgment applies on all fours to facts of present case.

8. The counsel for the Respondent NDMC has contended that the Respondent NDMC has never recognized anybody else other than Sh. Harbans Lal. It is stated that the letter dated 20th August, 1997 (supra) of Sh. M.L. Kapoor, Assitt. Secretary (Enforcement) of the Respondent NDMC relied upon by the Petitioner is a nullity in as much as the same was issued by the said Sh. M.L. Kapoor without any authority and action was taken by the Respondent NDMC against Sh. M.L. Kapoor for issuing the said letter. Attention is drawn to page 68 of the paper book where the Petitioner has also referred to the Vigilance Inquiry. He contends that though in the file sent to him there is a draft of the License Deed executed and in the note forwarded to him also it has been informed that the taxi booth in question was allotted in the joint name of Sh. Om Prakash and Sh. Vinod Kumar in the year 1997 for a period of three years but the License Deed is not contained in the file sent to him.

9. Prima facie it appears that the Respondent NDMC would definitely have a role in any kind of encroachment on the pavements in as much as the streets and the pavements vest in the Respondent NDMC. It thus appears unlikely, as contended by the senior counsel for the Petitioner that the Respondent NDMC would have no role in determining the period for which a taxi stand can continue. The senior counsel for the Petitioner has also drawn attention to judgment dated 24th August, 2004 in W.P.(C) No. 6603/1999 titled New Delhi Taxi Operators Association v. NDMC dealing with the said aspect.

10. I have also enquired from the senior counsel for the Petitioner as to who is carrying on the business of the taxi stand today. It is informed that it is the Petitioner only who is carrying on the said business. I have enquired whether the taxis/vehicles belong to the Petitioner. It is stated that a taxi stand is intended to provide parking facility to any of the taxis and the taxis/vehicles are not required

to belong to the person to whom the taxi stand has been allotted.

11. Since all the aforesaid aspects have not been considered, it is deemed expedient that a proper inquiry including on all the aspects be conducted not only by the Respondent NDMC but also by the District Magistrate/successor official and a reasoned decision be taken.

12. The Petitioner to appear before the Director (Enforcement) of NDMC on 25th March, 2011 at 1500 hours and on such subsequent dates as may be fixed. The Director (Enforcement) to, in consultation with the office of the District Magistrate/successor office, give a reasoned order on or before 30th June, 2011. If the Petitioner remains aggrieved by the decision, the Petitioner shall have remedies in law. Till then the Petitioner be not disturbed from the taxi stand aforesaid.

The petition is disposed of. No order as to costs.