
(2001) 03 DEL CK 0108

In the Delhi High Court

Case No : Civil Writ Petition No. 4774 of 1993 and CM. 10594 of 2000

Shakti Mandir Society (Regd). and Others

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 5 AD 1002 : (2001) 93 DLT 415 : (2001) 59 DRJ 348

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. S.M. Mittal, for the Appellant; Mr. Shiv Kumar and Mr. S.L. Hans, for the Respondent

Judgement

Manmohan Sarin. J.

1.Rule.

Pleadings are complete. With the consent of the counsel for the parties, the writ petition is taken up for disposal.

2. Petitioners, Shakti Mandir (Society) Regd., Prem Nagar Shiv Mandir Samiti and a few residents of Shakti Nagar, Delhi-110007, have filed this writ petition, seeking a mandamus to the respondent Municipal Corporation of Delhi and Commissioner of Police to discharge their statutory obligations under the D.M.C. Act, the Delhi Police Act the Indian Penal Code for removal of unauthorised and illegal squatters, hawkers and encroachers from the Shakti Mandir Marg.

3. Learned counsel for the petitioner urged that because of the increased presence of the squatters who sell their wares, there is congestion and disturbance to the residents and he devotees, visiting the temples.It is stated that these squatters use and leave behind wooden boxes and husk, which are highly inflammable and a risk to the residents.It is further submitted that there is lack of hygiene and obstruction in free movement of traffic, which is aggravated by the pitiable condition of the road.It is submitted that these squatters extend

their area on the road, thereby reducing the width of the road itself.

4. Learned counsel for the petitioners further submitted that the presence of these squatters in the vicinity of the temples and the nearby school is, even otherwise, against the guidelines and the policy of the respondent Municipal Corporation with regard to not permitting squatting or tehbazari within 25 metres of these institutions. Learned counsel points out that during the course of the writ proceedings, various undertakings had been given by the respondents for removal of encroachments, which have not been complied with. He submits that the SHO of the area has admitted the factum of excess coverage by these squatters. Petitioners, Therefore, seek a direction in the nature of a writ of mandamus to the respondent municipal corporation of Delhi to remove them.

5. Some of the site holders, who are stated to be squatting at the site, had sought impleadment in the writ petition vide CM.6107/96. The said applicants were permitted to be heard.

6. Mr. Shiv Kumar, learned counsel for the respondent Municipal Corporation of Delhi, submits that the writ petition is wholly misconceived, in as much as the squatters, who are occupying the sites in question are eligible squatters holding valid tehbazari site open to the sky with a dimension of 6" x 4". He further refutes the suggestion that the area is non-squatting zone. He further submits that these squatters are occupying the sites pursuant to valid permissions granted by the respondent Corporation.

7. As regards cases of unauthorised extension of area by some site holders/squatters, these are cases of individual aberrations and breaches. Learned counsel for the respondent Corporation states that action is taken forthwith to remove them and clear the excess area covered. He submits that this is continuing process. As a matter of fact, it is submitted that steps have been taken to fence the areas so that it is not possible for the site holder to extend beyond the area allotted. Learned counsel further submits that there is no policy or guidelines in force for not granting squatting sites within 25 meters of temples or educational institutions.

8. Mr. S.L. Hans, appearing for the applicants in M.6107/95, submits that this matter is no longer rest integra, in as much as seven of these applicants had moved the Hon'ble Supreme Court against the order passed by the Division Bench while disposing of CW.396/86. By order dated 16th of May, 1988, the Division Bench of this Court had permitted the Municipal Corporation to allot the teaser sites to seven of the applicants and four other person at another site than the existing site in front of the temple. It was ordered that upon grant of an alternate site they would be removed from the existing sites. These applicants had gone in appeal before the Supreme Court and the Apex Court set aside the direction by which location of their place of business was to be shifted. This was done in view of the Corporation having no objection to their carrying on the business under the licenses issued. Learned counsel further points out that in

CQW.2453/86 the existing allottees were permitted to continue at the tehbazari sites allotted to them.

9. In view of the stand taken by the Municipal Corporation of Delhi that the squatters at the Shakti Mandi Marg are lawful allottees of tehbazari sites of "6 x 4" and also in view of the decisions of the Supreme Court, as noted above, no case is made out for directing their removal.

10. The respondent Municipal Corporation of Delhi and the Police shall, however, ensure that the sites in question are not extended and no other obstruction is caused in the free flow of traffic on the road. Counsel for the parties have shown me in Court certain photographs of the road, which reflect its deplorable state with pits and potholes. Let the municipal corporation take action to have the road repaired forthwith. The respondent Corporation shall also carry out period checks to ensure that no inflammable material is left in the open by the site holders, which can be a fire hazard.

11. The writ petition is dismissed with the aforesaid directions.