

(2005) 04 DEL CK 0066
In the Delhi High Court
Case No : WP (C) 7050 of 1999

Shri Rajdev Singh and Another	Vs	APPELLANT
New Delhi Municipal Council and Others		RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 1, 11, 202, 203

Citation : (2005) 04 DEL CK 0066

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Ravinder Sethi and D.B. Kalia, for the Appellant; Adarsh B. Dial Arvind Shah, for R - 1 and 3, Iram Majid, for Zubeda Begum, for R - 4, Arun Kr. Sharma, for R - 6, Ravi P. Mehrotra and Garvesh Kabra for Rs - 12 and 33, 40 and 41 and Amrit Kaur Oberoi, for Rs - 34 and 48, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The proprietor and M/s. Hotel Imperial have filed the present writ petition aggrieved by the action and inaction of the respondent authorities of allotting taxi booths, shops including Tibetan shops in front of the hotel and abutting on the wall. The petitioners seek the relief of demolition and removal of such structures and for a restraint order against the respondent authorities from permitting the use of the road in front of the hotel for any such purpose.

2. The private respondents being the taxi booth licensees and licensees of the shops have been imp leaded as respondents No. 7 to 42.

3. The petitioners claim that the respondent NDMC is required to maintain the streets under the provisions of the New Delhi Municipal Council Act, 1994 (hereinafter to be referred to as, the NDMC Act) especially in view of the provisions of Section 11(p) of the NDMC Act. Section 11 prescribes the obligatory functions of the Council and the removal of obstruction and projections on streets and other public places is one such function under sub-section (p). A reference has also been made to the provisions of Sections 202 and 203 of the NDMC Act

providing for vesting of the public streets in the Council and for the functions to be performed in respect thereof.

4. The respondent NDMC itself has taken action against the taxi booth licensees on account of various breaches. In fact, the stand of the respondent NDMC is that such booths were telephone booths provided to the taxi owners and the licenses were cancelled after initiation of the proceedings. Such cancellation was challenged in WP (C) No. 4001 and 4355-58 of 2000. The present writ petition was heard along with those writ petitions. By a separate Order passed today, those writ petitions are being dismissed. To that extent, the grievance of the petitioners herein really does not survive. The grievance of the petitioners is, however, also in respect of the Tibetan shops in respect of which complaints are stated to have been made by the petitioners. The petitioners claim that they obstruct the right of way and in view of a number foreigners and other high-profile customers of the petitioner hotel, great inconvenience is caused.

5. The petitioners contended that the license for these shops are in the nature of squatting rights and the same cannot be permitted on the footpath on payment in view of judgment of the Supreme Court in *Ahemdabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors.*, (1977) 11 SCC 121. The petitioners also draw strength from judgment of the Supreme Court in *Sodan Singh and Others Vs. New Delhi Municipal Committee and Others*, to contend that tehbazari rights are basically meant for poor hawkers and not for the sellers of luxury items or smuggled goods.

6. The structures are said to be abutting the boundary wall of the hotel and are against the Building Bye-Laws and the height of the structures is stated to be higher than the wall of the hotel. Notices are stated to have been issued by the respondent NDMC to the offending parties, but no action was taken. The structures are stated to be hazardous and unsafe on the pavement.

7. The petitioners claim that they are bona fide owners of their property under perpetual lease deed and their rights are being affected including of privacy.

8. In respect of these licensed shops, the stand of respondent NDMC, however, is that the same are authorized and no cancellation of license has taken place. The Tibetan squatters were given permission to squat on pavement on tehbazari basis. The permission is stated to have been initially granted for 6 months in 1953, but thereafter vide Resolution No. 3 dated 02.11.1962, their permission for squatting was extended to full year. The NDMC subsequently allotted 24 stalls in front of Hotel Imperial to rehabilitate the squatters in April, 1971 and in terms of Resolution No. 16 dated 06.04.1976, the Committee decided to allow 100% coverage of loft for storage purposes in all municipal markets. The stalls are stated to be located in municipal markets. These facts have been set out in an affidavit filed by the Chairman, NDMC dated 03.11.2000 in WP (C) No. 4001/2000. It is on this basis that the allotment of telephone / taxi booths was distinguished.

9. The private respondents contended on the same lines and further submitted that it was not open to the petitioners to approach the Court after such a long period of time since such persons had been in existence for a number of decades.

10. In my considered view, there is some substance in the plea advanced by the respondents that the petitioners never objected to the location of these persons on the pavements for decades and it is only now that they seek removal of such private respondents, who have been given the stalls. The respondent NDMC has defended their existence on license basis.

11. In view of the stand of the respondent NDMC, the private stallholders holding valid license cannot be said to be encroachers on land and, thus, the judgments cited by the petitioners would have no application in so far as they relate to encroachers. For this reason, the reliance placed by learned counsel for the petitioners even on the judgment in *State of Karnataka Vs. State of A.P. and Others*, would be of no avail.

12. In my considered view, there are two directions, which are necessary to be given in the present proceedings arising from the aforesaid facts.

13. There can be no doubt that these licensees must adhere to the terms and conditions of the licenses. This has to be both in terms of the extent of the construction and the manner of user. The respondent NDMC is, thus, directed to carry out an inspect on of these stalls within a maximum period of four weeks from today to verify that such stallholders are adhering to the norms. In case of violation, immediate action in accordance with law must be taken. The NDMC shall also ensure that its relevant Building Bye-laws applicable are adhered to. Further, if there are any stalls existing for which no license has been granted, they are naturally required to be removed forthwith. This direction becomes necessary as there appears to be some difference in the number of stalls as alleged by the petitioners numbering 26 and what is stated in the affidavit of the NDMC about the stalls numbering 24.

14. The second direction arises from the fact that the petitioners have represented against the location of these shopkeepers on the streets, which is called a municipal market. It is for the respondent NDMC to consider the representation of the petitioners as to whether it is feasible to relocate the stallholders at any other appropriate place. No doubt, there has been delay and laches on the part of the petitioners in approaching the Court, which will disentitle, apart from any other reason, any direction for removal. However, certainly, the respondent authorities can be directed to consider the feasibility of such a proposal in view of the fact that these stalls are outside the property of the petitioners. The petitioners are given liberty to make any additional representation in this behalf within a period of two weeks from today and the same shall be decided within a maximum period of two months thereafter. Needless to say, it will be open to the respondents to give a hearing to the petitioners and the private stallholders, if deemed appropriate by the respondent

NDMC.

15. The writ petition is disposed of with the aforesaid directions leaving the parties to bear their own costs.