

Mor Singh Kandari and Others Vs. Mcd and Others

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Court : Delhi

Decided On : Feb-17-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P.(C) 7804 of 2011

Appellant : Mor Singh Kandari and Others

Respondent : Mcd and Others

Judgement :

HIMA KOHLI, J

(ORAL)

C.M.No.2181 of 2012

1. The present application is filed by the petitioners praying *inter alia* for directions to the respondents/MCD to de-seal their shops and allow them to continue their business from the allotted sites at Pitampura, Rohini Zone, in view of the status quo order dated 08.11.2011 passed in the present petition. Counsel for the petitioners states that on 14.2.2012, the respondent/MCD had taken sealing action in respect of the *tehbazari* sites in question. She further states that before taking the sealing action, the respondent/MCD did not pass any revocation order in terms of the second set of notices to show cause issued to the petitioners and, therefore, their sealing action is bad in law and liable to be set aside.

2. Counsel for the respondents states that the respondents/MCD had issued notices to show cause to the petitioners in November, 2011 pointing out that they were running the *tehbazari* sites in breach of the terms and conditions of allocation and asking them as to why action of revocation of *tehbazari* sites should not be taken against them. It is contended by him that none of the petitioners replied to the said notices to show cause and they submitted their replies only after a second set of notices to show cause were issued to them in December 2011, again calling upon them to explain as to why their *tehbazari* sites may not be revoked in view of the fact that they had not submitted any reply to the earlier notices to show cause dispatched to them.

3. Counsel for the respondents/MCD points out that the entire action as proposed to be taken by the respondents/MCD had been duly brought to the notice of the Court on 24.01.2012 and in the order passed on the said date, it was clarified that the status quo order granted on 08.11.2011 would not preclude the respondents/MCD from taking necessary action as per law in respect of the *tehbazari* sites in question on account of other violations, if any, committed by the petitioners, which are actionable under the DMC Act, 1957. He submits that it was only after obtaining the aforesaid clarification that the respondents/MCD had proceeded to take sealing action against the petitioners as they had continued to violate the terms and conditions of allotment of *tehbazari* sites as mentioned in the respective notices to show cause issued to them. He further states that it is not a case where the petitioners alone have been targeted by the MCD, rather, the respondents/MCD is taking such sealing action in respect of all the *tehbazari* sites in the Rohini Zone wherever breach of terms and conditions of allotment has been noticed by the Department. It is submitted that till date, respondents/MCD has taken sealing action in respect of 17 *tehbazari* sites in Rohini Zone and further action shall be taken in the course of the day in respect of 4 other sites in Rohini zone. He, however, points out that the respondents/MCD has been careful by refraining to take any revocation action against the petitioners in view of the status quo order operating in their favour.

4. Counsel for the petitioners states that the petitioners are aggrieved on account of the fact that although the notices to show cause issued by the

respondents/MCD were duly replied to by the petitioners, the respondents/MCD have taken sealing action in respect of *tehbazari* sites allocated to them, without considering their submissions.

5. In view of the aforesaid grievance raised by learned counsel for the petitioners, it is deemed appropriate to direct the respondents/MCD to consider the representations of the petitioners in reply to the notices to show cause and pass appropriate orders thereon. The said orders shall be passed within a period of two weeks from today under written intimation to the petitioners. In case the respondents/MCD arrives at the conclusion that the petitioners are in breach of any of the terms and conditions of allotment then, they be given a reasonable time to remove the said breaches and upon the petitioners expressing in writing their readiness and willingness to remove the said breaches and giving an undertaking to use the *tehbazari sites* allotted to them in accordance with the terms of the allotment within one week from the date of the decision conveyed by the MCD, the same shall be duly considered by the respondents/MCD and the decision taken in that regard shall be duly communicated to the petitioners within one week from the date of receipt of the undertakings furnished by each of them separately.

6. The application is disposed of.

7. *Dasti* to the parties.

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