

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th September, 2010.

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W.P.(C) No.6427/2010

SAROVARI DEVI

..... PETITIONER

Through: Mr. M.M. Kashyap, Advocate

Versus

NEW DELHI MUNICIPAL COUNCIL

..... RESPONDENT

Through: Ms. Madhu Tewatia & Ms. Sidhi
Arora, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported
in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. Considering the nature of the relief claimed in the petition, with consent, the counsels have been finally heard.
2. The petitioner claims to be the widow of Sh. Shankar Rai who died on 25th April, 2010 leaving besides the petitioner, five children. The said Sh. Shankar Rai was earning livelihood as a hawker squatting at BOT at LIC Building in front of Bank of Baroda, Janpath Lane, Janpath, New Delhi. He being a handicapped person was a member of Adarsh Viklang Vikas Samiti. The said Samiti had obtained an order dated 30th January, 2010 from the Appellate Authority under the National Policy on Urban Street Vendors, 2009 restraining the respondent NDMC from removing its members including the said Sh. Shankar Rai from the sites where they were squatting,

till the disposal of their applications for allotment of a site by the respondent NDMC. The said application is stated to be still pending. The petitioner upon the death of Sh. Shankar Rai being apprehensive that the protection granted vide order dated 30th January, 2010 aforesaid to her husband may not enure to her benefit, filed an application again before the Appellate Authority for securing her squatting on the site in place of her husband. However, the Appellate Authority disposed of the said application directing the petitioner to approach the Zonal Vending Committee. The petitioner has filed this writ petition averring that since the Zonal Vending Committee is not functioning; her squatting from the same site where her husband was squatting and hawking should not be disturbed. The counsel for the petitioner relies on the observations of the Supreme Court in the order dated 6th February, 2007 in *Sudhir Madan Vs. MCD* 2007 (8) SCALE 334 holding the *tehbazari* / vending sites to be transferrable in the name of legal heirs in case of death or permanent insanity of the allottee.

3. The counsel for the respondent NDMC appearing on advance notice states that though the application of the husband of the petitioner is still pending before the Zonal Vending Committee but as per the approved Norms, the husband of the petitioner was not entitled to / eligible for a vending site. With respect to the judgment of the Supreme Court relied on by the counsel for the petitioner, it is contended that the said observations are in the context of a *tehbazari* holder i.e. a person who has been found eligible to a vending site by the Vending Committee and do not apply to the petitioner.

4. The fact remains that the squatting of the husband of the petitioner was protected under the orders of the Appellate Authority. The application before the Zonal Vending Committee during the pendency whereof the squatting of the husband of the petitioner was protected is still pending. In my view the unfortunate event of the demise of the husband of the petitioner

leaving the petitioner and five children should not deprive the legal heirs of the protection, especially before they have had time to adjust to the demise of the bread earner.

5. For this reason and without laying down any precedent, the writ petition is disposed of with the directions:

- (i) The protection available to the husband of the petitioner under the order dated 30th January, 2010 (supra) shall enure to the benefit of the petitioner also till the time the application pending before the Zonal Vending Committee is decided.
- (ii) The Zonal Vending Committee is directed to decide the said application as expeditiously as possible and in any case within three months from today.
- (iii) In the event of the Zonal Vending Committee finding the husband of the petitioner / petitioner eligible, the petitioner shall shift to allocated site; however in the event of the husband of the petitioner / petitioner being not found eligible as is contended by the counsel for the respondent NDMC, the petitioner subject to her further remedies shall immediately vacate the site and upon her failure to do so, the respondent NDMC shall be entitled to proceed against her in accordance with law.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

30th September, 2010
'gsr'..