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

% *Date of decision: 13th May, 2026*

+ W.P.(C) 2241/2012

MADAN LAL MALHOTRAPetitioner

Through: Mr. Anish Kumar Maggo, Advocate.

versus

MCDRespondent

Through: Ms. Sangeeta Chandra, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present writ petition has been filed seeking quashing of the order dated 17th November, 2011, passed by the respondent/MCD whereby the *tehbazari* granted to the petitioner at a plot near 33/16 Ashok Nagar, New Delhi, was cancelled.

2. The brief facts necessary for deciding the present petition are as follows:

- i. In the year 1970, MCD allotted a *tehbazari* site near 33/16 Ashok Nagar, New Delhi, to the petitioner's father for running a coal depot and storage of coal.
- ii. Subsequently, the said *tehbazari* site was transferred in favour of the petitioner on 19th June, 1979, and the license of the coal depot of the said site was also transferred in the name of the petitioner.
- iii. The petitioner has been running the coal depot at the Tehbazari site



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until 1994.

- iv. In 1994, the Government of NCT of Delhi banned coal distribution and prohibited coal depots in Delhi. As a result, the petitioner applied to MCD for permission to change the trade from that of a coal depot to trading of hardware, paints and sanitary goods.
 - v. MCD granted permission for change of trade *vide* communication dated 30th October, 1998. Since then, the petitioner has been running the business of trading in hardware, paints and sanitary goods at the said *tehbazari* site.
 - vi. On 22nd September, 2011, MCD issued a notice to the petitioner to show cause as to why an alternate *tehbazari* site be not allocated to the petitioner in terms of the new policy adopted by MCD.
 - vii. The petitioner replied to the aforesaid notice on 28th September 2011.
 - viii. On 17th November, 2011, the impugned order was passed by MCD directing the eviction of the petitioner from the *tehbazari* site.
3. Aggrieved by the aforesaid order, the present writ petition has been filed.
 4. Notice in the present petition was issued *vide* order dated 8th May 2012, on which date *status quo* with regard to the *tehbazari* site near property no.33/16, Ashok Nagar, Municipal Market, New Delhi, was directed to be maintained.
 5. On 9th May, 2013, the aforesaid interim order was confirmed till disposal of the writ petition.
 6. An additional affidavit has been filed on behalf of the respondent/MCD on 10th December, 2015. The case set up by MCD in the



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said affidavit is as follows:

- i. The original *tehbazari* was granted only for running a coal depot, but coal distribution under the Public Distribution System was banned since 1994 therefore, the original public purpose itself ceased to exist.
- ii. The petitioner is only claiming a *tehbazari* right over the land in question, which is in the nature of a license. The only right which the petitioner could claim as a *tehbazari* holder was to have his license renewed as per the *Tehbazari* Policy. The rights under a license are in the nature of temporary permission and are capable of being terminated/modified.
- iii. Earlier, the MCD had a policy of allotting large pieces of land admeasuring 100-200 square yards on *tehbazari* basis. However, the said policy has been withdrawn by MCD in public interest as huge tracts of land cannot be given for running private businesses to a party.
- iv. The basic purpose of allotting *tehbazari* license is to provide means of livelihood to the poor persons and the same cannot be allowed to be converted into running profitable businesses.
- v. MCD adopted a new comprehensive policy on 6th July, 2011 (hereinafter 'Policy'), in connection with sites allotted for coal depot on *tehbazari* basis. The impugned order has been issued in terms of the said policy. The aforesaid policy has been upheld by this Court.
- vi. The petitioner has been offered allotment of an alternative 7x5 site subject to scrutiny by the Zonal Vending Committee.
- vii. By way of the impugned order dated 17th November, 2011, the earlier



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decision of MCD permitting change of trade was withdrawn.

7. Counsel appearing on behalf of the petitioner submits that the petitioner's *tehbazari* site does not fall under the policy of MCD for alternative *tehbazari* sites of coal depot since the petitioner is running a hardware, paints and sanitary goods business at the allocated site with due permission from MCD, which was granted in favour of the petitioner. He submits that there has been no violation of the terms of the *tehbazari* site. Hence, the MCD could not have terminated the *tehbazari*. He further submits that the show-cause notice issued by MCD does not deal with the permission of change of trade granted to the petitioner.

8. Counsel for the respondent/MCD submits that the *tehbazari* site allotted to the petitioner was on a temporary basis and the same has been withdrawn validly as per the impugned order dated 17th November 2011 in pursuance of the Policy adopted by MCD. The petitioner was also offered the allotment of an alternate site of 7x5 feet, subject to the deposit of documents and scrutiny thereof. The said Policy was challenged before the Division Bench and the same has been upheld in LPA 542/2015. She submits that the petitioner cannot claim a vested right over the *tehbazari* site as the said *tehbazari* was a mere license and not a conferment of title in favour of the petitioner. She further submits that it is not the petitioner's case that he has been discriminated in any manner with regard to the adoption of the said Policy and the subsequent withdrawal of the permission granted.

9. I have heard the counsel for the parties and examined the record.

10. It is an admitted position that the *tehbazari* site was originally allotted



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to father of the petitioner for the purposes of the distribution of coal. Subsequently, on account of the prohibition of coal distribution by the Government of NCT of Delhi in the year 1994, MCD permitted change of trade in favour of the petitioner *vide* communication dated 30th October, 1998. Later on, while adopting a comprehensive policy on 6th July, 2011, with regard to the *tehbazari* sites allotted for distribution of coal products, the said permission was withdrawn by MCD. In this regard, a reference may be made to the relevant extracts from the impugned order:

“Whereas, the coal depot plot near property No. 33/16, Ashok Nagar, Mpl. Market, New Delhi-18 is the Municipal Property, the business of coal is no longer permissible in Delhi through Public Distribution System (PDS), it was decided to offer Tehbazari sites measuring to 7’ x 5’ to these Tehbazari holders in the area near their existing coal depot site falling in the same zone or nearby Zone as approved by the Corporation.

And whereas it is pertinent to mention that the Sh. Madan Lal has specifically averred in the reply dated 28-09-2011 that on account of prohibition on coal distribution by the Govt. of NCT of Delhi under PDS since 1994, the MCD had allowed the change of trade on 30-10-1998 and the tehbazari rent of Rs.200/- per month has been remitted till 31-3-2009. Since uniform policy regarding coal depot has been formulated and permission for change of trade as reflected for copy of letter submitted by you also stands withdrawn.

And whereas, the matter was place before the competent Authority in terms of the policy of the corporation and the decision dated 30-10-1998 allowing the change of trade by the subordinate officials of the MCD have been reviewed and upon examination of the matter, it is felt that the use of public land given on meager tehbazari fee for supply of coal to the public at large under the PDS cannot be allowed to be used as hardware, paint and sanitary goods the too without license/permission from the Delhi Govt. agencies.



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In view of the above, the Competent Authority has taken a conscious decision that the said Tehbazari is cancelled and the site in question be retrieved from the allottee/successor or occupier and be handed over to R.P. Cell, MCD for starting the other projects of Public utility. Sh. Madan, Lal/his legal heir, successor/Mutation holder, if found entitled for allotment of Tehbazari site measuring 7' x 5' subject to fulfillment of various required documents and the same will be placed before the Zonal Vending Committee for further approval of allotment. He is directed to show willingness along with the requisite documents like allotment letter, Succession Certificate, Mutation papers (if there is change in hand of Tehbazari) immediately.”

11. A reference may be made to the aforesaid Policy dated 6th July 2011, adopted by MCD, the relevant extract which is set out below:

“1. Since the business of coal is no longer permissible and relevant in the present context, the Tehbazari holders or their legal successors should be offered Tehbazari site measuring 7' x 5', preferably in areas near their existing coal depot sites, failing which in the same zone or nearby zones.”

12. The aforesaid policy of MCD has been upheld by judgment dated 27th July, 2015, passed by a Single Bench of this Court in W.P.(C) 3455/2012 titled **“Shanti Devi v. GNCTD”** and other connected matters.

13. The aforesaid judgment was taken up in appeal before the Division Bench. Subsequently, the Policy has also been upheld by the Division Bench in its judgment dated 4th January, 2016, passed in LPA 542/2015 titled **“Rajiv Narula v. GNCTD and Ors.”** The relevant extracts from the said judgment are set out below:

“9. The contentions on behalf of the two MCDs i.e. South Delhi Municipal Corporation and North Delhi Municipal; Corporation (in short title ‘MCDs’) are same, Learned counsels contend that appellants’ claim only a tehbazari right over the land in question and



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the tehbazari being a license, the right was purely personal given to a particular person to do a particular business at a particular place. Discretion is vested with the MCDs to renew or not the tehbazari license and it cannot be sought as a matter of right. The appellants have no right, title or interest over the land in question. The appellants also cannot claim tehbazari rights over any particular piece of land. Tehbazari right is merely a license for carrying out a particular trade at a particular site and can be revoked/modified at any time. The license has been revoked/modified by the MCDs as per their policy decision. The appellants do not have any right to perpetual possession over the land in question and having accepted tehbazari rights, they have acquiesced to the ownership of MCDs to the properties in question in view of Section 116 of Indian Evidence Act. The appellants are neither the owners of the land nor have any document to show permissible use by any authority whatsoever. Since there is no malafide or arbitrariness or irrationality or illegality in the policy, it is not subject to interference by the Courts. The appellants cannot claim any right to public land. The properties in question have been retrieved in most of the cases by sealing and the appellants have not challenged the final order hence no relief can be granted to them.

...

18. In view of the aforesaid, discussion the Policy dated July 06, 2011 is upheld... ”

[Emphasis Supplied]

14. The Division Bench has categorically held that *tehbazari* rights are merely in the nature of a licence and do not confer any vested, proprietary or perpetual right upon the allottee over the public land in question. It has further been held that the respondent/MCD is competent to modify, revoke or withdraw such licence in terms of its policy decisions and no allottee can claim continued occupation of a particular site as a matter of right.

15. It is a settled position of law that *tehbazari* is only in the nature of a temporary license which is granted in favour of a person. It does not create



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any right, title or interest in the subject property.

16. At best, the petitioner has a right to be considered for the grant/renewal of the prevalent policy adopted by MCD. On account of the subsequent formulation of Policy in 2011, the aforesaid permission was withdrawn and the petitioner was offered a *tehbazari* site of 7x5 feet.

17. Once the Policy dated 6th July, 2011 has been upheld by this Court as well as by the Division Bench, no separate challenge to the withdrawal of permission for change of trade can survive.

18. In the present case, the original allotment in favour of the petitioner was admittedly for running a coal depot and the subsequent permission was granted by MCD on 30th October, 1998, to the petitioner for trading in hardware, paint and sanitary goods instead of coal depots at the site. However, it cannot be said that permission was on a permanent basis or created any indefeasible rights in favour of the petitioner to permanently run the site for the purposes of trading in hardware, paints and sanitary goods.

19. In the additional affidavit filed on behalf of the respondent/MCD, it has been stated that there is no justification for the continuation of any other private business like trading of hardware, paints and sanitary goods, as in the present case, on public land. The petitioner has been occupying the said land for his commercial interest at the cost of the public exchequer. The purpose of *tehbazari* cannot be furtherance of the commercial interest of a few individuals. The petitioner is free to run his business from the alternative *tehbazari* site or from a private land, but the petitioner cannot lay any claim to run his private business from public land measuring 200 sq. yds. on *tehbazari* basis.



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20. In light of the aforesaid submissions, this Court is of the view that there is nothing unlawful or arbitrary in the MCD's decision to cancel the *tehbazari* allotted to the petitioner. The petitioner has also failed to demonstrate any mala fides or discriminatory application of the aforesaid Policy, warranting interference under Article 226 of the Constitution of India.

21. Accordingly, I do not find any merit in the present writ petition and the same is dismissed.

22. Considering the fact that the petitioner has been in occupation of this site since 1998, and would have to arrange an alternate site for running his business, this Court deems it fit that an appropriate time has to be given to the petitioner to arrange for an alternate site.

23. Counsel for the petitioner submits that six (6) months' time be given to the petitioner to vacate the said premises.

24. In my considered view, it would be in the interest of justice if five (5) months' time is given to the petitioner to vacate the subject site.

25. Accordingly, subject to the petitioner filing an undertaking before this Court within ten (10) days from today, stating that he would vacate the subject premises within five (5) months from today, the petitioner is granted five (5) months' time to vacate the said premises.

AMIT BANSAL, J

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