

ITEM NO.4

COURT NO.5

SECTION X/XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A. No. 394 in I.A. No. 356 in W.P. (C) No. 1699/87

SUDHIR MADAN & ORS.

Petitioner(s)

VERSUS

M.C.D. & ORS.

Respondent(s)

(For directions)

WITH

I.A. No. 366 in W.P. (C) No. 1699/87

RAM SWAROOP & ORS. VS. M.C.D. & ORS. (for directions)

WITH I.A. NO. 367 IN W.P. (C) NO. 1699/87

RAJ KUMAR GHAI VS. M.C.D. & ORS. (for directions)

With Contempt Petition (C) No. 125/01

REJANDER KUMAR VS. S.P. AGGARWAL & ORS.

With Contempt Petition (C) No. 126/01

HAWKERS WELFARE COMMITTEE VS. S.P. AGGARWAL & ANR.

With Contempt Petition (C) No. 506/02

CHANDNI CHOWK SARV VYAPAR MANDAL VS. RAKESH MEHTA & ORS.

(with appln. for exemption from personal appearance and for
directions/modifications)

I.A. NO. 396 IN Contempt Petition (C) No. 506/02

CHANDNI CHOWK SARV VYAPAR MANDAL VS. RAKESH MEHTA & ORS.

(For Impleadment)

CONTEMPT PETITION (C) NO. /2003 (D. No.4984/03)

M/S SWANTANTRA BHARAT STORE VS. DHARSHAN LAL & ORS.

CONTEMPT PETITION (C) NO. /2003 (D.No.4985/03)

M/S BEOPAR SANGH VS. DHARSHAN LAL & ORS.

I.A. NO. 361 IN W.P. (C) NO. 1699/87

HAWKERS WELFARE COMMITTEE VS. M.C.D. & ORS. (for directions)

WITH

I.A. NO. 372-373 IN W.P. (C) NO. 1699/87

HAWKERS WELFARE COMMITTEE VS. M.C.D. & ORS. (for directions)

(Along with the record of Contempt Petition (C) No. 187/2000)

I.A. NO. 389 IN W.P. (C) NO. 1699/87

HARBHAJAN SINGH BEDI VS. M.C.D. & ORS.

(Along with record of I.A. No. 356)

I.A. NO. 392 IN W.P. (C) NO. 1699/87

SHRI PRAMOD KUMAR & ANR. VS. ASSISTANT COMMISSIONER, MCD & ANR.

(for directions)

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I.A. NO..... IN W.P.(C) NO. 1699/87

RAM MOHAN GAUTAM VS. STATE THROUGH SECRETARY, DELHI ADMN.

(for interim relief)

WITH

W.P. (C) 535/01

RAJ KARAN VS. MUNICIPAL CORPORATION OF DELAHI & ANR. (With office report)

Contempt Petition (C) No. /2003 (D.No.15102/03)

SUBHASH CHAND & ORS. VS. O.P. BALWANI & ANR.

W.P.(C) 240/04

VIJAY PANDEY & ORS. VS. M.C.D. & ORS.

(With appln. for ex-parte stay and office report)

I.A. NOS. 397-398 IN W.P. (C) NO. 1699/87

OM PAL ETC. VS. ASSTST. COMM.,M.C.D. & ANR. (for directions)

I.A. NO. 399 IN I.A. NO. 394 IN W.P. (C) NO. 1699/87

SUDHIR MADAN & ORS. VS. M.C.D. & ORS.

(for modification of Court's order dated 09.08.2004)

WITH

I.A. NOS. 1-2 IN W.P. (C) NO. 100/02

NEW LAJPAT RAI MARKET PATRI HAWKERS UNION VS. MUNICIPAL CORPORATION OF
DELHI & ORS. (for directions and exemption from filing O.T.)

I.A. NO...../05 IN I.A. NO. 394 IN I.A. NO.356 IN W.P.(C) NO. 1699/87

NAND KISHORE & ANR. VS. M.C.D. & ORS. (for impleadment)

WITH

I.A. NO...../05 IN I.A. NO. 394 IN I.A. NO. 356 IN W.P.(C) 1699/87

NAND KISHORE & ANR. VS. M.C.D. & ORS. (for modification)

I.A. NO. 400 IN W.P.(C) NO. 1699/87

SH. SANTOSH KUMAR VS. M.C.D. & ORS. (for direction)

WITH

I.A. NO. 401 IN I.A. NO.396 IN C.P. 506/02

M/S CHANDINI CHOWK HAWKERS ASSOCIATION (REGD.) VS. RAKESH MEHTA & ORS.

(Appln. for modification of order dt. 25.08.2005)

I.A. NO.....IN C.P. NO.506/02

CHANDINI CHOWK SARV VYAPAR MANDAL VS. SH. RAKESH MEHTA & ORS.

(for direction/modification)

I.A. NO. 402 IN W.P. (C) NO. 1699/87

PRESIDENT, DELHI HAWKERS MAULIK ADHIKAR SURAKSHA MANCH VS. M.C.D.& ORS.

(for direction to in initiate proceedings under Section 340 Cr.P.C.)

...3/-

With SLP(C) NO. 7025/03

GRAM KALYANKARI YUVA SANSTHA VS. M.C.D. & ANR.

(With prayer for interim relief)

WITH WP(C) No. 414/2006

BHOORI VS. STATE OF DELHI & ORS.

(With office report)

WITH I.A.NO. 403 in W.P.(C) No. 1699/1987

MANUSHI SANGHATHAN & ORS. VS. M.C.D. & ORS.

(for intervention)

WITH I.A.NO. 404 in W.P.(C) No. 1699/1987

NATIONAL ASSOCIATION OF STREET VENDORS VS. M.C.D. & ORS.

(for intervention)

WITH I.A.NO. 406 in W.P.(C) No. 1699/1987

MINISTRY OF HOUSING & POVERTY ALLEVIATION, NEW DELHI VS. M.C.D. & ORS.

(for impleadment)

WITH I.A.NO. 407 in W.P.(C) No. 1699/1987

PATRI VYAPAR MANDAL DELHI (REGD) VS. M.C.D. TOWN HALL & ORS.

(for permission to file application)

WITH Contempt Petition NO. 215/2006 in W.P.(C) No. 1699/1987

NEW PATRI VYAPAR MANDAL DELHI (REGD) VS. SHRI ASHOK NIGAM

Date: 06/02/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner/(s) Mr. S.K. Sinha, Adv.
ts

Applicants

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for M/s. Arputham Aruna & Co., Adv.

In I.A. No. 407 &

Mr. Colin Gonsalves, Sr. adv.

Cont. pet.215/06

Ms. Kavita Wadia, Adv.

Mr. M.M. Kashyap, Adv.

Mrs. Usha Kumar, Adv.

Mr. K.K.Mohan, Adv.

Mrs. Gouri Karuna Das, Adv.

Ms. Anu Gupta, Adv.

Mr. Sanjay Mani Tripathi, Adv.

Mr. Kamal Kant Tripathi, Adv.

Ms. Rani Jethmalani, Adv.

..4/-

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Mr. K.C. Dua, Adv.

Mr. Subramonium Prasad, Adv.

Mr. S.S. Bandyopadhyay, Adv.

Mr. Mohan Pandey, Adv.

Mr. S.N. Pandey, Adv. (In SLP(C) 7025/03)

Mr. C.S. Ashri, Adv.

Mr. Anil Gupta, Adv. (In IA No. 392)

Mr. Ajay Garg, Adv.

Mr. C.S. Ashri, Adv.

Mr. S.K. Garg, adv.

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Mr. Varinder Kumar Sharma, Adv.

Mr. Sudhir Nandrajog, Adv.

Mr. Prasant Bhushan, Adv.

Ms. Madhu Moolchandani, Adv.

Mrs. Gargi Khanna, Adv.

Mrs. Asha G. Nair, Adv.

Mr. Varinder Kumar Sharma, adv.

For MCD

Mr. Sanjiv Sen, Adv.

Mr. Praveen Swarup, Adv.

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Mr. S.S. Bandyopadhyay, Adv.

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Ms. Shailja Sinha, Adv.

Ms. Jahanvi Worah, Adv.

Mr. Surya Kant, Adv.

Mr. Atul Kumar, Adv.

Mr. Himanshu Jha, Adv.

Dr. S.K. Verma, Adv.

Mr. Shakeel Ahmed, Adv.

Ms. Arna Das, Adv.

Ms. Kamini Jaiswal, Adv.

Ms. Shomila Bakshi, Adv.

Mrs. Sunita Dwivedi, Adv.

Mr. Prashant Bhushan, Adv.

...5/-

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For Respondent(s)

Mr. Shiv Kumar, Adv. (A.C.) (NP)

For MCD

Mr. Sanjiv Sen, Adv.

Mr. Praveen Swarup, Adv.

Ms. Indra Sawhney, Adv.

Mr. Rajan Narain, Adv.

For M/O U.D.

MR. Vikas Singh, ASG

Mr. Krishan Mahajan, Adv.

Mr. Rakesh Garg, Adv.

Mr. V.K.Verma, Adv.

Mr. D.S. Mahra, Adv.

Mr. Rakesh K. Khanna, Sr.Adv.

Dr. Rashmi Khanna, Adv.

Ms. Jahanvi Warah, Adv.

Mr. Surya Kant, Adv.

For Delhi Police

Mr. SWA Qadri, Adv.

Mr. R.C. Kathia, Adv.

Mr. D.S. Mahra, Adv.

Mrs. Anil Katiyar, Adv.

For Delhi Govt.

Mr. Ashok Bhan, Adv.

Mr. SWA Qadri, Adv.

Ms. Varuna Bhandari Gugnani, Adv.

Mr. D.S. Mahra, Adv.

Mr. Manish Sharma, adv.

Mr. Ravindra Kumar, Adv.

UPON hearing counsel the Court made the following

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We have before us an affidavit filed on behalf of the Municipal Corporation of Delhi in pursuance of our order dated 3rd March, 2006. In the said affidavit the proposed scheme for Grant of Tehbazari/Squatting/ Vending Rights has been outlined. It appears therefrom that in accordance with the National Policy on Urban Vendors-2004, Ward Vending Committees have been constituted in all the 134 Wards of the Municipal Corporation of Delhi charged with the duty of identifying the sites

declaring hawking and non-hawking zones in consultation with various stakeholders like Vendros/Traders' Associations, Resident Welfare Associations, Traffic Police etc . in accordance with the relevant Rules. Zonal Vending Committees have also been constituted in all the 12 Zones and the sites identified by the Ward Committees. It is stated that total vending sites shall not exceed 2.5% of the total population of that particular Ward/Zone based on Census 2001 and this is consistent with the policy framed for the purpose. On a rough estimate about 3 lakh hawkers/ squatters may be accommodated including existing tehbazari/vending sites.

In sub para (d) of Para (D), it is provided that tehbazari/vending sites will remain the property of the Corporation. However, mutation in case of death or permanent insanity of the allottee shall be allowed. Transfer/mutation in the event of change of hands or exchange shall be permissible subject to payment of the charges as approved by the Municipal Corporation from time to time.

We would like to clarify that the Scheme must contain a clause which makes tehbazari/vending sites non-transferable, except in the case of death or permanent insanity of an allottee, in which case, the legal heirs may be substituted in his place in accordance with the norms. This will be subject to the condition that the legal heir(s)

who is allotted the site in the place of the deceased/insane allottee shall carry on

tehbazari/vending activity himself and shall not permit anyone else to carry on the

business on his behalf.

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In sub para (e) of paragraph (D), it is provided that the tehbazari/vending site shall measure 6' x 4' and open to sky. The Municipal Corporation proposes to allow the

tehbazari/vending sites to be covered wherever possible, for which a standard design will

be evolved by the Corporation. The expense on this account shall be borne by the

allottee. This has been proposed with a view to prevent illegal extension of tehbazari

sites and also with a view to maintain uniformity.

We would like to add, that while doing so, no permanent structure shall be

raised. The tehbazari/vending sites may be covered in such a manner as to identify and

demarcate the area available for tehbazari and with a view to afford protection against

the elements to the allottee(s) and their goods lying within the allotted site.

We also suggest that necessary provision be made in the Scheme for taking

strict action against any allottee found to change or alter the structure raised by the

Corporation. If at any time, it is found that any change or alteration in the structure has

been made by the allottee, his license may be canceled.

In sub-para (f) of paragraph (D), it is provided that the Vendor will pay a

registration fee of Rs.1,000/- for the vending site in addition to monthly tehbazari

charges as approved by the Municipal Corporation in consultation with the Zonal

Vending Committee of a particular Zone, or Ward Vending Committee in case of a

particular Ward.

We clarify that the amount payable by way of registration fee may be altered if considered necessary. The same will apply to the monthly tehbazari charges.

In sub para (h) of paragraph (D), it is provided that preference will be given to those persons whose disputes are pending in Courts and who are covered under the scheme formulated in the case of Gainda Ram Vs. MCD

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or the Chopra Committee, as also those, whose applications were rejected by the Chopra Committee on minor grounds. Thereafter, second preference will be given to the special groups like handicapped and widows etc. The sites meant for widows will be allotted to the "DMC Widows & Dependents Welfare Society" (a society formed to take care of widows and dependents of deceased MCD employees) for running vending sites either individually or through self-help groups of widows and handicapped.

So far as widows are concerned, we are of the view that a part from the

category of widows mentioned in the proposed scheme, war widows may also be included in the said category.

After some discussion, it was clarified to us that all the existing allottees as

per the old scheme shall continue. Thereafter the cases of others will be considered in

accordance with the preference provided in the said sub-paragraph. We, however, clarify

that this will not preclude the shifting of an allottee from one site to another consistent

with the norms laid down in the National Policy on Urban Street Vendors which

provides that eviction should be avoided wherever feasible unless there is clear and

urgent public need of the land in question. The Municipal Corporation will generally

follow the norms laid down in paragraph 5 of the National Policy on Urban Street

Vendors. Before any allottee is shifted he should be given an opportunity to give his

preference for a site which may be available for allotment.

In sub-para (k) of paragraph (D), it is stated that the nature of goods/items of

daily needs/service will only be allowed which are as per the needs and requirements of

that particular area. Preparation of any

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unhygienic food spreading infectious diseases, obnoxious, hazardous, electronic items

and polluting items shall not be allowed. The existing PCO booths will also be allowed

to switch over to other trades as the PCOS have become outdated due to inception of

mobile phones/cordless phones.

The said sub-para (k) needs to be re-drafted so as to make

it clear and

categoric that cooking of any food items shall not be permitted at all, but cooked food properly packed may be sold by the allottees. In the case of Maharashtra Ekta Hawkers

Union and Another Vs. Municipal Corporation, Greater Mumbai and Others (2004)
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SCC, 625 in sub-para (5) of para 14 this Court has provided as under :-

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"(5) They can only sell cooked foods, cut fruits, juices
the like. We are unable to accept the submission that cooki
should be permitted. We direct that no cooking of any natur
whatsoever shall be permitted. Even where cooked food or cut
fruits or the like are sold, the food must not be adulterat
unhygienic. All Municipal Licensing Regulations and the
provisions of the Prevention of Food Adulteration Act must be
complied with."

orated in the We are of the view that a similar provision shall be incorp

Scheme proposed by the Municipal corporation.

ELIGIBILITY CONDITIONS :

of the In sub-para (c) of paragraph (E) it is provided that income
applicant

should not exceed Rs.45,000/- per annum from all known sources and in support of this

an affidavit shall have to be sworn before the Sub Divisional Magistrate/Metropo
litan

Magistrate.

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We are of the view that this clause should be deleted. If the applicant has an income of Rs. 45,000/- per annum there is no need for him to ask for allotment of a tehbazari/vending site. Instead, the scheme must provide that the allottees must be persons who need to carry on tehbazari/vending in order to earn a livelihood. His financial standing shall be taken into account and only the needy should be considered eligible for allotment of the tehbazari/vending sites.

In the case of death of an allottee the site may be allotted to one of his legal representatives who shall actually carry on the business at the site. In case, there are more than one legal representatives, those already in employment, shall be excluded.

Thereafter if the remaining legal representatives agree allotment may be made in favour of one or more of them (jointly) who shall actually carry on squatting/vending activity at the site allotted. Such an allottee(s) shall not be permitted to allow any other person to carry on the business at the site allotted and shall in no event transfer his rights therein to any other person. These norms require to be incorporated in the scheme.

In sub-para (h) of paragraph (D), the following may be added.

The transfer of an allotted site to any other suitable place as per availability and feasibility shall be done by the Appellate Committee referred to in sub-para (j) of paragraph D. This shall be done after giving the allottee an opportunity of giving a

preference of any other available site.

The Scheme shall also provide that no license shall be granted to any person in no hawking/squatting zones. The Station House Officer of the concerned police station shall take immediate steps to remove any person found hawking/squatting in a non-hawking/squatting area. If an

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allottee, who has been allotted a tehbazari/vending site in a hawking/squatting zone. is found carrying on such activity in a non-hawking/squatting zone, the Municipal corporation may consider canceling his allotment.

In the matter of Gainda Ram and Others Vs. MCD, Town Hall and Others

(1993) 3 SCC, 178 in paragraph 1(2) this Court gave certain directions with regard to

holding of casual tehbazari on weekly holidays, festivals/melas etc. We are informed

that weekly bazars which were then 67 in number have since increased in number, and

the said direction shall apply to all such weekly bazars. It is clarified that such weekly

bazars shall not be held in non hawking/squatting zones. We also clarify that in purely

residential areas no hawking/squatting shall be permitted except where shopping area

has been provided for and there is space available for accommodating such

squatters/hawkers. Detailed norms with regard to holding of weekly bazars shall also

be declared by the Municipal Corporation of Delhi and placed before this Court for

approval. Any change in the non-hawking/squatting zones shall be intimated

to the

concerned police station.

The authorities under the Scheme shall wherever necessary ascertain the views of the Delhi Metro Rail Corporation and the Delhi Fire Services before identifying the sites.

POLICY WITH REGARD TO N.D.M.C. AREAS

We have also before us a draft Scheme prepared for the street vendors by the N.D.M.C. It appears from the draft scheme that the Vending Committees have not yet been constituted. We are informed that the Vending Committees shall be constituted within a period of one month from today which shall be entrusted with the tasks enumerated in paragraph 3.2.

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In paragraph 4.2 of the Draft Scheme, it is provided that no squatting shall be allowed on the roads/areas specified in the said paragraph. We direct the NDMC that after the Vending Committee is constituted it shall review the exclusion of any of those areas and if any alteration is sought to be made, the same shall be placed before this Court for approval. The scheme should be framed having regard not only to the interest of the vendors but also of the public at large.

In para 4.2.1 at page 165 of the paperbook, parks have been included in the

Vending Areas.

We are of the view that parks should be excluded from the Vending Areas unless there be any park where special provision is made for providing space for squatting/tehbazari. etc., but hawking only on the roads/streets around or near the park may be allowed.

Para 4.5 provides for grant of hawking license. It vests the Vending Committee in consultation with the Resident Welfare Association to decide the number of categories and type of items which should be permitted for hawking in each of the residential colonies.

Para 4.5.2 provides that the resident welfare association, if they so need, may permit additional space for squatting/tehbazari.

We are of the view that this should not be permitted unless there is a shopping area clearly demarcated where space is available for accommodating such squatters/tehbazaris.

In para 4.8 it is stated that at present the squatting sites/space are of different dimensions.

We suggest that, as in the case of Municipal Corporation of Delhi, the tehbazari/vending sites should be uniformly of the specification 6' x 4' and no permanent structure shall be raised on the said site.

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We have also noticed para 6.1 of the Scheme wherein the problems created by taxi stands have been highlighted. The counsel for the N.D.M.C. submits that the power of denotifying the general taxi stands vests only in the District Magistrate. These taxi stands are being misused. The footpaths and roads have been encroached by private commercial and luxury vehicles operating as taxis. The N.D.M.C. is not able to remove these taxi stands with the result that the footpaths and roads continue to be crowded by these taxi stands.

Mr. S.W.A. Qadri, learned counsel appearing for Delhi Police is directed to seek instructions on behalf of the Delhi Administration and submit its response to this Court on the next date of hearing.

We have made our general observations which have to be incorporated in the Scheme with clarity. We, therefore, direct the Municipal Corporation of Delhi and the N.D.M.C. to reframe the scheme in the light of our observations contained in this order and submit the same before us within four weeks.

We would like to highlight the fact that though this Scheme is to a great extent is for the benefit of hawkers/squatters/tehbazari holders, it also serves a public purpose. At the same time the convenience and interest of the public at large, which constitutes 97.5% of the population, should not be forgotten by the concerned authorities. To the extent possible space may be made available for squatters/tehbazari etc. but not so as to cause inconvenience to the general public. This aspect of the matter

should not be forgotten at any time by any of the authorities.

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The Municipal Corporation of Delhi and the N.D.M.C. will now finalise the

squatting/tehbazari zones and submit a detailed report to this Court. They shall also

indicate the norms that they have followed in identifying these sites, in particular, the

width of the roads where such squatting/tehbazari has been permitted and the areas

whether commercial/residential or otherwise where such sites are located. They should

also indicate the availability of the footpath for the general public after accommodating

the squatters. After the sites are identified, norms will have to be evolved by the

Municipal Corporation of Delhi and the N.D.M.C. to make allotments. For that purpose

they may either make a survey or adopt any other fair procedure for making allotments.

It may be useful to consider the suggestions made by some of the Advocates present in

Court that a detailed proforma may be prescribed by the concerned authorities for

making application for allotment of squatting/tehbazari site.

Put up these matters on 28th March, 2007 for further directions.

I.A. Nos. 394 in I.A. No. 356 in W.P.(C) No. 1699/1987, I.A. No. 396 in Cont. Pet. (C)

No. 506/2002, I.A. NO. 407 in WP (C) No. 1699/1987 and SLP(C) No. 7025/2003

Let these applications/petitions be placed for orders on 20th February, 2007.

(Ajay Kr. Jain)
Ajay Dhawan)

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Court Master
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