

ITEM NO.301 & 302

COURT NO.7

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 WP (C) NO. 1699/1987

SUDHIR MADAN & ORS.

Petitioner(s)

VERSUS

M.C.D. & ORS.

Respondent(s)

(FOR DIRECTIONS)

WITH

I.A. No. 366 in WP(C) No. 1699/1987

Ram Swaroop & Ors. Vs. M.C.D. & Ors.

(For Directions)

WITH

I.A.No. 367 in WP(C) No. 1699/1987

Raj Kumar Ghai Vs. M.C.D. & Ors.

(For Directions)

WITH

Contempt Petition (C) No. 125/2001

Rajender Kumar Vs. S.P. Aggarwal & Ors.

Contempt Petition (C) No. 126/2001

Hawkers Welfare Committee Vs. S.P. Aggarwal & Anr.

Contempt Petition (C) 506/2002

Chandni Chowk Sarv Vyapar Mandal Vs. Rakesh Mehta & Ors.

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

I.A. No. 396 in Contempt Petition (C) 506/2002

Chandni Chowk Sarv Vyapar Mandal Vs. Rakesh Mehta & Ors.

(For Impleadment)

Contempt Petition (C) No.D4984/2003 M/s. Swatantra Bharat Store

Vs. Dharshan Lal & Ors.

Contempt Petition (C) No.D4985/2003

M/s. Beopar Sangh Vs. Dharshan Lal & Ors.

WITH

I.A.No.361 in W.P.(C) No.1699/1987

Hawkers Welfare Committee Vs. M.C.D. & Ors.

(For Directions)

I.A.No.372-373 in W.P.(C) No.1699/1987

Hawkers Welfare Committee Vs. M.C.D. & Ors.

(For Directions)

[ALONGWITH THE RECORD OF CONTEMPT PETITION (C) NO.187/2000]

I.A.No.389 in W.P.(C) No.1699/1987

Harbhajan Singh Bedi Vs. M.C.D. & Ors.

(For Directions)

[ALONGWITH RECORD OF I.A.NO.356]

I.A.No.392 in W.P.(C) No.1699/1987

Shri Pramod Kumar & Anr. Vs. Assistant Commissioner, MCD & Anr.

(For Directions)

I.A.No. ... In W.P. (C) No.1699/1987

Ram Mohan Gautam Vs. State Through Secretary, Delhi Admn.

(For Interim Relief)

WITH

W.P.(C) No.535/2001

Raj Karan Vs. Municipal Corporation of Delhi & Anr.

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(with office report)

CONMT. PET.(Civil) No.D15102/2003

Subhash Chand & Ors. Vs. O.P. Balwani & Anr.

W.P.(C) No.678/2002

Godwari Devi Vs. New Delhi Municipal Council

(with application for direction and office report)

W.P.(C) No.240/2004

Vijay Pandey & Ors. Vs. M.C.D. & Ors.

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

WITH

I.A.NOS.397-398 IN WP(C) NO.1699/1987

Om Pal etc. Vs. Asstt. Commr., M.C.D. & Anr.

(For Directions)

I.A.NO.399 IN I.A.NO.394 IN W.P.(C) NO.1699/1987

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 WP(C) NO.100/2002

New Lajpat Rai Market Patri Hawkers Union Vs. Municipal Corporation of Delhi & Ors.

(For Directions and exemption from filing O.T.)

WITH

I.A.NO.../2005 IN I.A.NO.394 IN IA NO.356 IN WP(C) NO.1699/1987

Nand Kishore & Anr. Vs. M.C.D. & Ors.

(For Impleadment)

I.A.NO.../2005 IN I.A.NO.394 IN IA NO.356 IN WP(C) NO.1699/1987

Nand Kishore & Anr. Vs. M.C.D. & Ors.

(For Modification)

I.A.NO.400 IN W.P.(C) NO.1699/1987

Sh. Santosh Kumar Vs. M.C.D. & ors.

(For Direction)

I.A.NO.401 IN I.A. 396 IN C.P. 506/2002

M/s. Chandini Chowk Hawkers Association(Regd.) Vs. Rakesh Mehta & Ors.

(Appln. for modification of Order dated 25.08.2005)

I.A... IN C.P. 506/2002

Chandini Chowk Sarv Vyapar Mandal Vs. Sh. Rakesh Mehta & Ors.

(For Direction/Modification)

I.A.NO.402 IN W.P.(C) 1699/1987

President, Delhi Hawkers Maulik Adhikar Suraksha Manch Vs. M.C.D. & Ors.

(For direction to initiate proceedings under sec. 340 CrI.P.C.)

WITH

SLP(C) No.7025/2003

Gram Kalyankari Yuva Sanstha Vs. M.C.D. & Anr.

(with prayer for interim relief)

WITH

SLP(C) No.20593/2003:

PRATAP SINGH & ORS. VS. N.D.M.C. & ORS.

(with prayer for interim relief and office report)

I.A.NO.200-202 & 204-205 & CRLMP.NO.1148 In C.A.NO. 560/1998

Sodan Singh Vs. N.D.M.C. & Ors.

(With directions and permission to file addl. affidavit and impleading party and appln. for initiating

appropriate proceedings U/s 340 Cr.P.C. and office report)

(FOR FINAL DISPOSAL)

WITH

SLP(C)...CC NO. 7760 of 2005

Ramesh Kumar and Ors. Vs. New Delhi Municipal Council

With I.A.1 (c/delay in filing SLP and substitution and office report)

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WITH

SLP(C) NO. 17472 of 2005

Siya Ram & Ors. Vs. U.O.I. & Ors.

(With appln.(s) for exemption from filing c/c of the impugned judgment and permission to place addl.

documents on record and office report)

Date: 03/03/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ARUN KUMAR

FOR PETITIONER(S)

Mr. K.N. Rai, Adv.

Mr. A.T.M. Sampath, Adv.

Mr. Amlan Kumar Ghosh, Adv.

Mr. A.P. Mohanty, Adv.

Mr. Arun K. Sinha, Adv.

Mr. Anis Suhrawardy, Adv.

Mr. Bharat Sangal, Adv.

Mr. Dinesh Kumar Garg, Adv.

Mr. G.K. Bansal, Adv.

Ms. Hemantika Wahi, Adv.

Mr. K.C. Dua, Adv.

Mr. K.K. Mohan, Adv.

Mr. K.N. Rai, Adv.

Mr. M.M. Kashyap, Adv.

Mr. Subramonium Prasad, Adv.

Mr. M.A. Krishna Moorthy, Adv.

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Mr. Manoj Prasad, Adv.

M/s Manoj Swarup & Co., Adv.

M/s. Mitter & Mitter Co., Adv.

Mr. N. Ganpathy, Adv.

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Mrs. Rani Chhabra, Adv.

Mr. R.C. Kaushik, Adv.

Mrs. Gowri Karuna Das, Adv.

Ms. Anu Gupta, Adv.

Mr. Rajesh Singh, Adv.

Mr. Kamal Kant Tripathi, Adv.

Mr. Sanjay M. Tripathi, Adv. for

Ms. Rani Jethmalani, Adv.

Mr. S.K. Sabharwal, Adv.

Mr. S.K. Sinha, Adv.

Mr. Shree Pal Singh, Adv.

Mr. Shakeel Ahmed, Adv.

Mr. S. Srinivasan, Adv.

Mrs. Sarla Chandra, Adv.

Mr. S.N. Bhat, Adv.

Mrs. Urmila Sirur, Adv.

Mrs. Lalita Kaushik, Adv.

Mr. Sandeep Narain, Adv.

Mr. Anil Kumar Gupta-II, Adv.

Mr. Sudhir Nandrajog, Adv.

Mr. N.K. Saha, Adv.

Mrs. Asha Gopalan Nair, Adv.

Mr. Varinder Kumar Sharma, Adv.

Ms. Prasanthi Prasad, Adv.

Ms. Kavita Wadia, Adv.

in IA 389 in

Mr. Mohan Pandey, Adv.

WP(C) 1699/1987

Mr. S.S. Bandyopadhyay, Adv.

in I.A. 392

Mr. Anil Gupta, Adv.

Mr. C.S. Ashri, Adv.

in SLP 7025/03

Mr. S.N. Pandey, Adv.

Mr. A.K. Singh, Adv.

Mr. Abhishekh Aggarwal, Adv.

Mr. C.S. Ashri, Adv.

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

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Mr. C.S. Ashri, Adv.

Mr. Balraj Dewan, Adv.

Ms. Madhu Moolchandani, Adv.

Mr. Surya Kant, Adv.

Dr. S.K. Verma, Adv.

Mr. P.H. Parekh, Adv.

Mr. Rohit Alex, Adv.

Mr. Rajiv Mishra, Adv.

M/s. P.H. Parekh & Co., Adv.

Mr. Ranjit Kumar, Sr. Adv.

Ms. Indra Sawhney, Adv.

Mr. N.K. Saha, Adv.

Mr. Suresh Chandra Tripathy, Adv.

FOR RESPONDENT(S)

Ms. Binu Tamta, Adv.

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for M.C.D.

Mr. Mohan Parasaran, ASG.

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Sanjiv Sen, Adv.

Mr. Praveen Swarup, Adv.

Mr. Rajan Narain, Adv.

Ms. Prasanthi Prasad, Adv.

Ms. A. Subhashini, Adv.

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

for U.O.I.

Mr. Krishan Mahajan, Adv.

Mr. Vijay Verma, Adv.

Mr. Deeksha Mishra, Adv.

for Delhi Police

Mr. Vikas Singh, ASG.

Mr. S. Wasim A. Qadri, Adv.

Mrs. Anil Katiyar, Adv.

for UOI/MCD

Mr. Vikas Singh, ASG.

Mr. Raghu Nath Kapur, Adv.

Mrs. Anil Katiyar, Adv.

in CP 506/02

Mr. Vikas Singh, ASG.

Mrs. Swarupa Reddy, Adv.

Mrs. Anil Katiyar, Adv.

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Mr. Kishan Mahajan, Adv.

Ms. Deeksha Mishra, Adv.

FOR N.D.M.C.

Mr. Rakesh K. Khanna, Adv.

Dr. Rashmi Khanna, Adv.

Ms. Jahanvi Warah, Adv.

Mr. Surya Kant, Adv.

Ms. Indra Sawhney, Adv.

Ms. Indu Malhotra, Adv.

Mr. Dinesh Kumar Garg, Adv.

Mrs. Rani Chhabra, Adv.

Mr. M.M. Kashyap, Adv.

Mr. S.C. Patel, Adv.

Mr. N.K. Saha, Adv.

Mr. Asha Gopalan Nair, Adv.

UPON hearing counsel the Court made the following

O R D E R

An affidavit has been filed on behalf of the Municipal Corporation of Delhi

affirmed on 13th January, 2006. Information, which was required, has been given, but

we find that all the Ward Vending Committees have not yet been constituted,

particularly in the Central Zone. Ten Committees have yet to be constituted, which, we

are told, will be constituted within two weeks.

It is not possible for this Court to look into each individual grievance, neither

will it be practicable for this Court to issue directions in each case. This being a Public

Interest Litigation, we are only required to provide the guidelines consistent with public

interest so that the roads, streets, footpaths, parks, etc. are not illegally occupied by

unauthorized hawkers, squatters etc. We have also to keep in mind the principle that

the right to use the pathway, footpath etc. is that of the citizens. No hawker can claim a

right to defeat the rights of other citizens. The hawkers are large in number, but the

population of citizens is many times more than that of hawkers and, therefore, the

fundamental rights of the citizens cannot be put in jeopardy by permitting hawkers and

squatters to block roads, footpaths, public parks, etc., etc. The Authority, which frames

a scheme, has to keep this paramount consideration in mind. Consistent with the rights

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of citizens, if it is possible to provide any space to hawkers, squatters etc., that may be

done consistent with the policy to be framed by the concerned Authority. The Authority

will have to consider on what principles hawking and no hawking zone have to be

carved out. It will also have to consider in which zones no hawking activity can be

permitted. It will also have to consider what nature of goods can be sold by hawkers,

squatters, etc. so that cleanliness is maintained and at the same time free flow of traffic

and movement of pedestrians is not obstructed. We do not wish to give the authorities

an impression that the streets, lanes, footpaths and the parks exist only for hawkers.

The reality is that they exist for the benefit of the ordinary people living in those

localities. The concept of starting hawking business early in the morning or late in the

evening may also have to be reconsidered in the light of recent developments in the city, particularly with the advent of Metro and progress made in widening roads for use by

the ordinary citizens. We cannot lose sight of the fact that street hawkers have also

increased in number. All these concerns are important and the authority framing the

scheme must keep these considerations in mind. The scheme need not be populist in its

appeal, but must be practical and consistent with the rights of citizens, who have a

fundamental right to use the roads, parks and other public conveniences provided by the

State.

These are other such considerations must permeate the thinking of the

authorities, who have been vested with power to frame a scheme. We, therefore, call

upon the Municipal Corporation of Delhi as well as the New Delhi Municipal Council to

frame a scheme keeping in mind the National Policy on Urban Street Vendors, 2004.

The National Policy has to be implemented keeping in view the conditions that exist in

different parts of the city and no uniform formula can be applied. We call upon the

M.C.D. and the N.D.M.C. to file their schemes with details within a period of eight

weeks from today. The schemes must contain the reasons for the provisions made

therein so that there can be a useful discussion and all persons interested may be able to

participate with their own constructive suggestions. We are informed that the N.D.M.C.

had framed a Scheme in the year 1989, but that may require revision in the light of

changed circumstances and the National Policy on Urban Street Vendors, 2004. The

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N.D.M.C. may also in the light of these developments submit their Scheme with such

modifications as they propose to make, if any. In any event, a comprehensive document

should be placed before us containing the Scheme, the manner of implementation of the

Scheme and the practical difficulties faced by the N.D.M.C. in implementing these

Schemes.

While we undertake this exercise, we direct the Authorities to see to it that

those persons, who are carrying on hawking activities or who are squatting on public

land without any authority, even in accordance with the present day scheme in force,

are removed forthwith. This includes unauthorized hawking, squatting on public

streets, footpaths and public parks, including playgrounds. We direct the Delhi

Administration to take steps immediately in collaboration with M.C.D. and N.D.M.C.

with necessary assistance from Delhi Police to clear the roads, streets, footpaths, parks

etc. by unauthorized occupants/squatters/hawkers. We expect that in the next two

weeks steps will be taken by the concerned authorities to remove the unauthorized

hawkers, squatters, occupants from the public roads, streets, footpaths, parks, etc. Let a

Compliance Report be submitted to this Court within four weeks from today. We also

wish to emphasize the fact that in doing so the Authorities must not discriminate, and if

unauthorized persons have to be removed, there shall be no exception and

all

Unauthorized persons must be removed. If we find cases where the Authorities have

acted not in an impartial manner, we shall take action against such Authorities under

our contempt jurisdiction. The Draft Schemes formulated by the M.C.D. and the

N.D.M.C. shall be filed in Court on or before 30th April, 2006. Parties, who intend to

make their submissions before us on the Schemes may obtain copies from counsel

appearing on behalf of the M.C.D. and the N.D.M.C.

Let these matters come up on 5.5.2006.

I.A.NO.204/2005 IN C.A.NO.560/1998:

Copy of the application be given to the counsel appearing on behalf of the

N.D.M.C. N.D.M.C. is directed to pass an appropriate order after considering the

application of the applicant and communicate the same to her forthwith within two

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weeks from today.

(P.D. BALODI)

(VIJAY DHAWAN)

A.R.-cum-P.S.

Court Master