

ITEM No.301

Court No.7

SECTION X

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

RECORD OF PROCEEDINGS

IA No. 394 in IA NO.356 in Writ Petition(Civil) No.1699/1987

SUDHIR MADAN & ORS.

Petitioner (s)

VERSUS

M.C.D. & ORS.

Respondent

(s)

(for directions)

WITH

IA 366 in WP(C) No. 1699/1987 (Ram Swaroop & Ors. vs. MCD & Ors.)

(for directions),

IA 367 in WP(C) No. 1699/1987 (Raj Kumar Ghai vs. MCD & Ors.)

(for directions),

Contempt Petition (Civil) No. 125/2001 (Rajender Kumar vs. S P Aggarwal & Ors.),

Contempt Petition (Civil) No. 126/2001 (Hawkers Welfare Committee vs. S P Aggarwal & Anr.),

Contempt Petition (Civil) No. 506/2002 (Chandni Chowk Sarv Vyapar Mandal vs. Rakesh Mehta & Ors.) (with appln.(s) for exemption from personal appearance and for directions/modifications),

IA 396 in Contempt Petition (Civil) No. 506/2002 (for impleadment),

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

Dharshan Lal & Ors.),
Contempt Petition (Civil) No. D4985/2003 (M/s. Beopar Sangh vs. Dharshan
Lal & Ors.),
IA 361 in WP(C) No. 1699/1987 (Hawkers Welfare Committee vs. MCD & Ors.)
(for directions),
IAs 372-373 in WP(C) No. 1699/1987 (Hawkers Welfare Committee vs. MCD &
Ors.) (for directions)(along with the record of Contempt Petition (C)
No. 187/2000)
IA 389 in WP(C) No. 1699/1987 (Harbhajan Singh Bedi vs. MCD & Ors.)
(along with record of IA 356),
IA 392 in WP(C) No. 1699/1987 (Shri Pramod Kumar & Anr. vs. Assistant
Commissioner, MCD & Anr.) (for directions),
I.A. No. in WP(C) No. 1699/1987 (Ram Mohan Gautam vs. State through
Secretary, Delhi Admn.) (for interim relief),
WP(C) No. 535/2001 (Raj Karan vs. Municipal Corporation of Delhi & Anr.)
(with office report),
Contempt Petition (Civil) No. D15102/2003 (Subhash Chand & Ors. vs. O P
Balwani & Anr.),
WP(C) No. 678/2002 (Godawari Devi vs. New Delhi Municipal Council) (with
appln.(s) for direction and office report),
WP(C) No. 240/2004 (Vijay Pandey & Ors. vs. M C D & Ors.) (with appln.(s)
for ex-parte stay and office report),
I.A. Nos. 397-398 in WP(C) No. 1699/1987 (Om Pal etc. vs. Asstt. Commr.,
MCD & Anr.) (for directions),

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I.A. No. 399 in I.A. No. 394 in WP(C) No. 1699/1987 (Sudhir Madan & Ors.
vs. MCD & Ors.) (for modification of Court's order dated 9.8.2004),
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 OT),
I.A. No. .../2005 in I.A. No. 394 in I.A. 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 I.A. No. 356 in WP(C) No. 1699/1987
(Nand Kishore & Anr. vs. M.C.D. & Ors.) (for modification),

I.A.No.400 in WP(C) 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 dt.25.08.2005),

I.A..... in C.P.506/2002 (Chandini Chowk Sarv Vyapar Mandal vs.Sh.Rakesh Mehta & Ors.) (For direction/modification)

With

SLP(C) No.7025/2003

(With prayer for interim relief)

Date : 20/01/2006 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ARUN KUMAR

Amicus Curiae

Mr. Shiv Kumar, Adv.

For Applicant(s)

in WP 1699/87

Mr. Vikas Singh, ASG

IA 394

Ms. Deeksha Mishra, Adv.

Mr. V.K. Verma, Adv.

Mr. S K Sinha, Adv.

For R2 to R74

IA 366 & for petitioners

1 to 73 in IA 356

IA 366

M/s. Arputham Aruna & Co., Advs.

IA 367 Ms. Kavita Wadia, Adv.

CP 125/01 Mr. S K Sinha, Adv.

CP 126/01 Mr.M.M.Kashyap, Adv.

CP 506/02 Mr. K K Mohan, Adv.

IA 396 IN CP 506/02 Mr. Sunil Kumar, Sr. Adv.

& IA 401 in IA 396 in Mr. A.T.M. Ranga Ramanujan, Sr. Adv.

CP 506/02 Mrs. Gouri K. Das, Adv.

Ms. Anu Gupta, Adv.

Mr. Rajesh Singh, Adv.

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Mr. Kamal Kant Tirpathi, Adv.

For Ms. Rani Jethmalani, Adv.

CP D4984/03 & D4985/03 Mr. K C Dua, Adv.

IA 361,CP 126/01 Mr. M.M. Kashyap, Adv.

&in IA 400 in WP1699/87

IA 372-373 Mr. Subramonium Prasad, Adv.

IA 389 Mr. Mohan Pandey, Adv.

IA 392 Mr. Anil K. Gupta, Adv.

Mr. C S Ashri, Adv.

IA ...in WP1699/87 Mr. Balraj Dewan, Adv.

WP 535/01

Petitioner Mr. Varinder Kumar Sharma, Adv.

CP D15102/03	Mr. Sudhir Nandrajog, Adv.
WP 678/02	Mr. R K Maheshwari, Adv. Mr. Rishi Maheshwari, Adv. Mr. Raj Kumar Kaushik, Adv.
WP 240/04	Mr. Prasanthi Prasad, Adv.
IAS 397-398	Ms. Madhu Moolchandani, Adv.
IA399 In IA 394 In WP 1699 /87	Mr. Praveen Swarup, Adv.
IAS 1-2 in WP 100/02	Ms. Rani Jethmalani, Adv.
APPLICANT IN IAs in IA 394 in IA 356 & for respondent NDMC	Mr. Surya Kant, Adv.
IAin CP 506/02	Dr. S.K. Verma, Adv.
In SLP(C) 7025/2003	Mr. S.N. Pandey, Adv. Mr. A.K. Singh, Adv. Mr.C.S.Ashri,
For Respondent (s) In WP(C) 678/2002	Mr. Rakesh K. Khanna, Adv. Dr. Rashmi Khanna, Adv. Mr. Shashank Shekhar, Adv. Mrs. Shailja Sinha, Adv. Ms. Jahanvi Worah, Adv, Mr.Surya Kant, Adv.

MCD

Mr. Ashwani Kumar, Sr. Adv.

Mr. Sanjeev Sen, Adv.

Mr. M.C. Arvind, Adv.

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Mr. Rajan Narain, Adv.

Ms. Indra Sawhney, Adv.

Mr. Praveen Swarup, Adv.

Mr. D S Mahra, Adv.

Delhi Police &
UOI/Govt.of NCT,
Delhi

Mr. Gopal Subramaniam, ASG

Mr. S. Wasim A. Qadri, Adv.

Mr. Raghunath Kapur, Adv,

Mrs. Swarupa Reddy, Adv.

Ms. Pareena Swarup, Adv.

Ms. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Put up on 10th February, 2006.

(Ravi P. Verma)

(Vijay

Dhawan)

Court Master

Court Master

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[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (C)NO.67 OF 2001

IN

IA.NO.352

IN

W.P.(C)NO.1699/1987

PATRI VYAPAR MANDAL, DELHI

Petitioner(s)

VERSUS

S.P. AGARWAL & ANR.

Respondent(s)

O R D E R

Counsel for the petitioner states that the contempt petition

has become infructuous since squatters concerned have been given

possession by the MCD. Notice of contempt is, therefore,

discharged.

If the petitioners have any grievance about the location of the

sites, it is open to them to make representation to the concerned

authorities, who shall deal with such grievances in accordance with

law.

.....J.

(B.P. SINGH)

.....J.

(ARUN KUMAR)

New Delhi

August 25, 2005.

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We have heard counsel for the parties appearing before

us today. We are informed that pursuant to the order of this

Court, the Municipal Corporation of Delhi as well as the NDMC

have framed schemes for squatters/hawkers. It is also stated

that pursuant to the scheme, applications were made and the

concerned committees finalised some of the applications. It

is further contended that some of the hawkers/squatters who

were granted tehbazari rights were either dislocated or removed

for one reasons or the other. In some cases possession was

not given. Those persons, who are entitled to settlement

under the Schemes as framed have a grievance that their

matters/cases have remained pending and no order has been

passed granting them alternative sites, etc. etc.

Learned ASG appearing on behalf of the MCD informs us that in the meantime, in the year 2004 the National Policy on Hawkers has been formulated by the Government of India. The Municipal Corporation of Delhi, has in principle agreed to implement the same. He, therefore, submits that whatever action will be taken in future will be based on the National Policy on hawkers formulated in the year 2004. However, that will not affect the rights of those already granted valid licenses under the Scheme finalised by the MCD. However, he states that in executing the National Policy, preference will be given to those squatters/hawkers eligible for allotment under the existing scheme based on their seniority and priority of claim.

We find that the National Policy envisages grant of tehbazari rights to persons not exceeding 2 to 2.5 per cent of the population. Learned ASG tells us that this percentage

has to be worked out on Zonal basis, as there are 12 zones

under the MCD and may be about 6 to 8 under the NDMC. We are

also informed by some of the petitioners who are before us that

large number of applications were made for settlement of the

tehbazari rights under the Schemes as formulated by the MCD and

the NDMC. But unfortunately, most of them have not been

disposed of and only about three thousand and odd applications

were decided by the concerned committee. The rest of them

fall under Category IV under the MCD Scheme and their matters

are still pending. We are also informed that under the

Schemes formulated by the MCD and the NDMC hawking and non-

hawking zones have been demarcated and the hawkers/squatters

will be located only in those Zones which have been demarcated

by the NDMC and the MCD as hawking zones in accordance with

the priorities mentioned in the Scheme. It is not disputed

before us that only a few applications have so far been decided

and it is not known as to what is the exact position as of

date. Counsel for the NDMC informs us that all applications received by the NDMC, have been decided and orders passed.

In the background of these facts, we call upon the MCD

and the NDMC to file comprehensive statements stating:

(i) whether necessary arrangements have been made so that

the

National Policy formulated by the Central Government can be

implemented, i.e. whether the committees have been

constituted, etc. etc.;

(ii) how many applications for grant of licenses were received

by the MCD and the NDMC and how many of them have since been

decided. How many applications still remain pending and why;

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(iii) in how many cases those who were granted squatting rights

or tehbazari rights were subsequently dislocated, or

possession of the site not given for any reason;

(iv) How much time it will take for the NDMC and the MCD to

dispose of the applications that may be pending;

(v) how many IAs have been filed before this Court pursuant to the direction of this Court for grant of alternative sites or for grant of tehbazari rights or squatting rights.

The affidavit shall also state the number of squatters/hawkers who can possibly be accommodated based on the calculation made under the DMC & NDMC Schemes which have demarcated 'hawking' and 'no hawking' zones.

The affidavit shall be filed within six weeks.

However, in the meantime nothing prevents the DMC and NDMC from disposing of pending applications, if any.

Commt.Pet.(C)67/2001 :

Counsel for the petitioner states that the contempt petition has become infructuous since squatters concerned have been given possession by the MCD. Notice of contempt is, therefore, discharged.

If the petitioners have any grievance about the location of the

sites, it is open to them to make representation to the concerned authorities, who shall deal with such grievances in accordance with law.

Conmt.Pet.(C)No.506/2002 : We have been taken through the orders passed by this Court on 6/11/2000, 1/12/2000, 2/12/2000

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and the order of this Court passed on 9th August, 2002. We

have also been taken through the order of this Court dated 26th

October, 2004. A combined reading of the orders indicates

that so far Chandni Chowk area (Jain Mandir to Fathepuri) is

concerned, the same has been declared to be a non-hawking zone.

The grievance of the petitioner is that there is some confusion

in this regard. The Chandni Chown area is full of

hawkers/squatters and it is impossible for the existing

shopkeepers to carry on their business, and for the public to

move freely in that area.

A submission was sought to be urged on behalf of

some of the petitioners before us, that there are observations in the order of this Court which permit squatting/hawking on holidays, festivals, etc. We are not in a position to decide that issue today and we shall consider this on the next date.

Counsel for the MCD states that as of date no hawkers or squatters have been granted permission to do hawking or squatting in the Chandni Chowk area and, therefore, if any one is found hawking or squatting in this area, that is unauthorised. If any permission is shown, that may be a fabricated document or some document obtained illegally. Such licenses must be ignored.

Counsel for Delhi Police is present and he takes note of all these facts. He states that if no permission has been granted to any squatter or hawker, the police will have no difficulty in removing anyone who is found hawking or squatting in the Chandni Chowk area. The difficulty of the police arises from the fact that some hawkers/squatters claim

to be licensed hawkers and squatters. The position has been made clear to counsel appearing for Delhi Police. He states that the police will immediately take action to remove all hawkers and squatters from the Chandni Chowk area, subject to further directions of this Court.

On the next date we shall consider the submission of the petitioners that in accordance with orders of this Court, squatters/hawkers are entitled to carry on their business at least on holidays and festival days. We will consider this matter later and give suitable directions. We, however, make it clear that the police authorities will act in accordance with the orders passed by this Court referred to earlier in this order, and remove all squatters and hawkers and not permit any hawker or squatter to carry on business in the Chandni Chowk area. If we find that this order has been breached, we shall hold the concerned police officials responsible for the breach and punish them for Contempt of

Court.

There are a number of IAs before us today. We pass

the following general direction in all these IAs:-

- petitioner(s) in all the IAs will make sure that the opposite parties concerned have been served with the IAs, if not, they shall be served with the IAs/Contempt Petitions within a week. The opposite parties shall file their reply to the IA within a period of 4 weeks from the date on which the IA is served on them, if not already served on the present counsel for the MCD. The petitioners will have

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liberty to file rejoinder, if so advised, within 2 weeks thereafter. Let the matters come up after eight weeks. We will take the IAs one by one and dispose them of.

The order dated 1/12/2000 in W.P.1699/1987 is

modified to the extent that instead of requiring the

parties to serve a copy of the application to Mr.

Shiv Kumar, A.C. they are directed to circulate copy

on the counsel for the MCD.

IAS..... (filed by Mr M.M. Kashyap, Adv.) may be

registered. Counsel will serve copy of the application on

counsel for the MCD, whereafter, the MCD will file its reply

to the application within four weeks. Rejoinder, within two

weeks thereafter.

IA No..../05 In IA 394 In IA 356 In WP(C)1699/87 :

The applicants in this application are persons

who were having shops near the old Delhi Railway Station.

They had to be shifted from there on account of construction

of the Delhi Metro. By resolution of the Standing

Committee dated 7th July, 2004 they were allotted

alternative site in Central Market, Lajpat Nagar-II New

Delhi. This resolution has been ratified by the Municipal

Council on 25th October, 2004. However, in view of the order of this Court dated 9th August, 2004 the Municipal Corporation has not handed over the possession of the lands in question to the applicants.

The petitioners in IA 394 namely, Ram Swaroop &

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Ors. have objected on the ground that they held licenses to hold tehbazari in Lajpat Nagar area but they have been shifted on account of bomb blast. They have claimed that they should be allotted alternative sites for their business. We will consider what relief should be granted to petitioners-Ram Swaroop and ors. But we find no reason why Nand Kishor and Ashok Kumar the applicants should not be given possession of the lands allotted to them. We, therefore, permit the Municipal Corporation to issue necessary orders to hand over possession of lands allotted to them. So far as the case of the petitioners in IA 394 is concerned, we will later consider directing the Municipal

Corporation to give alternative sites to them if any

alternative site is available.

However, the applicants in IA 394 are permitted to

assist the municipal authorities to locate possible

available sites in the areas of their choice, and if

possible, the Municipal Corporation may take appropriate

steps in accordance with law to allot them alternative sites

notwithstanding the pendency of their application.

List the matters on 28th October, 2005.