

Prem Shankar Gupta and ors. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Jan-21-2008

Reported in : 147(2008)DLT517

Judge : Pradeep Nandrajog, J.

Acts : [Constitution of India](#) - Articles 19 and 227; Code of Civil Procedure (CPC) - Order 39, Rules 1 and 2

Appeal No. : CM(M) No. 1388/2007

Appellant : Prem Shankar Gupta and ors.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Sangeeta Chandra, Adv. ; Amit Paul, Adv. for MCD in CM(M) Nos. 1388 and 1395/2007 and ;

Advocate for Pet/Ap. : Kirti Uppal,; Ajit Dayal and; Anamika Ghai, Advs. in CM

Judgement :

Pradeep Nandrajog, J.

1. By a common order I propose to dispose of CM(M) Nos. 1388/07, 1395/07 and 1622/07 which have almost identical facts and raise similar questions of law.

2. The petitions have been filed against the common order dated 12.09.07 passed by Sh. S.S. Handa, ADJ, Delhi in Appeal No. MCA 7/07 titled 'Prem Shankar Gupta and Ors. v. DDA and Anr.', MCA No. 8/07 titled 'Virender Pal Singh and Ors. v. DDA' and order dated 2.3.2007 passed by the Court of Sh. Brijesh Kumar Garg, Commercial Civil Judge, Delhi in Suit Nos. 1404/05 and 1454/06. It appears that one set of plaintiffs have chosen to file two different CM (Mains) for the reason in respect of two proceedings which commenced, three petitions have reached this court.

3. The learned Trial Judge has dismissed the applications filed for interim injunction. The appellate judge has affirmed the said order passed by the learned trial judge.

4. Before proceeding to deal with the legal submissions made in the petitions it would be necessary to set out the factual matrix.

5. The petitioners herein filed two civil suits praying for a decree of permanent and mandatory injunction wherein, claiming themselves to be hawkers/squatters/running small and petty business/tehbazari kiosks of tea, eatables and other food items and daily needs items such as clothes etc. on the pavements, footpaths, open space in the vicinity of Nehru Place Commercial Complex, Delhi for the last about 20 years. It was contended that initially the area fell within the jurisdiction of MCD and that MCD has transferred the said area to DDA for maintenance. It was pleaded that the petitioners have been paying tehbazari fee to the MCD for the site occupied by them and that MCD has been issuing receipts to the petitioners, thereby acknowledging their right to carry on business from the site in respect whereof tehbazari right has been conferred upon them. It was pleaded that plaintiffs appeared before the Chopra Committee and made their representations but the representations have not yet been decided and no rejections have been received by them till date of the suit.

6. Petitioners instituted the suit seeking a restraint order from the Court against the defendants from dispossessing them from the place of business allegedly occupied by them. They also sought directions to be issued requiring defendants to allot alternative stalls to the petitioners within the Nehru Place Commercial

Complex on payment of nominal amount of money.

7. In the written statement filed by DDA it was pleaded that Nehru Place District Centre had fallen into disarray and on 18.4.2002, in a meeting held under the Chairmanship of the Hon'ble Lt. Governor, Delhi it was decided that the Nehru Place Commercial Complex would be transferred to DDA. For improving the conditions at Nehru Place Commercial Complex the following decisions were taken:

(i) The entire Nehru Place area will be Zero Tolerance Zone where no violation of law would be permitted.

(ii) All encroachments whether in right of way or on piazzas or in common areas to be removed by MCD (now DDA) immediately and ensure that these do not come up again.

(iii) The complex of Nehru Place Commercial Complex to be transferred back to DDA for its maintenance in future.

8. It was further pleaded by DDA that in compliance with the above decision the maintenance services of the District Centre was transferred to DDA vide order dated 4.6.2002. That the Engineer Member, DDA inspected the Nehru Place Commercial Complex and ordered that all vendors from the piazza should be removed and not allowed to come back to avoid obstruction to the pedestrians and visitors in the complex as well as to keep the complex neat and clean.

9. It was pleaded that with the help of some of their leaders, petitioners were entering the complex daily in the morning along with other hawkers and were encroaching upon and occupying the open spaces meant for the public on the main piazza and the adjoining area in the corridors, verandas, galleries etc. causing obstruction to the pedestrians/visitors and making the entire complex dirty and unhygienic causing nuisance to the public.

10. It was pleaded that the petitioners were encroachers; having no right or title over the suit land and were thus liable to be evicted. That none of the petitioners had any permission, license or regular tehbazari from MCD and under the guise of

the suit were claiming a decree of declaration that they were entitled to enter and hawk their goods. It was pleaded that all the eligible vendors who had tehbazari rights under MCD or identity cards issued by DDA had already been allotted platforms/shops at Nehru Place, Tilak Nagar, Chootti Subzi Mandi and East of Kailash. Since the petitioners were not entitled, they did not fall under the list of allottees. In the light of the decisions in Saudan Singh's case and Gainda Ram's case, it was pleaded that the petitioners had no right to carry on business in a 'Zero Tolerance Zone' and had no justiciable rights much less any rights for tehbazari or an alternative site. It was pleaded that all the encroachments were cleared in 2002, thus, there was no prima facie case in favor of the petitioners and the suit as well as the interim application were liable to be dismissed.

11. The MCD had also filed a written statement though apparently not on record.

12. After going through the pleadings, documents and the submissions made by the parties, both the Courts below have held that the petitioners (plaintiffs in the suit) being hawkers, squatters running small and petty business have failed to establish any prima facie case in their favor. It has been held that they have not been able to show any right to a specific place or space. It has been held that there exists no document giving them any right to any specific site. Taking note of the judgments of the Hon'ble Supreme Court reported as : [1992]2SCR243 Saudan Singh v. NDMC; : [1993]3SCR704 Gainda Ram and Ors. v. MCD and Ors. and the final orders passed by the R.C. Chopra Committee wherein, it was clarified that the decision by R.C. Chopra Committee shall be treated as final and binding on the squatters concerned as well as on the MCD, the learned courts below have held that it was too late in the day for the petitioners to make fresh representations and claim that their cases were pending before the said Committee and have not been considered.

13. It has been held that the documents filed by the petitioners indicate that the petitioners were not regular tehbazari holders and were holding casual tehbazari on weekly holidays, festivals etc. and that they were not paying license fee/tehbazari to the respondents on a continuous and regular basis. It has been held that in case the petitioners were occupying the sites in the year 1992 or were

doing business or were squatting or hawking at the Nehru Place complex in the year 1992, then they should have approached the R.C. Chopra Committee for redressal of their grievances. It has been held that since no such documents were placed on record it could be presumed that none of the petitioner had approached the Redressal Committee for redressal of their grievances.

14. CM(M) No. 1388/2007 and CM(M) No. 1395/2007 came up for hearing on 12.10.2007, on which date this Court was pleased to issue notice in the petitions and granted a stay of dispossession in favor of the petitioners.

15. A reply has been filed by DDA enclosing therewith documents placed before the learned Courts below, reiterating that the Nehru Place District Centre Complex was a 'Zero Tolerance Zone' where no violation of law was permitted. That demolition was carried out in the entire complex on 8.3.2007 and 9.3.2007 after the vacation of the interim orders on 2.3.2007 by the learned Trial Judge and no hawker was allowed to squat in the said area. It has been stated that the petitioners were not regular tehbazari holders and were not entitled to any alternative site, since, the eligible hawkers/squatters had already been given alternative sites by the DDA and the MCD in the year 2002 when the entire area was cleared of encroachments. It has been pleaded that after the removal of the unauthorized vendors in the area in question, nobody was allowed to operate any kind of stall/tehbazari, kiosks in the open piazzas or on pavements and that the Fire Officer, Delhi Fire Services has warned that due to unauthorized vendors on the road it was very difficult to approach the building located at District Centre, Nehru Place Complex for fire appliances in case of any emergency.

16. DDA moved applications seeking a vacation of the interim order on the ground that after the rejuvenation work at Nehru Place Commercial Complex was initiated in 2002 the petitioners have been trying to encroach on the open space time and again. It is pleaded that the petitioners were again removed from the site in question after the interim order was vacated by the Trial Court on 2.3.2007 and that the entire complex was cleared by DDA on 8.3.2007 and 9.3.2007 with the help of local police. It was pointed out that after obtaining the interim orders on 12.10.2007, petitioners of CM(M) No. 1388/2007 and CM(M) No. 1395/2007 had

re-trespassed into the site.

17. In the application it has additionally been pleaded that pursuant to the transfer of Nehru Place District Centre to DDA on 18.4.2002 for rejuvenation, the layout plan has also been formulated after the administrative approval and expenditure was sanctioned in sum of Rs. 3005.47 lacs. It was pointed out that the interim orders are hampering the development work.

18. In the reply to the application seeking vacation of the orders obtained on 12.10.2007, the petitioners have placed reliance upon the National Capital Territory of Delhi Laws (Special Provisions) Bill 2007 urging that the petitioners cannot be dispossessed in view of the same. Reliance has also been placed on para 11 of the decision of the Hon'ble Supreme Court reported as 2007 (8) Scale 334 Sudhir Madan and Ors. v. M.C.D. to urge that unless the National Policy of Urban Street Vendors becomes operational the petitioners cannot be removed from the present site.

19. Points urged above have been controverted in the rejoinder filed by DDA. In the rejoinder DDA has placed reliance on Clause 4(b) of the said Bill which states that during the period of operation of the Bill, no relief would be available to the hawkers and urban street vendors in case there is a specific public project for the clearance of land in question duly approved by the Central Government. DDA submits that the rejuvenation and redevelopment plan prepared by the DDA envisages setting up of more than 50 B.O.T. towers and other facilities in public interest in the piazza of Nehru Place Complex. Administrative approval and expenditure sanction to the tune of Rs. 3500.47 lacs has been received on 22.11.2004 and that an amount of Rs. 5 crores has already been spent on improvement of the piazza area which indicates that there is a clear public project which is being undertaken by DDA in respect of the site in question and the said public project is in the stage of implementation. Hence, it has been pleaded that no protection can be claimed by the petitioners under the said Bill.

20. Afore-noted pleadings were reiterated during arguments by learned counsel for the parties.

21. Ms. Sangeeta Chandra, learned counsel for DDA urged that the issue relating to the hawkers carrying on business activity has been considered at length by the Hon'ble Supreme Court in the judgments reported as : [1992]2SCR243 Saudan Singh v. NDMC; : [1993]3SCR704 Gaiinda Ram and Ors. v. MCD and Ors.. Thereafter, the matter has currently been re-looked at again by the Hon'ble Supreme Court in the case of 'Sudhir Madan and Ors v. MCD and Ors.' wherein orders dated 6.2.2007 and 17.5.2007 have been passed - reported as 2007 (8) Scale 334 and 339 - the MCD has identified hawking as well as non hawking zones. The Nehru Place District Centre is not a part of the hawking zone identified even by the MCD and thereforee, there is no occasion left for there being any confusion of a no tolerance zone/no hawking zone being permitted to be used for hawking.

22. Learned counsel for DDA further submitted that MCD had framed a scheme called the 'National Policy on Urban Street Vendors-2004'. The said scheme has been placed before the Hon'ble Supreme Court and that the same has been closely examined and scrutinized therein. It was urged that after taking note of certain suggestions, final directions were issued by the Hon'ble Supreme Court. Counsel urged that the directions issued by the Hon'ble Supreme Court in the case of Sudhir Madan also took into consideration the various suggestions and difficulties pointed out on behalf of the hawkers. Thereafter, MCD has formulated its scheme for squatters/hawkers - 2007 for implementation of the National Policy of Urban Street Vendor 2004 as modified by the orders of the Hon'ble Supreme Court. The counsel urged that some petitioners have applied under the scheme and thereforee, it is not open to the petitioners to contend that hawking and squatting can be permitted in any manner other than the manner envisaged under the national policy.

23. Learned counsel further submitted that a detailed consideration of this entire scheme has been made by this Court recently in WP(C) No. 8019/2007 Amit Kumar Gupta v. MCD and Ors. along with 11 other writ petitions which have been dismissed by this Court vide order dated 29.11.2007. Counsel urged that the said decision notes the distinction between hawkers who have no regular tehbazari rights and regular tehbazari holders. It was urged that the decision notes that

persons having regular tehbazari rights were already given alternative sites by the DDA as well as by the MCD in the year 2002 when the area in question at Nehru Place was cleared of all encroachments. Counsel urged that as of today the only right of a person to claim a hawking site was to apply afresh under the scheme framed by the MCD and as approved by the Hon'ble Supreme Court for implementation of the National Policy of Urban Street Vendors-2004

24. Learned counsel categorically urged that none of the petitioners in CM(M) No. 1622/2007 are hawking at the site in question. Counsel submitted that as the petitioners of the other two petitions, these petitioners will also encroach on the piazzas under the guise of the pendency of the instant petition.

25. Learned counsel for MCD urged that no tehbazari rights have been given by the MCD in the Nehru Place area after 2002. The area is non hawking zone. However, counsel urged that being a public statutory body, the MCD was prepared to re-look into the claim of the petitioners who alleged that they had tehbazari rights and for this, learned counsel submitted that directions may be issued requiring petitioners to appear before the Additional Commissioner, Central Zone, Delhi at 11.00 am on 23.1.2008 with identity proof and all documents on which petitioners rely. Counsel submitted that the officer concerned would grant a personal hearing to such petitioner who appears before him and a reasoned decision would be taken under communication to the petitioner who may collect the same on the date notified by the Additional Commissioner concerned.

26. It is trite that while deciding on the issue of interim injunction or stay, the Court must address itself to three issues; namely, prima facie case, irreparable loss and injury and lastly balance of convenience.

27. To obtain an order for interim injunction in his favor, the applicant must make out a 'prima facie case' in support of right claimed by the applicant. The existence of a 'prima facie' right and infraction of such right is a condition precedent for grant of interim injunction.

28. In the instant case, in order to obtain an injunction in their favor it is essential for the petitioners to first establish that prima facie they had a right to carry on the

business under tehbazari in Nehru Place Commercial Complex.

29. The issue relating to tehbazari rights allegedly claimed by the petitioners was dealt by the learned Trial Court. In para 9 of its decision the learned Trial Court has held as under:

9. In the present case, the plaintiffs are alleging themselves to be the hawkers/squatters running their business/tehbazari etc. in the vicinity of the Nehru Place Commercial Complex and the perusal of the case file also shows that the said area had been declared by the defendants as 'no tolerance zone', in compliance of the orders of the Lieutenant Governor of Delhi. It is further observed that the plaintiffs are not the regular tehbazari holders and they are not holding casual tehbazari on weekly holidays, festivals/melas etc. and the plaintiffs are not paying the license fee/tehbazari to the defendants on continuous or regular basis. They are applying for tehbazari to the defendants for different periods and different dates and the perusal of the receipts clearly indicates that they are not the regular squatters/hawkers at Nehru Place Commercial Complex. Further more, only a few of the plaintiffs have given the representation to the defendants for consideration of their eligibility regarding the allotment of the alternative sites. None of the plaintiffs have approached the Chopra Committee for redressal of their grievances and in the considered opinion of this court, if the plaintiffs were existing in the year 1992 or were doing their tehbazari business or were squatting/hawking at the Nehru Place Complex in the year 1992 then, they should have approached the Chopra Committee for redressal of their grievances. The contentions of the counsel for the plaintiffs that the plaintiffs had approached the defendants cannot be sustained at this stage, in view of the specific directions of the Hon'ble Supreme Court in the case of ' Gaimda Ram and Ors v. MCD and Ors.' (supra), further more, it is not the case of the plaintiffs that, they have not applied under the Scheme of 1992 and their representations were not considered by Sh. R.C. Chopra Committee, but, on the contrary, they have claimed that, they have filed their representations with the defendants but their representations have not been considered by the defendants and no intimation about the rejection of their representations has been made by the defendants to them till date. thereforee, in the considered opinion of this court, the plaintiff should have approached Sh. R.C.

Chopra Committee for redressal of their grievances straight away and since, the Hon'ble Supreme Court has already passed the order, from time to time, monitoring the implement of its earlier orders in the case of 'Gainda Ram and Ors' (supra) this court is of the considered opinion that the plaintiffs had miserably failed to establish a prima facie case in their favor. Further more, sine, the Hon'ble Supreme Court has already issued various directions regarding the implementation of its directions in the case of 'Saudan Singh and Gainda Ram and Ors' cases and has already directed that, all the applications, including the petitions of hawkers/squatters should be filed only in aforesaid proceedings, it would not be appropriate for this Court to pass any stay orders in the present suit. It is pertinent to mention here that, a Civil Writ Petition No. 647/2007 was preferred before the Hon'ble High Court of Delhi by one Sh. Mangal Singh on similar facts and the said Writ Petition has also been dismissed by the Hon'ble High Court, vide orders dated 24/01/2007, whereby, the Hon'ble High Court has also rejected the Writ Petition.

30. In appeal, the Appellate Court has also dealt with the said issue and agreed with the finding returned by the Trial Court that petitioners have failed to establish that prima facie they had a right to carry out the business under tehbazari in Nehru Place Commercial Complex. In paras 10 and 11 of its decision the appellate court has held as under:

10. While weighing the suits filed by the appellants, I find that more or less each of the appellant has a different case. Someone is claiming to be having tehbazari right. Someone has filed the documents of holding to Mela for a few days, some of them have fled the receipt of holding weekly bazar; some of them have filed the documents about putting up wares for festival seasons. Some of them have filed the documents pertaining to holding pheri, secondly, none of the appellant had laid specific right to any specific place. Some one claims to run business in kiosks, someone laid his claim about the stalls, someone about the shed, someone has claimed tehbazari site, someone occupying the pavement. Some claimed to occupy the footpath and someone open space. The relief sought for decree of permanent injunction is to restrain the defendant, their agents, servants, assignees from dispossessing the plaintiffs/appellants from their present place of

business/tehbazari/kiosks/stalls. Thus, no one claims to have specific place or space. Similarly, in the mandatory injunction relief sought for is a decree of mandatory injunction directing the defendants/respondents to allow of mandatory injunction directing the defendants/respondents to allow alternative puce kiosks, stalls within Nehru Place on payment of nominal amount of money on equal monthly installments. Thus, none of appellant has laid claim to any specific place or spot. In this perspective where the appellants have different cases, have no specific site or spot to be protected the very maintainability of the suit is seriously under doubt. On this could alone, the appellants seem to behaving no case for grant of interim relief sought for in the application under Order 39 Rules 1 and 2 CPC.

11. On the count of prima facie case before me; only documents pertaining to Mr. Prem Kumar Gupta and Mr. Virender Gupta were referred to and it was submitted that the case of other appellants was also more or less the same. The case of Mr. Prem Shankar Gupta pertains to the site at Gobind Puri which is far away from Nehru Place. It is neither in Nehru Place District Centre Complex nor in its vicinity. Mr. Virender Gupta had filed identity card from Pawan Putr Rehri Morcha Samiti, Delhi Pradesh about a hotel. In fact, no document was referred from the record showing that their cases fell within the ambit of criteria as laid in Saudhan Singh's case supra. In Saudhan Singh's case the Hon'ble Apex Court came to the conclusion that right to carry on trade or business to the eligible persons need be protected. In Gainda Ram v. MCD, Town Hall and Ors. 1993's case the cases of eligible squatter/hawkers sought to be verified and considered for allotment of alternative site but at the same time, all the appeals/SLPs/Suits etc. pending before the Hon'ble Apex Court/Hon'ble High Court of Delhi and courts subordinate were terminated forthwith. It also specified no other Civil Writ or suit on behalf of squatters/hawkers pending in the courts at Delhi shall survive.

31. It is settled law that the jurisdiction of this court under Article 227 of the [Constitution of India](#) is not to sit as a court of appeal over the findings of the courts below and to reappraise the matter. Only where it is shown that the approach or the principles adopted by the Courts below is contrary to law or that some vital document has been ignored or legal principles have not been correctly applied,

can this Court exercising power of superintendence under Article 227 of the [Constitution of India](#) re-look into the matter.

32. The learned Courts below have categorically returned a prima facie finding that no plaintiff had placed any material to show that a site had been allotted to him on tehbazari at the complex in question. The Courts below have recorded that the documents filed by the plaintiffs show that on festival days and weekly mela days, limited to said day, receipts acknowledging payment received were issued by the MCD. Learned counsel for the petitioners failed to point out any document where from it could be gathered that said prima facie view was incorrect.

33. In the decision dated 29.11.2007 disposing of 12 writ petitions, lead matter being WP(C) No. 8019/2007 Amit Kumar Gupta and Ors v. MCD and Anr. dismissing the writ petitions, learned Single Judge of this Court noted as under:

1. These writ petitions have been filed by persons who are contending that they are hawking and so selling different articles in different areas in the Nehru Place Commercial Complex. The petitioners in these writ petitions have claimed that they have been hawking in the area over different periods. The petitioner in W.P.(C) No. 8028/2007 has stated that he has been hawking since 1987; the writ petitioner in W.P.(C) No. 8025/2007 has stated that he has been hawking since 1990; the writ petitioner in W.P.(C) No. 8027/2007 has stated that he has been hawking since 1994; the writ petitioners in W.P.(C) Nos. 8018/2007, 8020/2007, 8026/2007 have stated that they have been hawking since 1996; the writ petitions in W.P.(C) Nos. 8021/2007, 8022/2007 have stated that they have been hawking since 1999; the writ petitioner in W.P.(C) No. 8024/2007 has stated that he has been hawking since 2000; the writ petitioner in W.P.(C) No. 8023/2007 has stated that he has been hawking since 2002; while the writ petitioner in W.P.(C) No. 7444/2007 has stated that he has been hawking since 2001. These writ petitions have been filed by the petitioners who have claimed that they have a fundamental right under Article 19 of the [Constitution of India](#) to do their business in this area and that the DDA is adopting a pick and choose policy and is illegally preventing the petitioners from carrying on their legitimate business. The petitioners have submitted that they are all registered with the Pavanputra Rehdi Patri Khomcha

Sangh as well as the Manushi Sangathan which are non-governmental organisations looking after the welfare of the tehbazari holders, hawkers and street vendors. The representations of the petitioners through these organisations have received no response at all and that, despite the pressure from the respondents, they continue to do their business at various spots in the Nehru Place area. The petitioners place reliance on photographs to manifest their contention that they are actually continuing with the hawking business.

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4. The receipts placed on record however do not evidence any permission in continuity and are not in the nature of tehbazari permission or license by the MCD. The same only evidence that some of the petitioners at different festivals and on some times have been permitted to carry on their business of hawking during different occasions. The identity cards issued by the Pavanputra Rehdi Patri Khomcha Sangh also only evidence the petitioners membership of this organisation and would not by itself create any rights in favor of the petitioner.

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17. It now becomes necessary to examine the claimed rights of these petitioners. As noticed hereinabove the petitioners have placed reliance on certain receipts issued to them by the MCD. It is an admitted position that none of these petitioners have been considered or been granted tehbazari licenses at any location in the Nehru Place. They appear to have been permitted to sell their wares from time to time on certain special occasions including festivals. It may be that they have not been removed and have so continued to sell their wares for the period which have been claimed. However certainly it cannot be held that the petitioners have a legal right to hawk their wares at a particular place in the Nehru Place.

34. Giving reasons in support of the conclusion that the writ petitions were liable to be dismissed, learned Single Judge held as under:

18. I find that such an issue was considered by the Division Bench in its judgment dated 3rd July, 2006 which was passed in W.P.(C) No. 10479/2006 entitled

Citizens for Justice v. Lieutenant Governor (NCT) of Delhi and Ors. This writ petition had been filed by the petitioner which is a society seeking a writ of prohibition against the respondents from giving effect to a letter of the senior architect of the DDA dated 15th May, 2006 creating 64 locations for hawkers place in the Nehru Place District Centre. This writ petition was dismissed by the court holding that these locations had been identified by the respondents on public land and that there was no conflict between a no tolerance zone and a regulated and a designated area for hawkers.

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22. In the instant case this court is not concerned with persons who have any valid allotments on tehbazari in their favor but is concerned with persons who have been hawking their wares without valid allotment and would required to make applications under the National Policy noticed hereinabove which has been approved by the Apex Court. I find that the Apex Court is categorically directed that no license shall be granted to any person in no hawking/squatting zones and that the station house officer of the concerned police station is required to take immediate steps to remove any person found hawking/squatting in a non-hawking/squatting area. If an 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 cancelling his allotment.

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26. Before this court a vehement plea has been raised on behalf of the petitioners that they are entitled to continue to hawk and vend at the same site. The same plea was placed before the Apex Court. In the order dated 17th of May, 2007 in (2007) 8 SCALE 339 it was asserted that the scheme proposed by the MCD was not satisfactory so far as survey work to identify hawking zone/non- hawking zone and sites were concerned. This contention was answered by the Apex Court thus:

4. It appears that such a question was raised before this Court in the case of Ramesh Shah v. MCD and Ors. I.A. No. 332-333 in WP(C) No. 1699/1987 and this

court by order dated 6.11.2000 rejected the submission which has been urged before us, in these words:

So far as identification of squatting and non-squatting zones are concerned it is an administrative function of the MCD which is done by taking into account various factors namely, public interest depending mainly upon the congestion in the area and public safety which are the main considerations for any Government. No challenge to such identification of squatting and non-squatting zones can be permitted under any circumstances when the administrative authority has taken all factors in to account. We are not sitting in appeal against any decision made by the administrative authority. We therefore do not permit any challenge to the identification of the squatting and non-squatting zone and to the map as prepared by the MCD showing Green shall be treated as final and shall not be allowed to be questioned. In this view of the matter, we cannot accede to the request of the learned counsel for the respondents who have contended that fresh survey should be undertaken by an independent expert body or an independent organisation to identify the hawking sites and the existence of hawkers. This is essentially a matter which the Municipal Corporation of Delhi has to consider and take a decision. We cannot issue a writ directing the MCD to do so, this being a matter of policy.

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31. It was also submitted that the authorities may be directed to identify the non-hawking areas only and rest of the areas should be permitted as hawking areas. In our view such a course will not be practicable. In any event, that is a matter for the concerned authorities to consider and we can express no opinion in the matter. We may however observe that since a National Policy on Urban Street Vendors has been formulated the authorities concerned will have due regard to the said policy in the implementation on the schemes regulating tehbazari/vending sites etc.

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35. It is admitted position that the petitioners are not hawking on a site designated or allotted to them by the Municipal Corporation of Delhi. therefore, the petitioners cannot urge a plea that they have a vested right to continue to hawk at such site or any other site unless designated or allotted by the authorities. The apex court has also so held in the aforenoticed binding precedents. The act of resumption of hawking after removal also does not create any vested right in the petitioners.

35. The issue raised in the instant petitions squarely arose for consideration in afore-noted decision in Amit Kumar Gupta's case (supre) and I need not reiterate the reasons recorded in the order dated 29.11.2007 dismissing the batch of writ petitions. I adopt the reasoning. Suffice would it be to state that all contentions urged by learned counsel for the petitioners before me have been dealt with in the decision dated 29.11.2007 in Amit Kumar Gupta's case (supra).

36. Thus, the view taken by the Courts below that the petitioners have failed to show or make out a prima facie case in their favor is correct. Even otherwise, balance of convenience is against the petitioners for the reason where a private right comes into conflict with the right of the community, the former must yield to the latter. DDA has brought on record material to show that Nehru Place Complex is being converted into a no-hawker zone and for which Rs. 3500.4 lacs have been sanctioned for improvements in the area.

37. The petitions are thus liable to be dismissed.

38. I accordingly dismiss the petitions.

39. However, as conceded by learned counsel for MCD, I direct that MCD would be bound by the concession made by its counsel and as recorded in para 25 above. Since petitioners have no right to squat at Nehru Place Complex, I direct that the Additional Commissioner, Central Zone, MCD would decide the representation submitted to him pursuant to the concession made by the counsel for MCD and as recorded in para 25 above, within 3 weeks from 23.1.2008 and consequential action would be taken as per the decision.

40. No costs.

41. Copy of this order be supplied dusty to learned counsel for the parties on payment of usual charges.

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