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M.C.D. and anr. Vs. Naresh Kumar and ors. and Nand Lal and ors.

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Court : Delhi

Decided On : Mar-22-2005

Reported in : 119(2005)DLT376; 2005(83)DRJ412

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Sections 420; [Constitution of India](#) - Article 19(1)

Appeal No. : LPA 22, 23, 587, 593, 594 and 608 of 2005

Appellant : M.C.D. and anr.

Respondent : Naresh Kumar and ors. and Nand Lal and ors.

Advocate for Def. : Maninder Singh, ; Sushant Kumar and ; Kirtiman Singh, A

Advocate for Pet/Ap. : Vibhu Shankar, Adv. and; K.L. Shukla, Asstt. Commr

Judgement :

B.C. Patel, C.J.

1. Admit.

2. Learned counsel for the respondents waives service of notice on behalf of the respondents.

3. The matter is taken up for final disposal at this stage at the request of learned counsel for the parties.
4. The present appeals are preferred against the Orders made by learned Single Judge in WP (C) Nos. 17804-08/2004 and WP (C) Nos. 17791-803/2004 on 19.11.2004
5. The dispute has had a chequered history. Thus, it is necessary to set out the facts in that behalf.
6. The claim of the squatters / hawkers carrying on business activity in the area within the administrative control of the Municipal Corporation of Delhi came to be considered in Saudan Singh v. N.D.M.C. and Ors., : [1992]2SCR243 . The petitioners in the said petition were persons claiming a right to trade on the pavement situated within the areas under the control of MCD and NDMC in different parts of the city of Delhi. This judgment was a equator to the Constitution Bench judgment in Sodan Singh v. New Delhi Municipal Committee, : [1989]3SCR1038 , which came to the conclusion that the right to carry on trade or business mentioned in Article 19 of the [Constitution of India](#) on street pavements, if properly regulated, cannot be denied on the ground that the street pavements are meant exclusively for pedestrians and cannot be put to any other use. However, proper regulation was required as a necessary condition or otherwise the very object of laying roads would be defeated. Schemes were required to be prepared to examine the claim of the squatters and to identify street pavements in different areas where street hawking could be regulated without being hindrance to other users. The criteria of priority for allotment was determined as under:
 - '(1) Persons who have been found squatting between 1970 and 1982 and whose names are contained in the survey report prepared after the survey conducted in 1982 will receive first priority for grant of tehbazari permission subject to the scrutiny of their claims;
 - (2) Insofar as casual tehbazari on weekly holidays, festivals/melas, etc. is concerned, as well as at the 67 weekly bazars held, persons availing of the said benefit will continue to be granted the casual or weekly tehbazari;

(3) Squatters who have started squatting/ hawking in 1983 onwards and who are found on the date of survey would also be considered for grant of open tehbazari of 6' x 4' subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/hawkers would be granted open tehbazari subject to availability of space provided they have cleared the dues of the MCD; and

(4) Persons who do not fall within the aforesaid three categories would be permitted to apply for hawking licenses under Section 420 of the [Delhi Municipal Corporation Act, 1957](#) and their applications would be considered on merit for permission to hawk - not squat - by moving in specified areas with their goods on their heads or on cycles. They will be entitled to hawk with their goods anywhere in the zone in respect of which they have been granted a license. However, such permission will be subject to any restrictions that may be imposed by the residential associations of different colonies.'

7. The Committee appointed under the MCD Scheme was asked to scrutinize the claims of the squatters and hawkers from the viewpoint of the eligibility criteria laid under the Scheme so that their priorities could be determined.

8. MCD issued public notices in newspapers and through bills, posters, etc. between June and August, 1992.

9. The aforesaid gave rise to another round of litigation / direction and the relevant judgment is in the case of Gainda Ram and Ors. v. M.C.D., Town Hall and Ors., : [1993]3SCR704 . In terms of the said judgment, those of the hawkers / squatters who had file petitions / appeals in the Supreme Court and the High Court or suits in the Trial Court prior to the date of the Supreme Court judgment in Saudan Singh's case (supra) and who on account of bona fide belief thought that it was not necessary to make a for all application to the Committee appointed for the purpose of scrutinizing and verifying the claims were permitted one month's time to file their claims before the MCD Committee. It was further directed that no civil litigation / writ petitions / appeals or SLPs by squatters / hawkers pending in Delhi Courts / High Court or the Supreme Court would survive. Such directions given were stated to be of general application and would apply to all claims of squatters / hawkers

who fall within the categories enumerated in para 11 of the judgment in Saudan Singh's case (supra). Those, who did not fall in any of the four categories, had no right as they fall outside the Scheme and were not entitled to any protection.

10. Further directions were passed in Gainda Ram and Ors. v. M.C.D. and Ors., : [1997]3SCR1181 recording that in pursuance to the earlier directions of the Supreme Court, Shri R.C. Chopra, Additional District Judge (as he then was) had been appointed to examine the Scheme and to make the report. One of the directions issued was to give opportunity to all ineligible applicants to make representations for review of their cases, which is as under:

'2.

(a) All applicants held ineligible shall be given an opportunity by MCD to make representations for the review of their cases. Such representations be entertained only in cases where the applicants file copies of the documents to show prima facie that there were in fact eligible but have been declared ineligible by the Zonal Licensing Committee. The zonal heads of the zones concerned are directed to personally deal with these applications and dispose of them within three months..
... ..'

11. The matter did not rest at this since further directions were issued in the very same Order in the following terms:

'10. It is further directed that after the report is received from the MCD, about the exercise carried out by it in the light of the present order, if any of the squatters feels aggrieved by the rejection of his claim by the MCD, it will be open to the aggrieved party-squatter concerned, to file a written representation before the same judicial officer, Shri R.C. Chopra, Additional District and Sessions Judge, who has given the present report and in the light of the said report, further exercise is directed by us to be carried out by the MCD. The said written representations shall be considered and decided by Shri Chopra within a period of three months from the date of receipt of the representations. Representations shall be filed by the aggrieved squatters within a period of 15 days from the intimation received by them from MCD about rejection of their claims. No representations filed later will

be entertained by Shri Chopra save and except in cases where he in his direction finds it necessary to condone the delay up to 15 more days in the interest of justice. However, no such delay in any case should exceed a period of 15 days from the original period of 15 days as entire exercise of review is to be completed in a time-bound manner..

12. It is clarified that whatever decision is rendered by Shri Chopra on these representations, shall be final and shall not be subject to the scrutiny of any court. It is also made clear that this Court will also not undertake any review against the decision of Shri Chopra and the decision of Shri Chopra shall be treated as final and binding on the squatter concerned as well as on the MCD.'

12. This is so far as background of the litigation in respect of such hawkers and squatters is concerned. In so far as the present respondents are concerned, before these appeals, they had filed writ petitions bearing No. 573/1999 and 948/1999, which were disposed of by the Supreme Court vide Order dated 05.05.2000, which reads as under:

'Learned counsel for the Municipal Corporation of Delhi states that the petitioners are not governed under the scheme and a mere look at the order dated 20.12.1999 of Mr. Chopra at page 37 shows that the appeals of the petitioner were not maintainable before him because they were not covered by the Scheme. Whatever independent grievance they may have against the respondent-authorities can be ventilated in accordance with law before appropriate court and the earlier order of this court not allowing such persons to go before any other court to get their grievance redressed will not come in their way. Without prejudice to the rights and contentions of both the sides the status quo order granted by us on 21st January, 2000 in this Writ Petition will continue for two weeks from today.

It is made clear that this extension of status quo order is granted only because of our earlier order of 21st January, 2000 and will not be treated to be binding on any appropriate court deciding on its merits the interim or final relief in accordance with law.

The Writ Petition is disposed of accordingly.'

13. The respondents thereafter filed writ petitions before this Court and the said writ petitions were disposed of by an Order dated 25.10.2002 in Shri Inderjit and Ors. v. Municipal Corporation of Delhi and connected matters. The claim of the respondents herein was that they were seeking regularisation of what they claim to be the tehbazari rights. It was stated that they were squatting in Central Market, Lajpat Nagar, New Delhi prior to 1982 and that a survey was conducted in December, 1982 whereby about 15 squatters were found to be eligible including the petitioners. The respondents claim that they had been rehabilitated in a land between the post office and Alankar Cinema in April, 1985 from where they were removed and rehabilitated behind MCD Hospita, Lajpat Nagar. Thereafter in August, 1986, they are stated to have been allotted squatting sites at II Block, Pushpa Market, Lajpat Nagar and continued there till May, 1996. In December, 1996, due to certain bomb blast in the area, they were removed.

Thereafter they had filed writ petitions in the year 1999 before the Hon'ble Supreme Court for allowing them to squat at the original sites in Pushpa Market / Central Market.

14. The case of the respondents herein was stated to have been rejected by the appellant Corporation as the list of eligible squatters in the case of Chopra Committee recommendation did not include their names. The stand of the appellant Corporation in the writ petition was that the respondents herein were not covered under the Scheme and their case was, thus, rejected by the Chopra Committee, which was obvious from the Order of the Hon'ble Supreme Court dated 05.05.2000 in CWP No. 573/1999.

15. It may be noticed at this stage that it is not disputed by learned counsel for the respondents that the respondents here are not governed by the Scheme of Gainda Ram and Ors.'s case (supra) as they have not been found eligible therein.

16. The MCD had opposed the plea of the petitioners in the writ petitions on the ground that the complete Scheme of the directions of the Hon'ble Supreme Court in Saudan Singh's case (supra) and Gainda Ram and Ors.'s case (supra) had been gone through and the cases of the petitioners did not figure in the name of the approved squatters. Even appeals were permitted to be filed before Shri R.C.

Chopra Committee, which were not the subject matter of further challenge. It was categorically stated that no squatters were being permitted in Pushpa Market, which had been declared as a non-squatting zone and till finalisation of the review Scheme, on compassionate grounds, the respondents herein were permitted to squat near Alankar Cinema. It is not in dispute that the respondents have been removed from the said site by now. The finding recorded in the Order passed by learned Single Judge on 25.10.2002 is as under:

'11. The petitioners admittedly did not apply under the 1992 scheme and their appeals were thus held to be not maintainable by the RC Chopra Committee. It is also relevant to note that no squatting is permissible in Pushpa Market which has been declared a non-squatting zone for which the relevant orders have been filed. The petitioner, however, continued to occupy the areas near Alankar Cinema. It is relevant to note that there is squatting on the area of 6' x 4', but a large area has been covered bisection of Tarpaulin as apparent from the photographs. Open areas have been encroached upon and the business being carried on is of the nature of shops under Tarpaulin. There can be no doubt that the same would cause grave inconvenience to the shopkeepers who are in regular occupation of the shops as also for the persons visiting the market.

12. The question to be considered is whether these petitioners have any right to squat. In my considered view, the answer is in the negative. Other than stating that they have been squatting in various areas from time to time, the petitioners have failed to establish any such right. The review exercise is stated to be in progress in pursuance to the order dated 1.5.1997 and the petitioners have been permitted to squat near Alankar Cinema pending finalization of review exercise since at the relevant time the site will have to be made available to the eligible squatters. It was also stated that these petitioners have been removed from their original place and have falsely stated that they are squatting at Pushpa Market though the same is a non-squatting area. In case any of the petitioners are found eligible under the review exercise he will be entitled to the right as granted to such persons.'

17. The respondents aggrieved by the said Order filed LPA No. 848/2002 before the Division Bench, which was disposed of vide Order dated 04.02.2003, which is

as under:

'Learned Single Judge vide his order dated 25.10.2002 had directed the respondent Corporation to permit the petitioner to squat near Alankar Cinema pending finalization of review exercise. Counsel for the petitioners states that MCD is not permitting the petitioners to sit near Alankar Cinema. Counsel for the respondent says that these petitioners have been removed from the places they were squatting originally.

It is fact that the impugned order has not been assailed by the MCD. therefore, the direction contained in the impugned order is binding on the MCD. It is made clear that till such time review exercise is finalized the MCD will comply with directions given in the impugned order and permit the petitioners to squat near Alankar Cinema. Further while finalizing the review exercise the claims of the petitioner also be considered on merits.

With these directions, appeal stands disposed of.'

18. Soon thereafter, the MCD also filed an appeal against the same Order dated 25.10.2002 and the different Division Bench on 30.09.2003 in the operative paragraph of the Order observed as under:

'The matter was required to be considered whether review exercise is completed or not. Now it is stated that the review exercise is completed and it was also so stated in the counter affidavit. If that be so, it goes without saying that the appellants are not affected by the order made by the learned Single Judge and, therefore, it would be open that they should take appropriate action in accordance with law. therefore, appeals are not required to be entertained further. The same are accordingly dismissed.'

19. There were thereafter certain contempt proceedings initiated by the respondents herein as also review petitions of all these Orders, but the same were found to be without any merits.

20. A fresh round of litigation started when the respondents herein filed WP (C) Nos. 177804-08/2004 and WP (C) Nos. 17791-803/2004 in which directions were

issued on 19.11.2004, which have been impugned in the present appeals. The issue which arose was on account of the fact that the appellant / MCD stated that there was, in fact, no review exercise being undertaken insofar as the respondents herein are concerned, since such an exercise could not include people who were found ineligible. The direction, which was passed, is as under:

'MCD, in its pleadings in the earlier writ petitions, has been taking a stand that case of the petitioners is under review. I direct the MCD to review the issue of Teh Bazari pertaining to the petitioners and pass necessary orders after giving opportunity of person hearing to the petitioners. Review exercise would be completed within a period of 3 weeks from today. Order in review would be filed in court.'

21. The controversy before us is now limited in view of the submissions made by learned counsel for the parties since it is not disputed that the Scheme of Saudan Singh's case (supra) and Gainda Ram and Ors.'s case (supra) would not apply to the case of the respondents. The respondents, however, still claim that they have a right to agitate their claim as tehbazari holders under the [Delhi Municipal Corporation Act, 1957](#) (for short, 'the said Act') or otherwise. The Order dated 05.05.2000 of the Hon'ble supreme Court proceeds on the basis that independent grievances of the respondents herein can be ventilated in accordance with law before the appropriate court. The grievances, however, are not clear and they have yet to be considered as to whether they have any merits.

22. In the absence of review exercise being applicable to the respondents herein, in our considered view, the direction could not have been passed by learned Single Judge in the impugned order to review the issue of tehbazari pertaining to the respondents herein. The respondents at best could have been directed to consider whether they have any rights de hors the Scheme of Saudan Singh's case (supra) and Gainda Ram and Ors.'s case (supra).

23. We are, thus, of the considered view that the impugned order passed by learned Single Judge is required to be modified. Instead of the direction given to MCD to review the issue of tehbazari pertaining to the respondents, it is required to be directed that the MCD shall consider the cases of the respondents herein on

production of relevant material and shall decide their entitlement de hors the Scheme of Saudan Singh's case (supra) and Gainda Ram and Ors.'s case (supra). It will be for the respondents herein to establish whether they have any such rights including under the said Act.

24. We further consider it appropriate to direct that the matter shall be considered by the concerned Additional Commissioner, MCD after approval of the Commissioner, MCD and the respondents herein shall appear before the concerned Additional Commissioner MCD on 04.04.2005. All the documents and the material which the respondents seek to rely upon shall be filed before the said Additional Commissioner, MCD before that date. The Additional Commissioner, MCD shall endeavor to decide the request of the respondents herein on the basis of the material produced, submissions made and shall pass a speaking order within a period of three months thereafter.

25. It has been brought to the notice of learned counsel for the appellants that the appellant / MCD is required to pay court fee separately for each of the appeals relating to each respondent and the appropriate amended memo of parties be filed and the Registry to give separate LPA nos. to each appeal.

26. The appeals are disposed of in the aforesaid terms leaving the parties to bear their own costs.

CM No. 306/2005 IN LPA No. 22/2005

CM No. 312/2005 IN LPA No. 23/2005

In view of disposal of the appeals, no further directions are required to be passed in these applications.

Applications stand disposed of.