

SUPREME COURT OF INDIA

Gainda Ram

Vs.

M.C.D.

(S.B.Sinha and Dr.M.K.Sharma JJ.)

09.04.2009

ORDER

Dr. Mukundakam Sharma, J.

1. By this common order we propose to dispose of various applications filed by the parties hereto including the one which has been filed by the Municipal Corporation of Delhi (in short the 'MCD').

2. Delhi being the capital of India has many peculiar problems. One of the problems is naturally its population which has increased manifold obviously due to influx of people from various regions and States looking for new openings and avocations. Space availability in Delhi is very limited and within that limited space available at its disposal the municipalities namely the MCD and the New Delhi Municipal Corporation (in short the 'NDMC') have to manage all their activities including functioning of the markets at different places.

3. Limited space available for effective functioning of markets including accommodation available for the squatters and hawkers to carry on their small business has been receiving attention of this Court for quite a long time. In that regard, several orders have been passed by this Court from time to time. Pursuant to such orders of this Court the MCD as well as the NDMC have framed Schemes for running of the business by the squatters/hawkers. In response to the Schemes, nearly 85,000 people applied for allotment of spaces within the MCD area and about 10,000 people applied for such allotment within the NDMC area seeking settlement of the tehbazari rights under the Schemes as formulated by the MCD and the NDMC. Due to want of space only about three thousand of such applicants out of the aforesaid applications received could be allotted spaces by the concerned authorities.

4. So acute was the dissatisfaction with the process followed by municipal authorities that several complaints were filed in the Court raising numerous objections against the manner in which the MCD tried to implement the Schemes.

5. Under the Schemes formulated by the MCD and the NDMC hawking and non-hawking areas have been demarcated and the hawkers/squatters were to be located only in demarcated hawking zones in accordance with the priorities mentioned in the Schemes.

6. In the last few years a clearance operation was being carried out for the purposes of widening roads and decongesting crowded areas which affected a large proportion of genuine vendors who were either removed or dislocated for one reason or the other. In some cases possession was not given and in some other cases those persons, who were entitled to settlement under the Schemes have a grievance that their matters remained pending and no orders have been passed granting them relief.

Consequent thereupon, a large number of applications were filed by the concerned authorities and aggrieved parties in which general directions were issued by this Court from time to time.

7. In the meantime, a Scheme called the "National Policy on Urban Street Vendors" (for short the `NPSV/Scheme') was formulated by the Government of India in the year 2004 which the MCD has agreed to implement in principle. In accordance with the said Scheme, Ward Vending Committees have been constituted in all the 134 Wards of the MCD. These committees were charged with the duties of identifying the sites, declaring hawking and non-hawking zones in consultation with various stakeholders like Vendors/Trader's Associations, Resident Welfare Associations, Traffic Police etc. in accordance with the relevant Rules. In addition to this, Zonal Vending Committees have also been constituted in all the 12 Zones.

8. According to the NPSV the total vending sites would not exceed 2.5% of the total population of that particular Ward/Zone based on the Census 2001 which is consistent with the policy framed for the purpose and about 3 lakh hawkers/squatters could be accommodated including existing tehbazari/vending sites. It was proposed in the Scheme that the rights of those hawkers/squatters already granted valid licenses under the Schemes finalized by the MCD would not be affected and that whatever action could be taken in the near future would be based in terms of the Scheme. It was decided that in executing the Scheme preference would be given to those squatters/hawkers eligible for allotment under the existing scheme based on their seniority and priority of claim.

9. When the matter came up before this Court on 06.02.2007, all aspects of the NPSV were fully discussed. Certain suggestions were made in the Court by the various parties which the Court found acceptable and in that regard directions were issued to the MCD to consider whether those suggestions could be incorporated in the Scheme. The MCD found the suggestions acceptable and has submitted a Scheme incorporating those suggestions. Now the Scheme envisages identification of squatting/vending areas by the Ward Vending Committees which was to be approved by the Zonal Vending Committees which is also empowered to make necessary changes and make allotments accordingly.

10. In the said order dated 06.02.2007 reference was made to the fact that the tehbazari/vending sites would remain the property of the MCD.

“However, mutation in case of death or permanent insanity of the allottee would be allowed. It was provided that transfer/mutation in the event of change of hands or

exchange would be permissible subject to the charges as approved by the MCD from time to time. It was also provided that tehbazari/vending sites would measure 6 ft. x 4 ft. and open to sky and that no permanent structure would be allowed to be raised. It was also held that if it is found that any change or alteration in structure has been made by the allottee, his licence would be cancelled. It was ordered that all the existing allottees as per the old Schemes would continue and only thereafter, the cases of others would be considered in accordance with the preference as provided in the said sub-paragraph but that would not preclude the shifting of an allottee from one site to another consistent with the norms of the NPSV which provided that the eviction should be avoided wherever feasible unless there is clear and urgent public need of the land in question.”

11. Broad guidelines were issued by this Court in the said order as to what would be the further conditions to be incorporated in the Scheme which were so incorporated. However, the said Scheme proposed by the MCD was not found to be satisfactory by some of the parties due to various reasons due to which objections were raised in respect of some of the clauses in the said Scheme. This Court considered the said objections and after detailed discussion and subject to certain modifications as outlined in the order passed by the Court, the Scheme submitted by the MCD in regard to the tehbazari/vending sites was approved.

12. Ms. Indira Jaising, learned senior counsel appearing on behalf of Self Employed Women Association (SEWA) put forward a strong claim for establishment of weekly markets in various areas. This Court heard the said suggestions very carefully and after full deliberation held that the Court cannot issue direction to declare weekly market in a particular area for such matter is to be exclusively considered by the MCD. So far as the suggestion for giving preference to women vendors in the allotment of tehbazari/vending sites is concerned, it was held that the same is again a matter of policy and, therefore, it was observed that in planning markets in the city, the MCD may consider whether some space would be made available to women vendors and whether they may be allotted tehbazari/vending sites adjacent to each other in a Block.

13. A further submission was made before the Court that the Schemes which have been approved by the Court should be subject to such Act or Rules that may be formulated in consonance with the NPSV. The Court in that regard made it clear that it had only approved the Schemes as framed by the MCD and the NDMC and that if the Legislature intervenes and frames another Scheme or Regulation governing such Scheme that would certainly supersede the Schemes formulated by the MCD for it is well settled that any administrative action is always subject to such law that may be framed by the competent Legislature. It was observed by the Court while passing the said order that since the NPSV have been formulated, the concerned authorities would have due regard to it in regulating tehbazari/vending sites etc. In the orders subsequent thereto this Court desired that the MCD and the NDMC would submit a separate status report along with charts in regard to the implementation of the Schemes not only in general but also with reference to the pending applications.

14. Pursuant to the aforesaid order passed, the MCD filed a detailed affidavit on 19.04.2008 giving the said status report regarding the implementation and progress of the new Scheme. The MCD also filed an application dated 09.05.2008 seeking appropriate directions from this Court in regard to certain difficulties being faced by them in implementing the Scheme. In the said application four principal difficulties have been pointed out. The first issue which is raised is that the Government of India has issued an Ordinance in 2007 which was later converted into an Act known as *Delhi Laws Special Provisions Act, 2007* (for short the 'Delhi Act') which restrains removal action inter alia against unauthorized squatters/vendors up to 31.12.2008. It was stated that the applicability of the Delhi Act has been extended for another one year and an appropriate legislation in that regard has been passed by the Parliament.

15. In view of the aforesaid position it is pointed out that a problem is being created for settlement of eligible squatters as some of the sites have been occupied by unauthorized vendors who are entitled to protection under the provisions of the Delhi Act. It is next pointed out that for settlement of squatters/street vendors, there is hardly any footpath which has a width of 9 ft. providing 5 ft. for the pedestrians and 4 ft. for the hawkers along the roads and as such, a difficulty has arisen to adjust the eligible applicants on the footpath and also for identification of new squatting and vending areas for them. It was, therefore, suggested by the MCD in the said application that it may be permitted to identify the sites for squatting/vending areas on the footpath having less than 9 ft. width and for that purpose the open space on the footpath may be reduced from 5 ft. to 3 ft. It was pointed out that if such an order is not passed the number of new sites identified/to be identified would not exceed 20,000. The third aspect on which emphasis was placed by the MCD was that this Court in its earlier orders has barred transfer of sites. It was pointed out that most of the existing tehbazari sites have been sold by their original allottees to others who are in possession of the sites as on date. It was also pointed out that in most cases the existing occupants of the allotted sites did not apply pursuant to the advertisement which was issued by the MCD and also in the format which was approved by this Court. Lastly, it was pointed out that in many cases the tehbazari holders have made additions/alterations and even encroached the adjoining area thereby enlarging the size of the tehbazari which is now fixed at 6 ft. x 4 ft. and even in some cases, making it double storey instead of single storey/open to sky or closed. Therefore, it was proposed in the said application that the MCD may be allowed to bring the old tehbazari sites into 6 ft. x 4 ft. with an aesthetic design and to take action against encroachers/violators in order to bring these tehbazaris to a uniform size and manner.

16. Applications were also filed by the other parties. Mr. Prashant Bhushan, learned counsel appearing for National Association of Street Vendors of India (NASVI) while supporting his application which is registered as I.A. No. 404 in W.P. (C) No. 1699 of 1987 submitted that mobile hawkers should be allowed to replace unauthorised hawkers and that the width of the footpath should be left to be determined by the Ward Vending Committees. He further submitted that the meetings of the Ward Vending Committees should be more transparent and advance notice of such meetings should be given to all concerned particularly to its members. He also submitted that the applications for granting tehbazari sites are not being considered but instead the authorities have started the eviction process.

17. Ms. Geeta Luthra, learned counsel appearing for Manushi Sangathan made submission that there should be a photo census of all the squatters and hawkers so as to avoid all illegal transfers of such sites in future.

“She also referred to the NPSV and particularly to paragraph 3.1. of the said Policy which gives vendors a legal status by amending, enacting, repealing and implementing appropriate laws and providing legitimate hawking zones in urban development/ zoning plans.”

18. Mr. R.K. Khanna, the learned counsel appearing for the NDMC submitted that so far as NDMC is concerned it does not want the area and width of the footpath to be changed or reduced. He also submitted that they have granted tehbazari licence in accordance with the existing rules/Schemes.

19. So far I.A. No. 1 in I.A. No. 407 in W.P. (C) No. 1699 of 1987 is concerned, orders were already passed in the said application on 05.03.2009.

20. In view of the aforesaid position we are required mainly to deal with the contentions raised by Mr. Ravishankar Prasad, learned senior counsel appearing for the MCD in respect to the application filed by the MCD whereby they have sought for certain clarifications and also with the contentions raised by Ms. Indira Jaising, Mr. Prashant Bhushan and Ms. Geeta Luthra.

21. So far the contentions of Ms. Indira Jaising are concerned, the said contentions with regard to the establishment of weekly markets and giving preference to women vendors in the matter of allotment of tehbazari/vending sites have already been dealt with and orders in that regard have been passed by this Court in the order dated 17.05.2007. It is established from the records and the statements made before us that the Ward Vending Committes numbering 134 as also the Zonal Vending Committes numbering 12 have already been constituted. The Appellate Committee to be presided over by a retired High Court Judge in terms of the orders of this Court has also been constituted. It is an admitted position that no Act or Rules have been framed so far by the Legislature in consonance with the NPSV. Therefore, orders in the manner of administrative action could be issued subject to law that may be framed by the competent Legislature.

22. With regard to the contentions raised by the MCD regarding reduction of the width of the footpath for pedestrian from 5 ft. concerned, in our considered opinion, no direction in that regard could be passed by this Court. There could be some areas where 5 ft. width of the footpath for the use of pedestrian could be necessary depending on overflowing members using it whereas in some other places width of 5 ft. for a footpath and 4 ft. width for hawkers may not or could not be made available due to various practical reasons. It is also not possible for us to consider reduction of width of such footpath for we are unaware of the existing condition of the footpaths of the various areas in Delhi.

“Therefore, we do not intend to pass any such orders without there being some concrete materials for such modification. We, however, leave the matter to be considered by the Zonal Vending Committees. At one stage we considered to leave the matter to be considered by the Ward Vending Committees which are 134 in number but the volume being too large we think it fit to leave it to the Zonal Vending Committees to do such exercise as to whether in any particular area, the area of the actual footpath being used by pedestrian could be reduced from 5 ft. to a lesser area so as to make the balance area available to accommodate more hawkers. While making a study in that regard the Zonal Vending Committee shall consider all factors including the interest and the requirement of the pedestrian using the footpath in a particular area. The said Zonal Vending Committee after making proper and appropriate study of the prayer for reduction of the width of the footpath for the pedestrian would submit their report to this Court within three months from the date of receipt of a copy of this order whereupon appropriate orders shall be passed in that regard.”

23. So far the prayer of the MCD with regard to the transfer of tehbazari/vending sites to the non-family members as per the Scheme of the MCD is concerned, this Court passed an order dated 06.02.2007 barring transfer of tehbazari/vending sites which was reiterated in the order dated 17.05.2007. The said orders were meant to be prospective in nature and, therefore, if any such tehbazari/vending sites were transferred prior to 06.02.2007 the same could be considered as a valid transfer. But, in any case, no transfer made after 06.02.2007 by way of change of hands, sale etc. would be allowed and any such transfer, if made, would be illegal. Persons found to have been transferred their tehbazari/vending sites after 06.02.2007 could be evicted as per the due process of law. We believe that the aforesaid order which we have passed with a cut of date of 06.02.2007 directing for legalizing any transfer made prior to 06.02.2007 and declaring all subsequent transfers as illegal and invalid would likely to cause the process of allotment of new tehbazari/vending sites smooth and easy.

24. So far the contention with regard to applicability of the Delhi Act is concerned, the same lapsed on 31.12.2008 and was subsequently extended till December, 2009. Needless to say, the said law will have to be given effect to as it is a Central law and would definitely have primacy over the administrative orders. The provisions of the Delhi Act have to be implemented and, therefore, none of the orders passed by us would be deemed to have been passed in derogation or contrary to the provisions of the Delhi Act.

25. We observe that when the Ward Vending Committees hold their meeting, advance notice thereof with sufficient time should always be given to its members and the minutes of the said meeting shall be recorded and record thereof shall be maintained.

26. With regard to the suggestion that is given by Manushi Sangathan regarding maintaining a photo census of all the squatters and hawkers allotted with the tehbazari/vending sites, we find that the said suggestion is fair and reasonable and many problems being faced by the MCD regarding illegal transfer, sale etc. would be taken care of if a photo census of all the squatters and hawkers given the tehbazari/vending sites is made compulsory and properly

maintained. We direct MCD to take immediate steps for carrying out photo census of all the existing squatters and hawkers allotted with tehbazari/vending sites. The photo census shall be compulsory for all future allotment also, if any. MCD shall also maintain proper records of the photo census.

27. So far as the establishment of the weekly markets and giving preference to women vendors are concerned, this Court has already taken notice of the said submissions and has passed effective orders in that regard. We make it clear that it is for the MCD to consider the aforesaid request and to take appropriate decisions in that regard for we do not intend to pass any such order as the same is, in our considered opinion, in the domain of policy decision.

28. In terms of the aforesaid order the applications registered as I.A.No. 1 in I.A. No. 407 in W.P.(C) No. 1699/1987 with I.A.No.1 & C.P.(C) No. 170/2007 in I.A. No. 394 in I.A. No. 356 in W.P.(C) No. 1699/1987, Contempt Petition (Civil) No.323/2007 in W.P.(C) No. 1699/1987 with I.A. No. 366 in W.P.(C) No. 1699/1987, I.A. No. 367 in W.P.(C) No. 1699/1987, Contempt Petition (Civil) No. 126/2001, I.A. No. 361 in W.P.(C) No. 1699/1987, I.A. Nos. 372-373 in W.P.(C) No. 1699/1987, I.A. No. 389 in W.P.(C) No. 1699/1987, I.A. No. 392 in W.P.(C) No. 1699/1987 with W.P.(C) No. 535/2001, W.P.(C) No. 240/2004, I.A. Nos. 397-398 in W.P.(C) No. 1699/1987, I.A. No. 399 in I.A. No. 394 in W.P.(C) No. 1699/1987, I.A. Nos. 1-2 in W.P. (C) No. 100/2002, I.A.No..../2005 in I.A.No. 394 in I.A.No. 356 in W.P. (C) No. 1699/1987, I.A.No..../2005 in I.A.No. 394 in I.A.No. 356 in W.P.(C) No. 1699/1987, I.A. No.400 in W.P.(C) No. 1699/1987 with I.A. No.401 in I.A. No. 396 in C.P. No. 506/2002 with I.A. No..... in C.P. No. 506/2002, I.A. No.402 in W.P.(C) No. 1699/1987 with W.P.(C) No. 414/2006 with I.A. No.403 in W.P.(C) No. 1699/1987 with I.A. No.404 in W.P.(C) No. 1699/1987 with I.A. No.406 in W.P.(C) No. 1699/1987 with I.A. Nos.408-409 in W.P.(C) No. 1699/1987, I.A. No.410 in W.P.(C) No. 1699/1987 with Contempt Petition (Civil) No.183 in W.P.(C) No. 1699/1987 with C.P. (C) No.....(D. No.4361/2009) in W.P.(C) No. 1699/1987 are disposed of.