

Gainda Ram And Ors. Etc vs M.C.D. Town Hall And Ors. Etc on 12 May, 1993

Equivalent citations: 1993 SCR (3) 704, 1993 SCC (3) 178

Author: A.M. Ahmadi

Bench: A.M. Ahmadi

PETITIONER:

GAINDA RAM AND ORS. ETC.

Vs.

RESPONDENT:

M.C.D. TOWN HALL AND ORS. ETC.

DATE OF JUDGMENT 12/05/1993

BENCH:

AHMADI, A.M. (J)

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AHMADI, A.M. (J)

ANAND, A.S. (J)

CITATION:

1993 SCR (3) 704

1993 SCC (3) 178

JT 1993 (3) 396

1993 SCALE (2) 893

ACT:

Constitution of India, 1950:

Articles 14, 19 (1) (g) and 21-Squatters/hawkers-Grant of Tehbazari Permission by Municipal Corporation of Delhi-Scheme evolved by the Corporation on the directions of Supreme Court--Clarifications and further directions given.

Delhi Municipal Corporation Act, 1957:

Section-420-Grant of Tehbazari Permission to squatters/hawkers--Scheme formulated as directed by Supreme Court-Clarifications and further directions issued.

HEADNOTE:

Certain guidelines were issued by this Court in Saudan Singh v. N.D.M.C. & Ors. [1992] 2 S.C.R. 243 in respect of the squatters/hawkers carrying on business activity in the area under the Municipal Corporation of Delhi. Pursuant to the said guidelines, the respondent M.C.D. evolved a Scheme and undertook an exercise to complete the scrutiny of the claims

of the squatters/ hawkers for grant of tehbazari permission by which it subclassified the persons found squatting between 1970 and 1982, and laid down the procedures to be followed in the implementation of the Scheme. Aggrieved, the petitioner squatters/hawkers approached this Court for appropriate directions on their petitions pending in this Court.

Disposing of the cases, and clarifying directions given in Saudan Singh and giving further directions, this Court,

HELD : 1.1. In regard to persons who have been found squatting between 1970 and 1982 and whose names were contained in the Survey Report, and who were to receive first priority as per the guidelines issued, the M.C.D. divided them into two classes viz., those who possessed the survey report-receipt and those who did not possess the receipt but could tender evidence or proof of squatting from 1970 to 1982. According to M.C.D. the latter category would be considered after the former. It is made clear that both the classes belong to one category and the sub-classification is not

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warranted. (708-F-G)

1.2 In the name of the procedure set out by the M.C.D., they would not be permitted to change the nature of the tehbazari of those who have been expressly permitted facility of covered the tehbazari/kiosks/shops/stalls in the past but those who are not given that facility will not be entitled to it. Temporary tarpaulin covers/umbrellas would not fall within the expression 'covered tehbazari because these would be necessary to combat the vagaries of nature. They will however, be liable to be evicted if under this pretext they try to put up a semi-permanent cover over the area on which they are permitted to squat. By way of abundant caution and to avoid harassment it would be desirable for them to put up only a temporary cover to beat the sun or the remand remove it when they leave the place after business hours. (709C-D)

1.3 Having regard to the segment of the society to which many of the squatters/hawkers belong, they may not have retained the tehbazari receipts and it would also be well-nigh impossible for the M.C.D. to verify their records and determine whether or not such squatters/hawkers had in fact paid the tehbazari. Therefore, option is given to the squattest hawkers who face this difficulty, to pay a lumpsum of Rs. 3000 in four quarterly installments of Rs. 750 each. The first installment will be paid within one month after the receipt of the order or intimation of allotment from the M.C.D. The subsequent installments will be paid every three months thereafter. If any squatter/ hawker commits default in the payment of the installments, his allotment will be liable to be cancelled one month after a reminder is sent to him and the next person in the order of seniority will be allotted that space. (709-F-H)

1.4 By way of a special consideration, time of one month is

granted to such claimants whose cases were pending on the date of decision in Saudan Singh's case, but who have not filed formal claims, to file their claims before the M.C.D. Committee with all accompaniments and particulars. The M.C.D. Committee will examine such claims. The claims to be filed need not be in any prescribed form, but may furnish the particulars along with the copy of their petition/appeal/suit pending on or before 13th March, 1992, duly attested by the Advocate for the party. In case of doubt, M.C.D. will be at liberty to demand from that party the production of a certified copy. (710-C-E)

1.5 These directions would apply to claims of all squatters/hawkers who fall in the four categories enumerated in Saudan Singh, and others have no right as they fall outside the scheme and are not entitled to any protection.

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Since all those who claim to be covered under the scheme and whose claims are awaiting scrutiny are protected by this order, all the writ petitions/ appeals/SLPs Suits, etc., pending in this Court/the High Court of Delhi and Courts subordinate to it shall stand terminated forthwith. No further litigation by or on behalf of any squatter/hawker will be entertained but if the M.C.D. violates any part of this order, the concerned party governed by this order will be entitled to file an I.A. for directions. The interim stay orders granted in those cases shall also stand vacated. The M.C.D. will, however, maintain the status quo till the verification is completed. (710-F-H, 712-A-B)

Saudan Singh V.NDMC & Ors., [1992] 2 SCC 458, relied on and the directions given therein clarified.

The Court observed that the M.C.D. would ensure that future encroachments do not take place defeating the rights of existing squatters/hawkers governed under the scheme, and that it would also protect the interest of the shopkeepers as they too have a similar right under Article 21 of the Constitution.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (c) No. 1699 of 1987. Under Articles 32 of the Constitution of India.

WITH Writ Petition (C) Nos. 1059/87, 324, 311, 841, 318, 315, 299, 334, 335, 457, 414, 435, 436, 438, 31, 157, 213, 215, 217, 188, 809, 441, 483, 150, of 1990, 616, 1065, 376 of 1989, 372/87, 323/90, 269/90, 317/86, 700/86, 1096/87, 435/89, 479, 552, 837, 903, 1097 of 1987, 33/88, 228, 313, 125 of 1989, 627/88, SLP (C) No. 5127/90, WP (C) 475/87, 281, 909 of 1987, 51/88, SLP (C) 4501/87, WP(C) 394, 1158 of 1989, 494, 488, 322, 500, 712 of 1990, 264/86, 752, 798, 791, 793, 790, 776 of 1990, 398/89, 984 of 1990, 719, 1301, 349 of 1987, 138, 418, 1263, 964 of 1989, 11096-97/94, 1011, 752 of 88, SLP (C) 12418/87, 501/87, 13156/86, CMP 1278 of 1987 in WP

248/87,924/87, 1531/87,479/87,522/89,1042/89,109/ 90, 131/90, 141/90, 146, 156, 157, 164, 180, 238,313,317,351, 359 of 1990, I.A. 361 of 1990, in WP 360 of 1990,362,436,438,445,447,454,455, 457, 478, 483, 488, 494, 498,565,663,664,712,743,776,790,809,814,823,835,886,905,923, 940,944,985, 989, 995, 996, 1007, 1008,1009, 1010, 1049, 1097,1132,1125, 1161, 1180, 1185, 1186, 1187 ,1192,1194,1195,1212,1214,1231,1281,1295, 1294, 1233, 1251, 1258, 1283, 127 1 of 1990, 1476, 313, 1316, 1251 of the 1987, 321/86, 237/90, SLP (C) 6925/87, 14496/89, WP 1001, 1004, 1007, 595, 747, 1146, 1156 of 1992, 7, 8, 19 of 1992, 13712-13 of 1984, 54, 62, 109 of 1992 15, 45, 137,144,146,145, 147,148, 180,221, 263, 267,347,348,401, 349,350,35 1, 352, 353, 355, 357, 372, 393, 5 2 0 , 6 1 4 , 6 2 9 , 6 2 8 , 7 5 5 , 1 0 5 5 , 1 0 5 9 , 1 0 6 0 , 1 0 6 2 , 1 0 6 6 , 1 1 1 7 of 1991, 1344 of 1990,161/84,11096-97/84,134,216,362,401,348, 700, 1203, 1210, 1258, 1273, 1278, 1291, 1305, 1214 of 1987, 163, 434 of 1989, 897/89,1341/89,1436/86,1651,1754 of 1986,12492-541/84, 1304/90, 1472/87, 1126/87, 479/87, 138/90, 1266/90, 13712-13/84,342,462,539,701,799,931,287 of 1990, 677/89, 168, 200, 217, 253,256,320,365, 374, 375,376 of 1992, 20/91, 10 1, 136, 154, 272, 354, 387, 400, 425, 436, 1054 of 199 1, SLP (C) 3119/93.

Govinda Mukhoty, V.M. Tarkunde, Arun Jaitley V.C. Mahajan, K.N. Rai, A.P. Singh, G.K. Bansal, P.H. Parekh, B.N. Agarwala, Ms. Simi Kumar, Ms. Sanriti Mishra, M.M. Kashyap, Ms. Meenakshi Arora, K.R. Nagaraja Ms. Sarla Chandra, R.C. Kaushik, Satish Chandra Agarwal, L.K. Gupta, D.K. Gara, Ms. Renu Gupta, P.Narsimhan, B.B. Tawakley, S.K. Sabharwal, An- dan Ghosh, R.C. Verma, B.D. Sharma, A.K. Sangh, PK. Manohar, A.P. Mohanty, Bharat Sangal, Ms. Lalita Kaushik (N.P.), Shree Pal Singh, N. Ganpathy, S.N. Bhatt, Ms. Rani Jethmalani, S.K. Bisaria, Ms. H. Wahi, Ms. Rani Chabra, Uma Datta, Shakil Ahmed, Anil Kumar Gupta (11), Ms. Manjeet Chawla, Arun K. Sinha, Ms. Indra Sawhney, L.K. Pandey, S. Sreenivasan, Anis Suhrawardy, S.P. Tambwekar, S.P. Pandey for Pandey and Associates, A.S. Pundir, M.B. Lal & Co. Manoj Prasad, J.P. Verghese, M.P. Raju, Vishnu Mathur, Manoj Swarup, Sandeep Narain, Shree Narain, Ms. P. Gopinath, Ranjit Kumar R.K. Maheshwari, Vineet Maheshwari, V.B. Saharya for Saharya & Co., Ms. Rekha Pandey, Ms. Bina Gupta, K.B. Rohtagi S.R. Setia, K.K. Mohan, S,K. Nandy, R.D. Upadhyay, Ms. Kamini Jaiswal, S.M. Ashri, S.N. Sikka, B.K. Prasad, P. Parmeshwaran, Ms. Sushma Suri, Ms. A. Suhashini, Sudersh Menon, G.S. Chatterjee and M.C. Dhingra Advocates with them for the appearing parties.

The Following Order of the Court was delivered In Saudan Singh v. NDMC & Ors, [1992] 2SCC 458 we laid down certain guidelines in paragraph 11 of the judgment concerning squatters/hawkers carrying on business activity in the area within the administrative control of MCD. The guidelines laid down were four in number, namely (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 were not found on the date of survey would also be considered for grant of open tehbazari of 6'x4' 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) Personal who do not, fall within the aforesaid three categories would be permitted to apply for hawking licences 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 not been granted a licence.

However, such permission will be subject to any restrictions that may be imposed by the residential associations of different colonies."

Pursuant to the said guidelines, the MCD issued public notices in newspapers and through handbills, posters, etc., between the months of June and August, 1992. In regard to the category of hawkers/squatters mentioned in the guidelines, the MCD has undertaken an exercise to complete the scrutiny expeditiously. In regard to hawkers/squatters falling under category (1), the MCD has divided them into two classes, namely, those who possess survey- report- receipt dated 23.12.82 and those who do not possess that receipt but are in a position to tender evidence or proof of their squatting from 1970 to 1982. It is stated that the latter category will stand and will be treated and considered after the former. We would like to make it clear that they all belong to one category and this subclassification is not warranted.

Even in regard to those who do not possess the survey report receipt dated 23. 12. 82 but tender satisfactory proof in regard to their squatting from 1970 to 1982 should be considered along with those who possess the receipt and be arranged in the order of their respective seniorities. We do not think that the sub-

classification is necessary.

The MCD has also stated that no covered tehbazari/kiosks/stalls/shops will be given to any person under the present scheme and only open to sky tehbazari on area admeasuring 6'x4' should be permitted to eligible squatters and the seniority list will be prepared accordingly on submission of proof. Counsel for the squatters/hawkers contended that earlier covered tehbazari/kiosks/shops/stalls was permitted to some of them like Jai Jawan Stores, etc., and if by this procedure it is intended to disturb them that should not be permitted. We read this procedure only to mean that those who have not been expressly given such facility will not be given covered tehbazari/kiosks/shops/stalls, etc., under the scheme which is being finalised. We would like to clarify that in the name of the procedure set out by the MCD, which they propose follow to finalise claims, they would not be permitted to change the nature of the tehbazari of those, who have been expressly permitted facility of covered tehbazari/kiosks/shops/stalls in the past but those who are not given that facility will not be entitled to it. We may also clarify that temporary tarpaulin covers/umbrellas would not fall within the expression 'covered tehbazari because these would be necessary to combat the vagaries of nature. They will, however, be liable to be evicted if under this pretext they try to put up a semi-permanent cover the area on which they are permitted to squat. Byway of abundant caution and to avoid harassment it would be desirable for them to put up only a

temporary cover to beat the sun or therein and remove it when they leave the place after business hours.

Under category (3) -in paragraph 11 of the Judgment, we have in the concluding lines stated that such squatters/hawkers would be granted open tehbazari subject to availability of space provided they have cleared the dues of the MCD. Counsel submitted that this requirement of clearing the dues is likely to cause avoidable Hardship since the period covered would be almost of a decade and at times more. Many of the squatters/.hawkers having regard to the segment of society to which they belong may not have retained the receipts and it would also be well-nigh impossible for the MCD to verify their records and determine whether or not such. squatters/hawkers had in fact paid the tehbazari. We see considerable force in this submission and we, therefore, provide an option to the squatters/hawkers, who face this difficulty to pay a lump sum of Rs. 3,000 in four quarterly instalments of Rs. 750 each. The first instalment will be paid within one month after the receipt of the order or intimation of allotment from the MCD. The subsequent instalments will be paid every three months thereafter. If any squatter/ hawker commits a default in the payment of the instalments, his allotment will be liable to be cancelled one month after a reminder is sent to him and the next person in the order of seniority will be allotted that space.

Lastly, it was submitted by counsel for the squatters/hawkers that some of them who had already filed petitions/appeals in this Court or in the High Court or suits in the Trial Courts prior to the date of this Court's judgment in Saudan Singh dated 13th March, 1992 and who on that account bona fide thought that it was not necessary to make a formal application to the Committee appointed for the purpose of scrutinising and verifying their claims, may be permitted to do so. Although we are generally reluctant to extend the time but having regard to the bonafide misunderstanding pointed out by counsel on behalf of the squatters/hawkers, we put it to the learned counsel for the MCD if the MCD would have no objection to the extension of time and he fairly stated that he would have no objection provided the facility is limited to those whose petitions/appeals/suits were pending in any of the courts on 13th March, 1992. By Way of a special consideration we grant time of one month from today to such claimants to file their claims before the MCD Committee with all accompaniments and particulars. The MCD Committee will examine such claims. The claims to be filed need not be in any prescribed form, but may furnish the particulars and be accompanied with the copy of the petition/ appeal suit with their numbers which they claim were pending on or before 13th March, 1992, duly attested as a true copy by the Advocate for the party. If there is any doubt, MCD will be at liberty to demand from that party the production of a certified copy. We would expect the MCD to complete the process of verification as early as possible. The procedure indicated by MCD, except for the modifications which we have made hereinabove, may be followed. Mr. Maheshwari states that the endeavour of the MCD would be to complete the verification within four months from today. We think that this is a reasonable period. Let it be so done. The directions given hereinabove being of general application would apply to claims of all squatters/hawkers who fall within the categories enumerated in paragraph 11 of Saudan Singh's judgment dated 13th March, 1992. Those who do not fall in any one of the said four categories have no right as they fall outside the scheme and are not entitled to any protection. Since all those who claim to be covered under the scheme and whose claims are awaiting scrutiny are protected by this order, we see no reason why their petitions/appeals/suits, etc., should be kept pending. We, therefore, propose to dispose them

of by this order. Intimation of this order will be sent to the Registrar of the High Court of Delhi who will immediately apprise the Judges of the subordinate judiciary for compliance. The Registrar will ensure compliance. With these observations, all the writ petitions/ appeals/SLPs/suits, etc., pending in this Court/the High Court of Delhi and Courts subordinate to it shall stand terminated by this forthwith. In other words no civil litigation commenced by or on behalf of the squatters/hawkers pending in the Courts of Delhi shall survive. No further litigation by or on behalf of any squatter/ hawker will be entertained but if the MCD violates any part of this order the concerned party governed by this order will be entitled to file an I.A. for directions. The interim stay orders granted in those cases shall also stand vacated. The MCD will, however, maintain the status quo till the verification is completed and only in regard to those hawkers/squatters whose claim are negated, will it be open to the MCD to take action for their eviction ten days after the claim is rejected. The MCD will also ensure that future encroachments do not take place defeating the rights of existing squatters/hawkers governed under the scheme. It will also protect the interest of the shop-keepers as they too have a similar right under Article 21 of the Constitution. No order as to costs in all cases. G.N. Petitions disposed of.