

# Chandni Chowk Sarv Vyapar Mandal ... vs Delhi Police Through Commissioner Of ... on 12 February, 2019

**Author: G.S.Sistani**

**Bench: G.S.Sistani, Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5002/2017

CHANDNI CHOWK SARV VYAPAR MANDAL (REGD.)

..... Petitioner

Through: Mr.Sanjeev Ralli and Mr.Atul Verma,  
Advocates

versus

DELHI POLICE THROUGH COMMISSIONER OF POLICE & ORS

..... Respondents

Through: Mr.Anuj Aggarwal, ASC, GNCTD for  
respondents no.1 and 2.

Mr.Zahid Hanief, proxy counsel for

Mr.Naushad Ahmed Khan, ASC, GNCTD.

SI Devender Antil, PS Kotwali.

Mr.Pratap Singh, Advocate for North DMC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 12.02.2019

1. The petitioner i.e. Chandni Chowk Sarv Vyapar Mandal (Regd.) has instituted the present writ petition under Article 226 of the Constitution of India, wherein the following reliefs are prayed for:

I) to issue writ of mandamus or any other appropriate writ or directions to Respondents No. 1 to 3 to ensure that no squatting and hawking activities are carried on in the "non hawking/non squatting areas" of City Zone, North DMC including Chandni Chowk, Subhash Marg and other areas notified by Respondent No.3 ;

II) to direct the Respondents 2 and 3 to ensure that the areas from where the illegal hawkers and squatters are removed, are not reoccupied again for such prohibited activities; III) to direct Respondents to ensure the compliance of the directions of the Honble Supreme Court relating to non hawking/non squatting areas in Delhi as contained in orders/directions passed in Writ Petition (Civil) No. 1699/1987;

IV) to pass any other appropriate order as the Hon'ble Court deems fit and proper in view of the facts of the present case.

2. Mr. Sanjeev Ralli, learned counsel appearing for the petitioner, submits that Chandni Chowk, Subhash Marg and other areas in the city zone, which are the subject matter of the present writ petition were declared as 'no hawking' 'no vending' zone way back in the year 2000 and despite orders/directions passed by Supreme Court of India and Delhi High court, the statutory bodies have failed to discharge their duties and functions to stop illegal encroachments by street vendors, hawkers and otherwise in the city zone. Photographs filed along with the writ petition are relied upon to show the extent of illegal encroachment by the street vendors and otherwise. Some of the sample photographs have been scanned and placed below, which would show that there is hardly any space either in the verandahs or the main road for the free movement of pedestrians and free flow of traffic.

3. The attention of the Court has been drawn to the order dated 18.11.2005 passed by the Supreme Court of India in the case of Sudhir Madan & Ors. Vs. M.C.D. & Ors in Writ Petition (Civil) No.1699/1987. The operative portion of the order reads as under:

"The learned counsel appearing on behalf of the N.D.M.C. states that its affidavit in response to the order of this Court dated 25.8.2005 is ready and the same will be filed during the course of the day. It is stated by the learned counsel that as of date no application is pending with the N.D.M.C. and all applications filed have been disposed of. It is brought to our notice that the Chandni Chowk area has been cleared of squatters/hawkers, but policing the area is a serious responsibility. The learned Additional Solicitor General appearing for Delhi Police informs us that Delhi Police has done its best to get the area cleared of squatters/hawkers but the process is a continuous one and in performing its duties Delhi Police requires the co-operation of the authorities of the M.C.D. The primary responsibility is that of the M.C.D. and we, therefore, direct the M.C.D. to co-operate with Delhi Police and to see to it that the area is not again encroached upon by the squatters/hawkers, etc. Assistance whenever required by the M.C.D. should be forthcoming from the police authorities.

Let these matters come up for further orders immediately after expiry of eight weeks."

4. Our attention has also been drawn to another order dated 05.05.2006 passed by the Apex Court in the case of Sudhir Madan (supra), operative portion of which is reproduced below :

"We further direct the Delhi Police that whenever hawkers are removed from the non hawking zones they shall see to it that those areas are not reoccupied by them. We, hereby declare that every Station House Officer shall be held personally responsible if such hawkers reoccupy the areas from which they have been evicted. Any non compliance of this Court's Order shall be treated as a breach of this Court's Order and punishable as contempt of Court. Let a copy of this order be sent to the Commissioner of Police who shall communicate the same to all police stations.

We wish to clarify that when we use the term unauthorised hawkers or squatters it means those who without valid permission are squatting and hawking in nonhawking zones.

The suggestions may be made by Counsel appearing for the parties concerned before the next date of hearing.

Put up on 21st July, 2006.

We direct that before the next date of hearing all unauthorised permanent or semi permanent structures on foot paths and public pathways are removed. If there are any such structures, they should be removed forthwith."

5. We may also note that during the pendency of this writ petition as reflected in our order dated 31.07.2017, the learned counsel appearing for the North DMC had submitted that all illegal squatters have been removed in an action taken on 28.07.2017. Photographs in support whereof were filed. It has also been brought to our notice that instructions have been issued to keep the roads and verandahs encroachment free. We were informed that the North DMC had addressed a letter to the DCP of the area seeking enforcement of the action taken by the Corporation since the encroachers had returned back to the area in question. Learned counsel for the petitioner filed additional photographs in support of his submission that the position at site remains unchanged and to show that the entire roads are blocked and in the absence of free movement, in the case of a calamity, it would be impossible to render relief as fire vehicles and ambulances would not reach the spot. We are informed that Ms.Renu Sharma, Principal Secretary (PWD), GNCTD had been appointed in W.P.(C) 4572/2007. We had as a Nodal Officer deem it appropriate to appoint Ms.Renu Sharma in this case as well and we had directed the concerned officers to report her for convening a meeting. Minutes of Meetings have been placed on record. Extract of Minutes of meeting held on 27.07.2017 is reproduced below:

"2. Removal of Encroachments of Hawkers/Vendors:

During the meeting with Trade Associations it was discussed that there is a lot of encroachment in the Chandni Chowk area mainly at Shani Temple, Subhash Marg and Main Road Chandni Chowk including artillery roads.

AC/CZ, SE/CZ and DHO/CZ are directed to take a combined action for removal of encroachment, by hawkers and other petty sellers in both the side of the road. They will ensure that action will taken twice a day. So that temporary encroachers may not come again. Simultaneously, sanitation wing take up the sanitation work immediately.

After removal of the encroachment and prior of action including photographs and videography should be done of the area. After completion of removal action a letter is to be issued to concerned DCP and SHO to restrain the encroachers again. A copy of

the High Court order dated 05.05.2006 be provided to the police department in which clear cut responsibility was of police to stop re-encroachment. Report in this regard be submitted daily to the undersigned for onward submission to the Commissioner, North DMC."

6. Relevant portion of the Minutes of Meeting held on 13.12.2017 is reproduced below:

"2. Removal of Encroachments of Hawkers/Vendors :

Deputy Commissioner (City Zone)/Nodal Officer, North DMC submitted the report on action taken for encroachment removal during period w.e.f. 1st June 2017 to 12th December 2017 and informed that the request is made to SHO of local police station to prevent re-encroachment, after each such exercise. Joint Commissioner (Northern Range)/Nodal Officer, Delhi Police, however, informed that the all necessary assistance required for preventing encroachment is provided to North DMC officials whenever such request is made, but prevention of re-encroachment is not mandate of police.

Addl. Commissioner (Traffic)/HQ furnished the deployment details of Traffic Police Officials in the area. Joint Commissioner (Northern Range)/Nodal Officer, Delhi Police also assured to provide deployment pattern of police officials in the area within three days.

It has been decided that :

1. Deputy Commissioner (City Zone)/Nodal Officer, North DMC as well as DCP (North) shall issue detailed instructions within a week to its officials concerned on their responsibilities and accountability with regard to encroachment prevention in area under their jurisdiction.

2. Deputy Commissioner (City Zone)/Nodal Officer, North DMC shall continue with regular encroachment removal drives and submit report in next meeting."

7. Minutes of Meeting held on 20.12.2017 are reproduced as under:

"1. Disaster Management Plan:

District Magistrate (Central) shall forward the District Disaster Management Plan within a week. It has been decided that District Magistrate (Central) shall begin taking necessary action under DDMA Act to keep roads, streets, footpaths, walkways etc. of the area free from obstructions or encroachment. "2. Removal of Encroachments of Hawkers/Vendors:

Joint Commissioner (Central)/Nodal Officer, Delhi Police requested to amend the minutes of the previous meeting, wherein it is recorded that it is not the mandate of police to prevent re- encroachment. Joint Commissioner (Central)/Nodal Officer, Delhi Police clarified that it is the joint responsibility of North DMC and Delhi Police to prevent encroachment and informed that deployment of police officials in the area has been be increased.

It was decided that:

1. The Para no.2 of minutes of the meeting held on December, 2017 shall be read amended as under:

"Joint Commissioner (Northern Range)/Nodal Officer, Delhi Police, however, informed that all necessary assistance required for preventing encroachment is provided to North DMC officials whenever such request is made, but prevention of re-encroachment is not mandate of police only, as North DMC as well as Delhi Police are jointly responsible for ensuring it."

2. Deputy Commissioner (City Zone)/Nodal Officer, North DMC as well as DCP (North) shall issue detailed instructions within a week to its officials concerned on their responsibilities and accountability with regard to encroachment prevention in area under their jurisdiction.

3. Deputy Commissioner (City Zone)/Nodal Officer, North DMC shall continue with regular encroachment removal drives and submit report in next meeting.

4. DGM (Projects & Administration)/ Nodal Officer, SRDC shall submit the comparative statement of deployment of police officials.

8. Relevant portion of Minutes of Meeting held on 03.01.2018 is extracted as under:

2. Removal of Encroachments by Hawkers/Vendors:

It was decided that:

1. Deputy Commissioner (City Zone)"Nodal Officer. North DMC as well as DCP (North) shall issue detailed instructions within a week to its officials concerned on their responsibilities and accountability with regard to encroachment prevention in area under their jurisdiction.

2. Deputy Commissioner (City Zone)/'Nodal Officer, North DMC shall continue with regular encroachment removal drives and submit report in next meeting."

9. While we notice that the statutory bodies are discussing the issue in the meetings, we are constrained to note that the position at the site remains unchanged as actions for removal of

encroachers are taken and the area is declared free from encroachments but the encroachers are return back to the area. Mr.Pratap Singh, learned counsel appearing for the North DMC, has strongly urged before us that although the Corporation is making every effort for removal of the encroachers, however, it is really for the Delhi Police, who is responsible for implementation of the order to ensure that the encroachers do not return back to the area. Mr.Anuj Aggarwal, learned counsel appearing for the Delhi Police/respondents no.1 and 2, submits that the MCD is responsible for keeping the area encroachment free and as far as the Delhi Police is concerned, as and when the force is sought, the same is provided.

10. At this stage, Mr.Ralli has drawn the attention of the specific directions passed by the Apex Court on 05.05.2006 which we have reproduced above. It has been highlighted that once the removal action has been taken, every Station House Officer shall be held responsible, if such hawkers reoccupy the area from which they have been evicted. In our view, the orders passed by the Courts are to be respected, followed and complied with in letter and spirit, failing which, the consequences must follow. Having regard to the fact that the area is highly congested and it would be impossible to render relief in case of a calamity, we direct the Nodal Officer to conduct a meeting in the next two weeks and explore the possibility to form a task force comprising of members of the Corporation and the police. We are also of the view that once the area is cleared of illegal encroachers, the entry into the area should be restricted or such other measures may be followed, which would be necessary to comply with the directions passed by the Apex Court and this Court for keeping the area encroachment free. The Committee would consider as to how the benefit of recordings of CCTV cameras can be used for their advantage to identify the persons who resurfaces and for a long term solution to the problem as we are of the firm belief that there cannot be any encroachment unless there is inaction or connivance on the part of the respondents.

11. Renotify on 15.03.2019.

12. Copy of this order be furnished to the Nodal Officer and be given dasti to all the parties under the signatures of the Court Master.

G.S.SISTANI, J

JYOTI SINGH, J

FEBRUARY 12, 2019/rb/  
W.P.(C) 5002/2017

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