Supreme Court of India
Municipal Corporation Of Delhi vs Gurnam Kaur on 12 September, 1988
Equivalent citations: 1989 AIR 38, 1988 SCR Supl. (2) 929
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
GURNAM KAUR

DATE OF JUDGMENT12/09/1988

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)
RAY, B.C. (J)

CITATION:
1989 AIR 38 1988 SCR Supl. (2) 929
1989 SCC (1) 101 JT 1988 (4) 11
1988 SCALE (2)1155
CITATOR INFO :
R 1989 SC1988 (33)

ACT:
Delhi Municipal Corporation Act, 1957--Sec. 320 Bar on illegal encroachment on public land--Sec. 322--Exercise of power by Commissioner to remove encroachment. In a Writ Petition under Article 226 of the Constitution High Court restrained Corporation from stopping pitching of a stall on public land--Held High Court could not give sucha direction contrary to provisions of Section 320 and 322.
%
Precedent--Precedential value of a direction made by the Supreme Court on a writ petition under Article 32 based on consent of parties with the reservation that it should not be treated as a precedent--Precedents sub silentio and without argument are of no moment--What is binding on an authority is the principle upon which the case was decided--Obiter dicta are not binding.

HEADNOTE:
Some persons were plying their business by squatting on pavement in front of a hospital in Delhi and had put up

stalls or kiosk allegedly on Tehbazari under a licence under section 321 of the Delhi Municipal Corporation Act, 1957. The Delhi Municipal Corporation tried to remove them by demolishing their stalls etc. These persons filed suits in the Court of Subordinate Judge praying for perpetual injunction restraining the Corporation from interfering with their business and/or removing or demolishing any temporary structures put up by them for plying their trade. The Subordinate Judge disallowed the plaintiffs' main claim seeking a declaration that the Municipal Corporation had no right or authority to remove the stalls built up by them. He however held that by virtue of the Tehbazari licence granted in their favour the plaintiffs had acquired the right to occupy and carry on business at the suit sites till their licence was not terminated by the Corporation according to the procedure laid down in proviso (a)(ii) of Sub-Section of Section 430 of the Act.

Two of the squatters namely Jamuna Das and his brother filed writ petitions in this Court seeking a writ of mandamus ordaining the Municipal Corporation to allot each of them a suitable site on pavement in front of the main gate of the hospital. (Jamna Das & Anr. v.

PG NO 929

PG NO 930

Delhi Administration & Ors., Writ Petition Nos. 981--982 of 1984.) This Court directed that the petitioners be rehabilitated by the Municipal Corporation by construction of stalls according to the sketch plan filed by the Corporation with a further direction that each of them would be put in possession of one of the stalls. The Court made it clear that this was a consent order and that the direction should not be treated as a precedent.

The respondent, who was one of the plaintiffs who had filed suits in the court of Subordinate Judge, moved the High Court under Article 226 of the Constitution for a writ and direction restraining the Corporation from evicting her without the due process of law. The High Court partly allowed the writ petition holding that the judgment of the Learned Subordinate Judge which was a judgment inter partes had become final not having been appealed from and therefore the respondent could not be removed from pitching her stall on the pavement outside the hospital where she was squatting. Relying on the decision of this Court in Jamuna Das' case the High Court gave an option to the Corporation either to construct the stall similar to the one they have constructed in compliance with the direction made by this Court in Jamuna Das' case or in the alternative furnish to the respondent a plan of the stall with requisite permission so that she could build her own stall accordingly. Feeling aggrieved by this Judgment of the High Court, the Municipal Corporation filed this appeal by special leave. Allowing the appeal this Court,

HELD: The Learned Judges of the High Court failed to

appreciate that this Court in Jamna Das' case made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question whether there was any statutory obligation cast on the Municipal Corporation to provide alternative site to a person making illegal encroachment on a public place like any public street etc. contrary to Section 320 of the Act as a condition precedent to the exercise of its powers under s. 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart, the High Court could not have made the impugned direction contrary to the provisions contained in ss. 320 and 322 of the Act. [937A-C

It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision

PG NO 931

binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das' case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das' case was made not only with the consent of the parties but there was an interplay of various factors and the Court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. [937F-H; 938A]

Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. [938F-G ]

A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. [938G-H]

Salmond on Jurisprudence by P.J. Fitzgerald, 12th Ed.; Gerard v. Worth of Paris Ltd. (K), [1936] 2 All E.R. 905

(C.A.) and Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., [1941] 1 KB 675, referred to.

Precedents sub silentio and without argument are of no moment. This rule'has ever since been followed. One of the chief reasons for the doctrine of precedents is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement. having the weight of authority. [939G-H]

PG NO 932

Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 545 and Bombay Hawkers' Union & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 Scc 528, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3189/1989.

From the Judgment and Order dated 11.3.1987 of the Delhi High Court in C.W.P. No. 875 of 1986 R.B. Datar and Ranjit Kumar for the Appellant. V.B. Saharya for the D.D.A.

Jose P. Verghese and O.P. Verma for the Respondent. The Judgment of the Court was delivered by SEN, J. The main question involved in this appeal from a judgment and order of a Division Bench of the Delhi High Court dated March 11, 1987 is whether the High Court was justified, in the facts and circumstances of the case, in issuing a direction to the appellant Municipal Corporation of Delhi to construct a stall or a kiosk on the pavement near the OPD gate of the Irwin Hospital, Delhi within two months from the date of its order or in the alternative, to furnish a plan with requisite sanction to the respondent Gurnam kaur to enable her to construct a stall of her own. The issue involved is as to the precedential value of a direction earlier made by this Court on a petition under Art. 32 of the Constitution based on consent of the parties with the reservation that it should not be treated as a precedent.

It appears that sometime in 1984, the appellant Municipal Corporation of Delhi sought police help to clear the pavement near the OPD gate of the Irwin Hospital, now known as Lok Nayak Jai Prakash Narain Hospital, which is one of the largest hospitals in Northern India, on a complaint made by the Hospital authorities that the pavement-hawkers by setting up their stalls or pitching their wares were causing inconvenience to the ingress or egress of the ambulances besides causing congestion on the pavements and obstructing the free flow of traffic. The Municipal Corporation was satisfied that if the squatters continued to cover pathways meant for pedestrians, a time would come when no room would be left for people to walk on the footpaths. In a police action, the pavements-hawkers were removed from outside the main gate of the Irwin PG NO 933 Hospital in and around the subway of Jawahar Lal Nehru Marg on January 15, 1984.

On February 22, 1984, eight of these pavement squatters instituted separate suits in the Court of the Subordinate Judge, II Class, Delhi against the Municipal Corporation seeking the relief of perpetual injunction restraining the appellant, its officers and servants from interfering with their business of hawking on the pavements out-side the main gate of the hospital and/or from demolishing or removing any temporary structures put up by them for plying their trade. In denial of the claim, the appellant Municipal Corporation pleaded, inter alia, (i) that the construction of the kiosks or stalls by the plaintiffs was without permission and therefore amounted to an encroachment on the pavement. The Municipal Corporation accordingly under s. 322 of the Delhi Municipal Corporation Act, 1957 had the right and authority to remove such encroachment without notice, and (ii) that the plaintiffs had no legally enforceable right under the terms of the tehbazari licence, they having committed violation of the terms and conditions there of besides being in arrears of licence fee. Accordingly, it pleaded that the plaintiffs' claim in suit was wholly misconceived. The suits were consolidated together for trial as they raised a common issue.

It is common ground that the plaintiffs had each been occupying a site admeasuring 6 ft. x 4 ft. on tehbazari basis since the year 1975. The contention of the plaintiffs was that the Municipal Corporation having itself allotted the plaintiffs licence under s. 321 of the Act on tehbazari basis to use the pavement in front of the main gate of the Irwin Hospital for carrying on their business on specific terms and conditions, such grant of licence or permission gave to them a right under s. 430 of the Delhi Municipal Corporation Act, 1957 which could not be terminated unilaterally without affording them an opportunity of a hearing under proviso (a) to sub-s. (3) of s. 430 of the Act. On February 24, 1984, Shri B.P. Bhalla, learned counsel appearing for the plaintiffs in all the suits made a statement to the effect:

"The plaintiffs shall occupy only 6 ft. x 4 ft. space as allotted to them by the defendants and no further space beyond those limits. They have not constructed any permanent structure on the site and shall not construct any structure thereon, whether permanent or temporary." Accordingly, the learned Subordinate Judge during the course of his judgmeat observed:

PG NO 934 "In view of the above statement by the counsel for plaintiffs, it is clear that the stall if any erected or posted at the suit sites is without authority. Placing of such a stall at the suit site amounts to encroachment within the meaning of sec. 322 of the DMC Act which stall can be removed at any time by the defendant MCD without notice. In this light the plaintiffs have no right to claim an injunction against demolition or removal of any stall or other structure if posted or placed or affat the same time defendant MCD cannot remove the plaintiffs nor interfere with their business at the suit site in any other manner without terminating their licence to occupy the said sites in accordance with the procedure contained in sec. 430(3) of DMC Act."

The learned Judge accordingly partly decreed the plaintiff's claim to the extent indicated hereafter: "Consequently, all these suits are partly decreed to the effect that the defendants are restrained permanently from removing the palintiffs from the suit sites without terminating the Tehbazari permission granted in their favour in accordance with the provisions of s. 430(3) of the DMC Act. The prayer for injunction against demolition or removal of the stalls of the plaintiffs is disallowed."

It therefore follows that the learned Subordinate Judge accordingly disallowed the plaintiffs main claim seeking a declaration that the Municipal Corporation had no right or authority to remove the stalls built up by them on the pavement in front of the main gate of the Irwin Hospital. He however held that by virtue of the tehbazari licence granted in their favour, the plaintiffs had acquired the right to occupy and carry on business at the suit site each admeasuring 6 ft. x 4 ft. in question and till their licence was not terminated by the Municipal Corporation after PG NO 935 following the procedure laid down in proviso (a) to sub-s. (3) of s. 430 of the Act. It had no power to remove the plaintiffs nor interfere with their business at the suit sites. It could not take recourse to its power of removal of encroachment without notice under s. 322(a) of the Act. It is equally evident that the learned Subordinate Judge partly decreed the plaintiffs' claim only to that extent that it restrained the Municipal Corporation from taking any steps for removal of such encroachment by the plaintiffs inasmuch as the power under s. 322(a) of the Act cannot be exercised without following the procedure laid down in s. 430(3) of the Act and without terminating the tehbazari licence granted in their favour. The respondent Gurnam Kaur was one of the plaintiffs and she had been in occupation of a site admeasuring 6 ft. x 4 ft. on the basis of tehbazari licence intermittently since the year 1960 and had been paying the licence fee therefor. The decree passed by the learned Subordinate Judge not having been appealed from by the Municipal Corporation of Delhi has since become final. The rights of the parties therefore stand crystallized by the terms of th decree passed by the learned Subordinate Judge. There was a further development. Two of the squatters, namely, one Jamna Das and his brother moved this Court by petition under Art. 32 of the Constitution, being Writ Petition Nos. 981-82/84 Jamna Das & Anr. v. Delhi Administration & Ors., seeking a writ in the nature of mandamus ordaining the Municipal Corporation to allot each of them a suitable site on the pavement in front of the main gate of the Irwin Hospital. Their grievance was that they were similarly situate like 10 other squatters who were all plying their trade on the pavement in front of the main gate of the Irwin Hospital catering to the needs of the visitors to the hospital by selling tea, snacks, pan, bidi etc. and although the Municipal Corporation had rehabilitated the said 10 squatters by allotment of stalls to them, despite repeated applications there was no redressal of the wrong done to them inasmuch as the Municipal Corporation had arbitrarily and without any rational basis, denied them such facility. Further, it was alleged in that case that the father of the petitioners had been occupying the site admeasuring 6 ft. x 4 ft. on tehbazari licence since the year 1947 till his death in 1975 and thereafter the petitioners were permitted to occupy the same on similar terms but the Municipal Corporation illegally caused their removal with police help. It was averred that the Municipal Corporation could not take recourse to its power of eviction under s. 322(a) of the Act without terminating the tehbazari licence in their favour and without following the procedure prescribed by proviso (a) to s. 430(3) of the Act. Several adjournments were taken in an effort to find a solution to PG NO 936 the problem by learned counsel appearing for the Municipal Corporation.

Eventually, Desai, J. speaking for a Bench of two Judges by his order dated March 29, 1985 made a direction for rehabilitation of the petitioners. Virtually, it was a consent order as learned counsel appearing both for the Delhi Development Authority and the Municipal Corporation requested the Court to give a direction keeping in view the sketch plan furnished by the Municipal Corporation, and gave an undertaking that any direction made by the Court for rehabilitation of the petitioners would be carried out. The Court accordingly directed that the petitioners be rehabilitated by the

Municipal Corporation by construction of stalls according to the sketch plan with a further direction that each of them would be put in possession of one of the stalls. The direction was however made subject to the condition that such construction of stalls would not cause any further obstruction to the free flow of traffic. The Court also made it clear that the direction should not be treated as a precedent.

Presumably because of the direction made by this Court in Jamna Das' case. the respondent Gurnam Kaur moved the High Court under Art. 226 of the Constitution in April, l986 for the issuance of an appropriate writ or direction restraining the Municipal Corporation from evicting her without the due process of law. A Division Bench of the High Court by the impugned judgment has partly allowed the writ petition holding that the judgment of the learned Subordinate Judge which was a judgment inter partes had become final, not having been appealed from and therefore the respondent could not be removed from pitching her stall on the pavement outside the main OPD gate of the Irwin Hospital where she was squatting. The learned Judges relied upon the decision of this Court in Jamna Das case where a direction was made requiring the Municipal Corporation to construct stall for the petitioners in that case, so that they could be rehabilitated. The learned Judges felt that it was equally desirable that the respondent Gurnam Kaur instead of being allowed to squat on the pavement, should be provided with a stall of the same pattern and design as had been done for the two squatters in Jamna Das case. The High Court gave an option to the Municipal Corporation either to construct a stall similar to the one they had constructed in compliance with the direction made by this Court in Jamna Das' case or, in the alternative, furnish to the respondent a plan of the stall with requisite permission so that she could build her own stall accordingly.

PG NO 937 We find it rather difficult to sustain the judgment of the High Court. The learned Judges failed to appreciate that this Court in Jamna Das' case made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question whether there was any statutory obligation cast on the Municipal Corporation to provide alternative site to a person making illegal encroachment on a public place like any public street etc. contrary to s. 320 of the Act, as a condition precedent to the exercise of its powers under s. 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart,the High Court could not have made the impugned direction contrary to the provisions contained in ss. 320 and 322 of the Act. S. 320(1) in terms creates a statutory bar against illegal encroachment on any portion of a public street. It provides that "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street etc". Having regard to this express provision, the High Court failed to see that the respondent Gurnam kaur had no legally enforceable right to the grant of a writ or direction in the nature of mandamus. The High Court could not obviously issue any such direction which would be tantamount to a breach of the law. Furthermore the High Court could not also make the impugned direction in view of the provision contained in s. 322(a) of the Act, which expressly confers power on the Commissioner to cause the removal of any structure which constitutes an encroachment on a public place like a street which is meant for the use of the pedestrains.

It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge'sdecision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das' case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das'case was made not only with the consent of the parties but there was an interplay of various factors and the Court was moved by compassion to evolve a situation to mitigate hardship which PG NO 938 was acceptable by all the parties concerned. The Court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Art. 38(2) of the Constitution and said:

"Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as possible this should be avoided which we propose to do by this short order."

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a PG NO 939 pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In Gerard v. Worth of Paris Ltd. (k)., [1936] 2 All E.R. 905 (C.A.), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd., [1941] 1 KB 675. the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.

PG NO 940 At the end of the day, we must make a mention that Shri Verghese, learned counsel for the respondent made a valiant effort to bring into play the principles laid down by this Court in Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 545 and Bombay Hawkers' Union & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 528. We are afraid, we cannot permit the question to be raised for two reasons. In the first place, no such point was taken in the writ petition nor any contention advanced before the High Court that the removal of the illegal encroachment by the Municipal Corporation constitutes a threat to life and liberty guaranteed under Art. 21 of the Constitution or that the right to life includes a right to livelihood. Secondly, the rights of the parties now stand crystallized by the aforementioned judgment of the learned Subordinate Judge in the suit brought by the respondent, and the rights have to be worked out in terms of the decree passed by him which has since become final. Besides, the decision in Olga Tellis is of little avail. Chandrachud, CJ. speaking for the Constitution Bench observed that the word 'life' in Art. 21 included livelihood, but upheld the validity of ss. 313(1) and 314 of the Bombay Municipal Corporation Act, 1888 which provided that the Commissioner may 'without notice, cause to be removed' obstructions as an encroachment on footpaths could not be regarded as unreasonable, unfair or unjust. The learned Chief Justice however said that the section conferred a discretionary power which like all power must be exercised reasonably and in conformity with the provisions of

our Constitution. In Bombay Hawkers' Union, Chandrachud, CJ. speaking for himself and one of us (Sen, J.) held that the impugned provision was in the nature of a reasonable restriction in the interests of the general public, on the exercise of the right of hawkers to carry on their trade or business. The learned Chief Justice added:

"No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public streets are meant for the use of the general public and cannot be used to facilitate the carrying on of private trade or business."

These cases undoubtedly raise a human problem and both the Delhi Development Authority as well as the Municipal Corporation of Delhi should seek to evolve an innovative plan to rehabilitate the unfortunate persons who by force of circumstances are forced to ply their trade by squatting in the open on the pavements. At the same time, these pavement- squatters create a serious problem to the civic administration as it creates congestion on the public streets and obstructs free flow of traffic. As Chandrachud, PG NO 941 CJ. rightly observed in Bombay Hawkers' Union: "No one has a right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public", and further that "All public streets are meant for the use of the general public and cannot be used to facilitate the carrying on of private trade or business". We feel that the Municipal Corporation authorities in consultation with the Delhi Development Authority should endeavour to find a solution on the lines as suggested in Bombay Hawkers' Union i.e. by creating Hawking and Non- Hawking Zones and shifting the pavement-squatters to areas other than Non-Howking Zones. The authorities in devising a scheme must endeavour to achieve a twin object viz., to preserve and maintain the beauty and the grandeur of this great historic city of Delhi from an aesthetic point of view, by reducing congestion on the public streets and removing all encroachments which cause obstruction to the free flow of traffic, and rehabilitate those unfortunate persons who by force of circumstances, are made to ply their trade or business on pavements or public streets. In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court are set aside and the writ petition filed by the respondent in the High Court is dismissed. We direct however that the appellant Municipal Corporation of Delhi shall act in conformity with the judgment of the Subordinate Judge, II Class, Delhi in the aforementioned suits, which, not having been appealed from, has since become final inter partes. No costs.

H.S.K. Appeal allowed