

PETITIONER:
SAUDAN SINGH AND ORS. ETC.

Vs.

RESPONDENT:
N.D.M.C. AND ORS. ETC.

DATE OF JUDGMENT 13/03/1992

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
RAMASWAMI, V. (J) II
RAMASWAMY, K.

CITATION:
1992 AIR 1153 1992 SCR (2) 243
1992 SCC (2) 458 JT 1992 (2) 190
1992 SCALE (1) 679

ACT:

Constitution of India, 1950-Article 19(1)(g)-Public Street-User by citizen-Scope of Street-trading-Whether a fundamental right-Right of a hawker-Ambit of.

Constitution of India, 1950-Article 32,136-Deciding the question of livelihood and survival of large number of families-Whether Court to adopt compassionate approach-Claims of genuine squatters/hawkers-Determination-Court's directions to NDMC and MCD.

Constitution of India, 1950-Article 32,136, 19(1)(g)-Petitions by hawkers-Pending-Their claims to be finalised-Court's direction on listing of new petitions.

HEADNOTE:

The petitions under Article 32 of the Constitution and certain appeals under Article 136 of the Constitution filed against adverse judgments of the High Court, were referred to a Constitution Bench for deciding the grievance of the pavement-traders that the Municipal Authorities were violating their fundamental rights under Articles 14, 19(1)(g) and or 21 of the Constitution by refusing to permit them to trade on street and footpaths in different localities of the city of Delhi, under the respective control of the NDMC and MCD.

The Constitution Bench in *Sodan Singh & Others v. New Delhi Municipal Committee & Others*, [1989] 4 SCC 155 held that the right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution on street pavements, if properly regulated, could not be denied on the ground that the street pavements were meant exclusively for pedestrians and could not be put to any other use; that the right of a pavement-hawker was subject to reasonable restrictions under clause (6) of Article 19 of the Constitution and the State as trustee was entitled to impose all necessary limitations on the character extent of user by such pavement-hawkers; that there could not be a fundamental right of citizen to occupy a particular

244

place on the pavement where he would squat and engage in trading business, that a hawker could not assert a

fundamental right to occupy permanently specific places on any pavement, that the right to carry on any trade or business and the concept of life and personal liberty enshrined under Article 21 had no connection whatsoever and, that Article 21 had no application.

After stating the law, the Constitution Bench remitted all the petitions to the Division Bench for final disposal. After the decision rendered by the Constitution Bench, several other writ petitions came to be filed in this Court.

NDMC Cases

This Court by its order dated 21st December, 1989 appointed a committee, known as the Thareja Committee. In the light of the NDMC's Scheme vide Resolution No. 28 dated 10.11.1989 and the decision in Sodan Singh the Committee examined the claims made by the squatters and identify street pavements in different areas where street hawking could be regulated without being a hindrance to other users.

A direction was also given by order of 23rd March, 1990 that pending receipt of the report from the Committee hawking would be permitted subject to the same being regulated in sensitive areas.

During preliminary scrutiny, the Committee found that 'takhats' were given on hire by those who claimed to possess them on rentals varying from Rs.300 to Rs.1,000 per day depending on the season or the 'takhat holders' used to carry on business at the said 'takhats' through servants while they themselves attended to their business elsewhere and at certain places the 'takhat-holders' whose names appeared in the petitions were non-existent i.e. the orders were in fictitious names.

The Committee considered it imperative to undertake a strict scrutiny to ensure that the benefit of the scheme percolated to the deserving and not to those who were merely exploiting the fluid situation by obtaining court orders on distorted and inaccurate facts. The Committee, therefore, invited claims in the form of a statement on oath coupled with original genuine documents in support of it. This was done by public notices at the spot and through counsel in case of pending cases. In

245

addition, local visits were made to verify presence of the claimant at the site where he professed to carry on business and if not found at such visits he was asked to substantiate his claim by proof of challan, fine receipts or tehbazari receipts in order to eliminate bogus and fictitious claims. Records of NDMC were also checked for cross verification.

Out of the 460 claims registered with the Committee, 458 related to Resolution No.28 while the remaining two concerned contempt proceedings. Out of the 458 claims, the Committee scrutinised 440 claims out of which it upheld as many as 114 claims for allotment of stalls/kiosks/sites, etc., (area mentioned for each claimant) and 110 claims for other reliefs referred to in Resolution No. 28.

Seventeen claims in respect of Sarojini Nagar area could not be verified by the Committee, as the claimants contended that they were not in a position to meet the minimum proof standard of producing at least one genuine document in a time gap of one year as they were under the patronage of a local politician, and hence they were never disturbed by the police or any other authority and, therefore, they were not in a position to offer proof of the type insisted upon by the Committee. The non-cooperation by the N.D.M.C. added to the problems of the Committee. The Committee, therefore, sought the guidance of the Court to

resolve this deadlock.

The pavement-hawkers, submitted that the strict standard adopted by the Thareja Committee for recognising the claim of a pavement-hawker overlooked the fact that most of the pavement-hawkers were poor and illiterate persons who could not be expected to have maintained proper records of receipts, challans, etc. issued by the police or other local authorities to support their claims; that the standard of proof expected by the Thareja Committee was unrealistic and it was essential to modify the same to do complete justice to the concerned parties; that the deadline prescribed by the Thareja Committee was strictly enforced, with the result that many of the rightful claimants were denied the opportunity of submitting their claims to the Thareja Committee and having the same duly scrutinised and verified by him; that several pavement-hawkers who were unaware of the constitution of such a Committee and to whom a cause of action for seeking redress through court had not arisen were left out from consideration and as such pavement-hawkers were likely to be denied their

246

rightful place in the scheme if the scheme was finalised without their knowledge; that scores of writ petitions were filed after the Constitution Bench rendered its decision and most of the petitioners were not before the Thareja Committee; and that if strict proof as provided by the guidelines of Resolution No. 28 is not insisted upon in respect of Sarojini Nagar area claimants, there was no reason why it should not be relaxed in respect of the other claimants whose claims were rejected.

NDMC point out that the situation in Sarojini Nagar was completely different and incomparable with other areas in view of the peculiarity of the prevailing circumstance.

MCD Cases

The MCD prepared a scheme for regulating squatting/hawking business in Delhi and appointed a Committee for the identification of squatting/non-squatting areas in different zones. This Committee was expected to take a final decision regarding the areas identified for squatting/hawking. This was to be done in consultation with the Commissioner of Police so that the needs of vehicular traffic and other police/health problems could be taken care of. The criteria for priority allotment here also determined.

Under the scheme the squatters were expected to agree to their being shifted from one zone to another but they showed reluctance to move on to less lucrative zones. The areas in the ten zones under MCD control were duly identified on the plans and the total number of squatters/hawkers to be accommodated in the areas were also worked out. Objections were invited from the squatters/hawkers but that barring a few others did not react.

Disposing of the writ petitions filed under Article 32 of the Constitution and the appeals filed under Article 136 of the Constitution, in the light of the law settled by the Constitution Bench in Sodan Singh's case, [1989] 4 SCC 155 and disposing of the writ petitions filed after the Constitution Bench rendered its decision, this Court,

HELD : 1.01. Every citizen has a right to the use of a public street vested in the State as a beneficiary but this right is subject to such reasonable restrictions as State may choose to impose. [252E]

247

1.02. Street-trading is albeit a fundamental right

under Article 19(1)(g) of the Constitution but it is subject to reasonable restrictions which the State may choose to impose by virtue of clause (6) of Article 19 of the constitution. The right to street-trading under Article 19(1)(g) of the Constitution does not, however, extend to a citizen occupying or squatting on any specific place of his choice on the pavement regardless of the rights of others, including pedestrians, to make use of the pavements. In other words, a citizen is permitted to hawk on the street pavements by moving from one place to another without being stationary on any part of the pavement vested in the State. [252E-G]

2.01. Having regard to the fact that the Court dealing with the question of livelihood and survival of a large number of families, this court does not think it would not be justified if it adopts a compassionate approach so as to ensure that genuine squatters/hawkers are not denied their daily bread at alter of technicalities while at the same time ensuring that those who are out to exploit and abuse the process of law do not succeed. [285C-D]

2.02. In order to ensure that genuine claims are not defeated and in order to further ensure that the situation in the five zones identified earlier does not remain in a state of flux for all times to come, in regard to NDMC cases, the following directions were made :

(1) Out of the 440 claimants, the one-member, Thareja Committee will review the cases of those claimants, whose claims have been rejected for non-compliance of the standard of proof in the form of government or local authority records, the genuineness whereof is unimpeachable, and the Committee considers such proof presented to it to be adequate for review. If on perusal such proof is found to be unacceptable, the Committee may refuse to review its decision.

(2) In regard to the Sarojini Nagar claims, the Committee may evolve its own criteria or standard of proof de hors the one laid down by Resolution No.28 and proceed to dispose of the claims on the basis thereof. In doing so fresh claims, if any, received may also be scrutinised;

(3) Public advertisements will be issued by the Committee in local newspapers having wide circulation inviting claims from squatters/hawkers

248

who have not preferred claims or filed proceedings in court by a date to be stipulated therein, such claims must of course be consistent with the eligibility criteria laid down in Resolution No.28. In addition to such public advertisement to be issued in newspapers of different languages such as English, Hindi, Urdu, South-Indian languages, etc., to be determined by the Committee, hand bill and pamphlets shall also be printed and distributed and pasted in different parts of the five zones selected for squatting/hawking inviting claims by the stipulated date. The advertisements/pamphlets, etc. will also cover the claimants falling within direction (1) and (2) above;

(4) The Registry of this Court will not entertain any further Writ Petitions/Special Leave Petitions from any squatter or hawker concerning the sites chosen in the five zones mentioned hereinabove but will instead direct the petitioners to approach the Thareja committee if they have moved such Writ Petitions/Special Leave Petitions before the date stipulated by the Committee (which date will be communicated to the Registry) and no Writ Petition/Special Leave Petition or any other proceeding shall be entertained by the Registry concerning the sites in the five zones after

the stipulated date.

(5) The High Court of Delhi and all Courts subordinate thereto will also follow the course of action set out in direction No. 4 hereinabove.

(6) All Writ Petitions/Civil Appeals/Special Leave Petitions and CMPs/IAS therein which concern the five zones will stand disposed of by this order except one in which orders have been made from time to time and the claimants of all the matters disposed of pursuant to this direction will be at liberty to seek further direction in the one matter kept pending under this direction as interveners in case such need arises in future. This is essential to regulate such cases against NDMC.

(7) The interim stay will continue in respect of the 224 claimants whose claims have already been scrutinised by the Committee. In respect of the other claimants out of 440, whose claims have been rejected, the status quo will be maintained for two months after the stipulated date in respect of those claimants who have sought review on or before the stipulated date in respect of those claimants who have sought review on or before the stipulated date. If during the said period of two months the exercise for review cannot be completed, the authorities desirous of taking any action will approach the Committee and seek its approval. If the

249

Committee is of the opinion that there is no prima facie case for review it may permit such action to be taken 10 days thereafter so that the claimant likely to be affected may in the meantime approach the Court and obtain appropriate orders. In respect of all other cases, the interim orders, if any, will continue, till the Committee has scrutinised their cases and rejected them. Liberty is, however, reserved to NDMC to move for vacating any order if public interest so demands or it is found that the claimant is in any way misusing it.

(8) The Thareja Committee will draw up a list of squatters/hawkers identified by it as entitled to protection so that their claims can be regulated in future also. In drawing up the list care should be taken to ensure that one and the same person does not secure a double benefit.

(9) The Committee may also draw up a list of squatters/hawkers on the basis of their actual standing for being accommodated in future as and when there is a vacancy in the available space in the five zones or when such space is expanded or new space within the five zones is cleared for squatting/hawking. The Committee will also suggest sites within the zones, over and above those already identified, can be made available to accommodate such surplus squatters/hawkers who cannot be accommodated in the five zones on account of paucity of space. [258E-261A]

2.03. The order that the squatters/hawkers may have one more opportunity before any final decision is taken on the scheme prepared by MCD, it is proper that a public notice/advertisement should issue inviting objections from the squatters/hawkers against the proposed scheme by a date to be stipulated therein. Such public notice/advertisement will be issued in daily newspapers of different languages such as English, Hind, Urdu, South-Indian languages, etc., as well as by printing and distributing handbills and pamphlets in the zones identified for squatting/hawking so that every squatter/hawker has an opportunity to file his objections. If any, to the proposed scheme. The advertisement would also state that if no objection is received on or before the stipulated date, the concerned

squatter/hawker will not be heard in the matter. The objections or suggestions received will be tabulated

250

and considered by the Committee and final decision will be taken thereon expeditiously and the same will be placed before this Court for approval of the scheme will or without modification. [263H-264C]

2.05. The Committee appointed under the MCD Scheme may process the objection already received. The claims of squatters/hawkers who have already responded can be scrutinised from the viewpoint of the eligibility criteria laid down under scheme so that their priorities can be determined.

[264D]

3.01. The claims of those who have petitioned this Court and whose petitions are pending can also finalised to save time. [264D]

3.02. Henceforth if any new petition is filed in regard to MCD area, the Registry will direct copy of the petition to be delivered to standing counsel of MCD and the matter will be listed not earlier than 10 days before the service of the copy unless otherwise directed by the Court. No such mention will be made in court unless the registrar has been intimated in advance who on such intimation will indicate if there is such urgency that the matter cannot wait usual listing time. [264E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 15257 of 1987 etc. etc.

From the Judgment and Order dated 23.4.1987 of the Delhi High Court in C.W.P No. 268 of 1987.

P.H. Parekh, Ms. Sunita Sharma, J.P. Pathak and Bishwanatha Aggarwal for the Petitioners.

B. Sen, Govinda Mukhoty, R. K. Maheshwari, S.C. Sharma, Sudhanshu Atre, Pradeep Aggarwal, S.K. Dubey, L.K. Gupta, D.K. Garg, R.P. Bhardwaj, Ms. A. Subhashini, A.P. Singh, K.N. Rai, M.M. Kashyap, Ms. Mridula Ray, Ms. Indra Sawhney, V.K. Verma, Rishi Kesh, P. K. Manohar, A.S. Pundir, V.B. Saharya, S.N. Bhatt, N. Ganpathy, Ms. Bina Gupta, Ms. Rani Jethmalani and Ms. V.L. Menon for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J> A large number of writ petitions were filed in this Court by persons claiming a right to trade on the pavements situate within

251

the areas under the control of the Municipal Corporation of Delhi (MCD) and the New Delhi Municipal Committee (NDMC) in different part of the city of Delhi. These writ petitions filed under Article 32 of the Constitution and certain appeals brought under Article 136 of the Delhi High Court were referred to a Constitution Bench of this Court for deciding on the grievance of the pavement-traders that the Municipal Authorities were violating their fundamental rights under Articles 14, 19(1)(g) and or 21 of the Constitution by refusing to permit them to trade on streets and footpaths in different localities of the city of Delhi. The Constitution Bench by its judgement dated 30th August, 1989 in Sodan Singh & Others v. New Delhi Municipal Committee & Others [1989] 4 SCC 155 came to the conclusion that the right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution 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. Proper regulation is, however, a necessary condition, for otherwise the very object of laying roads would be defeated. While conceding that all public streets and roads in the country vest in the State, the Constitution Bench held that the State holds them as trustee on behalf of the public and the members of the public are entitled as beneficiaries to use them for trading as a matter of right subject of course to similar rights possessed by every other citizen including pedestrians. The right of a pavement-hawker is, however, subject to reasonable restrictions under clause (6) of Article 19 of the Constitution the State as trustee is entitled to impose all necessary limitations on the character and extent of user by such pavement-hawkers. The Constitution Bench, however, clarified that there cannot be a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business. Nor can the hawker assert a fundamental right to occupy permanently specific places on any pavement. It recognised the right under Article 19(1)(g) of the Constitution but negated the submission based on Article 21. It held that the right to carry on any trade or business and the concept of life and personal liberty enshrined under Article 21 have no connection whatsoever and therefore, Article 21 has no application. In paragraph 17 Sharma, J. speaking for the majority observed as under :

"So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognised for a long period. Of course, that also is subject to proper

252

regulation in the interest of general convenience of the public including health and security considerations. What about the right to squat on the roadside for engaging in trading business? As was stated by this Court in *Bombay Hawkers' Union v. Bombay Municipal Corporation*, [1985] 3 SCC 528 the public streets by their nomenclature and definition are meant for the use of general public; they are not laid to facilitate the carrying on of private business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is one side of the picture. On the other hand if properly regulated according to the exigency of the circumstances, the small traders on the sidewalks could considerable add to the comfort and convenience of general public by making available ordinary articles of every day use for a comparatively lesser price."

Kuldip Singh, J. who wrote a separate judgment concurred with the view taken by the majority for reasons of his own.

It is, therefore, settled law that every citizen has a right to the use of a public street vested in the State as a beneficiary but this right is subject to such reasonable restrictions as the State may choose to impose. Streettrading is albeit a fundamental right under Article 19(1)(g) of the Constitution but it is subject to reasonable restrictions which the State may choose to impose by virtue of clause (6) of Article 19 of the Constitution. The right to street-trading under Article 19(1)(g) of the Constitution does not, however, extend to a

citizen occupying or squatting on any specific place of his choice on the pavement regardless of the rights of others, including pedestrians, to make use of the pavements. In other words the law laid down by the Constitution Bench permits a citizen to hawk on the street pavements by moving from one place to another without being stationary on any part of the pavement vested in the State. After laying down the law on the point in the context of Articles 14, 19 and 21 of the Constitution, the Constitution Bench remitted all the petitions to a proper Division Bench of this Court for final disposal.

After the petitions were referred to the Constitution Bench for determining the challenge based on Article 14, 19(1)(g) and 21 of the

253

Constitution several other writ petitions came to filed in this Court and interim orders were made thereon from time to time. NDMC has prepared a scheme, vide Resolution No. 28 dated 10th November, 1989. Pursuant to the recommendation made by the Lok-Adalat on 19th November, 1989, this court by its order dated 21st December, 1989 appointed a Committee to examine the claims made by the squatters in the light of the said scheme and the decision in Sodan Singh and identify street pavements in different areas where street hawking could be regulated without being a hindrance to other users. The salient features of the NDMC scheme may be set out at this stage as under :

- " A squatter upto 1977 shall be eligible for the allotment of a stall/kiosk while the squatters pertaining to the years 1978 till 1980 shall be eligible for tehbazari site, if no shop/kiosk is available. The squatters squatting since between 1981 to 1987 shall be considered for allotment for a tehbazari site subject to availability of vacant space.
- B. The eligibility of a squatter shall be determined by document such as receipts issued by the NDMC, Challans by Police and Toleration Permission etc.
- C. Only non-licensable trades excluding sophisticated luxury items, imported or smuggled goods shall be permitted i.e. pan, biri, cigarettes, chana, moongfali, hosiery items, toys, small stationery items, lottery tickets, fresh vegetable, uncut fruits, packed bakery items etc. will be allowed. No cooking and sale of food items exposing dust causing health hazards shall be allowed. Open space measuring 6' x 3' for the trade of pan, biri, cigarettes will be allowed.
- D. Not more than one member of the family, as defined by the NDMC, will be eligible for benefit under the Scheme.
- E. The following percentage shall be allowed for the purpose of reservation in the allotment.

(a) General Category	60%
(b) Schedule Cast/Schedule Tribe	12-1/2%
(C) Physically Handicapped	10%
(d) Ex-serviceman	2-1/2%
(e) War Widows	2%
(f) Freedom Fighters	3%
(g) Extreme Hardship and Humanitarian grounds	10%"

On several pavements large number of such traders were carrying on business since quite sometime; many of them were stationary, some had raised wooden 'takhts' while others were squatting on the pavements in front of shop and near

public place. 'Tehbazari' was being recovered from them by the NDMC. The Committee was required to scrutinise the claims of the pavement hawkers and at the same time look into their grievances. This was a time consuming exercise. Keeping that in view interim directions are issued on 23rd February, 1990 to the following effect :

"We are of the view that until the scheme drawn up pursuant to the directions of the Constitution Bench is finalised, the petitioners in the several writ petitions placed before us as a group today should be permitted to hawk in the area where they claim to be carrying on the operation without a right to either sit down with or without their merchandise to be sold on the pavements in front of licensed shops or on the pavements as such but as soon as the shops close down in the evening it shall be open to them to settle down with their goods and squat on the pavements and sell their goods. On holidays and special festival occasions as per the prevailing practice they shall be entitled to squat throughout the day. This order is totally interim in nature without prejudice to the stance of both parties and shall not create any right nor prejudice any right, if any."

After this interim order was made a direction was given by the order of 23rd March, 1990 that pending receipt of the report from the Committee hawking will be permitted subject to the same being regulated in sensitive areas. During preliminary scrutiny, however, it was found that 'takhats' were given on hire by those who claimed to possess them on rentals varying from Rs.300 to Rs.1,000 per day depending on the season or the 'takhatholders' used to carry on business at the said 'takhats' through servants

255

while they themselves attended to their business elsewhere and at certain places the 'takhat-holders' whose name appeared in the petitions were non-existing i.e. the orders were in fictitious names. That being the position the Committee considered it imperative to undertake a strict scrutiny to ensure that the benefit of the scheme percolated to the deserving and not to those who were merely exploiting and fluid situation by obtaining court orders on distorted and inaccurate facts. The Committee, therefore, invited claims in the form of statement on oath coupled with original genuine documents in support of it. This was done by public notices at the spot and through counsel in case of pending cases. In addition local visits were made to verify presence of the claimant at the site where he professed to carry on business and if not found at such visits he was asked to substantiate his claim by proof of challan, fine receipts or tehbazari receipts. The underlying idea was to eliminate bogus and fictitious claims. Records of NDMC were also checked for cross verification.

A grievance was however, made that the procedure adopted by the Committee for scrutinising the claims made by the pavement-traders was too strict and resulted in injustice even to genuine claimants. According to the petitioners the strict standard adopted by the Thareja Committee for recognising the claim of a pavement-hawker overlooked the fact that most of the pavement-hawkers were poor and illiterate persons who could not be expected to have maintained proper records of receipts, challans, etc., issued by the police or other local authorities to support their claims. Counsel for the pavement-hawkers, therefore, submitted that the standard of proof expected by the Thareja

Committee was unrealistic and it was essential to modify the same to do complete justice to the concerned parties. It was also submitted that the deadline prescribed by the Thareja Committee was strictly enforced with the result that many of the rightful claimants were denied the opportunity of submitting their claims to the Thareja Committee and having the same duly scrutinised and verified by him. Apart from those whose claims were rejected on the insistence of the strict standard of proof prescribed by the Thareja Committee, counsel submitted that several pavement-hawkers who were unaware of the constitution of such a Committee and to whom a cause of action for seeking redress through court had not arisen were left out from consideration and as such such pavement-hawkers are likely to be denied their rightful place in the scheme if the scheme is finalised without their knowledge. Scores of writ petitions have been filed after the Constitution Bench rendered its

256

decision and most of these were not before the Thareja Committee.

Now it must be realised that under Resolution No. 28 itself the Committee was expected to scrutinise the claims on the basis of the receipts of removal charges, police challans, toleration slips, tehbazari receipts, etc. All the same time it is essential to bear in mind that such minimum proof as would enable the Committee to weed out bogus claims from genuine ones had to be insisted upon to maintain credibility in regard to the scrutiny. As stated earlier preliminary enquiry had revealed large scale manipulation and fabrication of documents by bogus and unscrupulous claimants who desired to make a windfall by abusing the process. It was, therefore, essential to lay down the minimum proof which the Committee would expect for accepting any claim put forth before it. It cannot, therefore, be said that the minimum proof expected by the Committee in the form of atleast one genuine receipt, police challans, toleration slip, tehbazari receipt, etc., during a gap of one year or so was unrealistic. An exception was made by the Committee in the case of a claimant who produced a large number of such documents for a regular period even though the same was not available in a given year where satisfactory explanation was offered. This was absolutely necessary as large scale irregularities had surfaced during the preliminary survey undertaken by the Committee. In the circumstances we are not inclined to think that the standard of proof required by the Committee was unduly harsh or unrealistic.

Of the 460 claims registered with the Committee, 458 related to Resolution No. 28 while the remaining two concerned contempt proceedings. Out of the 458 claims the Committee scrutinised 440 claims out of which it upheld as many as 114 claims for allotment of stalls/kiosks/sites, etc., (area mentioned for each claimant) and 110 claims for other reliefs referred to in Resolution No. 28. Seventeen claims in respect of Sarojini Nagar area could not be verified as the claimants contended that they were not in a position to meet the minimum proof standard of producing atleast one genuine document in a time gap of one year as they were under the patronage of one Arjan Dass, a local politician, and hence they were never disturbed by the police or any other authority and, therefore, they were not in a position to offer proof of the type insisted upon by the Committee. The non-cooperation by the N.D.M.C. added to the problems of the Committee. The Committee has, therefore, sought the guidance of the

257

Court to resolve this deadlock. In view of the peculiar circumstances mentioned by the 17 claimants, the Committee need not feel inhibited by the nature of proof laid down in Resolution No. 28. We would, therefore, direct the Committee to examine the claims of these 17 claimants closely in the light of any other evidence that they may choose to tender and on being satisfied about the genuineness and dependability of the proof so tendered by the claimants, the Committee may dispose of their claims.

Under Annexure A squatting is permitted in the entire area except Connaught Place/Circus area because of its special characteristics although Tehbazari permission already granted in respect of that area has to continue. Squatters were agreed to be continued in other areas subject to availability of space. Even in Connaught Circus area NDMC agreed to accommodate squatters provided their presence there did not interfere with the smooth movement of pedestrians. No squatting could be permitted in zones 2, 3 and 4 because of security considerations but shops and kiosks already in existence were to continue. So far as zone 5 is concerned squatting was agreed to be permitted leaving a margin of 30 Meters on either side of public utility institutions, e.g. hospitals etc. Kiosks, stalls etc. situate in the said areas were to continue. In addition 228 open tehbazari permission were agreed upon. Further 106 squatters were to be accommodated on compassionate grounds. In addition squatters rehabilitated in zone 1 and existing milk-booths were to be continued. In this manner the needs of those in NDMC area have been adequately attended to. Yet there exist a large number of squatters in different parts of NDMC area, some of whom have the protection of stay orders secured from courts, and their cases were to be worked out on the basis of the eligibility criteria to be formulated by a Sub-Committee of NDMC.

The grievance made by counsel for squatters/hawkers has been twofold. In the first place they complain against the strict standard of proof insisted upon by Mr. Thareja in support of the claim and secondly against the area identified for carrying on business by these squatters and hawkers being considerably restricted. It is pointed out that on account of the strict standard of proof expected by the Thareja Committee, out of 440 claims examined by that body only 224 claims (114 for kiosks/sites, etc + 110 for other reliefs) have been cleared and the rest have been rejected. But as pointed out earlier the standard and nature of proof was determined under

258

Resolution No. 28 and the Thareja Committee had merely gone by it. This difficulty, however, manifested itself when it came to scrutinising the 17 claims concerning the Sarojini Nagar area. Some directions in this behalf have to be given. It was contended that if strict proof as provided by the guidelines of Resolution No. 28 is not insisted upon in respect of Sarojini Nagar area claimants, there is no reason why it should not be relaxed in respect of the other claimants whose claims have been rejected. Counsel for NDMC, however, pointed out that the ground situation in Sarojini Nagar is completely different land incomparable with other areas in view of the peculiarity of the circumstance relied on.

We have given our anxious consideration to the rival point of view and having regard to the fact that we are dealing with the question of livelihood and survival of large number of families, we do not think we would not be

justified if we adopt a compassionate approach so as to ensure that genuine squatters/hawkers are not denied their daily bread at the alter of technicalities while at the same time ensuring that those who are out to exploit and abuse the process of law do not succeed. We must also realise that a large number of squatters/hawkers have since filed proceedings which await scrutiny. In order to ensure that genuine claims are not defeated and in order to further ensure that the situation in the five zones identified earlier does not remain in a state of flux for all times to come, we deem it necessary to give appropriate directions, here and now, in regard to NDMC cases. We accordingly direct:

- (1) Out of the 440 claimants, the one-member Thareja Committee will review the cases of those claimants whose claims have been rejected for non-compliance of the standard of proof laid down by Resolution No. 28, if the claimant adduces any other authentic proof in the form of government or local authority records, the genuineness whereof is unimpeachable, and the Committee considers such proof presented to it to be adequate for review. If on perusal such proof is found to be unacceptable, the Committee may refuse to review its decision;
- (2) In regard to the Sarojini Nagar claims, the Committee may evolve its own criteria or standard of proof de hors the one laid down by Resolution No. 28 and proceed to dispose of

259

the claims on the basis thereof. In doing so fresh claims, if any, received may also be scrutinised;

- (3) Public advertisements will be issued by the Committee in local newspapers having wide circulation inviting claims from squatters/hawkers who have not preferred claims or filed proceedings in court by a date to be stipulated therein, such claims must ofcourse be consistent with the eligibility criteria laid down in Resolution No.28. In addition to such public advertisement to be issued in newspapers of different languages such as English, Hind, Urdu, South-Indian languages, etc., to be determined by the Committee, handbills and pamphlets shall also be printed and distributed and pasted in different parts of the five zones selected for squatting/hawking inviting claims by the stipulated date. The advertisements/pamphlets, etc. will also cover claimants falling within direction (1) and (2) above;
- (4) The Registry of this Court will not entertain any further Writ Petitions/Special Leave Petitions from any squatter or hawker concerning the sites chosen in the five zones mentioned hereinabove but will instead direct the petitioners to approach the Thareja Committee if they have moved such Writ Petitions/Special Leave Petitions before the date stipulated by the Committee (which date will be communicated to the Registry) and no Writ Petition/Special Leave Petition or any other proceeding shall be entertained by the Registry concerning the sites in the five zones after the stipulated date;
- (5) The High Court of Delhi and all Courts subordinate thereto will also follow the course of action set out in direction No. 4 hereinabove;
- (6) All Writ Petitions/Civil Appeals/ Special Leave

Petitions and CMPs/IA's there in which concern the five zones will stand disposed of by this order except one in which orders have been made from time to time and the claimant of all the matters disposed of pursuant to this direction will be at liberty to seek further directions in the one matter kept

260

pending under this direction as interveners in case such need arises in future. This is essential to regulate such cases against NDMC;

- (7) The interim stay orders will continue in respect of the 224 claimants whose claims have already been scrutinised by the Committee. In respect of the other claimants out of 440 whose claim have been rejected the status quo will be maintained for two months after the stipulated date in respect of those claimants who have sought review on or before the stipulated date. If during the said period of two months the exercise for review cannot be completed, the authorities desirous of taking any action will approach the Committee and seek its approval. If the Committee is of the opinion that there is no Prima facie case for review it may permit such action to be taken 10 days thereafter so that the claimant likely to be affected may in the meantime approach the Court and obtain appropriate orders. In respect of all other cases the interim orders, if any, will continue till the Committee has scrutinised their cases and rejected them. Liberty is, however, reserved to NDMC to move for vacating any order if public interest so demands or it is found that the claimant is in any way misusing it;

- (8) The Thareja Committee will draw up a list of squatters/hawkers identified by it as entitled to protection so that their claims can be regulated in future also. In drawing up the list care should be taken to ensure that one and the same person does not secure a double benefit; and

- (9) The committee may also draw up a list of squatters/hawkers on the basis of their actual standing for being accommodated in future as and when there is a vacancy in the available space in the five zones or when such space is expanded or new space within the five zones is cleared for squatting/hawking. The Committee will also suggest sites within the zones, over and above those already identified, which can be made available to accommodate such surplus squatters/hawkers who cannot be accommodated in the

261

five zones on account of paucity of space.

All the NDMC cases falling under the zones created under Resolution No.28 will stand disposed of accordingly by this order with no order as to costs. The advertisement cost will be borne by NDMC.

We now move on to consider the cases of squatters/hawkers carrying on their business activity in the territory within the administrative control of the MCD. The MCD has, within its jurisdiction, the entire Union Territory of Delhi minus the area within the administrative control of NDMC and Delhi Cantt. The area falling under the administrative control of MCD has a large belt of agricultural lands and, therefore, any scheme to be prepared

in regard to facilitating trade by squatters/hawkers must be confined to the urban areas only. It appears that after the partition of the country there was large influx of population to Delhi and the local authority was constrained to evolve certain norms to rehabilitate such people. Squatting was, therefore, permitted on tehbazari system. Keeping this in view the MCD has now evolved a scheme of open tehbazari consisting of grant of permission to squat on a earmarked spot of the area of 6' x 4' for the purpose of carrying on business. On gazetted holidays, festival days and Sunday, permission to squat is granted in various areas under what is known as casual tehbazari. Weekly bazars are organised in certain specified areas once in a week when the regular shops are closed. 67 such weekly bazars are held in different parts of the city of Delhi. Survey has been carried out by the MCD officials from time to time to identify the person actually squatting in different areas on municipal lands. The last such survey was conducted on December 23, 1982. In preparing the scheme, the MCD has determined the categories of persons to be considered for grant of permission to squat, subject ofcourse to availability of space. The criteria evolved by the MCD is stated as under :

"(a) Persons who were found squatting continuously in the survey carried out by the Corporation as on 23.12.82 and who have proof of continuous squatting in a particular place which may be in the form of Police challans when the goods were removed or challans were issued by the Health Department or receipts of payment of Composition Fee to the Corporation and also supported duly by proof of their actual residence in the Union Territory of Delhi, their

262

nationality in the form of Ration Card and entry in the Voters' list.

(b) Persons who have only proof of squatting on holidays, festival days, etc. and have no other proof of squatting on any other occasion, and

(c) Persons who have no proof squatting at all prior to 1982 but have since then registered their claim of squatting in a particular place in the Writ Petitions filed in the Supreme Court and an order of stay has been granted in their favour on the basis of their having adduced proof of squatting anterior to the filing of the Writ Petition."

For this purpose the city is divided into ten zones, namely, (i) City Zone, (ii) Karol Bagh Zone, (iii) New Delhi Zone, (iv) South Zone, (v) Neralia Zone, (vi) Shahdara Zone, (vii) Sadar Paharganj Zone, (viii) West Zone, (ix) Civil Lines Zone, and (x) Najafgarh Zone. In all 288 squatting areas have been identified in the zones covering 12369 -6' x 4' spots for rehabilitation of squatters. Of these zones some zone like City Zone etc., comprise of extremely busy shopping centres with narrow roads like Chandni Chowk, Khari Baoli, etc. which on account of severe congestion do not permit even smooth movement of vehicular and pedestrian traffic making it impossible to allocate space for squatting/hawking purposes. Similar problems with varying degrees have to be countenanced in certain other areas as well which cannot accommodate the squatters/hawkers from other zones are not willing to shift making it difficult for the MCD to relieve the congestion found in certain zones where squatters/hawkers are found in large numbers, far more

than can be accommodated. Keeping these factors in mind and the directions of the court issued from time to time to MCD prepared a scheme for regulating squatting/hawking business in Delhi and appointed a committee for the identification of squatting/nonsquatting area in different zones. This Committee was expected to take a final decision regarding the areas identified for squatting/hawking. This was to be done in consultation with the Commissioner of Police so that the needs of vehicular traffic and other police/health problems could be taken care of. The criteria for priority allotment has also been determined as under :

263

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

Under the scheme the squatters were expected to agree to their being shifted from one zone to another but as stated earlier they have shown reluctance to move on the less lucrative zones. The areas in the ten zones have been duly identified on the plans and the total number of squatters/hawkers to be accommodated in the said areas have also been worked out. Objections were invited from the squatters/hawkers but it appears that barring a few others have not reacted. In order that the squatters/hawkers may have one more opportunity before any final decision is taken on the scheme prepared by MCD we think it is proper that a public

264

notice/advertisement should issue inviting objections from the squatters/hawkers against the proposed scheme by a date to be stipulated therein. Such public notice/advertisement will be issued in daily newspapers of different languages such as English, Hindi, Urdu, South-Indian-languages, etc., as well as by printing and distributing handbills and pamphlets in the zones identified for squatting/hawking so that every squatter/hawker has an opportunity to file his

objections, if any, to the proposed scheme. The advertisement would also state that if no objection is received on or before the stipulated date, the concerned squatter/hawker will not be heard in the matter. The objections or suggestions received will be tabulated and considered by the Committee and a final decision will be taken thereon expeditiously and the same will be placed before this Court for approval of the scheme with or without modification.

However, in the meantime, the Committee appointed under the MCD Scheme may process the objections already received. The claims of squatters/hawkers who have already responded can be scrutinised from the viewpoint of the eligibility criteria laid down under the scheme so that their priorities can be determined. So also the claims of those who have petitioned this Court and whose petitions are pending can also be finalised to save time. Henceforth if any new petitions is filed in regard to MCD area, the Registry of this Court will direct copy of the petition to be delivered to standing counsel of MCD and the matter will be listed not earlier than 10 days before the service of the copy unless otherwise directed by the Court. No such mention will be made in Court unless the Registrar has been intimated in advance who on such intimation will indicate if there is such urgency that the matter cannot wait usual listing time.

The above order will guide all concerned including the Registry of this Court so far as cases of squatters/hawkers are concerned.

V.V.R

Petitions disposed of.

265