

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.5779 of 2015

[arising out of S.L.P.(C)No. 3632 of 2015]

Dharam Chand

.....Appellant(s)

versus

Chairman,
New Delhi Municipal Council and others

.....Respondent(s)

JUDGMENT

M. Y. EQBAL, J.

Leave granted.

2. This appeal by special leave is directed against the judgment dated 13.11.2014 of the Division Bench of the Delhi High Court, which dismissed the Letters Patent Appeal preferred by the appellant against the decision of learned Single Judge of the High Court, which dismissed the appellant's writ petition challenging the order dated

03.12.2013 issued by the Enforcement Department, New Delhi Municipal Council (NDMC) deciding to relocate the appellant (a squatter) from his existing site outside Supreme Court to a site near Gate of Baroda House adjacent to the existing stalls due to security reasons.

3. The appellant's case in brief is that since 1965 he was squatting in the area of Chandni Chowk as a Hawker selling cloths and thereafter Tehbazari of selling tea was given by the NDMC to him at Bhagwan Das Road and he remained there till 1982, when he was shifted to the present place opposite to the Supreme Court. In 1989, a large number of writ petitions claiming a right to trade on the pavements in different parts of Delhi were filed under Article 32 of the Constitution and the Apex Court appointed a Committee known as Thareja Committee to examine the claims made by the squatters in the light of Scheme prepared by the NDMC and the decision in **Sodan Singh vs. New Delhi Municipal Corporation**, (1989) 4 SCC 155 to identify street pavement in different areas where

the street hawking could be regulated without being a hindrance to general public. On the application of the appellant before the Thareja Committee, in May, 1999, he had been allotted one stall bearing size 6' x 4', opposite Supreme Court, towards Bhagwan Das Road and near Office Complex of Supreme Court Lawyers and Purana Quila Road Bungalows in May, 1999 by Director (Enforcement) NDMC, New Delhi.

4. In September, 2011, an order was issued by Enforcement Department, NDMC, for temporary suspension of various Tehbazari holders, including the appellant, for security reasons. The appellant's business from his Kiosk remained unaffected. However, one Laxmi Narain Tiwari, who was allotted a squatting site next to the C-Gate of the Supreme Court of India and was removed, moved the High Court for either restoration of his site or his rehabilitation. On the stand taken by learned counsel for NDMC that a fresh site

would be allotted to the writ petitioner Laxmi Narain, his writ petition was disposed of.

5. Appellant herein contended that order dated 12th December, 2012 in **Laxmi Narain Tiwari vs. New Delhi Municipal Corporation**, W.P.(C) No.6876 of 2012 had no bearing on the appellant's case and the respondent has wrongly and without any basis has passed the following relocation order dated 3.12.2013:

“The Hon’ble High Court in the case of “Laxmi Narain vs. NDMC & Ors.” have directed the local authorities to allot a fresh site to the petitioners within a period of six weeks from today who were squatting outside the Supreme Court of India and due to security reasons, they were removed from the said site. Now, it has been decided to relocate the following verified squatters from their existing sites to the following sites:-

S.No.	Name	Existing Trade	Allotted Area	Option Sites
	xxxx	xxxx	xxxx	
5.	Sh. Dharam Chand, S/o Sh. Trika Ram, 213-S-01 (Stall)	Paan Biri Cigarette	6’x4’	209-Site near the gate of Baroda House adjacent to existing stalls.

(emphasis supplied)

6. It has been pleaded on behalf of the appellant that the allotment was in accordance with Article 39(a) of the Constitution and his right to carry on his trade and occupation from the kiosk allotted to him by NDMC on the basis of a direction by Thareja Committee is protected under Article 19(1)(g) of the Constitution. It has been further pleaded that his right could never be restricted by an executive order and the said right could be curtailed or taken away under Article 19(6) of the Constitution only by a law enacted under Article 13 of the Constitution.

7. It is the appellant's case that he has been carrying on his trade/occupation on this very place since before 1982 and regularly paying rent of the Kiosk allotted to him. The appellant over a long period of time has developed goodwill and a very strong customer base and his shifting from the present place of business for security reasons has the effect of

taking away his customers and would be a restriction on his right to trade, profession and occupation guaranteed under Article 19(1)(g) of the Constitution. The appellant relied upon the judgment of this Court in ***Kharak Singh vs. State of U.P.***, (1964) 1 SCR 332, stating that therein it has been held as under:-

"Though learned counsel for the respondent started by attempting such a justification by invoking s. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Ch. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant clauses 2 to 6 of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub- clauses of Art. 19(1); nor would the same be "a procedure established by law" within Art. 12."

8. Having heard learned counsel on either side, the learned Single Judge of the High Court dismissed the writ petition of the appellant. The learned Single Judge was of the view that

under Section 388(D)(5) of the New Delhi Municipal Council Act, 1994, the NDMC was empowered to impose terms and conditions while granting Tehbazari rights and the letter dated 20th May, 1999 by which Tehbazari/kiosk rights had been granted to the appellant contained terms and conditions which read inter alia, that:

"1. Tehbazari permission shall be purely temporary and on month to month basis.

xxxx xxxx xxxx xxxx

7. The permittee shall vacate the site in a peaceful manner and without any murmur on cancellation of the permission so granted on account of violation of the terms and conditions of the grant of permission or any security reasons, or any other circumstances justifying such action in public interest."

9. The learned Single Judge was of the view that the order of relocation was issued due to security reasons, which was in public interest and the aforesaid terms could never be said to be illegal or unconstitutional and the matters of security must be left to the wisdom and decision of the police.

10. Aggrieved by the decision of the learned Single Judge, appellant preferred Letters Patent Appeal, which was also dismissed by the Division Bench of the High Court vide impugned order observing that the appellant's relocation due to security reasons was in terms of the letter dated 20.05.1999 which had granted Tehbazari rights to him. He has no absolute right to hawk and the said letter itself granted only a temporary and terminable right to trade. Indeed, the appellant has a right under Article 19(1)(g) of the Constitution but undoubtedly it is subject to reasonable restrictions under Article 19(6). Hence, this appeal by special leave.

JUDGMENT

11. We have heard learned counsel for the parties at length and perused the affidavit of the respondents. It has been contended on behalf of NDMC that the decision to remove vendors from the vicinity of the Supreme Court of India was taken in view of the bomb blast on the perimeter of the Delhi

High Court complex. It was noted that the said decision to remove all squatters, vendors and kiosk owners was taken in a meeting attended by security experts. The respondent contended that the appellant's kiosk was deemed as a security hazard by the Hon'ble Supreme Court Judge and it was on the basis of his directions answering respondent was duty bound as the civic body of the area to remove the appellant from his site. The fundamental rights guaranteed under the Constitution of India are also subject to reasonable restrictions, and keeping the security and public order of any area, specially a sensitive area as the Supreme Court of India, is one such restriction, wherein if the need arises, the personal liberties of citizens may be curbed or partially within reasonable limits, restricted in the interest of peace, security and law and order.

12. The respondent referred to the decision of the Apex Court in ***Maharashtra Ekta Hawkers Union and Another vs. Municipal Corporation, Greater Mumbai and Anr.***, (2014) 1 SCC 490, wherein it has been held as under:-

“8. In *Maharashtra Ekta Hawkers Union v. Municipal Corpn., Greater Mumbai*, (2004) 1 SCC 625, which was decided on 9-12-2003, a two-Judge Bench referred to the judgments in *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545, *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155, the recommendations made by the Committee constituted pursuant to an earlier judgment and observed:

“10. The above authorities make it clear that the hawkers have a right under Article 19(1)(g) of the Constitution of India. This right, however, is subject to reasonable restrictions under Article 19(6). Thus hawking may not be permitted where, e.g. due to narrowness of road, free flow of traffic or movement of pedestrians is hindered or where for security reasons an area is required to be kept free or near hospitals, places of worship, etc. There is no fundamental right under Article 21 to carry on any hawking business. There is also no right to do hawking at any particular place. The authorities also recognise the fact that if properly regulated, the small traders can considerably add to the convenience and comfort of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. The scheme must keep in mind the above principles. So far as Mumbai is concerned, the scheme must comply with the conditions laid down in *Bombay Hawkers' Union case*, (1985) 3 SCC 528. Those conditions have become final and there is no changed circumstance which necessitates any alteration.”

9. The Court then enumerated the following restrictions and conditions subject to which the hawkers could do business in Mumbai: (*Maharashtra Ekta Hawkers Union case*, (2004) 1 SCC 625 at SCC pp. 635-37, para 14)

“(1) An area of 1 m × 1 m on one side of the footpath wherever they exist or on an extreme side of the carriageway, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the footpaths or roads. We, however, clarify that Aarey/Sarita stalls and sugarcane vendors would require and may be permitted an area of more than 1 m × 1 m but not more than 2 m × 1 m.

(2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However, they may protect their goods from the sun, rain or wind. Obviously, this condition would not apply to aarey/sarita stalls.

(3) There should be no hawking within 100 m from any place of worship, holy shrine, educational institutions and hospitals or within 150 m from any municipal or other markets or from any railway station. There should be no hawking on footbridges and overbridges. Further, certain areas may be required to be kept free of hawkers for security reasons. However, outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts, etc.”

13. On 10.4.2015, while considering the counter affidavit of respondent no.1 New Delhi Municipal Corporation, this court thought it appropriate to obtain the stand of the Secretary General of the Supreme Court of India as also the Deputy

Commissioner of Police, dealing with security of the Supreme Court of India.

14. In pursuance of this Court's order, the Secretary General, Supreme Court of India, and the Deputy Commissioner of Police filed their respective affidavits, copies of which were served upon the appellant and the respondents/intervenor. In the affidavit filed by the Deputy Commissioner of Police, Supreme Court Security, it has been submitted inter alia that it is only after the bomb blast outside Delhi High Court on 07.09.2011, a meeting was called by the then Chief Justice of India and this Court on its administrative side, after deliberations with the Delhi Police, prohibited vendors to squat along the perimeter of the Supreme Court. Similar affidavit has been filed by the Secretary General, Supreme Court of India, reiterating the same facts in para (2) of the affidavit about the incident which took place in 2011 and, thereafter, security arrangement was reviewed with the Delhi Police and a

decision was taken on the administrative side not to allow any hawkers near the Supreme Court premises.

15. After considering the aforesaid affidavits, this Court on 01.05.2015 directed Secretary General, Supreme Court of India and the Deputy Commissioner of Police, Supreme Court Security to inform this Court as to whether after 2011 any incident has been reported in and around the Supreme Court premises. Deputy Commissioner of Police, Supreme Court Security, vide his affidavit dated 30th June, 2015 has submitted that since 2011 no such incident of bomb blast has taken place in and around the Supreme Court premises. According to the Affidavit, DCP/New Delhi District has also opined that keeping in view the movement of traffic and general public, the surroundings of the Hon'ble Court are always vulnerable. Paragraphs 3 to 5 of the Affidavit are, therefore, extracted herein below:

“3. That the deponent states that since 2011 no such incident of bomb blast has taken place in and around the Hon’ble Supreme Court premises. DCP/New Delhi District has also stated that no such incident took place after 2011. DCP/New Delhi District has further stated that keeping in view the movement of traffic and general public the surroundings of the Hon’ble Court are always vulnerable.

4. That in the present security scenario and high threat perception to the various vital installations and institutions including the higher judiciary in the country, as such it is not in the interest of the security to allow any squatting on the pavements and area around Supreme Court of India.

5. That the existing arrangements of not allowing any squatter on the pavements and adjacent area around the periphery of Hon’ble Supreme Court should be maintained and no change in the existing arrangements in this regard should be made so as not to adversely affect the security of the Hon’ble Supreme Court of India.”

16. Secretary General of the Supreme Court of India has also submitted that no incident with regard to bomb blast has been reported in and around the Supreme Court of India after the bomb blast outside Delhi High Court on 07.09.2011.

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17. We have heard learned counsel appearing for the appellant and the respondents on several dates. On the final date of hearing, Mr. Salman Khurshid, learned senior counsel appearing for the appellant tried to convince us by showing a rough sketch map to the effect that the Kiosk in question is

not located within the Supreme Court compound. It was contended that after the Supreme Court compound wall, there is a road called Bhagwan Das Road. After crossing the road, there is a huge car parking and thereafter the building of Indian Law Institute and lawyers' chambers are located. Within that compound of Indian Law Institute, the Kiosk in question is located and hence the question of security of the Supreme Court because of the existence of that Kiosk is wholly unjustified.

18. Mr. Dushyant Dave, President of the Supreme Court Bar Association, submitted before us in support of the appellant. Mr. Dave contended that there is no threat to the safety and security of the Supreme Court if the appellant carries on his business. On the other hand, Mr. R. Bala Subramanian, learned counsel appearing for the Deputy Commissioner (Security) produced before us a confidential folder containing

many messages received by the Authority giving threat of exploding bomb blasts in different places.

19. After giving our anxious consideration in the matter, although we have sympathy for the appellant, but there are various circumstances justifying the refusal to permit the appellant to run his business in the kiosk in question. Notwithstanding the constitutional right of a citizen to carry on business but such right is subject to certain restrictions. It cannot be disputed that there are certain areas which may be required to keep free of such types of kiosks for security reasons. The Court cannot direct the administration to allow such a kiosk even if there is a threat to safety and security.

JUDGMENT

20. On the one hand, appellant has a right to earn his livelihood, but on the other hand there is serious issue of safety and security of the premises near the Supreme Court compound. Hence, the Court has to balance between the two. The purpose involving general interest of community as

opposed to the interest of individual directly or indirectly has to be balanced. Merely because of the contention of the appellant and the respondents that after the bomb blasts took place in Delhi High Court compound in 2011, no such incident happened till date, it cannot be presumed that such incident will not happen in a near future. The Court cannot assume and presume that there is no threat to the safety and security of the Supreme Court and its vicinity and allow the appellant to continue the said business.

21. We are therefore of the considered view that the order passed by the High Court needs no interference by this Court. Hence, this appeal is dismissed.

JUDGMENTJ.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
July 29, 2015

SUPREME COURT OF INDIA



JUDGMENT