

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **LETTERS PATENT APPEAL NO.766 OF 2008**

% **Date of Decision : April 17th, 2009.**

MANUSHI SANGATHAN, DELHIAppellant.
 Through Ms.Geeta Luthra, Ms.Indira
 Unninal, Ms.Rukhsana Chaudhary,
 advocates.

VERSUS

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents.
 Through Ms. Sangeeta Chandra,
 advocate for respondent no.1/DDA.
 Ms.Zubeda Begum, Ms.Sana, advocates
 for respondents-3&4.
 Mr.Ajay Arora & Mr.Kapil Dutta,
 advocates for respondent-MCD.
 Mr.Pankaj Batra, advocate for
 respondent no.5.

CORAM:

HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J:

1. This intra Court Appeal is directed against judgment dated 4th September, 2008 dismissing Writ Petition (Civil) No. 9407/2007 filed by Manushi Sangathan, Delhi (hereinafter referred to as appellant-NGO, for short).

2. Nehru Place is a well known commercial district centre in South Delhi which was developed in early 1970. Hawkers were naturally attracted and have been hawking in Nehru Place since 1980s.
3. The appellant-NGO, by their letter dated 28th July, 2003 submitted a proposal for regulated, controlled and systematic hawking at Nehru Place supported by documents like survey report of Nehru Place vendors, a plan for model market for hawkers and a report by a professor in School of Planning and Architecture relating to Nehru Place. This study was commissioned by the Ministry of Urban Affairs. It was noticed that the total number of hawkers in Nehru Place was about 300 and alternative sites had been provided to 102 street vendors/hawkers but not others. 68 existing hawkers operating from Nehru place were to be covered by this proposal of regulated hawking.
4. Delhi Development Authority (DDA for short) responded to the said letter stating that the proposal given by the appellant NGO would have to be integrated with the redevelopment proposal finalized for Nehru Place by the architect consultant. Thereafter, some correspondence was exchanged and the issue of regulated hawking in Nehru Place was also taken up with the MCD. Approval was sought from Chief Vigilance Commissioner.

The appellant- NGO, by their letter dated 13th May, 2005 submitted a list of street vendors/hawkers after carrying out a survey. It was stated that the list was verified in several meetings. It was also stated that the appellant-NGO shall undertake responsibility and ensure that the street vending was regulated and monitored as per code of conduct. Placement patterns/locations were earmarked. The said list gives names of 68 vendors along with goods being dealt with by them.

5. Finally, DDA by their letter dated 23rd January, 2006 informed the appellant-NGO that a joint inspection of Nehru Place was held on 17th January, 2006 regarding feasibility of construction/installation of stalls by vendors. The letter states that it was decided during inspection that DDA would provide list of markets where space was reserved for informal sector. The appellant NGO was given go ahead for further discussions with the Architecture Department regarding finalization of the proposal for hawking at Nehru Place.
6. On 3rd October, 2006 a meeting was held in the office of Vice Chairman, DDA and various issues were discussed. DDA in light of the said discussions decided to change their development policy and in future incorporate informal trade in building/shopping complexes. It was noticed in the meetings that there was some confusion about the list of hawkers/street

vendors submitted by the appellant/NGO but that was sorted out. The Vice Chairman asked the appellant-NGO to forward list of 68 persons along with their identity cards. The Vice Chairman directed that confiscation of products of street vendors should be stopped. It appears that these cards were later on submitted. Thus a deliberate, considered and reflected decision to allow and permit regulated hawking under the appellant NGO was sanctioned.

7. The said agreed arrangement/pilot project continued for a period of more than one year. In December, 2007, the appellant NGO filed WP(C) no. 9407/2007, suspecting that on basis of an earlier decision dated 18th April, 2002 declaring Nehru Place as a non-tolerance zone, the hawkers under the pilot project may be removed. The appellant NGO relied upon the decision dated 3rd July, 2006 in W P (C) No. 10479/2006 titled Citizens for Justice Vs. Lt. Governor (NCT) Delhi & Ors. wherein a similar contention raised against the pilot project was rejected by a Division Bench of this court observing:

“2. The contention of the counsel for the petitioner is that the respondents themselves have declared the District Centre, Nehru Place, as zero tolerance zone and, therefore, they cannot allow the hawkers to encroach the said area under the garb of sites created for them vide impugned letter of their Senior

Architect referred to above. We find no force in this contention. The location for hawkers have been created by the respondents not on any area belonging to the shop owners at District Centre, Nehru Place, but on public land with which they have no direct connection. Furthermore, there is no conflict between a no tolerance zone and a regulated and designated area for hawkers.

3. The petitioner cannot be heard to say that its fundamental right has been impinged by any means by creation of sites for the hawkers. In our opinion, this is a step which cannot be assailed as this seeks to regulate and legitimize hawkers in a public space. Hawkers also serve a public need of less affluent section of our population and cannot be wished away. Rather than banishing them it is necessary to ensure that the business of hawking is regulated and legitimized to ensure optimum utilization of public spaces. All over the world public spaces are utilized by permitting hawking in a regulated and disciplined manner. Such regulation of hawking is eminently in public interest as it will also generate revenue for the State. The consideration for use of public space by hawkers would ensure that the amount which lines the private pockets for permitting hawking, finds its way into the State revenue. Furthermore subject to not causing nuisance, obstruction and encroachment, even a small hawker who can not afford the astronomically prized commercial space in Delhi is entitled to carry out his business with dignity and without harassment."

8. While the writ petition was pending before the learned Single Judge, on 19th April, 2008, DDA without any notice and prior warning suddenly swooped down on the hawkers vending their products under the pilot project and forcibly removed them and confiscated the goods/articles.
9. By the impugned judgment learned single judge has dismissed the WP(c) no. 9407/2007 primarily relying upon decision dated 18th April, 2002 of respondent authorities to re-develop and rejuvenate Nehru Place, which was declared as a "zero tolerance zone".
10. The issue and contention raised in the present Appeal relates to right of hawkers, hawking and their regulation by the local authorities. Poor infrastructure, lack of job opportunities in rural areas, has resulted in rapid urbanization and migration to cities like Delhi. Informal trading as an itinerant hawker or from a kiosk or footpath has been a source of earning and livelihood for the lower classes and marginalized section of urban population in Delhi, Mumbai and other cities. What are the legal rights, if any, of the hawkers/street vendors and when and what extent these rights can be regulated, restricted or barred has been subject matter of decisions of the Supreme Court.
11. Right to hawk and hawking problem was first examined by the Supreme Court in the case of ***Bombay Hawkers'***

Union versus Bombay Municipal Corporation reported in (1985) 3 SCC 528 with reference to requirement by hawkers to obtain licences under the Bombay Municipal Corporation Act, 1888. It was held that right to hawk is protected and guaranteed under Article 19(1)(g) of the Constitution but is subject to Clause 6 and the State can impose reasonable restrictions in the interest of general public. No one, therefore, by hawking can cause nuisance, annoyance and inconvenience to other members of the public and the authorities could regulate and control hawking. In this case, the Supreme Court laid down modalities for declaring hawking and non-hawking zones in order to protect hawkers and regulate hawking. It was directed that in future before making any alteration in the scheme, the commissioner shall take into consideration all public interest including hawkers, Commissioner of police and representative associations of the public. It was recognized that hawking if properly regulated considerably adds to the convenience and comfort of the general public by making available ordinary articles of daily use at comparatively less price. It is a source of self employment.

12. Hawking in Delhi was subject matter before the Supreme Court in ***Sodan Singh and others versus New Delhi Municipal Committee*** reported in (1989) 4 SCC 155. In this

case also, the Supreme Court held that hawking on roadsides is an occupation, trade or business as enshrined in Article 19(1)(g) but was subject to reasonable restrictions under Clause 6 thereof. The argument that hawking is covered under Article 21 of the Constitution was rejected as the said Article is not attracted in a case of business or trade – big or small. On the question of right of hawkers to use public streets and areas it was held that they vest in the State but the State holds them as a trustee on behalf of the people. Members of the public are entitled as beneficiaries to use them as a matter of right but this right is limited as similar right is possessed by every other citizen. No person should create unreasonable obstruction which causes inconvenience to others. Though the primary object of building roads is undoubtedly to facilitate people to travel and move from one point to another, obstructions in form of hawking etc. are permissible so long as they do not cause nuisance to others. The law of user of highways is in truth law of give and take. Right to hawk and transact business from roads etc. is recognized for a long past but the same can be regulated. Local authorities could permit hawkers and squatters to vend and sell products on the sidewalks wherever considered practicable and permissible but there is no vested right to occupy a particular place or permanently occupy a

particular place. Thus, right of a hawker to do business for personal gains without discomfort or annoyance to others was accepted. The Supreme Court considered the provisions of Delhi Police Act, 1978, Delhi Control of Vehicular and other Traffic on Roads and Streets Regulation, 1980 and directed New Delhi Municipal Committee to frame a scheme with regard to areas and places where hawking/squatting could be permitted and decide the total number of hawkers to be allowed. Pursuant to the directions of the Supreme Court, a scheme was prepared by New Delhi Municipal Committee and a Zonal Officer was nominated and a Committee was formed to look into individual complaints. It was observed:-

"17. 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 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* the public streets by their nomenclature and definition are meant for the use of the 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 can considerably add to the comfort and convenience of general public, by

making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after day's work can pick up these articles without going out of his way to find a regular market. If the circumstances are appropriate and a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, we do not see any objection to his carrying on the business. Appreciating this analogy the municipalities of different cities and towns in the country have been allowing such traders. 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 streets are meant exclusively for passing or re-passing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads — to facilitate traffic — may be defeated. Allowing the right to trade without appropriate control is likely to lead to unhealthy competition and quarrel between traders and travelling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) of Article 19.

18. The provisions of the Municipal Acts should be construed in the light of the above proposition. In case of ambiguity, they should receive a beneficial interpretation, which may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment which may, in their opinion, be constituting undesirable obstruction to the travelling public. The provisions of the Delhi Municipal Corporation Act, 1957, are clear and nobody disputes before us that the Municipal Corporation of Delhi has full authority to permit hawkers and squatters on the sidewalks where they consider it practical and convenient."

13. Thereafter, Orders dated 13th March, 1992 and 4th

February, 1998 reported in (1992) 2 SCC 458 and (1998) 2 SCC

727/743, respectively in ***Saudan Singh Versus N.D.M.C.*** were passed.

14. Hawking problem in the city of Mumbai was again examined by the Supreme Court in ***Maharashtra Ekta Hawkers' Union and anothers versus Municipal Corporation, Greater Bombay and others*** and Orders dated 9th December, 2003 and 12th February, 2007 reported in (2004) 1 SCC 625 and 2007 (3) SCALE 24 respectively were passed. These orders reiterate the right of the hawkers to sell and carry on trade under Article 19(1)(g) of the Constitution of India and the said right is subject to reasonable restrictions. Therefore hawking could be regulated and reasonably restricted for justifiable and valid grounds like narrowness of the road, free flow of traffic, hindrance in movement of pedestrians or where for security reasons areas have to be kept free and hawking should not be permitted. The restrictions, should not be unreasonable and it was emphasized that guidelines should be fixed for ascertaining and earmarking areas where hawking cannot be permitted. In the order dated 9th Dec. 2003 the Supreme Court noticed that this required micro level examination, which the Court was ill equipped to undertake. It was directed as under:-

“12. We have, during the course of arguments, tried to go through the scheme street by street.

However, on a re-consideration it appears to us that this Court is not really equipped to undergo this exercise. In our view, it would be preferable that this Court approves the conditions of the scheme and certain roads/streets on which hawking is to be permitted. Then, as in *Sodan Singh's* case, a committee must be appointed and modalities laid down under which the committee is to function. The committee can hear interested parties and consider their representations. The committee can decide whether any particular road/street is to be declared as a non-hawking zone. We therefore confine ourselves to laying down the basic features of the scheme, appointing a committee and laying down the modalities for functioning of the committee."

15. While issuing above directions, the Supreme Court observed that the Committee appointed to demarcate non-hawking zones/sites shall not refuse or create non-hawking zones except for good reasons like public health, sanitation, safety, public convenience and the like. The said discretion to demarcate non-hawking/hawking should be exercised reasonably and in public interest. The Supreme Court did not approve of the principle that all major traffic and arterial roads should be automatically excluded from hawking zones. The Supreme Court appointed a Committee to comply with the directions and the question of demarcation of hawking and non-hawking zones/streets and the total number of hawkers who could be accommodated. The Committee was to examine

the proposal in respect of each road and decide whether hawking could be permitted keeping in mind nature of hindrance to vehicular or pedestrian traffic etc.

16. In the subsequent Order dated 12th February, 2007 the Supreme Court noticed the findings of the Committee and implementations of its directions. The Court also noticed that National Policy on Urban Street Vendor was framed in 2004 and street vending as a profession had increased manifold in the city of Delhi, Mumbai and Kolkata with the said cities having 2,00,000, 2,50,000 and 1,50,000 vendors respectively. The Supreme Court in this Order observed that a Committee had been set up by the Maharashtra Government to implement the National Policy on Urban Street Vendors and expressed its satisfaction that the State Government had initiated a process for implementation of National Policy of Street Vendors by framing regulations. It was directed that the regulations so framed should be in consonance with the aims and objects of National Policy to render some sort of succour to urban street vendors to enable them to earn livelihood through hawking. The Supreme Court, further, clarified that the scheme so framed should not be influenced by any scheme framed by the Supreme Court or directions issued by the Court in the interregnum.

17. The National Policy of Urban Street Vendors, 2004 estimates that city hawkers/vendors constitute nearly 2% of the population of a metropolis and hawking is not only a source of employment but provides affordable services/goods to majority of the urban population. The society needs to recognize this fact and give due credit to hawkers. Constant harassment of hawkers by police and civic authorities is accepted as an unacceptable reality and the need to protect hawkers and control discretion and arbitrary exercise of powers by authorities is emphasized. Right to carry on trade or business by way of hawking on streets and pavements is recognized and it is observed that street vendors cannot be denied their rights except for justifiable and valid reasons. The said policy refers to Article 39 of the Constitution that the State shall endeavour and direct its policies so that : (a) the citizens, men and women equally have the right to adequate means of livelihood and (b) ownership and control of material sources of the community are so distributed as best to subserve the common good.

18. The Policy notices orders and directions of the Supreme Court and the fact that some cities have framed guidelines for regulating urban vending activities. It emphasizes that there is greater need to recognize the rights of urban street

vendors/hawkers by the local governments as the demand for their services/wares is highly specific and varies from location to location and from time to time. It is stated that there is need to accept the natural propensity of street vendors to locate at particular places at particular times. It is observed that contrary to the said principle, the present urban norms disregard formation of such natural markets and are not supportive. Guidelines have been stipulated for regulation of street vending/hawking and when and under what circumstances an area can be declared as a non-hawking area. Clause 4.1.1., reads :

“4.1.1. Spatial Planning norms – demarcation of vending zones

X X X X

- It should take into account the natural propensity of the Street vendors to locate in certain places at certain times in response to patterns of demand for their goods/services.
- X X X X
- X X X X
- X X X X
- Designation of vendors markets/no-vending zones should not be left to the sole discretion of any civic or police authority but must be accomplished by a participatory process by a **Town Vending Committee** (which for large towns/cities may be constituted on the basis of wards) whose membership may be as follows:
 - Muncipal Authority
 - Traffic and Local Police
 - Public Land Owning Authority

- Associations (Market, Traders, Resident Welfare, slum & chawl, etc.)
- Representative from associations of Street vendors (static & mobile)
- Representative from lead Nationalized Bank/Commercial Bank.

The hawker's representatives should preferably constitute atleast 25% to 40% of the total number of members of the Committee. Atleast 1/3rd of the representatives of street vendors should be women. Process for selection of street vendors' representatives should be based on the following criteria:

- Membership based organizations
- Financial Accountability

The Committee should ensure that provisions for space for vendors' markets are pragmatic, consistent with formation of natural markets, sufficient for existing demand for vendor's goods and services, as well as likely increase in line with anticipated population growth. Provisions of space may include temporary designation as vendors' markets (e.g. as weekly markets) whose use at other times may be different (e.g. Public Park, parking lot). Timing restriction on urban vending should correspond to the needs of ensuring non-congestion of public spaces/public hygiene."

19. On the question of reallocation and rehabilitation, the

National Policy states :

"5. Relocation and Rehabilitation

Street vendors are most vulnerable to forced eviction and denial of basic right to livelihood. It causes severe long-term hardship, impoverishment and other damage including loss of dignity. Therefore, no street vendor should be forcefully evicted. They would be relocated with adequate

rehabilitation only where the land is needed for a public purpose of urgent need. Therefore:

- a) Eviction should be avoided wherever feasible unless there is clear and urgent public need in the land in question.
- b) Where relocation is absolutely necessary, notice of minimum 30 days should be served to the concerned vendors.
- c) Affected vendors/representative's involvement in planning and implementation of the rehabilitation project.
- d) Affected vendors should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels.
- e) Loss of assets should be avoided and if possible compensated.
- f) State machinery must take comprehensive measures to check and control the practice of forced evictions.

No hawker/street vendor should be arbitrarily evicted in the name of 'beautification' of the cityscape. The beautification and clean up programmes undertaken by the states or towns should actively involve street vendors in a positive way as a part of the beautification programme."

20. Keeping all these aspects in mind, MCD has framed Scheme of MCD for Squatters/Hawkers, 2007. The said Scheme notices and implements the National Policy on Urban Street Vendors, 2004 and the decision/directions given by the Supreme Court in several cases.
21. The said MCD Scheme has been considered by the Supreme Court in the case of ***Sudhir Madan and others***

versus Municipal Corporation of Delhi and Others. In the Order dated 6th February, 2007 reported in 2007 (8) SCALE 334, the Supreme Court examined the Scheme and issued some directions. On the question of shifting of existing hawkers, the Supreme Court in this order has observed :

“.....After some discussion, it was clarified to us that all the existing allottees as per the old scheme shall continue. Thereafter the cases of others will be considered in accordance with the preference provided in the said sub-paragraph. We, however, clarify that this will not preclude the shifting of an allottee from one site to another consistent with the norms laid down in the National Policy on Urban Street Vendors which provides that eviction should be avoided wherever feasible unless there is clear and urgent public need of the land in question. The Municipal Corporation will generally follow the norms laid down in paragraph 5 of the National Policy on Urban Street Vendors. Before any allottee is shifted he should be given an opportunity to give his preference for a site which may be available for allotment.

x x x x

.....The transfer of an allotted site to any other suitable place as per availability and feasibility shall be done by the Appellate Committee referred to in sub-para (j) of paragraph D. This shall be done after giving the allottee an opportunity of giving a preference of any other available site.

X X X X

.....We would like to highlight the fact that though this Scheme is to a great extent is for the benefit of hawkers/squatters/tehbazari holders, it also serves a public purpose. At the same time the convenience and interest of the public at large, which constitutes 97.5% of the population, should not be forgotten by the concerned authorities. To the extent possible space may be made available for squatters/tehbazari etc. but not so as to cause inconvenience to the general public. This aspect of the matter should not be forgotten at any time by any of the authorities.

The Municipal Corporation of Delhi and the N.D.M.C. will now finalise the squatting/tehbazari zones and submit a detailed report to this Court. They shall also indicate the norms that they have followed in identifying these sites, in particular, the width of the roads where such squatting/tehbazari has been permitted and the areas whether commercial/residential or otherwise where such sites are located. They should also indicate the availability of the footpath for the general public after accommodating the squatters. After the sites are identified, norms will have to be evolved by the Municipal Corporation of Delhi and the N.D.M.C. to make allotments. For that purpose they may either make a survey or adopt any other fair procedure for making allotments."

22. In the subsequent Order dated 17th May, 2007, reported in 2007 (8) Scale 257, the Supreme Court specifically noticed

the problem of identifying and earmarking hawking and non-hawking areas. It was noticed that as per the 2007 Scheme framed by MCD for Squatters/Hawkers, ward vending committees had to be constituted in 134 wards (to be re-constituted into 272 in all), for identifying sites, declaring hawking and non-hawking, squatting and non-squatting zones in consultation with various stake-holders like vendors/ traders associations, resident welfare associations, traffic police, Delhi Fire Service, Delhi Metro Rail Corporation (if required) by adopting norms explained therein. Further Zonal Vending Committees have to be constituted in 12 zones and the Zonal Vending Committees will be responsible for approving and reviewing hawking/non hawking and squatting/non-squatting zones and the sites identified by Ward Vending Committee and to make changes wherever required. The relevant portion of the 2007 scheme as noticed by the Supreme Court reads as under:-

"SCHEME OF MCD FOR SQUATTERS/HAWKERS-2007

x x x x

The Scheme of the MCD for implementation of National Policy on Urban Street Vendors-2004 as modified by the orders of the Hon'ble Supreme Court of India, are elaborated hereunder:-

1. Ward Vending Committees constituted in 134 Wards of MCD, are to be re-constituted in the wake of creation of more Wards i.e. 272 in all,

which will be responsible for identifying sites, declaring hawking and non-hawking/squatting and non-squatting zones in consultation with various stake holders like: Vendors/Traders' Associations, RWAs, Traffic Police, Delhi Fire Service, DMRC (where Metro Stations fall in the jurisdiction of that Ward) etc. by adopting the norms explained in the coming paras

2. Zonal Vending Committees have been constituted in all the 12 Zones of MCD whose responsibility will be to approve and review the hawking/non-hawking and squatting/non-squatting zones and the sites identified by the Ward Vending Committee and to make changes wherever required. For resolution of all disputes between allottees and MCD, the Zonal Vending Committee shall be presided over by a Judicial Officer not below the rank of Addl.Distt. Judge.....”

23. While referring to the Ward Vending Committees and Zonal Vending Committees, the Supreme Court in its Order dated 17th May, 2007 accepted the statement made by the learned counsel for MCD that the Scheme would be suitably amended/modified by providing that the Zonal Vending Committee shall be presided over by a Judicial Officer not below the rank of an Additional District Judge and the Appellate Committee shall be presided over by a retired Judge of the High Court. The aforesaid directions were issued after noticing that the Scheme envisages identification of squatting/vending areas by the Ward Vending Committees and the Zonal Vending Committees are empowered to make necessary changes and

make allotments accordingly. Request made by some NGOs that the proposed Scheme and the survey work done to identify hawking and non-hawking zones by MCD was not satisfactory and it should be again undertaken by an independent organization, was rejected, after referring to the Order passed by the Supreme Court in the case of ***Ramesh Shah versus Municipal Corporation of Delhi and others*** dated 6th November, 2000 and the relevant portion, reads as under:

“It appears that such a question was raised before this Court in the case of Ramesh Shah Vs. MCD and Ors (I.A. No.332-333 in WP(C) No.1699/1987) and this Court by order dated 6.11.2000 rejected the submission which has been urged before us, in these words:

So far as identification of squatting and non-squatting zones are concerned it is an administrative function of the MCD which is done by taking into account various factors namely, public interest depending mainly upon the congestion in the area and public safety which are the main considerations for any Government. No challenge to such identification of squatting and non-squatting zones can be permitted under any circumstance when the administrative authority has taken all factors in to account. We are not sitting in appeal against any decision made by the administrative authority. We therefore do not permit any challenge to the identification of the squatting and non-squatting zone and to the map as prepared by the MCD showing Green shall be treated as final and shall not be allowed to be questioned.

In this view of the matter, we cannot accede to the request of the learned Counsel for the respondents who have contended that fresh survey should be undertaken by an independent expert body or an independent organization to identify the hawking sites and the existence of hawkers. This is essentially a matter which the Municipal Corporation of Delhi has to consider and take a decision. We cannot issue a writ directing the MCD to do so, this being a matter of policy."

24. On the question of designation of hawking and non-hawking areas in natural markets, the same was lucidly explained in order dated 17th May, 2007 as under:-

"30. It was further submitted before us that the authorities must have due regard to the concept of a natural market. We agree. In implementing such schemes, the authorities cannot ignore the concept of a natural market, but many interests have to be balanced so as to cause least inconvenience to the public at large. There is no reason for us to doubt that the authorities concerned will ignore all such relevant considerations in working a scheme of this nature.

31. It was also submitted that the authorities may be directed to identify the non-hawking areas only and rest of the areas should be permitted as hawking areas. In our view such a course will not be practicable. In any event, that is a matter for the concerned authorities to consider and we can express no opinion in the matter. We may, however, observe that since a National Policy on Urban Street Vendors has been formulated, the authorities concerned will have due regard to the said policy in the

implementation of the schemes regulating tehbazari/vending sites etc.”

25. In terms of the said Order, the Schemes proposed by the MCD and NDMC were approved with the direction/liberty to implement the Scheme.
26. In light of the aforesaid legal position, National Policy on Urban Street Vendors-2004 and various orders passed by the Supreme Court, we avert to the facts and merits of the present appeal.
27. Learned counsel for the DDA had relied upon the decisions taken in the meeting dated 18th April,2002 called by the Lt. Governor. We have examined the said minutes. Maintenance and management of the district centre at Nehru Place and not hawking as such, was the subject matter of the meeting dated 18th April, 2002 called by the Lt. Governor and it was noticed as under:-

“This is a place, which is frequented by a large number of people, working in this area and visitors. Besides offices, there is large number of outlets selling stationary, computer hardware, and software, electrical items, eateries, etc. The infrastructure of Nehru Place needs upgradation as large areas within the District Centre (both private and public) have fallen into disarray. The objective of this meeting is to work out a plan for improving the conditions of Nehru Place.”

28. A number of decisions were taken in meeting held on 18th April, 2002. The two decisions relied upon by the learned counsel for the DDA read as under:-

“1. The entire Nehru Place area will be a “Zero Tolerance Zone” where no violation of law to be permitted.”

Action : commissioner, MCD

2. All encroachments, whether in right of way or on Plazzas or in common areas, to be removed by MCD immediately and ensure that these do not come up again.

Action : Commissioner, MCD, CE-V, MCD, C.E.O./C.E. DJB”

29. It was submitted by MCD that in view of the said decision Nehru Place has been declared as a no-hawking zone. The two decisions and directions do not make any specific reference to hawking or street vendors as such. Zero Tolerance Zone does not automatically mean zero or no hawking zone. As held by the Supreme Court, right to hawk by street vendors is guaranteed by the Constitution under Article 19(1)(g) but the same can be regulated and restricted in larger public interest. Street vending on its own by itself does not result in violation of law unless for justifiable and valid reasons hawking/street vending is prohibited or restricted in a particular area and there is violation of the said prohibition or restriction. The decision dated 3rd July,2006 in the case of Citizens for Justice (supra) quoted above is clear on this aspect. The second decision taken

in the said meeting refers to encroachments and does not specifically deal with right of hawkers or street vendors. It appears that the question of hawking and the right of street vendors in Nehru Place was not examined.

30. Subsequent facts and orders/directions made by DDA and the Lt. Governor establish and show that the two decisions dated 18th April, 2002 did not prohibit or ban hawking in Nehru Place. DDA itself did not find any incongruity and conflict between the two decisions quoted above taken on 18th April, 2002 and regulated and controlled hawking at Nehru Place. After discussions and detailed consideration DDA accepted and implemented the pilot project for regulated hawking in Nehru Place in 2006. In the light of the above discussion, we feel that the stand of the respondent-DDA that Nehru Place has been declared a non-hawking area in the Meeting dated 18th April, 2002 is incorrect and wrong.

31. We may also notice here the stand taken by DDA in their reply to the application for stay, C.M. No.6019/2008 filed in Writ Petition (Civil) No.9407/2007 in which it has been stated by DDA on oath as under:-

"The petitioners-being those hawkers who were being tried as part of a pilot project for regulated hawking – have been offered an alternative site for the time being till their applications under the National Urban Street Vending Policy (being

monitored by the Hon'ble Supreme Court) are decided. However, the petitioners are insisting on being restituted/reinstated on the site from where they were hawking and are refusing to accept the alternative site. It is stated that the petitioners have no right whatsoever to hawk at any particular place and in any case the same has to be inconsonance with the policy mentioned above. A map showing the existing site of operation of the petitioners as well as the proposed shifting site is annexed hereto and marked as Annexure RA-2."
(emphasis supplied)

32. DDA in the enclosed plan (Annexure RA-2) had demarcated the proposed new site. There is controversy whether the appellant-NGO had accepted the said site or not. It is the case of the appellant-NGO that they were ready and willing to accept the said site but the said site had already been demarcated as a parking site. It also appears that DDA later on backed out of the said statement.

33. Master Plan of Delhi, 2021 makes reference to hawking, right of hawkers etc. The said Master Plan in Clauses 5.4 makes reference to district/centre/sub-central business districts. Nehru Place is mentioned as one of the ten district centres, which is already developed or is in advance stage of development. With reference to the ten district centres including Nehru Place, it is stated in the Master Plan that these were developed on the basis of an integrated scheme and some of them need

upgradation in terms of infrastructure for parking spaces, hawking spaces, physical infrastructure and built environment.

With reference to the National Policy on Urban Street Vendors, Clause 5.10.1 relating to existing areas, the Master Plan of Delhi 2021 states:

"5.10.1 POLICY FOR EXISTING AREAS

Keeping in view the National Policy on Urban Street vendors the following provisions are made:-

- (i) The location/concentration of present stationary informal units shall be considered on case to case basis and steps for relocation/improvement shall be taken. It should be ensured that such activities do not spill over on the right of way. The Government/concerned local agency should coordinate the policy.
- (ii) The areas of informal sector shall have suitable public conveniences and solid waste disposal arrangements.
- (iii) Formulation of guidelines for schemes would include 'Hawking' and 'No Hawking Zones'. Specific areas should be earmarked for stationary and mobile street vendors by the concerned local authority in consultation with RWAs.
- (iv) The local authorities should take up new designs of stalls, push-carts and mobile vans of various sizes and with cleaning facilities, giving due consideration to urban design requirement of specific area where informal shopping is being permitted.
- (v) Defining the role and responsibility of NGOs along with specific obligations on part of hawkers towards the society for maintenance of law and order within the hawking zones and weekly markets.

(vi) An informal unit shall not be permitted within a distance equivalent to half the width of the road, from an intersection.”

34. Similarly, Clause 5.10.5 relating to planning norms for informal trade reads :

“5.10.5 PLANNING NORMS FOR INFORMAL TRADE

The informal sector trade should be incorporated in the planned development in various use zones. The provision of informal sector trade units should be ensured at the time of sanction of building plants/layout plans as per the norms given in the Table 5.3.

Table 5.3. Planning Norms

S.No.	Use Zones/Use premises	No. of Informal shops/Units
1.	Retail trade : Metropolitan City Centre, District Centre, Community Centre, Convenience Shopping Centre	3 to 4 units per 10 formal shops (to be provided in informal bazaar/service market components)

35. DDA in their counter affidavit filed before the learned Single Judge had admitted that permission was granted to the appellant-NGO under the pilot project for regulated hawking. Strangely however, it was pleaded that the said Project was never approved by the competent authority without stating who was the competent authority and why the said statement has

been made. Facts as recorded above show that the pilot project was approved after deliberations and consideration by the DDA including Lt. Governor for over 2 years. While the writ petition was pending before the learned Single Judge, on 19th April, 2008, DDA without any notice and prior warning suddenly swooped down on the hawkers vending their products under the pilot project and forcibly removed them and confiscated the goods/articles. Photographs filed by the appellant-NGO on record show the brute force and power used to remove the hawkers. The past correspondence and discussion mentioned above reflects the considered view and the two fold objective of the pilot project. To prevent exploitation and harassment of the infirm informal traders and interest of the general public by regulating the manner in which hawking was conducting. The decision to ban/prohibit hawking in Nehru Place can be taken and justified if it is reasonable and taken after taking into consideration relevant and material factors. The final decision and merits thereof of course cannot become subject matter of judicial review, but if wrong principles and basis is the foundation of the final outcome/direction it can be examined and challenged before the court and amenable to judicial review.

36. As held above, DDA has wrongly relied upon the two resolutions dated 18th April, 2002 for they do not declare Nehru Place as a non-hawking area. Even if it is assumed that a decision was taken on 18th April, 2002 to ban hawking at Nehru Place, the decision requires reconsideration and reappraisal in view of subsequent developments, namely, Master Plan of Delhi 2021, National Policy on Urban Street Vendors – 2004, Scheme of MCD for Squatters/Hawkers – 2007 and the decision of the DDA itself after the said decision, to permit and allow a pilot Scheme. This reconsideration and reappraisal should have been undertaken before any punitive and penal action for removal was taken. Reconsideration, post punishment has no meaning and is futile as in the meantime the sellers have lost their livelihood and deprived of their meagre earnings. Article 19(1)(g) has been violated.

37. The appellant-NGO has filed before this Court photographs to indicate the disciplined manner in which regulated hawking was undertaken under the pilot project. The appellant-NGO has also filed other photographs after the hawkers under the pilot project were forcibly removed and their goods confiscated. The photographs show that the entire central plaza has been converted into a open market with hawkers occupying and swamping virtually the entire open

area. Allegations have been made by the appellant-NGO that bribes are taken from hawkers and controlled and regulated hawking under the pilot project was not conducive. It is alleged by the appellant-NGO that the dexterous decision of regulated hawking had a convulsive and a diabolic effect on "extra income" earned by those charged with enforcement functions and duties. Noticing the aspect of corruption, harassment and arbitrary exercise of power and discretion in ***Sodan Singh*** Case, (supra), it was observed and directed :

"22. During his argument Mr Tarkunde fairly stated that the Municipal Committee may be entitled to regulate the squatting business of the petitioners, but they must make detailed schemes in this regard. A serious concern was shown in the argument of the other learned advocates also alleging that corruption at large scale was rampant and huge amounts of money were being realised illegally by some of the servants of the municipalities from the poor hawkers. No rules have been framed with respect to the choice of the persons, the area to be allowed to them or the rate of Tehbazari charges. The permission to squat was being granted on daily basis or for very short periods to the great inconvenience to the hawkers and no machinery was available to hear their grievances. A draft scheme has been prepared and filed on behalf of the petitioners with a suggestion that the respondents may be directed to adopt it. On behalf of the respondents it was said that statutory provisions are already there in this regard, but they had to concede that they are too sketchy and incapable of meeting the need. We are, in the circumstances, of the view that detailed necessary provisions, dealing with all relevant aspects, and capable of solving the problems arising in the situation in a fair and equitable manner, should be made; and, the respondents should proceed as soon as may be possible. They will be well advised to consider the suggestions of the petitioners while finalising the schemes. Due regard to the requirements of the relevant laws, e.g., Delhi Police Act, 1978 and the Delhi Control of Vehicular and other

Traffic on Roads and Streets Regulation, 1980 will have to be given.

24. The authorities, while adopting a scheme, should also consider the question as to which portions of the pavements should be left free for pedestrians and the number of the squatters to be allowed on a particular road. There should be rational basis for the choice of the licensees. A policy decision should be taken in regard to the articles which should be permitted to be sold on the pavements. It is common knowledge (as was taken note of in *Bombay Hawkers' case*) that some of the hawkers in big cities are selling very costly luxury articles including sophisticated electronic goods, sometimes imported or smuggled. The authorities will be fully justified to deny to such hawkers any facility. They may frame rules in such a manner that it may benefit only the poor hawkers incapable of investing a substantial amount for starting the business. Attempt should be made to make the scheme comprehensive, dealing with every relevant aspect, for example, the charges to be levied, the procedure for grant and revocation of the licences, et cetera."

38. The National Policy on Urban Street Vendors incorporates and proceeds on the basis of the guidelines and directions issued by the Supreme Court. Additional safeguards and protection to vendors and regulations have been provided. Exercise of discretion is regulated by clear guidelines and principles to be followed. We have also quoted above directions of the Supreme Court in the Order dated 6th February, 2007 in ***Sudhir Madan and others versus MCD and others*** making reference to the National Policy on Urban Street Vendors and holding, inter alia, that an existing allottee can be shifted from one site to another but consistent with the said Policy which provides that eviction should be avoided, unless there is clear and urgent public need. It also states that the allottee before

shifting would be given an opportunity to give his preference. There was no need for such haste and hurry on the part of the DDA to remove hawkers under the pilot project. We may also note here that DDA has not made any allegation that the appellant-NGO or any of their hawkers had violated the terms of the pilot project or the undertakings given or the said appellant-NGO had misused or abused the permission for controlled and regulated hawking in Nehru Place. During the course of hearing before us, it was pointed out that DDA took the said action as other hawkers had filed litigations claiming parity with permission granted to the appellant-NGO for regulated hawking. Controlled and regulated hawking under the pilot project cannot be equated with unregulated hawking contrary to the terms of the policy/scheme and directions of the Supreme Court. Scrapping of the pilot project and removing the Hawkers without notice and in the manner stated above was arbitrary.

39. In view of the above findings, it is clear that the respondents and specially DDA have not followed guidelines of the Supreme Court, Master Plan of Delhi- 2021, guidelines laid down in the National Policy on Urban Street Vendors and the scheme of MCD for squatters/hawkers-2007. These aspects were not examined and considered before evicting the vendors

under the pilot project at Nehru Place. As already stated above, the decision taken in the meeting held on 18th April, 2002 does not support the contention that Nehru Place is a non-hawking Zone. It is also apparent that the respondent-DDA has acted illegally in removing the hawkers operating under the pilot project and who were complying with the imposed terms and indulging in regulated hawking.

40. In view of the above findings, we dispose of the present Letters Patent Appeal by directing DDA to continue with the pilot project. Accordingly, 67 vendors (reduced to 67 from 68 as per the statement made by the appellant-NGO) will be permitted to hawk in the area which was demarcated by DDA prior to their removal on 19th April, 2008. However, it will be open to DDA to examine whether Nehru Place or the said area should be declared a non-hawking area and if required, demarcate vending/non-vending areas in Nehru Place. Removal/shifting of the hawkers under the pilot project, if required, will be in terms of the directions issued by the Supreme Court in the case of ***Sudhir Madan*** (supra). The question whether Nehru Place should be declared a no hawking zone and the question of demarcating non-vending areas will be decided by the DDA after making reference to the Ward Vending Committee and on the basis of the directions issued by

the Supreme Court and in terms of the Scheme of the MCD. We may note that MCD has stated that they had already allotted alternative site to some hawkers out of the list of 67 street vendors. If any of said hawkers have already opted for the new site, they will not be entitled to the benefit of this Order. The Appeal is accordingly allowed to the extent indicated above.

41. In the facts and circumstances of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

APRIL 17, 2009.
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