

SODAN SINGH
v
N.D.M.C. AND ORS.

FEBRUARY 4, 1998

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

New Delhi Municipal Committee—Hawkers/Squatters—Allocation of sites—Recommendations of Thareja Committee—Acceptance of with modifications—Appointment of Chaturvedi Committee—Guidelines and directions issued for allocation of sites—Right to change of trade—Held, trade should not be unlawful or one in luxurious goods or smuggled goods—N.D.M.C. may impose reasonable conditions consistent with Articles 19(1)(g) and 19(2) of the Constitution—Constitution of India—Articles 19(1)(g) and 19(2).

The New Delhi Municipal Committee, consequent upon the directions of this Court in *Sodan Singh v. NDMC*, [1989] 4 SCC 155, framed a scheme with regard to allocation of sites to squatters/hawkers within NDMC area. It divided the area into five zones and identified the places where the squatters/hawkers could be permitted to trade in each zone. Under the Scheme, trade was permitted only in non-licensable goods excluding luxury items imported or smuggled goods and cooking of sale of food items exposed to dust which could cause health hazard. Thereafter, the matter was placed before a Lok Adalat which observed that the work of allocation of sites to individual claimants should be given to a Committee. This Court ordered for appointment of the Committee and ultimately Shri Thareja, a Judicial Officer of Delhi, was appointed as a one member-Committee.

The Thareja Committee identified 116 places in 14 sub-areas of the five zones and found that only 760 individual claimants were eligible to be accommodated. This figure was in addition to the cases of hardship. The Committee compiled the names of eligible applicants, their trade, their seniority and details of the area occupied. The claimants were divided in three groups: (i) those continuing from prior to 1977; (ii) prior to 1977-80 and (iii) between 1981-87. As to eligibility of squatting at various places the Committee considered the eligibility of the claimants and made tentative allotments subject to final allotment later on after the identified sites were approved by this Court with the scheme for allocation and the list of identified

A squatters was finalised.

The Thareja Committee passed detailed orders and filed its report before this Court. The instant 130 interim application were filed challenging the orders passed by the Thareja Committee.

B It was contended for the NDMC that 33 important places in the five zones were wrongly included by the Thareja Committee for allocation of sites to squatters/ hawkers and they had to be excluded.

Disposing of the matter, this Court

C HELD : 1.1. The Thareja Committee has based its conclusions on valid material and on the existing factual position at the grass-root level. As regards the objection of the NDMC to the inclusion of 33 important places. Shri Thareja has also relied upon factual information gathered from personal visits made by him to the places and kept in mind the manner in which the N.D.M.C. had itself already granted certain kiosks, squatting or tehbazari rights in these very areas earlier. No exception can be taken to the reasoning and conclusions of the Thareja Committee in regard to these items and to its ultimate recommendations as to the suitability of these areas. There is no ground to modify or set aside the recommendations in regard to these sites. In the result, the recommendation is accepted, the objection of the D E NDMC is rejected and, therefore, these 33 sites would get added to the sites already mentioned-resulting in 116 sites. [640-A; 641-A-B]

1.2. The recommendations of the Thareja Committee as to seniority are accepted, subject to the orders passed in the IAS questioning the adverse orders passed by the Committee. [641-C]

F 1.3. The Thareja Committee rightly recommended time scheduled "sunrise to sun-set"-as has been granted to tehbazari. This recommendation is accepted. [639-B]

G 1.4. The procedure of allocation of sites recommended by the Thareja Committee and the recommendation for giving three options in the zone is accepted subject only to one modification that the allocation will be according to seniority as decided by the Committee and not by draw of lots. [644-A]

H 2.1. Sri V.C. Chaturvedi, working as Joint Registrar in the High Court of Delhi is nominated to undertake the various duties and functions enumerated and complete the job. He will decide rival options for each place

and for that purpose it may evolve its own procedure consistent with natural justice. The NDMC would issue orders directing the Directorate of Estate and the Director of Enforcement to help and implement the decisions, directions or orders of Sri V.C. Chaturvedi. [649-B-D] A

2.2. The Chaturvedi Committee (sole member) shall issue notice to the concerned parties and the NDMC in regard to each of the places at which squatting/hawking is permitted as per the Thareja Committee Report and decide on the basis of seniority and reservation, size of place and such other relevant material as may be placed before the Committee, as to who should be allotted at what place. The Committee shall give an opportunity of being heard and pass reasoned orders. [650-D-E] B

2.3. The Thareja Committee has recommended that all approved claimants-though they were squatting prior to 1.1.1990 and were allowed to continue under orders passed by the Committee-should pay the arrears of tehbazari charges only from 1.1.1990 and that the arrears prior to 1.1.1990 be waived by the NDMC. So far as arrears after 1.1.1990 are concerned it has been stated that the tehbazari charges for a space of 6'x 4' are Rs. 240. p.m. and that for a space of 4' x 3' are 120. p.m. The Chaturvedi Committee would examine, in case of dispute, the facts in each case relating to arrears of tehbazari charges for the period after 1.1.1990 and decide the extent of arrears in each case after giving a reasonable opportunity of being heard, to the claimants found eligible by the Thareja Committee. Deduction will be given for any amounts already paid for the period after 1.1.1990 provided adequate proof is produced therefor. [651-A] C

2.4. In case it is decided by the Chaturvedi Committee that any eligible claimant is in arrears of tehbazari dues for any period after 1.1.1990 then the said Committee shall fix a date before which the arrears have to be paid. In case of default of claimant in payment and his rights having ceased, the Chaturvedi Committee will consider if the vacancy can be allotted to any other claimant already declared eligible by the Thareja Committee. Pending a decision on arrears the claimants will be permitted to carry on their avocations at the places tentatively designated by the Thareja Committee, subject of course to final allotment of places by the Chaturvedi Committee. [651-A; 651-C-D] D

2.5. So far as the construction of kiosks is concerned permission may be obtained from Delhi Urban Arts Commission and also from the Archaeological Survey of India and the Department of Archaeology of the Government of the National Capital Territory, New Delhi. But, in the E

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A meanwhile if tentative allotment is already made by the Thareja Committee
or there are authorised occupants, they will not be disturbed, pending
construction of kiosks. In the event of the Urban Arts Commission or the
Archaeology Department not approving any of the sites for kiosks identified
B by the Thareja Committee, the said places shall be available for tehbazari and
the Chaturvedi Committee shall consider the said places for tehbazari and
make such final allotment as it may deem fit, in accordance with the procedure
already indicated.

2.6. A reading of the Thareja Committee Report and connected
documents does show that in several areas unauthorised squatters or hawkers
C have been allowed to conduct their operations. These unauthorised squatters/
hawkers will be removed by the NDMC forthwith. [645-D-E]

2.7. No IAs will be allowed to be filed against the Thareja Committee
Report or against individual orders passed by said Committee before it
submitted its Report in this Court. As regards the pending IAs, they would
D be disposed of by this Court by the time the Chaturvedi Committee gives its
report. [647-E-F]

2.8. The decisions of the Chaturvedi Committee both on the question
of allotment of the kiosk/stall or the sites for tehbazari and also as to
quantum of arrears of tehbazari shall be final, as was recommended by the
E Lok Adalat on 19.11.1989 and shall not be questioned either by the claimants
or the NDMC before any authority, Tribunal, a court of law, the High Court
or in this Court. No petition shall be registered in this behalf by the above
bodies. The Chaturvedi Committee only may file IAs in the appeal seeking
any direction or clarification and none others. [651-H; 652-A]

3.1. As regards change of trade, if the trade is not unlawful or if it
F is not one in 'luxurious goods' or 'smuggled goods', the NDMC may, impose
reasonable conditions for the enjoyment of the right consistent with Article
19(1)(g) and Article 19(2) of the Constitution. If the orders of the NDMC or
the conditions imposed by it in this regard are unreasonable or arbitrary or
contrary to any provisions of law, it would be open to the aggrieved parties
G to avail all remedies at law. [647-E-F]

3.2. The eligible squatters who were selling lotteries which have since
been barred, such claimants will apply to the concerned authority in the
NDMC for change of trade. The NDMC shall, if such new trade is not a
prohibited one nor one relating to imported or luxury items, grant the
H request for change in trade. [648-H; 649-A]

Sodan Singh v. N.D.M.C., [1989] 4 SCC 155 and *Sodan Singh v. N.D.M.C.* [1992] 2 SCC 458, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 560 of 1998.

From the Judgment and Order dated 23.4.87 of the Delhi High Court in C.W.P. No. 268 of 1987. B

R.F. Nariman, Raju Ramachandran, D.D. Thakur, M.P. Verma, M.M. Kashyap, Dhan Singh Nagar, Mrs. Sarla Chandra, Mrs. Rani Chhabra, (Mrs. M.R. Bhardwaj) (NP), Harish Chander, Mrs. B.K. Brar, M.K. Singh, Ashok K. Srivastava for Petitioner-in-person in I.A. No. 67, Santosh Gupta, K.K. Gupta, Arun K. Sinha, Rajeev Sharma, Krishan Mahajan, P.H. Parekh, Amit Dhingra, N.K. Sahoo, Dr. I.B. Gaur, S.S. Ray, Ms. Rakhi Ray H.A. Raichura, Manoj Prasad, S.D. Sharma, Ms. Pratibha Jain, Ms. Subhadara Chaturvedi, Rajesh Nair, Ms. Suman Rastogi, Shiv Pujan Singh, (Irshad Ahmed) (NP), Kirpal Singh, Debashish Mishra, V. Menon, L.K. Gupta, Rajiv Kaul, Adhya Gupta, D.K. Garg, K.G. Bhagat, (P. Chowdhary) (NP), Ms. Rani Chhabra for Ms. Indira Sawhney, in I.A.No.127, Ms. K. Sarada Devi, K.L.Vohra, P.C. Mudgal, Mohan Panday, K.B. Rohatgi, Ms. Aparna Rohatggi Jain, (S.B. Sharma) for Ms. Pratibha Jain in I.A.No. 0120., M.A. Krishnamurthy, (P.H. Parekh) for Sita Ram in I.A.No. 68 R.K. Maheshwari and Shalley Bhasin for the appearing parties. C D

The Judgment of the Court was delivered by E

M. JAGANNADHA RAO, J. Leave granted.

This judgment is in continuation of two earlier judgments of this Court rendered in this very case, which is a public interest case concerning the hawkers, squatters, etc, in the public streets in the New Delhi Municipal Committee area. The first of the judgments was rendered by a Constitution Bench on 30.8.1989 in *Sodan Singh v. N.D.M.C.*, [1989] 4 SCC 155 and the second was rendered on 13.3.1992 by a three Judge Bench in *Sodan Singh v. N.D.M.C.*, [1992] 2 SCC 458. In sub - para 6 of para 10 of the latter judgment, all cases then pending except one (the case now before us) were treated as disposed of and claimants were permitted to seek further directions in future as and when the Thareja Committee Report (to which we shall presently refer) was given. The said report was given in May 1996 and thereafter about 130 IAs were filed in this S.L.P. pursuant to the permission granted as stated above. We heard there IAs. We have also heard the objections of the N.D.M.C. to the Thareja Committee Report. Counsel made various submissions on 6th, F G H

A 7th & 8th January. Several IAs were rejected at the time of the said hearing. In some IAs where the claimants were found 'eligible' by the Thareja Committee, orders were passed adopting the recommendations of the Committee as orders of the Court subject to "general directions" to be given in the case now before us. Some IAs of 'eligible' claimants were adjourned and are being disposed of separately.

B We shall make a brief reference to the events which have taken place hitherto and then deal with the issues argued before us.

The first Sodan Singh case - [1989] 4 SCC 155 :

C This decision was by a Constitution Bench of this Court and was rendered on 30.8.1989. It was held that the right to carry on trade or business was not covered by Article 21 of the Constitution of India but was covered by Article 19 (1)(g) and could be reasonably restricted by law made under Article 19(6). It was held that hawking on road-sides fell within the expression
D 'occupation, trade or business' in Article 19(1)(g). It was also held that all puca streets and roads vest in the State but the State holds them as trustee on behalf of the public and the members of the public are beneficiaries entitled to use them as a matter of right. The Municipality has full authority to permit
E 'hawkers and squatters' on the *side walks* wherever the Municipality considers it practicable and convenient, under the provisions of the Punjab Municipal Act, 1911 (or Delhi Municipal Corporation Act, 1957). But there cannot be a fundamental right vested in a citizen to *occupy any particular place* on the pavement where he can squat and engage in trading business. Nor can the hawkers assert a fundamental right to occupy any place *permanently* on a pavement. If the circumstances are appropriate and a small trader can do some
F business for personal gain on the pavement to the advantage of the general public and without discomfort or annoyance to others, there can be no objection. Hawkers cannot be permitted to squat on every road. Various circumstances-such as whether the road is narrow, whether it is located close to a hospital or whether there is need for security measures in a particular area, etc. and similar relevant factors are to be taken into account for permitting
G business on a particular road. Licence has to be given for trading but this does not mean that licence is to be given on a daily basis. Regard must be had also to the provisions of the Delhi Police Act, 1978 and Delhi Control of Vehicular and other Traffic on Roads & Streets Regulation, 1980. This Court, on a consideration of all the above factors, directed the New Delhi Municipal
H Committee to frame a scheme in regard to the areas or places where hawking/

squatting is to be permitted and as to the number of squatters that could be allowed. The authorities would be fully justified in refusing any facility to hawkers who sell costly *luxury* articles. The right is basically for poor hawkers and not to sellers of luxury items or smuggled goods. Broadly, these are the directions given in the first *Sodan Sing's* case. A

The NDMC Scheme: (10.11.1989) B

Pursuant to the directions above stated, the N.D.M.C. came forward with a detailed scheme on 10.11.1989. Under the said scheme, the N.D.M.C. area was divided into 5 *Zones* and the places where these squatters or hawkers could be permitted to trade in each zone were identified. It was also stated that squatting will not be permitted in certain areas because of certain unique characteristics of the area or because of the place being security-sensitive. However, existing permission of Tehbazari or Kiosks in some of these areas were not to be disturbed. Squatting would not be permitted on the footpaths or on road so far as major roads are concerned. No permissions, in verandah of markets which have been declared as public streets, were to be granted. C D

Annexure A of the scheme gives details of places in each zone where squatting/hawking could be permitted and the total number, of the stalls, kiosks, pan tharas, Mocho tharas, cycle repair tharas, telephone booths, tax booths, vegetable tharas, tehbazari or tolerations which could be given in each zone and also those which could be given on compassionate grounds. Annexure B of the scheme gives the total of stalls, kiosk, etc. already built as 1089 degree and states that the number of existing permissions for Tehbazari is 228 and tolerations 106. Still, there are 1500 squatters in N.D.M.C. area to be provide for and eligibility of claimants was to be considered as per criteria stated in para 6 of the Scheme. E F

Under para 6 of the scheme squatters were divide into 3 categories, (i) those before 1977. (ii) those between 1978 to 1980 and (iii) those between 1981 and 1987. The first category who are the seniormost, would get kiosks/stalls subject to availability. Further, "till they are allotted kiosks/stalls, they will be given permission for tehbazari on usual charges". The second category of eligible squatters of 1978-1980 will be given tehbazari permission in their respective area subject to availability of stalls, unless there are kiosks/stalls available as per their seniority. The third category of eligible squatters of 1981 to 1987 would also be considered for allotment of tehbazari, in case suitable vacant spaces in respective zones are available for such allotment. A further H

A procedure for reservation was spelled out as follows:

(a) general category (60%); (b) SC/ST category (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%).

B Paras 7 and 8 of the Scheme mention the conditions for allotment of tehbazari. Only non-licensable trades excluding sophisticated luxury items, imported or smuggled goods) are to be permitted i.e. Pan, Biri, Cigarette, etc. No cooking or sale of food items exposed to dust which could cause health hazard; - was to be permitted. Not more than one person from a family was to be allotted. Para 9 of the Scheme dealt with the issue of hawking licences.

C This question of eligibility was to be examined by a Committee to be appointed.

The Lok Adalat (Dated 19.11.1989) and recommendation as to 'finality'.

D After the Scheme was framed as above, a Lok Adalat, presided by a learned Judge of this Court and a retired Judge of the Allahabad High Court was held and the learned Judges observed that the job allotment to individual claimants should be given to a Committee consisting of 2 members from the N.D.M.C. and a Judicial Officer of the rank of a District Judge. It was further directed that

"the decision by the Committee shall be binding and *final*".

E In other words, the decisions of the said allotment Committee was to be *final*.

Supreme Court Orders dated 21.12.1989, 1.2.1990. 9.2.1990:

F We shall next briefly to refer to certain orders of this Court. It was directed on 21.12.1989 that the District Judge, Delhi should nominate a judicial officer with the previous concurrence of the High Court to carry out the suggestion made by the Lok Adalat. It was again directed on 1.2.1990 that initially 100 cases should be examined. By another order dated 9.2.1990 it was directed that the Judicial Officer nominated. could even make surprise inspections etc. and work on a whole time basis.

G The Judicial Officer nominated was Mr. Thareja. He gave an interim report. On 29.1.1991 this Court noticed that 5000 applications were pending before the Officer. This Court directed that the Committee will consist only of Mr. Thareja. In a latter order dated 28.10.1991. this Court stated that the timings 4.00 PM to 9.00 PM suggested by the N.D.M.C. for the hawkers were not acceptable and that 12.00 Noon to 7.00 PM could be more appropriate.

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The second Sodan Singh Case : [1992 (2) SCC 458] (13.3.1996) :

The second judgment is dated 13.3.1992. This court, initially rejected the complaint that the Thareja Committee was applying very strict standards of proof for eligibility and that this was affecting interests of bonafide claimants. But in order to protect genuine claimants, this Court gave a set of nine directions. We do not propose to refer to all of them except two. Under direction 8, the Thareja Committee was to draw up a list of squatters/hawkers identified by it. Under direction 9, the Committee was to draw up a seniority list of squatters/hawkers and the Committee was to "suggest sites within the zone, over and above those already identified". All pending cases were to be treated as disposed of, except one case. No Court was to entertain any fresh case.

Public notice & cut off dated (22.5.1992):

As directed in para 12 of the second *Sodan Singh's* case, public notice was given inviting claims before the Thareja Committee and a cut off date namely 22.5.1992 was fixed. Pursuant thereto, several claims were received. In all, there were 5627 claims before the Committee, including 126 review petitions.

The Thareja Committee Report (May, 1996) :

The Committee examined 5627 claims in a very detailed fashion during a period of 5 1/2 years and passed detailed orders in every case, examining the evidence produced by both sides. We have gone through the Report and have also read a large number of individual orders passed by the Committee. It was against those orders that the 130 IAs were filed in this Court questioning the adverse orders passed against some of the claimants.

We must place on record our deep sense of appreciation for the tremendous work done by Mr. Thareja and the trouble he had taken in completing these cases. He had also visited the places where the hawking was being done or was claimed as being done, - on various occasions with or without notice to verify facts. He has also applied a judicial and humanitarian approach to the problems of the hawkers. At the sametime, he has also taken care to apply principles which eliminated any possible manipulations by the employees of the N.D.M.C. or exploitation by them of these squatters/hawkers regarding which there were complaints before him.

The Thareja Committee took up the question of identification of sites. Fourteen sub areas in the 5 zones were identified., Other areas which were

A not accepted by N.D.M.C., were subjected to detailed scrutiny to find out if the objections raised by the NDMC were tenable. The Thareja Committee, in Chapter II, has dealt with the individual sites in each zone (page 56 to 310) and took up the objections of the NDMC in respect of each site, and rejected almost all the objections of the N.D.M.C., particularly in regard to lucrative areas. The Committee has given elaborate and very tenable and rational reasons. This part of the Report is from page 56 to page 310, nearly 250 pages. We shall deal with these areas lower down. The Committee has also gone into claims of individual claimants and found only 760 as eligible persons to be accommodated. This figure is in addition to the cases of 'hardship'. The Committee also compiled a separate volume (volume 2) of the Report in respect of the names of eligible applicants, their trade and their seniority and details of the area occupied (6'x 4' or 4 x 3' or stall-kiosk) alongwith the photograph of the particular claimant. The Committee here referred to the 760 claimants and also the other cases coming under the category of hardship. This volume 2 runs to more than 200 pages. As to eligibility of squatting at various places, the Committee considered several claimants eligible and made tentative allotments, subject to final allotment later on. The Committee said (page 38 of its Report):

E "Since the N.D.M.C. is contesting the sites identified, it is yet not finally settled which sites are available for purposes of allocation to the squatters. The sites identified have been dealt with in Chapter II....Thus even the list of squatters is not final as yet. In this view of the matter, no site has ben allocated to an individual squatter. The scheme of allocation of sites, however, has been described in brief in Chapter III. The sites can be actually allocated only after the identified sites are approved by the Hon'ble Supreme Court, the Scheme for allocation is approved and also the list of identified squatters is finalised".

G Thus the occupation of these places by eligible squatters as decided by the Thareja Committee is only tentative and subject to regular allotment after a decision is arrived at as to whether the places in regard to which the NDMC claimed exclusion (see below) would be accepted by the Thareja Committee and by this Court. The tentative allocation by the Thareja Committee is also subject to further final allotment on the basis of priorities between the three groups of squatters i.e. those before 1977, those between 1977 to 1980 and those between 1981 to 1987. Final allotment depended also on Seniority and reservation ratio of the squatters in each of the three groups.

H An important aspect of timings as to "*squatting hawkers*" was

considered by the Committee (pages 44-45) to say that neither the hawkers nor the N.D.M.C. officials were acting in accordance with the timings referred to by this Court in one of its orders dated 28.10.1991. It was pointed out by the Committee that those who were settling with N.D.M.C. officials were being allowed all 24 hours while others not so inclined were being harassed and discriminated against. This resulted in a flood of IAs being filed before the Committee in regard to timings alone. The Thareja Committee therefore recommended time schedule as "sun-rise to sun-set" - as has been granted to tehbazari". We accept this recommendation to the above said extent.

One of the eligibility criteria followed by Thareja Committee;

In respect of the period

(1) prior to 1977

(2) 1978-80

(3) 1981-87

The Thareja Committee was prepared to condone absence of proof of squatting/hawking only for one year. Further the squatting/hawking after 1987 upto date of inspection by the Committee has been also gone into. In other Words those who were squatting in the periods (with only year gap) were to be squatting even after 1988. For the period after 1988 also only one year gap has been condoned. This principle was followed uniformly. Some claimants whose claims were rejected on this basis have filed IAs. We have rejected them as we have agreed with the principles adopted by the Thareja Committee.

Submissions of N.D.M.C. in this Court in regard to rejection of NDMC's objections to some sites:

In regard to the some important and if fact lucrative areas to which the N.D.M.C. had objection before the Committee and which objections were rejected by the Thareja Committee, the N.D.M.C. has filed before us its written submissions on 19.7.1997. The said objections (at pp 77 to 84 in the paper book of IA 3/91) also list out 76 sites for which the N.D.M.C. has no objection. While making these written submissions, the NDMC has also given number of kiosks and/or tehbazari which could be accommodated in various places for which there was no objection. Total number of the available places is also given.

A In addition 7 sites are proposed by the N.D.M.C. mostly for kiosks or for covered Thara and, one place for 6 tehbazari.

B The Thareja Committee while rejecting the objections of the NDMC in respect of these areas and including them in the list of acceptable places, has also given the figures of how many kiosks, squatter or tehbazari can be accommodate in these areas.

C Objections were raised before us by the NDMC in regard to (i) 26 important places in the various zones, (ii) place in Sarojini Nagar and (iii) six other places in some zones -in all 33. Learned senior counsel for the N.D.M.C. Sri R.K. Maheshwari made his submissions in regard to each of these items and referred to the reasons given by Mr. Thareja and contended that these sites were wrongly included by the Committee and have to be excluded and further that the reasons given by the Thareja Committee are not sound.

D The objections of the N.D.M.C. in respect of these sites fall into the various categories : (i) Pedestrians hindrances and major road, (ii) falls under development scheme (iii) adds to congestion (iv) disturbs unique character of Connaught Place (v) traffic congestion (vi) security problem and major road (vii) over crowded (viii) over congested (ix) no further scope. Part 9 of the report of the Thareja Committee from pp 56 to 310 dealing with these aspects has been read before us by the learned counsel for NDMC for 2 days on 6th and 7th January. taking up item by item. The reasons given by the Thareja Committee were challenged.

F We have heard these submissions and have also gone through the elaborate reasons given by the Thareja Committee in regard to each of these 33 places. We do not propose to record our reasons nor to deal with each item independently. We are indeed not sitting in appeal. Further, we are keeping in mind the recommendation as to 'finality' made in the Lok Adalat on 19.11.1989. Further the plea of the NDMC that certain areas fall under 'development scheme' was a plea not raised before the Thareja Committee and has been raised for the first time before us. We find that the Redevelopment Scheme prepared by the DDA is of March 1993 and the NDMC had full knowledge thereof long before May 1996 when the Thareja Committee Report was submitted to this court. Hence this ground is liable to be rejected. We are satisfied that Mr. Thareja has based his conclusions on valid material and on the existing factual position at the grass-root level. He has also relied upon factual information gathered from personal visits made by him to these places and kept in mind the manner in which, the N.D.M.C. had itself already granted

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certain kiosks, squatting or tehbazari rights in these very areas earlier. In our view no exception can be taken to the reasoning and conclusions of the Thareja Committee in regard to these items and to its ultimate recommendations as to the suitability (or otherwise) of these areas. We do not find any grounds to modify or set aside the recommendations in regard to these sites. In the result, we accept the recommendation, reject the objection of the NDMC and therefore these 33 sites would get added to the 76 and 7 sites already mentioned - resulting in 116 sites. (In this connection, our order in IA No. 114/97 may also be seen).

As already stated, the Thareja Committee also decided the relative seniority of each claimant and wherever individual claimants have questioned the adverse orders passed by the Committee, we have passed separate orders in the IAs. Subject to the orders passed in the IAs, the recommendations of the Committee as to seniority are accepted by us.

The Committee has recommended the procedure that could be followed while making final allotments. It reads as follows (p. 309):

“...the squatters who have been identified have been shown as per the seniority in the list of squatters squatting in respective areas. The allocation of sites, accordingly is to be made as per the seniority of the squatters identified in the area. To do this, it is proposed that the squatters of the particular area be invited to give their preference for sites available in that area, with respect to the trade as approved in consultation with the NDMC. Where a site is preferred by an individual squatter only, the same be allocated to him. Where a particular site has been preferred by more than one squatter, then the same be allocated by seniority or by the system of draw of lots for the first five senior squatters for one site. A squatter shall be eligible to give his preference for only three sites so that a large number of applications for one single site is avoided. Such an approach, it is felt shall not result in objection from any of the squatters and will be in fair play.”

In other words, apart from seniority, each eligible squatter should be allowed three sites as options in the zone.

We accept the above procedure recommended by the Thareja Committee and the recommendation for giving three options in the zone subject only to one modification that the allocation will be accordingly to seniority as decided

A by the Committee and not by draw of lots as alternatively suggested by the Committee.

The concluding para of the Committee report reiterates that the allotments made by the Committee are only tentative and that final allotment has to be made after this Court passes orders on the Committee's Report. This part of the recommendation (which is similar to recommendations at page 38 of its report) reads as follows (p.310):

C "At present, it is not possible to allocate a site to an individual squatting in the area of NDMC as the NDMC is contesting the identified sites and it is not yet finally decided by the Honourable Supreme Court as to which sites are available for purposes of allocation to the squatters/hawkers. Various petitions for directions against the claims rejected by the squatters are still pending consideration before the Supreme Court. The lists of the squatters also cannot be said to be final as yet. It is only after the petitions for directions are decided that the list of squatters can be said to be final and the identified sites are approved by the Supreme Court, that the task of allocation of sites can be done. Accordingly, the report is submitted with respect to the allocation of sites as was desired by the Honorable Supreme Court in its Order dated 23.9.1994."

E Therefore, the allocation of palaces, if any, done by the Thareja Committee in individual cases, is only tentative inasmuch as new places have been added, seniority is now fixed and three options are to be now given by each person and question of reservation is also to be considered. Now that the IAs regarding claims of squatters whose claims have been rejected by the Committee have also been disposed of by us and the seniority list stands accepted and the objections of the NDMC for excluding certain areas stand rejected, while some areas are suggested by the NDMC have got added, the stage is therefore set for final allocation of the sites to the various claimants. While making allotments for squatters\tehbazari the proportion as to reservation mentioned in the scheme will also have to be followed. We are, therefore, F proposing that after a public notice to be issued by the authority whom we propose to nominate, claims will be filed in Part I by the eligible claimants (Part II will deal with arrears of Tehbazari charges). G

Arrears of tehbazari charges :

H The Thareja Committee has recommended that all squatters who have

been given seniority and eligibility for allotment should pay arrears of dues towards tehbazari within 2 weeks and that in case of failure to pay, the claimant would not be entitled to benefit under the Scheme. The said Committee also suggested that all approved claimants - though they were squatting prior to 1.1.1990 and were allowed to continue under orders passed by the Committee, - should pay the arrears of tehbazari charges only from 1.1.1990 and that the arrears proof to 1.1.1990 be waived by the NDMC.

So far as waiver of the arrears of tehbazari charges prior to 1.1.1990 by the NDMC is concerned, we heard arguments and considered the facts and circumstances of the case and we accept this recommendation.

So far as arrears after 1.1.1990 are concerned, it has been stated before us that the tehbazari charges for a space of 6' x 4' are Rs. 240 p.m. and that for a space of 4' x 3' are Rs. 120 p.m. There was considerable argument before us as to whether in order to avoid dispute as to what is the actual amount in arrears after 1.1.1990. we should fix a lump sum amount applicable to all claimants or whether we should order an enquiry into individual cases where there is dispute as to the period of occupation. Having considered this aspect carefully we are not inclined to fix a lump sum. We are of the view that the authority whom we propose to nominate should examine, in case of dispute, the facts in each case relating to arrears of tehbazari charges for the period after 1.1.1990 and decide the extent of arrears in each case after giving a reasonable opportunity of being heard, to the claimants found eligible by the Thareja Committee wherever there is a dispute as to the amount of arrear. We also direct that deduction will be given for any amounts already paid for the period after 1.1.1990 provided adequate proof is produced therefor.

It has been argued for the NDMC that unless the arrears are paid, the eligible claimants should not be allowed to conduct their trade at the places tentatively allocated to them or where they have been lawfully conducting their trade. We are unable to agree with this contention particularly because we have directed an inquiry into the arrears after 1.1.1990, wherever the quantum is in dispute. We are of the view pending a decision on arrears that the current tentative occupation by these persons of any places, as decided by the Thareja Committee, need not be disturbed. The claimants will be permitted to carry on their avocations at the places tentatively designated by the Thareja Committee, subject of course to final allotment of places by the authority to whom we propose to entrust the job for such final allotment.

The authority whom we propose to designate shall, as per the procedure

- A for public notice indicated below, require eligible claimants to file in Part II of their application, details as to the Tehbazari charges paid after 1.1.1990, so that the issue of arrears, if any, is not raked up after the issue of allotment of site is finalised. Both issued could be decided more or less simultaneously, so that in case the arrears finally determined are not paid, the final allotment of site could be made to another eligible person by the new Committee.

B

Construction of Kiosks: time to be fixed etc.:

- C As pointed by the Thareja Committee, those claimants who are senior most would be allotted kiosks/stalls as mentioned in the Report. It is however stated by the learned counsel for the NDMC that the kiosks to be constructed are 92 in number and that construction of these kiosks at the places identified by the Thareja Committee would take some time and there is also need for obtaining adequate budgetary provision for these purposes. Question has also arisen as to whether at these places where the kiosks are to be constructed by the NDMC, the places should be kept idle till such time as the kiosks are
- D constructed.

- E It has been rightly suggested by Shri Maheshwari for the NDMC that it is not necessary to keep these places identified for construction of kiosks idle till the kiosks are actually constructed. In the meantime, those to whom these kiosks have been allocated by the Thareja Committee tentatively or who have already been authorisedly continuing, will continue to squat at the places where the kiosks are to come up and conduct their avocation subject to any final allotment that may be made by the authority whom we propose to dominate.

- F It has been argued for the NDMC that so far as the construction of these kiosks is concerned, permission may be obtained from Delhi Urban Arts Commission and also from the Archaeological Survey of India and the Department of Archaeology of the Government of the National Capital Territory, New Delhi. If such a procedure is warranted by law, surely the NDMC may follow the same. But, in the meanwhile, if tentative allotment is already made
- G by the Thareja Committee or there are authorised occupants, they will not be disturbed, pending construction of kiosks. Further if there are any 'unauthorised' persons at these places where kiosks are to be constructed - conducting tehbazari or squatting, - such persons shall forthwith be removed from those places by the NDMC.

- H In the event of the Urban Arts Commission or the Archaeology

Departments mentioned above not approving any of these sites for kiosks identified by the Thareja Committee, the said places shall be available for tehbazari and the authority whom we propose to nominate, shall consider the said places for tehbazari and make such final allotment as he may deem fit, in accordance with the procedure already indicated. A

For the purpose of obtaining clearance from the aforesaid authorities, we grant time to the NDMC upto 30.6.1998 and for construction of the kiosks/ stalls upto 31.10.1988. Copy of our order will be communicated to the above departments i.e. Delhi Urban Arts Commission; Archaeology Survey of India, New Delhi and Department of Archaeology, N.C.T., New Delhi. B

Immediate eviction of unauthorised squatters/hawkers: C

A reading of the Thareja Report and connected documents does show that in several areas unauthorised squatters or hawkers have been allowed to conduct their operations. It is alleged by the learned counsel appearing for the squatters/hawkers that this is done in collusion with the NDMC or officers of other departments and this should be stopped forthwith. In fact, it is vehemently argued that such unauthorised squatters/hawkers are there in places in respect of which the NDMC claimed exclusion on pleas of heavy traffic sensitivity etc. It was therefore agreed before us by the learned counsel for the NDMC, Sri Maheshwari that these unauthorised squatters/hawkers will be removed by the NDMC forthwith. D E

We are of the view that these persons should be removed forthwith and that it is not necessary to wait till the final allotment of these sites to the eligible claimants. We accordingly direct that the unauthorised squatters/hawkers trading at the places recommended by the Thareja Committee or suggested by the NDMC - which have now been accepted by us - should be removed by the NDMC within one week from today and the NDMC shall also ensure that, in future, no unauthorised squatter/hawker conduct his trade at the places accepted by the Thareja Committee and by this Court. We make it clear that if the above directions are violated by the NDMC, it may call for serious action from this Court. It will also be open to the authority whom we propose to appoint to bring to the notice of this Court any breach by the NDMC of this direction. F G

Mode of issuing public notice. fixing cut-off and procedure for hearing before the authority:

We have already stated that for the purpose of final allotment of the H

A places to the authorised squatters/hawkers as per their seniority and to consider the three options of each person and for the purpose of deciding the quantum of arrears of tehbazari charges for the period after 1.1.1990, we will be nominating a particular authority. Question has arisen as to what procedure he should adopt.

B *Public notice: inviting applications - Part I (allotment of sites)*

Initially he will issue a public notice that the eligible claimants may submit their applications in respect of the 116 sites and in Part I of their application they shall state their claim in regard to the size (whether 6' x 4' or 4' x 3') within the respective Zones - restricting choice to three places in each Zone - and quoting their seniority as decided by the Thareja Committee. (The option in all will be only for 3 places in the zone). The public notice shall also require the eligible claimants to state in Part II details of the arrears of tehbazari charges from 1.1.90 and if there are arrears as on date or not. Public Notice will be issued in one English and one Hindi Newspaper having circulation in Delhi in this behalf. Such notices will also be put up at the various offices of the NDMC. It will also be stated that claimants can put forward their claims within three weeks (a specific cut off date is to be given) before which the applications is to reach the authority whom we propose to nominate. It shall also be stated in the public notice in the newspaper that for the purpose of giving the three options, the claimants can ascertain. if necessary, the details of the location and size of these 116 places for which they would give their options - from the Notice Board of the NDMC at specified places. We are emphasising this aspect to obviate any grievance that the eligible claimants did not know details of the available places in each Zone or the size and to eliminate any grievance that they did not have a reasonable opportunity of submitting the three options.

F *Public notice - Part II of application: (arrears of Tehbazari)*

As already stated, we have also required a statement from the claimants regarding arrears of tehbazari charges in Part II so that the question of arrears can also be simultaneously decided and so that in case the amount is decided and not paid and the claimant loses his eligibility due to non-payment, the new Committee can proceed to consider if the vacancy so available could be allocated to some other eligible candidate, if any, who did not get any allotment.

H *Cut off date for filing application and further notice of hearing to*

petitioners or counsel

After receipt of the claims which are received on or before the cut-off date indicated in the public notice the nominated authority shall issue notices to the claimants by registered post-A.D. fixing particular dates for hearing. It could also - if it considers it necessary - issue a general public notice through the NDMC that eligible claimant who have lodged their claims, could appear before the nominated authority on or before a particular date, for orally submitting their case.

The nominated authority will decide rival options for each place and for that purpose it may evolve its own procedure consistent with natural justice. On the question of arrears from 1.1.1990 also separate orders will be passed. Hearing will be given to the claimants who could either represent their cases personally or through counsel, Reasoned orders will be passed by the nominated authority and the decisions shall be final and shall not be questioned before any authority, tribunal or court of law or the High Court of Delhi nor in this Court. In other words, as recommended in the Lok Adalat on 19.11.1989, the decision of the authority both on questions of allotment of place and arrears due shall be binding on the claimants and the NDMC as well.

Ban on further IAs:

We also direct that as from today, no IAs will be allowed to be filed against the Thareja Committee Report or against individual orders passed by the said Committee before it submitted its Report in this Court. The IAs, if any pending, as of date will be listed for final disposal so that by the time the authority we propose to nominate, gives its public notice, all the pending IAs are disposed of by this Court.

We are giving this direction to put a seal of finality to the decisions of the authority so that the problems arising out of this PIL case in respect of the squatters/hawkers which have been pending in this Court since 1989 could come to an end atleast in 1998.

Change of trade:

(i) *general right to change in trade:*

This aspect is somewhat important. The first *Sodan Singh* Case upheld

A the right to trade under Article 19(1)(g) of the Constitution of India on the pavement and sidewalks without however, interfering with the freedom of others using these places. This right could also be subject to reasonable restrictions, if any, made by law under Article 19(6). As yet no such special law has been brought to our notice except the Delhi Police Act, 1978 and Delhi (Control of Vehicular and other traffic on Roads and Streets Regulation) Act, 1980, referred to in the first *Sodan Sing's Case*. Of course, certain provisions of the Punjab Municipality Act, Rules or bye laws thereunder could also be relevant. In addition, the Scheme issued by the NDMC pursuant to orders of this Court permits non-licensable trades (excluding luxury and smuggled outlets). Further this Court had also stated in the first *Sodan Singh's Case* that the grant of hawking/squatting right is not meant for luxurious items or smuggled goods.

In IA No.83 of 1995, in which we have today passed a separate order, the claimant, Bishwanath Roy, who was trading in 'tea' wanted to change over to garments. The NDMC took the stand that it had a discretion either to grant or not to grant the change in trade to garments and it would take up the issue after the Thareja Committee gave no objection. The Thareja Committee did not pass final orders but dealt with this question in its report. It pointed out that absolute discretion for change of trade even in respect of non-licensable trades cannot be granted to the NDMC and that for example there are some locations where the business of hawkers could yield substantial gross income per day and therefore abuse of discretion by the NDMC officials could not be ruled out. Bearing all these factors in mind, we have allowed IA No.83 of 1995 for change of trade to garments in that case as such trade was not unlawful and was not one in 'luxurious goods' or 'smuggled goods' and we added that the NDMC could, at the most, impose reasonable conditions for the enjoyment of the right consistent with Article 19(1)(g) (and Article 19(2)). We have also stated that in the matter of change of trade, if the NDMC's orders or the conditions imposed are unreasonable or arbitrary or contrary to any provisions of law, it would be open to the aggrieved parties to avail all remedies at law. We reiterate the same position in this order also.

G (ii) *Lotteries* :

In certain cases the eligible squatters were presently selling lotteries which have since been barred. As agreed to before us by some counsel appearing for those selling lotteries, such claimants will, apply to the concerned authority in the NDMC for change of trade. The NDMC shall, if such new

trade is not a prohibited one nor one relating to imported or luxury items, grant the request for change in trade. Such claimants will indicate in Part I of their application as to whether they have (or are proposing to), applied for change of trade from lottery to any other non-prohibited trade. A

Appointment of Shri V.C. Chaturvedi and infrastructure: B

We hereby nominate Sri V.C. Chaturvedi, presently working as Joint Registrar in the High Court of Delhi to undertake the various duties and functions enumerated as above (which are again summarised below) and complete the job, as far as possible, within a period of a 6 months from the date of receipt of this order. We request the High Court of Delhi to spare his services, during the remaining period of his service as Joint Registrar in the Delhi High Court for the aforesaid purpose. (We are passing separate orders in connection with his remuneration, in this very SLP.) We direct the NDMC to issue orders directing the Directorate of Estates and the Director of Enforcement to help and implement the decisions or directions or orders of Sri V.C. Chaturvedi. The NDMC is directed to provide a place for the office of Sri V.C. Chaturvedi, clerical staff, stenographer and class IV employees and all other infrastructure required by Sri V.C. Chaturvedi for the purpose of facilitating early disposal of the matters. If any assistance or clarification is required by Sri V.C. Chaturvedi, it shall be open to him to seek appropriate directions from this Court by filling IAs in this SLP, even though this SLP is disposed of. Nobody else will be entitled to file any application or proceedings before any other tribunal, Court of law, High Court or this Court to challenge any orders passed by Sri V.C. Chaturvedi on any ground whatsoever. C D E

Summary of procedure to be followed by the Chaturvedi Committee and N.D.M.C. F

1. Sri Chaturvedi Committee (sole member) shall issue public notice in an English and a Hindi Newspaper (expenses to be borne by the NDMC) within 15 days from today permitting the eligible claimants so found eligible by the Thareja Committee to submit their application in Part I. containing options in regard to the identified places and sizes (whether 6' x 4' or 4' x 3') in the particular zone to which these claims belong. The public notice in the newspaper will state that the details regarding the available sites and their locations and size is put up on the Notice Boards of the NDMC at various place, whose addresses are given. The notice will also require the claimants to state in Part II of their applications the details as to payment of Tehbazari G H

A charges due after 1.1.1990 and if there are or not any arrears as on date. The notice will also be put up in the various offices of the NDMC within the above said period. The notice in NDMC office will also give a detailed list of the places available for squatting/hawking and stating whether it is a kiosk/stall or a place for mere vending on Tehbazari basis as decided by the Thareja Committee and indicating their sizes (6' x 4' or 4' x 3').

B
2. The eligible claimants will be given 3 weeks time to file in Part I of their application their three options, indicating the zone concerned, their seniority as decided by Thareja Committee, stating whether they come under any reservation category, the type of trade they have been trading in or the new trade for which they have applied to the NDMC and such other particulars as may be called for or relevant. In Part II the eligible claimants shall specify if they have made payments of Tehbazari arrears due for the period after 1.1.1990 and if there are any arrears as on date.

C
3. After receipt of the claims, Committee shall issue notice to the concerned parties and the NDMC in regard to each of the places at which squatting/hawking is permitted as per the Thareja Committee Report and decide on the basis of seniority and reservation, size of place and such other relevant material as may be placed before the Committee, as to who should be allotted at what place. The Committee shall fix up dates of hearing by issuing Registered A.D. notices to the parties concerned. (The expenditure in this behalf shall be borne by the NDMC.) The Committee shall give an opportunity of being heard and pass reasoned orders and its decisions shall be final and shall not be questioned before any other authority, tribunal, Court, nor the High Court nor in this Court.

D
4. It shall however be open to Sri Chaturvedi to obtain, if necessary, such directions or clarifications from this Court by way of filing IAs in this SLP, even though it is now disposed of.

E
5. The claimants will be permitted to appear before the Chaturvedi Committee either in person or through their counsel.

F
6. In case it is decided by the Chaturvedi Committee after the hearing of the case in Part II that any eligible claimant is in arrears of tehbazari dues for any period after 1.1.1990 then the said Committee shall fix a date before which the arrears have to be paid and informing that if the amount is not paid by that date, the claimant will lose his claim for the kiosk/stall or for the place.

G
H In case the claimant default in payment by such date fixed and the claimants

rights cease as stated above, the Chaturvedi Committee will consider if the vacancy can be allotted to any other claimant already declared eligible by the Thareja Committee. A

7. In case any of the placed found eligible for kiosks/stalls by the Thareja Committee are not accepted by the Urban Arts Commission or the Archaeological Survey of India and the Department of Archaeology of the Govt. of NCT, the said places meant for kiosks/stall shall be available for tehbazari and the Chaturvedi Committee shall pass appropriate orders of allotment on that basis. As and when the above said authorities inform the NDMC that the places earmarked for kiosks/stalls are not acceptable for that purpose, the NDMC shall inform the Chaturvedi Committee about the said decision. (We have already observed that pending construction of kiosk/stall the claimant tentatively allotted the place or other person authorisedly using the place for vending on Tehbazari; shall continue. We also said unauthorised persons vending at these places be evicted by the NDMC forthwith.) B C

For the purpose of obtaining clearance for the said authority, the NDMC is granted time upto 30.6.1998 and for construction of the Kiosks/stalls upto 31.10.1998. D

8. In regard to eviction of unauthorised squatters or other persons using the places identified by the Thareja Committee the NDMC has undertaken to have them evicted forthwith and in case this is not done, it will be open to the Chaturvedi Committee to bring it to the notice of this Court for appropriate orders, as stated earlier. E

9. The NDMC in general and the Director of Estates and the Director of Enforcement in particular will help and implement the decisions, directions or orders of Sri V.C. Chaturvedi. The NDMC shall also provide the other infrastructure to Sri Chaturvedi as stated in the main body of this order and pay his remuneration (in regard to which we are passing separate orders in this SLP). F

10. The decisions of the Chaturvedi Committee both on the question of allotment of the kiosk/stall or the sites for tehbazari and also as to quantum of arrears of tehbazari shall be final as indicted in the body of this order and shall not be questioned either by the claimants or the NDMC before any authority. Tribunal, a Court of Law, the High Court or in this Court. No petition shall be registered in this behalf by the above bodies. We have only G H

A permitted the Chaturvedi Committee to file IAs in the appeal seeking any direction or clarification and none others. So far as orders of NDMC in regard to change of trade, it is open to the affected parties to resort to all appropriate remedies. We have so permitted Sri Chaturvedi to move this court in certain respects.

B The above summary is in addition to directions contained in the main body of this Judgment. The Civil Appeal stands disposed of.

R.P.

Appeal disposed of.