

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.22/2008 & CM No.1214/2008**

Date of Decision: April 28, 2010

RATTAN LAL PRAJAPATI Appellant
Through: Mr.P.K.Mittal, Advocate.

Versus

MCD & ORS. Respondents
Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (3) Whether reporters of local paper 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

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellant is earning his livelihood by selling pan, bidi and cigarettes as a squatter on the land of Municipal Corporation of Delhi (for short 'MCD') in front of United Bank of India, Gandhi Nagar since 1980. He applied with the respondent for permission of squatting vide receipt No.72967 dated 23rd July, 1992. Despite deposit of Rs.3,000/-, respondent failed to allot the said land to the appellant as a squatter. Hence, he filed a

suit for permanent injunction against the respondent.

2. Respondent in the written statement raised a defence that *Teh Bazari* of the appellant was cancelled and therefore, he became an encroacher of the municipal public land. Respondent also referred to directives of the Supreme Court dated 1st May, 1997 by virtue of which MCD was directed to investigate all the *Teh Bazari* matters and thereafter scrutinize all the documents in this regard and allot sites to eligible persons. However, appellant despite service of registered letter upon him, failed to submit his documents in respect of continuing *Teh Bazari* payment as required and therefore, his *Teh Bazari* was cancelled.

3. In view of judgment of the Supreme Court in '***Gainda Ram & Ors. Vs. MCD, Town Hall & Ors.***', reported as ***JT 1993 (3) SC 396***, respondent disputed maintainability of the suit in the Civil Court.

4. Trial Court in view of ***Gainda Ram's*** case (*supra*) dismissed the suit as not maintainable and declined to give relief of injunction as claimed by him. Thereafter appellant filed a Regular Civil Appeal bearing RCA No. 52/2004, which was also dismissed by the Appellate Court vide its impugned judgment and decree dated 25th January, 2007.

5. While dismissing the appeal, Appellate Court observed:-

“.....but the fact that the Committee of Justice R.C.Chopra was looking in to the *Teh Bazari* cases, the plaintiff should have also

approached the said Committee for the relief asked for. Since he did not approach the said Committee, which was exclusively dealing with Teh Bazari cases, he cannot agitate before the Civil Court the remedy which he did not avail. Therefore, the view taken by the Ld. trial court, in view of the judgment of Hon'ble Supreme Court in *Gainda Ram's* case that the suit of the appellant was not maintainable, certainly the appellant should have approached the said Committee and findings of the trial court on this ground cannot be said to be erroneous. The appeal of the appellant is hereby dismissed.”

6. Counsel for the appellant has submitted that both the courts below misinterpreted *Gainda Ram's* case (*supra*) to the facts and circumstances of this case to conclude that the suit was not maintainable in the Civil Court and that appellant should have approached the Committee of Shri R.C.Chopra to look into his *Teh Bazari* rights. Therefore, he has submitted that substantial question of law is involved in this case.

7. I find no force in the submission of counsel for the appellant. In *Gainda Ram's* case (*supra*), Supreme Court, while referring to '*Saudan Singh Vs. NDMC & Ors., [1992] 2 SCR 243*, reproduced the guidelines as laid down in the said case in the following manner:-

“(1) Persons who have been found squatting between 1970 and 1982 and whose names are contained in the survey report prepared after the survey conducted in 1982 will receive first priority for grant of tehbazari permission

subject to the scrutiny of their claims;

(2) Insofar as casual tehbazari on weekly holidays, festivals/melas, etc., is concerned, as well as at the 67 weekly bazars held, persons availing of the said benefit will continue to be granted the casual or weekly tehbazari;

(3) Squatters who have started squatting/hawking in 1983 onwards and who were not found on the date of survey would also be considered for grant of open tehbazari of 6'x4' subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/hawkers would be granted open tehbazari subject to availability of space provided they have cleared the dues of the MCD; and

(4) Persons who do not fall within the aforesaid three categories would be permitted to apply for hawking licences under Section 420 of the Delhi Municipal Corporation Act, 1957 and their applications would be considered on merit for permission to hawk-not squat-by moving in specified areas with their goods on their heads or on cycles. They will be entitled to hawk with their goods anywhere in the zone in respect of which they have not been granted a licence. However, such permission will be subject to any restrictions that may be imposed by the residential associations or different colonies.”

8. After considering the submissions of respective parties,

Supreme Court concluded:-

“5. With these observations, all the petitions/appeals/SLPs/suit, etc., pending in this Court/the High Court of Delhi and Courts

subordinate to it shall stand terminated by this order forthwith. In other words no civil litigation commenced by or on behalf of the squatters/hawkers pending in the Courts of Delhi shall survive. No further litigation by or on behalf of any squatter/hawker will be entertained but if the MCD violates any part of this order the concerned party governed by this order will be entitled to file an LA. for directions. The interim stay orders granted in those cases shall also stand vacated. The MCD will, however, maintain the status quo till the verification is completed and only in regard to those hawkers/squatters whose claims are negatived, will it be open to the MCD to take action for their eviction ten days after the claim is rejected. The MCD will also ensure that future encroachments do not take place defeating the rights of existing squatters/hawkers governed under the scheme. It will also protect the interest of the shopkeepers as they too have a similar right under Article 21 of the Constitution. No order as to costs in all cases.”

9. Thus, it is clear that appellant could not invoke jurisdiction of the Civil Court to seek relief which he was required to seek from Shri R.C.Chopra’s Committee.

10. Counsel for the appellant has referred to ‘**Gainda Ram Vs. M.C.D.**’ 1997 VI AD S.C.130 to emphasize that the civil suit filed by the appellant was maintainable. It is noted that it was an interim application filed in **Gainda Ram’s** case (*supra*), which was considered and decided by the Supreme Court on 1st May, 1997. While disposing of the IA, some

suggestions made by Shri R.C. Chopra's Committee were considered and accepted. Supreme Court went further to lay down further guidelines for examination of claims of some of the applicants, who were held eligible for allotment of *Teh Bazari*.

11. In view of my discussion as above, it is concluded that in view of the settled principle of law by the Supreme Court in ***Gainda Ram's*** case (*supra*), Trial Court as well as Appellate Court rightly held that civil suit was not maintainable. No substantial question of law can be formulated to interpret the guidelines laid down in ***Gainda Ram's*** case (*supra*) and further in IA No. 37 filed in the said case, specially when the guidelines as laid down are crystal clear and unambiguous.

13. Since no substantial question of law is involved in the appeal, it being without any merits is hereby dismissed.

(ARUNA SURESH)
JUDGE

APRIL 28, 2010
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