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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28th July, 2011

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W.P.(C) 4278/2011

**DELHI FLOWERS CUTTERS,GROWERS &
SUPPLIERS WELFARE SOCIETY (REGD.)** Petitioner
Through: None.

Versus

GNCTD & ORS. Respondents
Through: Ms. Avnish Ahlawat, Adv. For R-1,3&4.

AND

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W.P.(C) 4279/2011

THE FLOWERS TRADERS ASSOCIATION Petitioner
Through: Mr. M. Ahmad, Adv. for Mr. Bahar U.
Barqui, Adv.

Versus

GNCTD & ORS. Respondents
Through: Ms. Avnish Ahlawat, Adv. for R-1,3&4.

AND

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W.P.(C) 4629/2011

**FATEHPURI FLOWERS TRADERS WELFARE
ASSOCIATION FATEHPURI (REGD.)& ANR** Petitioners
Through: Ms. Mukta Sharma, Adv.

Versus

GNCTD & ORS. Respondents
Through: Ms. Avnish Ahlawat, Adv. for R-1&2.
Mr. Nawal Kishore Jha, ASC for MCD

AND

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W.P.(C) 4897/2011

SH. SUBHASH SETHI

..... Petitioner

Through: Mrs. Mukta Sharma, Adv.

Versus

GNCTD & ORS.

..... Respondents

Through: Mr. L.K. Garg, Adv. for R-1.

Ms. Manjira Dasgupta, Adv. for Ms. Shyel
Trehan, Adv. for MCD.

AND

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W.P.(C) 5005/2011

**MEHRAULI FLOWERS MARKET
ASSOCIATION**

..... Petitioner

Through: Mr. M. Ahmad, Adv. for Mr. Bahar U.
Barqui, Adv.

Versus

GNCTD & ORS.

..... Respondents

Through: Ms. Avnish Ahlwat, Adv. for GNCT.

Ms. Manjira Dasgupta, Adv. for Ms. Shyel
Trehan, Adv. for MCD.
Ms. Sonia Arora, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|---|-----|
| 1. Whether reporters of Local papers may
be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported
in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. The petitioners in W.P.(C) 4278/2011 and W.P.(C) 4279/2011 represent the interest of those selling flowers, leaves and other related items at Baba Kharak Singh Marg, Connaught Place, New Delhi. The petitioners in W.P.(C) 4897/2011 & W.P.(C) 4629/2011 represent the traders engaged in the business of Arhat of flowers at Fatehpuri, Delhi. The petitioners in W.P.(C) No.5005/2011 represent the traders/sellers of flowers and accessories at Mehrauli, New Delhi. Since all the petitions entail similar controversy, they have been taken up for hearing together. Notices of some of the petitions were issued and the other petitions which came up subsequently were tagged for being heard along with the petitions in which notices had been issued. Interim orders were granted on 10th June, 2011 in W.P.(C) No.4278/2011 and W.P.(C) No.4279/2011 restraining the respondents from taking coercive steps against the petitioners of removal of the petitioners therein. Counter affidavits have been filed by the contesting respondents Govt. of NCT of Delhi, Delhi Agricultural Marketing Board (DAMB) and the Chairperson, Flower Marketing Committee in W.P.(C) No.4278/2011 and the counsel has adopted the said counter affidavit in other petitions also. Rejoinder thereto has been filed.

2. The counsels for the petitioners and the counsel for the aforesaid respondents have been heard.

3. The Lieutenant Governor of NCT of Delhi vide notification dated 17th January, 1997 issued in exercise of power under Section 4(1) of the Delhi Agricultural Produce Marketing (Regulation) Act, 1976, then in force, declared the whole National Capital Territory of Delhi as a “Market Area” of agricultural produce pertaining to Item No.XV (Horticultural) thereof. Vide further notification dated 3rd June, 1997 issued in exercise of powers under Section 6(2) of the said Act, the Director, Agricultural Marketing, Govt. of NCT of Delhi established the Mehrauli Flower Market (as described therein) as the Principal Market and the Fatehpuri Flower Market (as described therein) as the Subsidiary Market for horticultural products.

4. Vide another notification dated 12th March, 1998 also issued in exercise of powers under Section 6(2) of the Act, the Director, Agricultural Marketing established Connaught Place Flower Market (as described therein) also as a further Subsidiary Market for the flower trade in addition to the above.

5. Since then, the Mehrauli Flower Market has been functioning as the Principal Market and the Fatehpuri and the Connaught Place Flower

Markets have been functioning as the subsidiary markets within the meaning of the Act aforesaid. The 1976 Act stands repealed by the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (the 1998 Act), now in force.

6. It is the case of the contesting respondents that the markets at Mehrauli, Connaught Place and Fatehpuri were/are on the roadside; that the business in Connaught Place was carried on by the traders only in the morning hours as the area which was notified was in front of and behind the shops/Emporia on Baba Kharak Singh Marg and was required by the NDMC and the Police to be cleared by 8:00 a.m. in the morning; that after the constitution of Flower Market Committee within the meaning of Section 26 of the 1998 Act, efforts were being made to relocate the trade of flowers at one place permanently like markets for other commodities where traders can continue their trade throughout the day; that several writ petitions were filed in this Court by the flower traders contending that their trade from the markets as notified could not be interfered with as long as the said markets were not de-notified and shifted to some other place; that the said writ petitions were disposed of with the directions that till the notifications constituting the markets remain in force, the traders had a right to carry on business in the notified area; that two plots were acquired in Okhla

Srinivaspuri Area where shops were constructed for temporary shifting of the flower market till the regular place therefor was arranged and proposals for shifting the Connaught Place and the Mehrauli Flower Markets to Okhla were mooted; however when applications were invited, it was found that the space at Okhla will not be sufficient for shifting even the flower traders from Connaught Place; that another writ petition was filed by a resident of Connaught Place for removal of illegal encroachments by the flower traders on the road and footpath around Jain Mandir Lane, Connaught Place and in which writ petition certain interim directions for regulating the trade at Connaught Place were issued; during the pendency of the said petition, a decision was taken and this Court was also informed of shifting of the flower market from Connaught Place, Fatehpuri and Mehrauli to Ghazipur where land *ad measuring* 10 acres had been earmarked for establishment of Modern Flower Market; however since the said project was/is yet to be cleared by various authorities, the DAMB took a decision for shifting all the three markets firstly in Ghazipur in an area earmarked as parking lot by allotting them temporary space till the proper market comes up; that the flower traders who were also represented in the said writ petition also contended that the three markets be shifted together; that there are approximate 240 license holders in Connaught Place area and around

150 from Mehrauli and Fatehpuri; that assurance was given to the Court in the writ petition filed by the resident of Connaught Place that the Mehrauli, Fatehpuri and Connaught Place markets will be de-notified and whereupon no one will be able to carry on the trade in the said three areas and only one market at Ghazipur will be notified; that in the meanwhile allotments were made to the license holders at Ghazipur and the license holders have accepted the said allotments and taken possession of their respective spaces/sites; that it is only thereafter that order dated 28th February, 2011 under Section 23(2) of the 1998 Act identifying an area of 1.5 acres within the compound of Fruit and Vegetable Market IFC Ghazipur notified as “Market Yard of Flower Market” was issued; it was thereafter that notification dated 6th June, 2011 impugned in these petitions, in exercise of powers under Section 23(2) of the Act was issued rescinding with immediate effect the earlier notifications aforesaid dated 3rd June, 1997 and 12th March, 1998 (supra) establishing Mehrauli Flower Market as the Principal trade Market and the Fatehpuri and Connaught Place flower markets as the Subsidiary Markets.

7. It is further the case of the respondents that in the year 2011 another writ petition being W.P.(C) No.1902/2011 was filed by certain other persons claiming that till all the facilities are made available at Ghazipur, the flower

trade be not shifted there; that in view of the orders/notifications dated 28th February, 2011 and 6th June, 2011, the aforesaid three writ petitions were disposed of. It is thus the contention of the respondents that shifting the flower trade to Ghazipur has been subject matter of the aforesaid three petitions and cannot be again challenged by way of these petitions.

8. The counsels for the petitioners besides impugning the notification dated 6th June, 2011 (supra) rescinding earlier notifications establishing the Principal Market at Mehrauli and Subsidiary Markets at Fatehpuri and Connaught Place have also contended that there are no proper facilities at Ghazipur; that most of flowers arrive in Delhi by Rail; that establishment of the market at Ghazipur would require the flowers which are fragile/perishable commodity to be transported to Ghazipur; that owing to the location of slaughter house also at Ghazipur emitting methane gas, even otherwise there can be no flower trade in that area.

9. I may notice that though some of these petitions also challenge the validity of Section 62 of the Act and Bye-Law No.48 made thereunder but upon it being put to the counsels that such challenge is not maintainable before this Bench and the petitions will have to be heard by the Division Bench of this Court, it was stated that the petitioners do not desire to

challenge the validity of any provision of the Act and Bye-Laws and gave up the said pleas in the writ petitions.

10. The Act aforesaid was enacted to provide for better regulation of marketing of agricultural produce and establishment of markets for agricultural products in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto. Sections 3 and 4 of the Act empower the Government to, after following the procedure prescribed therein, declare an area as the market area and to regulate agricultural products therein. As aforesaid, Delhi has been declared to be a market area under the said provisions and there is no dispute that flowers and leaves are an agricultural product and their marketing in Delhi is to be regulated in accordance with the provisions of the said Act.

11. As far as the challenge in this petition to the shifting of the market to Ghazipur on the ground of Ghazipur being unsuitable and/or not the best location for the market is concerned, in my view has no merits for the following reasons:

- i.) The place/location of the market is an executive and policy decision and this Court is always reluctant, in exercise of powers under Article 226 of the Constitution of India, in interfering with such decisions.

ii.) The counter affidavit of the respondents sets out the detailed reasons for which the decision has been taken for shifting of the markets from Mehrauli, Fatehpuri and Connaught Place to Ghazipur and it is, thus, not as if the shifting is without any reason or basis. It is inter alia the case of the respondents that the existing markets are on the road side and atleast the market in Connaught Place admittedly works only for a few hours in the morning and there has been litigation in the past about the shifting of the markets. Of course, counsels for the petitioners have controverted that the markets are on / around the roadside. They have with the assistance of the photographs particularly of the Mehrauli market contended that the same is not on the roadside but on an open plot of land. Similarly, it is stated that the Fatehpuri market is on the first floor. However, this Court cannot substitute its own opinion for the reasons which prevailed with the competent authority to shift the market to Ghazipur.

iii.) The counsels for the petitioners have also contended that there can be a market at Ghazipur also but in addition to the existing markets. It is contended that just like there are several vegetable markets for the market area of Delhi, similarly, there can be several flower markets also. It is contended that it is not feasible to have only one market that too at a far off place. These are again arguments which are a matter of executive public policy decision. Nothing has been brought before this Court to show that the decision is totally unreasonable.

iv.) It is experience of life that there is always resistance to change. However, the fact remains that change is the only constant in life and once the Body/Authority constituted in accordance with the Act has felt that it is in the best interest of the trade and for the city that the entire market should be at one place only, i.e., in Ghazipur, there is no reason for this Court to interfere therewith.

v.) Judicial notice can also be taken of the growing/pressing need for decongesting the city owing to the increase in population over the years. Various facilities which earlier were not felt to have caused obstruction by being in the heart of the city or which when originally established were on the outskirts of the city have with the growth of the city fallen in the heart of the city and have had to be shifted away. Again the experience of life has shown that such changes though initially resisted, have in the long run yielded good results. Samuel Johnson said "Change is not made without inconvenience". There is no reason for this Court to presume otherwise in the matter of proposal to shift the flower market to Ghazipur. It has been said "change is hard because people overestimate the value of what they have—and underestimate the value of what they may gain by giving that up."

vi.) There are no large tracts of land available in the heart of Delhi as the petitioners would want/desire. Whenever shifting has to take place, it always has to be to a distant place. The same is true about residences even; whenever a larger residence is desired, it is inevitably found at a great distance from the existing residence.

vii.) It cannot be lost sight of that the markets at Mehrauli, Fatehpuri and Connaught Place were established immediately after the declaration of Delhi as a market area for flowers. It thus cannot be said that there was any planning or finality to the said declaration. The said declaration was perhaps to control the trade where it then existed. Now when with the experience of the last over a decade, the authority constituted to take a decision in this regard has taken a decision to have a centralized modern market, this Court would be loath to come in the way of such a change.

viii.) The plea of the respondents of a large number of licensed traders in the existing market having already been allotted spaces at Ghazipur and having accepted the same cannot also be disregarded. The petitioners before this Court perhaps largely comprise of unlicensed traders. Now, when the licensed traders have accepted the change, it is all the more a reason for not interfering therewith.

12. Yet another ground urged in these petitions is of the respondents charging the market fee without rendering any services. It is contended that there has to be an element of *quid pro quo* in the levy of market fee. Reliance in this regard is placed on ***Bhagwan Dass Sood Vs. State of H.P.*** (1997) 1 SCC 227. However, I am not inclined to entertain the said challenge. The said challenge has been made as a corollary to the challenge to the shifting of the markets. The petitioners in the last one decade since when the markets

have existed did not object to the levy of market fee. The plea of the market fee being disproportionate and/or without providing any corresponding amenities/facilities has been taken with reference to shifting to Ghazipur only. As far as Ghazipur is concerned, the relationship of the parties is still to be worked out and it is not deemed appropriate to deal with the quantum of market fee in Ghazipur at this nascent stage. Moreover, I do not find sufficient pleadings also in this regard for this Court to form an opinion as to whether the market fee levied is disproportionate or not.

13. The counsel for the petitioners in W.P.(C) 4629/2011 has also contended that Section 23 of the 1998 Act in exercise of the powers whereunder the notification dated 6th June, 2011 purportedly denotifying the flower markets at Mehrauli, Fatehpuri and Connaught Place has been issued does not permit the denotification and only empowers notifying the market. It is contended that Section 21 of the General Clauses Act, 1897 under which the power to notify includes the power to denotify also, is applicable to Central Acts only and the subject Act is not a Central Act and thus, Section 21 is not applicable thereto. It is yet further contended that though the Union Territory of Delhi had adopted West Bengal General Clauses Act which has a provision in *pari materia* to Section 21 of the General Clauses Act but upon Delhi ceasing to be Union Territory and becoming a State, the West Bengal

General Clauses Act has also ceased to apply to Delhi; she has handed over a list of Acts of different States as extended to Delhi as available on the website of the Govt. of N.C.T. of Delhi to show that the West Bengal General Clauses Act is not included therein. It is, thus, argued that there is no power to denotify a market once so notified.

14. I am unable to accept the aforesaid contention. Delhi is a hybrid State and it cannot be said that it has ceased to be a Union Territory for the West Bengal General Clauses Act earlier admittedly applicable, to cease to be applicable to Delhi. Even otherwise, I am of the opinion that the power conferred under Section 23 is wide enough to empower the Director, DAMB to change the place of the market from time to time. The provisions of a statute are to be interpreted to make the statute workable and not to make it unworkable. It is inconceivable that the Act intended to confer a state of permanency to a place once declared to be the market. Such an interpretation would be contrary to the principle of change being constant in life as stated hereinabove. I find that the Apex Court in ***Ramesh Chandra Kachardas Porwal v. State of Maharashtra*** (1981) 2 SCC 722 in relation to the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 held that nothing can be expected to remain static in this changing world – a market which is suitable and conveniently located today may be found

unsuitable and inconvenient tomorrow; that to interpret the Act as prohibiting abolition of a market once established and barring the shifting of the market to another place would defeat the purpose of the Act. Benjamin Franklin wisely said “When you’re finished changing, you’re finished”.

15. The counsels have also invited attention to the notifications dated 3rd June, 1997 and 12th March, 1998 declaring Mehrauli, Fatehpuri and Connaught Place as Principal and Subsidiary Markets. It is demonstrated that the same were duly published in the official gazette. Attention is then invited to the declarations of 6th June, 2011 and 28th February, 2011 establishing the Ghazipur market and denotifying the existing markets at Mehrauli, Fatehpuri and Connaught Place. It is stated that the same have not been published in the Official Gazette. Attention is then invited to Section 2(t) of the 1998 Act which requires the notification to be published in the official gazette. It is contended that without the order of 28th February, 2011 establishing Ghazipur market and denotifying the existing markets being published in the Official Gazette there is no notification to the said effect as required in law and therefore of no avail and cannot be given effect to.

16. The respondent also along with its counter affidavit has not produced any publication of the orders of 28th February, 2011 and 6th June,

2011 in the official gazette. The only explanation which the counsel for the respondents could offer was that the orders are forwarded to the gazette branch for publication and are normally published after a few days. She was however, unable to state whether they have been so published or not. Though, Mrs. Avnish Ahlawat, Advocate for the respondent was given liberty to enquire in this regard and to inform latest by the day following the hearing till when it was stated that this judgment will not be signed but she has not mentioned the matter. It would thus follow that there is no notification establishing the Ghazipur market or rescinding the earlier notifications establishing the Mehrauli, Fatehpuri and Connaught Place markets. In the absence of a notification the orders can have no effect. The counsel for the respondents was also not able to controvert the said position. It may be noticed that more than 5 months have elapsed since 28th February, 2011 and one month since 6th June, 2011 and without the respondent being able to produce publication in the official gazette this Court has no option but to proceed presuming that there is no notification. There is, thus, merit in the contention of the petitioners that it cannot be said as on date that the markets at Mehrauli, Fatehpuri and Connaught Place have ceased to exist or that the market stands established at Ghazipur. The petitioners would thus be entitled

to the relief of restraining the respondents from interfering with the functioning of the market at the said three locations.

17. The counsels for the petitioners in W.P.(C) 4279/2011 & W.P.(C) 5005/2011 has also argued that the procedure as prescribed in Section 3 of the 1998 Act has not been followed before notifying Ghazipur as the market. The said contention is to be noted only for rejecting the same. The procedure prescribed in Section 3 is for declaring a market area and not for declaring a market place. As aforesaid, Delhi was declared as a market area way back in 1997 and the declarations/notifications dated 28th February, 2011 and 6th June, 2011 do not intend to change the market area but intend to change only the market place. Section 23 does not require the DAMB to issue any notice of intent or invite any objections as is required to be done for declaration of a market area. The Supreme Court in *Ramesh Chandra Kachardas Porwal* (supra) has held that making of a declaration of a Principal Market or Subsidiary Market does not oblige the observance of the rules of natural justice.

18. He has further contended that no feasibility study/survey has been conducted before shifting the market to Ghazipur; that the spaces in the parking area of the fruit and vegetable market at Ghazipur are being allocated

for the purpose of flower trade and that too for a period of 11 months only; that there is no space for parking of vehicles which will necessarily have to carry flowers to and fro the said market.

19. However, for the reasons aforesaid, there is no merit in the said contentions.

20. The counsel for the petitioner in W.P.(C) 4278/2011 has contended that Connaught Place is governed by the NDMC and once NDMC has allowed the flower traders to function therefrom, the DAMB cannot interfere therewith.

21. There is no merit in the said contention also. The NDMC Act and the Delhi Agricultural Produce Marketing (Regulations) Act are to be read harmoniously and once the trading in flowers being an agricultural produce is specially governed by the Delhi Agricultural Produce Marketing (Regulations) Act, even if the NDMC were to allow the traders to squat in its area, they would still not be entitled, owing to the applicability of the special statute.

22. It is also argued that the scheme for street vendors has been formulated and vending of the flower vendors would be governed thereby.

23. The counsel for the respondents has explained that the respondents are concerned with the trading in flowers and are not concerned with the individual flower vendors who are required to carry on their business after obtaining licenses from the concerned municipalities.

24. The counsel for the petitioner in W.P.(C) 4897/2011 has also contended that the Act does not envisage shifting on a temporary basis. It is contended that the existing markets cannot be disturbed without having the alternate market. It is contended that on account of denotification of the Mehrauli, Fatehpuri and Connaught Place, the petitioners are being threatened with cancellation of their licenses. It is contended that more than 100 years old markets cannot be destabilized in the said manner.

25. The counsel for the respondents has besides the stand of the respondents as noted hereinabove, contended that Mehrauli Market is situated in the DDA land and DDA has been wanting to evict the market therefrom and which eviction has been withheld only for the reason of continuance of the declaration of the same as a market. She has further contended that in fact it is the traders of flowers who have been representing for a proper area and now when the respondents have made arrangement for a modern market at Ghazipur, the traders are estopped from opposing the same.

26. The declaration/notification dated 28th February, 2011 is as under:

**“(TO BE PUBLISHED IN PART IV OF DELHI GAZETTE
EXTRA ORDINARY)”**

**DIRECTORATE OF AGRICULTURAL MARKETING
(DEVELOPMENT DEPARTMENT)
GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI
49, SHAM NATH MARG, OLD SECTT., DELHI – 110054.
Fax No.23818298, E-mail address: dagri@sansad.nic.in**

No.F.8(8)/2011/DAM/MR/7616

Dated 28.02.2011

ORDER

No.F.8(8)/2011/DAM/MR/ In exercise of powers under
Sub-Section (2) of Section 23 of the Delhi Agricultural Produce
Marketing (Regulation) Act, 1998, an area of 1.5 acres within the
compound of Fruit & Vegetable Market, IFC Ghazipur is notified
as Market Yard of Flower Market with boundaries as under:-

East	:	45.00 mt. road.
West	:	Gazipur Village.
North	:	Subzi Mandi, Gazipur,
South	:	NH-24.

By order
Sd/-

**(KAILASH CHANDRA)
DIRECTOR, AGRICULTURAL MARKETING
CUM SPL. SECRETARY (DEVELOPMENT)
GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI ”**

27. Section 23 of the 1998 Act is as under:

“ 23. Establishment of market- (1) For every market area, there shall be established one principal market, and there may also be established one or more subsidiary markets, considered necessary, for the marketing of notified agricultural produce.

(2) The Director shall, as soon as possible after a declaration is made under sub-section (1) of Section 4, by notification, establish any place (including any structure, enclosure, open space or locality) in any market area to be the principal market for the marketing of the agricultural produce specified in such notification and may, by the same or other notification, establish in any such place in any market area one or more subsidiary markets for the marketing of such agricultural produce.”

28. I have enquired from the counsel for the respondents as to how the order dated 28th February, 2011 even if notified can be said to be establishment of a Principal Market or Subsidiary Market since the order/notification dated 28th February, 2011 does not use either expression. It also does not notify the place as demarcated therein as a market but notifies the same only as a market yard of flower market. No flower market has been notified. It has been enquired from the counsel for the respondents as to how the same even if published in the gazette satisfies the requirement of a Principal or a Subsidiary Market. The place demarcated is itself identified not as a market but as a market yard of a non-existent flower market. It is the case of the respondents themselves that the establishment of the flower market is still under consideration and the various requisite permissions/approvals therefor are still being sought/obtained. It appears that the respondent owing to the pendency of the other petitions as mentioned in para 6 & 7 above and upon being directed to inform the steps being taken for

establishing the alternate market hurriedly issued the order dated 28th February, 2011 being conscious that no alternate market can be notified as yet and thus only notifying a market yard. However, the same is not permissible in law. The law mandates establishment of a Principal Market for every market area. There cannot be a market area without a Principal Market. The order/notification dated 28th February, 2011 does not establish any Principal Market but only establishes a market yard at Ghazipur.

29. The counsels for the respondents feebly sought to explain that since as on 28th February, 2011, there was already a Principal Market at Mehrauli, the respondents could not declare another Principal Market at Ghazipur since Section 23 does not envisage more than one Principal Market. Even if that be so, nothing prevented the respondent from on 28th February, 2011 notifying Ghazipur as a Subsidiary Market and simultaneously on 6th June, 2011 while denotifying Mehrauli as Principal Market notifying Ghazipur as the Principal Market. The same has admittedly not been done.

30. The question that arises, is whether the respondents could rescind earlier notifications establishing Mehrauli as the Principal Market and Fatehpuri and Connaught Place as subsidiary markets, without establishing alternate Principal and Subsidiary Markets. The answer necessarily has to be

‘No’. As aforesaid, there can be no market area without market. The notification declaring Delhi as market area for flowers continues to remain in force. The notification dated 6th June, 2011 if allowed to stand will result in Delhi being market area for flowers without flower market since as aforesaid, the order/notification dated 28th February, 2011 notifies only a market yard of a non-existent flower market. The existing Principal and Subsidiary Flower Markets thus have to necessarily continue. The Supreme Court in ***Ramesh Chandra Kachardas Porwal*** held that a place ought not to be notified as a market unless it is ready for use as a market with all reasonable facilities and conveniences and that a notification may be quashed if nothing has been done beyond publishing the notification.

31. Though, I had expressed dissatisfaction to the counsel for the respondents at the close of the hearing on the state of affairs so created by the respondents but till the signing of this order no explanation has been forthcoming. The respondents even after filing of the present petition have had sufficient time to correct the mistake, if any, in non-publication in the official gazette and/or in non-declaration of Ghazipur as Principal or Subsidiary Market. However, no attempts were made at that stage or even now after the close of hearing. It appears that publication in the official gazette is also held up for the aforesaid defects. When the establishment of

markets has to be by notification in the official gazette no market can be said to have been established without such publication.

32. The writ petitions thus succeed on the aforesaid limited points of non-publication in the official gazette and non-establishment of the Principal Market. It is declared that the order/notification dated 28th February, 2011 is not of establishment of market under Section 23 of the Act. Without alternate market being established, the order dated 6th June, 2011 rescinding the existing notifications cannot be given effect to inasmuch as there can be no market area without the market. Accordingly, it is declared that till the establishment of alternate market, the existing Principal and Subsidiary Markets at Mehrauli, Fatehpuri and Connaught Place respectively to continue.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 28, 2011
anb