21. to 30.

%16.11.2011

Present: Mr. Ramesh K. Mishra, Advocate for the petitioners.

Mr. Vinod Kumar, Advocate for the respondent/NDMC in W.P.(C) 6258/2011, 6268/2011, 6927/2011, 7176/2011, 7569/2011 and 7570/2011.

Mr. Pankaj Batra, Advocate for respondent/Delhi Police in W.P.(C) 6823/2011, 6828/2011, 6926/2011, 6927/2011.

Mr. J.K. Sharma, Advocate for the respondent/Delhi Police in W.P.(C) 7176/2011.

+W.P.(C) 6258/2011 and CM 12601/2011,
W.P.(C) 6268/2011 and CM 12610/2011,
W.P.(C) 6352/2011 and CM 12803/2011,
W.P.(C) 6823/2011 and CM 15704/2011,
W.P.(C) 6828/2011 and CM 15709/2011,
W.P.(C) 6926/2011 and CM 15905/2011,
W.P.(C) 6927/2011 and CM 15906/2011,
W.P.(C) 7176/2011 and CM 16354/2011,
W.P.(C) 7569/2011 and CM 17154/2011,
W.P.(C) 7570/2011 and CM 17155/2011,

The facts of these cases are identical to the facts as set out in a batch of writ petitions filed by vendors in the NDMC jurisdiction, lead matter being **W.P.(C) 4743/2011** entitled Shiv Nath Choudhary vs. NDMC & Ors., which have recently been decided by a common judgment dated 24.10.2011. The present cases are also covered by the same judgment. For reasons set out in the aforesaid judgment,

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Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

the present petitions are disposed of alongwith the pending applications, while granting the same liberty to the petitioners as granted to similarly placed petitioners as also to NDMC in the aforesaid writ petitions.

HIMA KOHLI,J

NOVEMBER 16, 2011
rkb

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 21.09.2011
Pronounced on: 24.10.2011

\+ **W.P.(C) 4743/2011 and 5254/2011**

IN THE MATTERS OF

SHIV NATH CHOUDHARY ..... Petitioner in W.P.(C) 4743/2011
RAM DASS ..... Petitioner in W.P.(C) 5254/2011

versus

NDMC & ORS. ..... Respondents

Alongwith W.P.(C) 2601/2011, 2602/2011, 3052/2011, 4347/2011, 4559/2011, 4593/2011, 4610/2011, 4650/2011, 4651/2011, 4649/2011, 4722/2011, 4739/2011, 5046/2011, 5051/2011, 5157/2011, 4775/2011, 4827/2011, 4923/2011, 5024/2011, 5028/2011, 5247/2011, 5255/2011, 5257/2011, 5258/2011, 5261/2011, 5262/2011, 5263/2011, 5264/2011, 5277/2011, 5292/2011, 5312/2011, 5317/2011, 5402/2011, 5403/2011, 5420/2011, 5405/2011, 5408/2011, 5410/2011, 5411/2011, 5413/2011, 5418/2011, 5423/2011, 5444/2011, 5473/2011, 5484/2011, 5485/2011, 5497/2011, 5498/2011, 5503/2011, 5504/2011, 5505/2011, 5506/2011, 5507/2011, 5508/2011, 5595/2011, 5614/2011, 5615/2011, 5616/2011, 5618/2011, 5627/2011, 5630/2011, 5631/2011, 5643/2011, 5645/2011, 5654/2011, 5656/2011, 5711/2011, 5717/2011, 5718/2011, 5728/2011, 5729/2011, 5731/2011, 5732/2011, 5737/2011, 5738/2011, 5739/2011, 5743/2011, 5761/2011, 5784/2011, 5785/2011, 5791/2011, 5794/2011, 5797/2011, 5798/2011, 5822/2011, 5911/2011, 5918/2011, 5928/2011, 5931/2011, 5933/2011, 5934/2011, 5935/2011, 5957/2011, 5965/2011, 5966/2011, 5967/2011, 5968/2011, 5969/2011, 5970/2011, 5974/2011, 6096/2011, 6100/2011, 6101/2011, 6102/2011, 6107/2011, 6108/2011, 6114/2011, 6115/2011, 6116/2011, 6117/2011, 6118/2011, 6119/2011, 6120/2011, 6121/2011, 6122/2011, 6123/2011, 6144/2011, 6250/2011, 6270/2011, 6271/2011, 6449/2011, 6527/2011, 6528/2011, 6529/2011, 6530/2011, 6531/2011, 6532/2011, 6533/2011, 6534/2011, 6538/2011, 6555/2011, 5173/2011, 3181/2011, 3185/2011, 3189/2011, 3196/2011, 4340/2011, 4342/2011,

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4343/2011, 4344/2011, 4345/2011, 4349/2011, 4350/2011, 4352/2011, 4354/2011, 4356/2011, 4358/2011, 4359/2011, 4360/2011, 4361/2011, 4362/2011, 4363/2011, 4364/2011, 4365/2011, 4366/2011, 4367/2011, 4368/2011, 4369/2011, 4370/2011, 4371/2011, 4372/2011, 4373/2011, 4374/2011, 4375/2011, 4377/2011, 4387/2011, 4388/2011, 4389/2011, 4391/2011, 4392/2011, 4393/2011, 4395/2011, 4396/2011, 4397/2011, 4398/2011, 4399/2011, 4400/2011, 4402/2011, 4404/2011, 4405/2011, 4406/2011, 4407/2011, 4408/2011, 4409/2011, 4410/2011, 4412/2011, 4413/2011, 4414/2011, 5341/2011, 4847/2011, 4859/2011, 4887/2011, 4990/2011, 5063/2011, 5089/2011, 5099/2011, 5114/2011, 5115/2011, 5117/2011, 5129/2011, 5139/2011, 5144/2011, 6667/2011, 6668/2011, 6669/2011, 6670/2011, 6684/2011, 6701/2011, 6708/2011, 6799/2011, 6824/2011, 6825/2011, 6826/2011, 6827/2011, 6896/2011, 6901/2011, 6902/2011, 6903/2011, 6904/2011, 6905/2011, 6906/2011, 6907/2011, 6908/2011, 6909/2011, 6910/2011, 6917/2011, 6919/2011, 6920/2011, 6921/2011, 6922/2011 and 6932/2011.

Present: Mr. B. B. Sawhney, Sr. Advocate with Mr. Ankan Suri, Mr. Lakshay Sawhney, Mr. Ankur Suri and Mr. Sunil Kumar, Advocates for the petitioners.

Mr. Sumit Kumar Singh, Mr. Anand Shailani, Mr. Satish Kumar Tripathi, Mr. N.K. Sahoo, Mr. R.N.Singh, Mr. M.R. Singh, Mr. Ramesh K. Mishra, Mr. Surender Pandit, Mr. Navjot Kumar, Mr. Mahendra Singh, Mr.Sunder Lal Juneja, Mr. Pranesh, Mr. B.B. Bhatia, Mr. Navjot Kumar and Mr. Satish Chand Gupta, Mr. Pranesh, Mr. Sahil Kapoor, Ms. S. Fatima, Mr. Jagdeep Kr. Sharma, Ms. Rani Chhabra, Ms. Rupinder Kaur, Ms. Ferida Satarawala, Mr. R.N. Singh, Mr. Vikas Batra, Mr. V.P. Rana and Mr. Navjot Kumar, Advocates for the petitioners.

Ms. Madhu Tewatia, Ms. Sidhi Arora, Mr. Vinod Kumar, Mr.Arjun Pant, Mr. Ashutosh Lohia and Mr. Vinod Wadhwa, Advocates for the respondent/NDMC.

Mr. Najmi Waziri, Standing Counsel, Mr. Bhupesh Narula, Mr. Sanjay Sahay, Ms. Farida Satarwala Chopra, Mr. Sachin Datta, Mr. Abhimanyu Kumar and Ms. Rachna Saxena, Advocates for the respondent/GNCTD.

Ms. Navratan Chaudhary, Mr. H.S. Sachdeva, Mr. D.

Rajeshwar Rao, Mr. Vikram Aggarwal and Mr. Shariq Mohammad, Advocates for the respondent/Delhi Police.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

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

Yes

HIMA KOHLI, J.

1. This common judgment shall dispose of the petitions filed by the petitioners/vendors as the issues raised in these writ petitions are common. For the sake of convenience, facts of W.P.(C) 4743/2011 are taken note of.

2. The focus of the lengthy arguments addressed by both sides revolves around an order dated 15.07.2011 passed by the Supreme Court on some miscellaneous applications presented in **W.P.(C) 1699/1987** entitled Gainda Ram & Ors. vs. NDMC & Ors., which matter was decided on 08.10.2010 by issuing exhaustive directions. Before proceeding to deal with the respective arguments addressed by the learned counsels for the petitioners/vendors and the respondent/NDMC, it would be appropriate to set out the aforesaid order dated 15.07.2011, which is the bone of contention and is reproduced hereinbelow:-

> "Heard learned counsel for the applicants and perused the record.

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> Since judgment of this Court has so far not been implemented, inasmuch as appropriate legislation has not been enacted by the competent legislature, we direct the parties to maintain the status quo as it is obtaining today."

3. It was the submission of the learned counsel for the respondent/NDMC that the aforesaid order issued by the Supreme Court, calling upon the parties to maintain *status quo* as obtaining on 15.07.2011, can only be interpreted to mean that the extensive directions issued earlier, on 08.10.2010, in the case of Gainda Ram (supra) reported as **(2010) 10 SCC 715** shall continue to remain in operation, including the adjudicatory mechanism provided for by the NDMC in the scheme presented by it before the Supreme Court and approved in the said judgment, till the appropriate government enacts a law for regulating urban street hawkers and street vendors. It was stated that simply because the legislature has not enacted a law in this regard on or before 30.06.2011, as directed in the aforesaid judgment, it cannot be contended by the petitioners/vendors that there exists a vacuum and the said vacuum can no longer be filled up by continuing to regulate the vending activities in the NDMC jurisdiction in the manner as set out in the aforesaid judgment.

4. To give a brief background of the dispute, learned counsel for the respondent/NDMC walked this Court through some prominent decisions of the Supreme Court rendered from time to time, which relate to pavement

squatters/hawkers, starting from the decision in the case of Sodan Singh vs. NDMC & Ors. reported as **(1998) 2 SCC 727**, the interim order dated 03.03.2006 passed by the Supreme Court in **W.P.(C) 1699/1987** entitled Sudhir Madan & Ors. vs. MCD, the final judgment in the case of Sudhir Madan (supra) reported as **(2009) 17 SCC 597** and lastly, the judgment dated 08.10.2010 passed in the case of Gainda Ram (supra).

5. Learned counsel for the respondent/NDMC vehemently opposed the prayer of the petitioners/vendors for grant of interim orders restraining the respondent/NDMC from removing them from the sites occupied by them till the enactment of an appropriate legislation, in terms of the directions issued by the Supreme Court in the case of Gainda Ram (supra). She particularly referred to the observations made by the Supreme Court in paras 40 and 41 of the judgment in the case of Sodan Singh (supra), which dealt with the immediate eviction of unauthorized squatters/hawkers and laid emphasis on the fact that in the said case, the Supreme Court had directed removal of unauthorized squatters/hawkers without awaiting final allotment of sites to be allotted to eligible claimants at the places recommended by the Thareja Committee or suggested by the NDMC.

6. Again, in the interim order dated 03.03.2006 passed in Sudhir Madan's case (supra), the following observation made by the Supreme Court was highlighted by the counsel for the respondent/NDMC:-

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> "While we undertake this exercise, we direct the Authorities to see to it that those persons, who are carrying on hawking activities or who are squatting on public land without any authority, even in accordance with the present day scheme in force, are removed forthwith. This includes unauthorized hawking, squatting on public streets, footpaths and public parks, including playground. We direct the Delhi Administration to take steps immediately in collaboration with MCD and NDMC with necessary assistance from Delhi Police to clear the roads, streets, footpaths, parks etc. by unauthorized occupants/squatters/hawkers."

7. As to the judgment dated 17.05.2007 rendered in the case of Sudhir Madan (supra), much emphasis was laid by the counsel for the respondent/NDMC on paras 28 to 30 and 35, which are reproduced hereinbelow for ready reference:-

> "28. The New Delhi Municipal Committee has also submitted its Scheme. We have considered the Scheme submitted before us. The area which falls under NDMC does not create problems such as those in the areas under MCD. However, in the said Scheme reference has been made to persons who do not have permission under Section 225 or licence under Section 330 of the NDMC Act, 1994 but who are unauthorisedly continuing to carry on business as hawkers/street vendors. They have been described as those who are "tolerated" in the NDMC area. We fail to understand why any person who violates the law should be tolerated. Either they should be compelled to obey the law or the law may be suitably amended, if it is found to create undue hardship. The problems need to be addressed by the legislature or the rulemaking authority. We, therefore, observe that if it is felt that the persons who fall in this category require special protection, the Act may be suitably amended to cover their cases or else the number of such illegal squatters may increase from time to time.

> 29. There has been no serious objection to the Scheme submitted by NDMC which is a comprehensive scheme. Certain directions have, however, been sought for from this Court. We approve the Scheme submitted by NDMC.
>
> 30. It is submitted before us that the Schemes which have been approved by this Court must be subject to any Act or rules that may be framed in consonance with the National Policy on Urban Street Vendors. It goes without saying that we have approved the Schemes as framed by MCD and NDMC. If the legislature intervenes and frames another scheme or regulations governing such Schemes, that will certainly supersede the Schemes prepared by MCD and NDMC. It is well settled that any administrative action is always subject to law that may be framed by the competent legislature.
>
> 35. Subject to the aforesaid modifications/changes in the Schemes submitted by MCD and NDMC, the same are approved. The said authorities shall now take appropriate steps to implement the Scheme forthwith. In case of any difficulty faced by them in implementing the schemes, they shall have the liberty to apply to this Court."

8. Lastly, in the recent judgment in the case of Gainda Ram (supra), learned counsel for the respondent/NDMC specifically relied upon paras 30, 32, 50 to 66 to state that the Supreme Court was conscious of the fact that a structured regulation and legislation is urgently required to control and regulate the fundamental right of hawking. She also pointed out that the three tier disputes redressal mechanism set out in the affidavit filed by the then Chairperson of the NDMC was taken note of by the Supreme Court in para 72 of the aforesaid judgment and in para 73, it was then observed as below:-

"73. In paragraph 12 of the affidavit it has been stated that there shall be an Appellate Authority which shall attend to the redressal of grievances of squatters, hawkers, traders, residents or any other person by hearing appeals against the decision of the Vending Committee (Main). Paragraph 12 of that affidavit is set out below:-

> There shall be an Appellate Authority. On the forwarding of petitions received by the Chairperson, this Authority shall attend to redressal of grievances of squatters, hawkers, traders, residents or any other person. The Authority shall also hear appeals against the decision of Vending Committee (Main). Decisions of this Authority unless challenged before a Higher Forum or in any Competent Court, shall be final. This Authority shall be initially headed by a person appointed by the Chairperson having at least 10 years legal or judicial background. There can be more than one member in this Authority."

9. After making the aforesaid observations, in paras 74 to 76 of the judgment, the Supreme Court went on to observe as below:-

"74. In the said affidavit, which was affirmed before this Court on 24th August, 2010 it has been stated that NDMC shall comply with the orders which would be passed by the adjudicatory mechanism contemplated in the scheme and which has been approved by this Court for the NDMC area, unless such orders are made subject matter of challenge before a higher forum or in any other competent Court.

75. In view of such schemes, the hawkers, squatters and vendors must abide by the Dispute Redressal scheme mentioned above. There should not be any direct approach to this Court by way of fresh petition or IAs, bypassing the Dispute Redressal Mechanism provided in the scheme.

> 76. However, before 30th June, 2011, the appropriate Government is to enact a law on the basis of the Bill mentioned above or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights."

10. It was thus sought to be contended on behalf of the respondent/NDMC that there can be no vacuum as far as regulation of trade of street hawkers/vendors in the NDMC jurisdiction is concerned and the failure on the part of the legislature to abide by the timeline set out by the Supreme Court in the case of Gainda Ram (supra), by putting in place a statute on or before 30.06.2011, cannot be interpreted by the petitioners/vendors to mean that they can continue their trade unhindered at any place of their choice in the NDMC jurisdiction, in an unregulated manner and without any obstruction or objection from the NDMC.

11. Learned counsel for the respondent/NDMC particularly referred to paras 74 and 75 of the aforesaid judgment to state that the dispute redressal scheme, noticed by the Supreme Court in para 75 was the one that was legally functioning in NDMC jurisdiction and which was taken note of by the Court in the preceding para 74. In other words, she stated that the scheme as set out in the affidavit dated 24.08.2010, filed by the then Chairperson of NDMC before the Supreme Court in Gainda Ram's case (supra), was the one which was finally approved by the Supreme Court. She further submitted that assuming, without admitting, that the

dispute redressal scheme set out by the NDMC had lapsed on 30.6.2011, as claimed by the petitioners, then the NDMC Act provides an adequate fallback to ensure orderly management of vendors in the area. Specific reference was made in this regard to the provisions contained in Sections 221, 224, 225 and 226 of the said Act.

12. It was further argued by the counsel for the respondent/NDMC that the application filed by the NDMC before the Supreme Court in July 2011 praying *inter alia* for extension of time to regulate hawkers/squatters in the NDMC area, as per the scheme mentioned in the judgment in Gainda Ram's case (supra), till the enactment of a law by the legislature in that regard, had not yet been finally disposed of by the Supreme Court at the time of passing of the *status quo* order dated 15.07.2011 and similarly, the other application filed by one of the hawkers/vendors praying *inter alia* for restraining the respondent/NDMC from granting *Tehbazari* rights to the winners of the lucky draw of lots for allotment, which was to be held on 12.05.2011 or any date thereafter, was also pending consideration before the Supreme Court. Hence, no finality could be attached to the order dated 15.7.2011 which can only be considered an interim measure till the final disposal of the aforesaid applications or the enactment of a legislation.

13. On merits, learned counsel for the respondent/NDMC referred to the affidavit dated 01.08.2011 filed by the Director (Enforcement), NDMC,

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wherein it was stated that pursuant to the public notice issued by the NDMC inviting applications under the NDMC Urban Street Vending Scheme in the year 2007, the respondent/NDMC had received 4367 applications. The documents required by the applicants for registration under the Scheme included a proof of age, documentary proof/affidavit for the purpose of annual income, proof of residence, proof in support of special categories like handicapped, Kashmiri migrants etc. and proof of squatting in the NDMC area, if any. In para 4 of the aforesaid affidavit, the following criteria approved/adopted by the Vending Committee to shortlist the eligible applicants is set out:-

> "4. That the criteria approved/adopted by the Vending Committee to shortlist the eligible applicants is as under:-
>
> (i) The applicants should be resident of Delhi with his name registered in electoral rolls as per abstract of photo E-Roll or ERO certificate.
>
> (ii) The applicant should be a major, viz. with over 18 years of age as per valid birth certificate or age certificate or school certificate etc.
>
> (iii) The applicant should be a needy as per income records of DC (Revenue) or as vulnerability records of Government of NCT of Delhi (Samajik Suvidha Sangam: vulnerable and most vulnerable category).
>
> (iv) The applicant should be registered as per NDMC Street Vendors Scheme. The policy verification of the applicant should be available.
>
> (v) The applicant or his dependent family member should not be employed or should not have any other tehbazari/vending or any other business premises in Delhi as per record verification of NDMC/MCD.

> (vi) Preference will be given to applicants who are physically handicapped or widows or senior citizens above 60 years or Kashmiri migrants or SC/ST (necessary certificate to be submitted and relaxation may be given in the above criteria)."

14. As per the respondent/NDMC, the category-wise list of eligible shortlisted applicants in terms of the aforesaid criteria totalled to 3878 applicants. The affidavit dated 01.08.2011 states that the respondent/NDMC has identified 183 new spaces, in addition to the 203 remaining spaces identified by the Thareja Committee in the NDMC area, which were available for allotment, thus taking the total number of available spaces to 386. It was further stated that due to factors like de-listing of the Parliament Street on security grounds, construction of flyovers and Metro Stations at various locations in the NDMC jurisdiction, the number of authorized *tehbazari* squatters has changed from 348 to 404 in number. The number of applicants, who the respondent/NDMC claims, are vending unauthorisedly at Connaught Place, Sarojini Nagar, Parliament Street and Janpath areas and in whose favour, *status quo* orders are operating, is stated to be 323 in number. The affidavit asserts that simply because the names of the petitioners, who are registered with the NDMC, figure in the eligibility list drawn by the respondent/NDMC, cannot be treated as proof of their regularly vending in the NDMC area and nor does it confer on them any enforceable vested right to ensure a vending space for them in the NDMC area, which is directly dependent on

the number of spaces available. Thus, it was contended that neither the possession of any number of challans, nor the absence thereof can make a difference, for the reason that challans cannot form the basis for the petitioners to claim any vested legal right to squat at a given space.

15. Counsel for the respondent/NDMC asserted that the present petitions are not maintainable inasmuch as the petitioners have an equally efficacious alternate remedy of approaching the appellate authority constituted by the Chairperson, NDMC, for redressal of their grievances and failure on their part to have approached the Vending Committee is not on account of the fact that the said Committee including the appellate authority is not functioning, but because they have found it more convenient to bypass the aforesaid forum and approach this Court directly, which is not permissible. She stated that extensive measures have been taken by the respondent/NDMC to constitute the adjudicatory mechanism by way of a three tier system in the following manner:-

1. Vending Sub-Committee (Site of Spaces),
2. Vending Sub-Committee (Heath and Hygiene) and
3. Vending Sub-Committee (Enforcement).

16. She stated that the creation of the aforesaid three Vending Sub-Committees, Vending Committee (Main), as also of the appellate authority which was constituted to redress the grievances of the squatters, hawkers, traders, residents or any other person against the decision of

the Vending Committee (Main), was placed before the Supreme Court for consideration and the said three tier adjudicatory mechanism was duly approved in the judgment of Gainda Ram (supra).

17. Per contra, learned counsels for the petitioners/vendors, who appeared on different dates, vehemently opposed the aforesaid stand taken by the respondent/NDMC and asserted that the scheme floated by the respondent/NDMC for regulating vending activities in its jurisdiction had lapsed on 30.06.2011 in the absence of the enactment of a legislation as per directions of the Supreme Court in the case of Gainda Ram (supra) and as on date, there is no scheme in existence. It was canvassed that the implication of the aforesaid order of *status quo* passed by the Supreme Court on 15.07.2011 can only mean that irrespective of the fact whether the squatting is legal or illegal, the same be permitted to continue on an 'as is where is' basis, and such *status quo* is to be maintained by all the parties till a law is framed by the legislature.

18. Mr. B.B. Sawhney, Sr. Advocate appearing for the petitioners/vendors submitted that in the case of Gainda Ram (supra), the Supreme Court had directed that the appropriate government must enact a law on or before 30.06.2011 so that the hawkers may precisely know the contours of their rights, hence the dispute redressal mechanism provided for in the scheme mentioned in the aforesaid judgment could operate only upto 30.06.2011 and thereafter, the said scheme would

automatically stand lapsed. He stated that no other interpretation can be given to the order dated 15.07.2011, directing maintenance of *status quo,* in view of the qualifying words, "as it is obtaining today". He argued that if the scheme was continuing to operate, as claimed by the learned counsel for the respondent/NDMC, then there was no good reason for the respondent/NDMC to have refrained from holding a draw of lots, which was slated for the same day, i.e., 15.07.2011, and that fact of the matter is that even the respondent/NDMC had understood the *status quo* order to mean that there is no scheme in place after 30.6.2011, for the reason that in para 68 of the aforesaid judgment in the case of Gainda Ram (supra), all the writ petitions and the interim applications filed before the Supreme Court were disposed of with clear and specific directions that the problem of hawking and street vending could be regulated by the schemes framed by the NDMC and MCD only upto 30.06.2011 and not thereafter. It was asserted on behalf of the petitioners/vendors that as on date, the directions of the Supreme Court that *status quo* is to be maintained by the parties can only be given one interpretation, which is that till a law is ultimately enacted by the Parliament, irrespective of their legal status, all the petitioners/vendors would be permitted to continue squatting/hawking at the sites that have been occupied by them.

19. Insofar as the composition of the dispute redressal mechanism is concerned, learned Senior Advocate for the petitioners submitted that contrary to the understanding of the respondent/NDMC, the scheme

reproduced at paras 72 and 73 in the judgment in the case of Gainda Ram (supra), was not the one which was actually recognized by the Supreme Court, and rather it is the dispute redressal scheme mentioned in para 75 of the aforesaid judgment i.e., a scheme for urban street vendors for NDMC area as formulated in the year 2006, which was ultimately approved by the Supreme Court on 17.05.2007, in the case of Sudhir Madan (supra), which is the scheme which finds mention specifically in the following para 74 and is the one approved by the Supreme Court. It was contended that even otherwise, the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 (hereinafter referred to as '**Special Provisions Act**') comes to the rescue of the petitioners for the reason that sub-clause (2) of Section 3 of the Special Provisions Act mandates maintenance of *status quo* as on 01.01.2006, notwithstanding any judgment, decree or order of any court, in respect of encroachment or unauthorized development. Thus, it was submitted on behalf of the petitioners/vendors that they were entitled to grant of interim protection till the enactment of a legislation to regulate hawking/vending activities in urban streets in Delhi on the basis of the National Policy on Urban Street Vendors, 2009 framed on 17.06.2009 and the Special Provisions Act.

20. With reference to the Special Provisions Act, learned Senior Advocate for the petitioners stated that the phrase, "unauthorized development" used in the definition clause has to be seen in the same context as the one in which the phrase "encroachment" has been defined,

wherein it is mentioned that putting up of temporary, semi-temporary or permanent structure for residential use or commercial use or any other use, and the placement of goods on the pavements by the petitioners is liable to be termed as unauthorized use for maintaining status quo under the Special Provisions Act. Much emphasis was laid on the averments made by the respondent/NDMC in its interim application filed before the Supreme Court in Gainda Ram's case (supra) in July 2011, to submit that the respondent/NDMC itself had stated in the said application that the scheme had lapsed and therefore, the only interpretation that can be given to the *status quo* order passed by the Supreme Court on 15.07.2011 can be that no scheme would exist after 30.06.2011 and thus, the benefit of the Special Provisions Act ought to be extended to the petitioners. He submitted that the phrase 'street vendors' has been clearly defined under the National Policy on Urban Street Vendors, 2009. Reliance was placed in the case of Patri Vyapar Mandal Delhi (Regd.) vs. MCD Town Hall & Ors. reported as **(2009) 12 SCC 475** and the provisions of the Special Provisions Act to submit that even the Supreme Court had recognized the fact that the Special Provisions Act is the only Central law governing the field and it would have primacy over other Statutes and administrative orders. It is thus stated that the provisions of the NDMC Act cannot be invoked by the respondent/NDMC as the said Act is not in consonance with Article 96 of the Constitution of India and furthermore, the Special Provisions Act being valid till the end of

December 2011, no orders in derogation of the provisions of the said Act can be passed.

21. Mr. S.K. Tripathi, Advocate appearing for some of the petitioners/vendors sought to embellish the submissions of Mr.Sawhney, Sr.Advocate and relied on the orders passed in **W.P.(C) 1449/2011** entitled Mohd. Ismail vs. NDMC & Ors. to urge that the "Appellate Authority" constituted under the dispute redressal mechanism for the NDMC area, has not been functioning, which fact he stated is borne out from a perusal of the order dated 08.03.2011 passed in the aforesaid case, wherein the Court took notice of the claim of the petitioner/vendor therein to the effect that inspite of orders passed by the Appellate Authority allowing squatting at a particular site, till a final determination by the Vending Committee as to his eligibility, the respondent/NDMC and the police were disturbing his activities. In the aforesaid order, the statement of the counsel for the respondent/NDMC was recorded to the effect that the appellate authority, whose order was being relied upon by the petitioner therein, was constituted initially for the MCD areas and later started functioning for the NDMC areas as well for the reason that at that time, there was no separate appellate authority for the NDMC areas, but subsequently, in accordance with the scheme approved by the Supreme Court, the Chairperson, NDMC had constituted a separate appellate authority for the NDMC areas. Therefore, the appellate authority appointed earlier had ceased to have jurisdiction *qua* the NDMC areas. It

was thus contended on behalf of the petitioners/vendors that the aforesaid order clearly indicates that the appellate authority in the NDMC areas is not functioning.

22. Reliance was also placed on the minutes of the meeting of the Vending Committee dated 11.03.2010, to claim that if the fact of whether there was actual squatting/vending was verified by the Committee and if the names of the petitioners/vendors figured in the eligibility list prepared by the respondent/NDMC for holding the draw of lots, then it did not lie in the mouth of the respondent/NDMC to claim that the petitioners, who had been verified and found to be eligible, were not entitled to squat at various sites in the NDMC area after 30.06.2011.

23. In rebuttal, counsel for the respondent/NDMC disputed the contentions of the petitioners/vendors and while reiterating her earlier submissions, asserted that the petitioners did not have any legally enforceable right, created on the basis of the eligibility list drawn by NDMC, for claiming grant of interim orders in their favour. She again referred to paras 68, 69, 75, 76 and 78 of the judgment in the case of Gainda Ram (supra), to emphasize that when the aforesaid paras are read collectively, it is clear that the petitioners cannot claim an entitlement to any interim orders as sought by them in the present proceedings. She further stated that even otherwise, the Special Provisions Act relied upon by the petitioners has duly recognized the

schemes prepared by the local authorities in the National Capital Territory of Delhi for regulation of urban street vendors. To substantiate the said submission, she drew the attention of this Court to the preamble of the aforesaid Act, which mentions the fact that all the schemes prepared by the local authorities in the National Capital Territory of Delhi, for regulation of urban street vendors in accordance with the National Policy on Urban Street Vendors, 2009 and the Master Plan for Delhi 2021, have been implemented and further that more time is required for proper implementation of the schemes regarding hawkers and urban street vendors.

24. A specific reference was made by the learned counsel for the respondent/NDMC to Section 2(1)(c) of the Special Provisions Act, which defines the phrase "encroachment" to claim that it does not cover the petitioners herein, who are squatters. Further reference was made to the provision of Section 3 of the Special Provisions Act, which contains a non obstante clause, to state that *status quo* with regard to the encroachment or unauthorized development as on 01.01.2006, mentioned in the said provision, was in the context of the definition of the phrases "encroachment" and "unauthorized development" set out in the definition clause at Sections 2(1)(c) and 2(1)(i) respectively of the Special Provisions Act and thus, the petitioners/vendors did not qualify under the aforesaid enactment for claiming protection as none of the ingredients set out in the provisions of the aforesaid enactment are found to exist in their

case. It was submitted that the Special Provisions Act, which came into effect in the year 2007 and has been extended from time to time and lastly, till December 2011, does not give permission to persons to re-start any activity once they have been removed by the civic authority and similarly, the Scheme of 2009 does not entitle the registrants to squat unless they have been allotted a specific site. In support of the aforesaid submission, reliance was place on the judgment in the case of MCD vs. Gurnam Kaur reported as **(1989) 1 SCC 101**. For the purpose of interpreting the meaning of the phrase, "structure", reference was made to the judgment of the Supreme Court in the case of Municipal Corporation of Greater Bombay & Ors. vs. Indian Oil Corporation Ltd. reported as **AIR 1991 SC 686**. For the purpose of understanding the expression, 'status quo', reference was made to the judgment in the case of Messrs Bharat Coking Coal Limited vs. State of Bihar & Ors. reported as **1987 (Supp) SCC 394** to submit that in ordinary legal connotation, the term *'status quo'* implies the existing state of things at any given point of time.

25. As for the National Policy on Urban Street Vendors, counsel for the respondent/NDMC stated that both, the 2004 policy and the 2009 policy, find mention in the decision of the Supreme Court in the case of Gainda Ram (supra) and it was only after taking into consideration the said policies, did the Court directed the institutionalization of urban street vending through legislation. It was further stated that at the time of

delivering the judgment dated 8.10.2010, the Supreme Court took notice of the NCT of Delhi Laws (Special Provisions) Act, 2009, which was valid upto 30.12.2010, apart from noticing the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 introduced by the Government of India, Ministry of Housing & Urban Poverty Alleviation. She stated that nothing new is now being submitted by the petitioners/vendors herein, for the present petitions to be entertained for any purpose whatsoever and all the grievances raised by the petitioners can easily be addressed before the Vending Committee/appellate authority under the scheme relating to urban street vending in the NDMC area, which fora continue to remain functional, even after 30.6.2011.

26. This Court has heard these matters at length since 17.8.2011, on different dates. Various counsels for the petitioners/vendors and the Standing Counsel for the respondent/NDMC had addressed the Court. Their respective arguments have been taken note of. Both sides have made strenuous efforts to explain what the status quo order dated 15.7.2011 passed by the Supreme Court in the case of Gainda Ram(supra) implies. The *leitmotif* of the arguments addressed on behalf of the petitioners/vendors is that the status quo order read with the qualifying words, "as it is obtaining today", suffixed to the order, can only be read to imply that as on date, i.e., 15.7.2011, there was no scheme operational in the NDMC areas to regulate vending activities and till a law

is ultimately enacted by the legislature, all the petitioners, irrespective of their legal status, can continue squatting/hawking at different sites that have been occupied by them. It is also asserted that in the teeth of the status quo orders passed by the Supreme Court, the respondent/NDMC in collusion with the police authorities, is threatening to illegally remove the petitioners/vendors from different sites, which is detrimental, adverse, harassing and belligerent to those, who have been found eligible by the respondent/NDMC for being allotted specific *tehbazari* spaces within the NDMC jurisdiction, but are being threatened due to lack of further action in this regard which is pending at the end of the respondent/NDMC. The second limb of submissions made by the learned counsels for the petitioners/vendors was that the Special Provisions Act would additionally come to the rescue of the petitioners/vendors, which also requires maintenance of *status quo* as existing on 01.10.2006, till the end of December, 2011.

27. On the other hand, the main thrust of the arguments addressed by the counsel for the respondent/NDMC was that as the legislature has failed to enact an appropriate legislation in terms of the decision of the Supreme Court in the case of Gainda Ram(supra), the subsequent order dated 15.7.2011 directing parties to maintain the status quo as it is obtaining on the said date can only imply that the state of affairs as existing on date are not to be disturbed, until the rights of the parties can be finally determined through legislation. It was submitted that while

passing the status quo order on 15.07.2011, the Supreme Court was conscious of the fact that the Parliament had yet to enact a comprehensive legislation to regulate urban street vending and in such circumstances, it goes without saying that it was the intent of the Court that the entire dispute redressal mechanism as recognized in the case of Gainda Ram(supra) would continue to remain in operation, so as to regulate the urban street vending in the NDMC area, till the legislation in that regard is enacted. Further, it was stressed that the Special Provisions Act did not provide any protective umbrella to the petitioners, whose squatting activities neither fell under the definition of "encroachment", nor under "unauthorized development". It was further asserted that even otherwise pending an appropriate legislation, the NDMC Act was available as a fall back option and the relevant provisions in the said enactment would continue to regulate street vending activity in the NDMC area and the petitioners/vendors could not claim a vested right to squat at any site of their own.

28. From the above, it is apparent that arguments and counter arguments have been raised by both sides on their respective versions of the meaning and the effect of the status quo order dated 15.7.2011 passed by the Supreme Court. It is also very apparent, that the meaning sought to be attributed by both sides as to the implication of the said status quo order, is diametrically opposed to each other. Not only this, both sides are at a tangent on the factum of the pendency or otherwise of

the interim applications filed before the Supreme Court by both, the applicants/vendors and the respondent/NDMC, for clarifications, on which the aforesaid order came to be passed as it is the stand of the respondent/NDMC that the aforesaid applications were not disposed of while passing the order dated 15.7.2011. The parties are poles apart on the question of import of the status quo order, and the effect of the observations made by the Supreme Court in the case of Gainda Ram(supra) as regards the approval of NDMC scheme. They are also at loggerheads on the composition of the adjudicatory mechanism in the NDMC jurisdiction and the manner of its functioning, as also the identity of the scheme which is validly operating in the NDMC areas for regulating urban street vending, which had all been subject matter of consideration before the Supreme Court in the aforesaid case. The other issues agitated by the parties, starting from the interpretation of the various observations made by the Supreme Court in the aforesaid judgment, to the formulation of the scheme as approved by the Supreme Court in the case of Sudhir Madan (supra), to the composition of the disputes redressal mechanism and its validity as also the meaning of the status quo order, are all in a turmoil as both the parties have stoutly defended their respective stands which are completely at variance with each other. The only common ground shared by the parties is the factum of passing of the recent judgment dated 08.10.2010 in the case of Gainda Ram(supra) and the subsequent status quo order dated 15.7.2011 passed

by the Supreme Court.

29. The fountainhead of the dispute in the present cases therefore remains the *status quo* order dated 15.7.2011 passed by the Supreme Court. The issue which is sought to be agitated before this Court is that having regard to the status quo order, whether a stay order ought to be granted by this Court in favour of the petitioners/vendors as prayed for by them, irrespective of their legal status, thus forbidding the respondent/NDMC from threatening and/or removing them from the different sites occupied by them in the NDMC areas. In other words, this Court is being called upon to examine the meaning, scope and effect of the status quo order dated 15.07.2011. On the question of how to ascertain the implication of a status quo order passed by a court, in the case of Messrs Bharat Coking Coal Limited (supra), it was observed by the Supreme Court that the expression, 'status quo' is undoubtedly a term of ambiguity and at times, gives rise to doubt and difficulty and in case any party has any doubt on the meaning and the effect of the status quo order, the proper course for such a party would be to approach the Court that had passed the status quo order, to seek clarifications.

30. In the case at hand, while seeking to ride the wave of the aforesaid status quo order, the parties have chosen to overlook one important factor, which is that a status quo order operates on both sides. The Supreme Court has passed orders requiring both sides to maintain status

quo. Once such an order of the Supreme Court is on record, the same not only binds all the parties to the adjudication, and all the parties, civil or judicial who are required to act in accordance with the said orders, but it equally binds the High Court from interfering with such an order, as the said order has been passed in litigations before the highest Court of the land.

31. The orders of the Supreme Court are on record. The status quo order is a clear signal to the High Court as well, to avoid granting any order, including an interim order, when the Supreme Court has directed for status quo to be maintained. In such circumstances, if this Court was to grant a stay order in favour of the petitioners/vendors arrayed before it, it would be tantamount to negating the orders of the Supreme Court, which require the parties to maintain status quo pending enactment of appropriate legislation. If either of the parties were unclear about the interpretation of the status quo order, it was for them to have applied to the Supreme Court for clarifications thereof. Additionally, the reliance placed by the petitioners/vendors on the Special Provisions Act seeking interim legal sanctity to the placement of goods by them on the pavements, by terming it as encroachment/unauthorized use, as recognized under the said Act and their contention that the Supreme Court had recognized the fact that the Special Provisions Act is the only Central law having primacy over other Statutes, are also matters that the

petitioners/vendors ought to have placed before the Supreme Court while seeking clarifications of the status quo order. It would therefore be advisable for the petitioners/vendors as also the respondent/NDMC to approach the Supreme Court and make their submissions there as regards their grievances. However, as both parties insisted that their arguments be taken note of and their submissions be placed on record, some pains have been taken to do the needful.

32. In view of the aforesaid facts and circumstances, this Court is of the opinion that it will not be appropriate for it to grant stay orders in the face of the status quo order dated 15.07.2011 passed by the Supreme Court. It is reiterated that any such order shall be an anti-thesis to the orders of the Supreme Court, which must be respected both, in letter and spirit. In such circumstances, the present petitions are disposed of by declining grant of any interim orders to the petitioners. However, liberty is granted to both the parties to apply to the Supreme Court for a clarification of the status quo order dated 15.07.2011 passed in the case of Gainda Ram (supra). The parties are left to bear their own costs.

(HIMA KOHLI)
JUDGE

OCTOER 24, 2011
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