

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

Judgment Reserved on: November 26, 2015

% *Judgment Delivered on: January 04, 2016*

+ **LPA 542/2015 & CM Nos.15646/2015, 15647/2015 & 15648/2015**

RAJIV NARULA

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi
Gupta, Advocates for SDMC.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ **LPA 575/2015 & CM Nos.17179/2015, 17180/2015 & 17181/2015**

JAGDISH KUMAR LAL THR LRS

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi
Gupta, Advocates for SDMC.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 579/2015 & CM Nos.17363/2015

SURENDER MOHAN CHOPRA

..... Appellant

Represented by: Mr.Akshay Ringe, Advocate.

versus

GOVT OF NCT OF DELHI THR ITS CHIEF
SECRETARY & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan & Mr.Naushad Ahmed Khan, ASC for GNCTD with Mr.Sanjoy Ghose, Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar Rao, Mr.Charnjeet Singh, Mr.Deeptakirti Verma, Mr.Dhananjai Rana, Mr.Devendra Dedha and Ms.Prabhsahaya Kaur and Mr.Avinash K.Sharma, Advocates. Mr.H.S.Phoolka, Sr.Advocate instructed by Ms.Mini Pushkarna, Standing Counsel, North DMC, Ms.Yoothica Pallavi, Advocate for R-2 with Mr.Mantoo, ALO, L&E Deptt., North DMC in person. Mr.Ajay Verma, Standing Counsel with Mr.Amit Mehra and Mr.Pawan Mathur, Advocate for DDA. Mr.Sanjeev Narula, Mr.Bhagwan Swarup Shukla, Mr.Rajesh Gogna & Mr.Ripu Daman Bhardwaj, CGSC with Mr.Ajay Kalra, Mr.Adrija Thakur and Mr.T.P.Singh, Advocates for UOI.

+ LPA 581/2015 & CM Nos.17543/2015, 17544/2015 & 17545/2015

MAHENDER SAHNI (WRONGLY SHOWN
AS MANINDER SAINI)

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate instructed by Mr.Sanjay Kumar Pathak, Mrs.K.Kaumudi and Mr.Sunil Kumar Jha, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan & Mr.Naushad Ahmed Khan, ASC for

GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi
Gupta, Advocates for SDMC.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 592/2015 & CM Nos.18106/2015, 18107/2015 & 18108/2015

RAJESH CHAWLA

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and

Mr.Avinash K.Sharma, Advocates.
Mr.H.S.Phoolka, Sr.Advocate
instructed by Ms.Mini Pushkarna,
Standing Counsel, North DMC,
Ms.Yoothica Pallavi, Advocate for R-
2 with Mr.Mantoo, ALO, L&E
Deptt., North DMC in person.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 593/2015 & CM Nos.18110/2015, 18111/2015 & 18112/2015

JATINDER GULATI

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi

Gupta, Advocates for SDMC.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 594/2015 & CM Nos.18114/2015, 18115/2015 & 18116/2015

RAVINDER SINGH

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.H.S.Phoolka, Sr.Advocate
instructed by Ms.Mini Pushkarna,
Standing Counsel, North DMC,
Ms.Yoothica Pallavi, Advocate for R-
2 with Mr.Mantoo, ALO, L&E
Deptt., North DMC in person.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan

Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 595/2015 & CM Nos.18130/2015, 18131/2015 & 18132/2015

SHANTI DEVI

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVERNMENT OF NCT OF DELHI THR
ITS CHIEF SECRETARY & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.H.S.Phoolka, Sr.Advocate
instructed by Ms.Mini Pushkarna,
Standing Counsel, North DMC,
Ms.Yoothica Pallavi, Advocate for R-
2 with Mr.Mantoo, ALO, L&E
Deptt., North DMC in person.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan

Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 619/2015 & CM Nos.19181/2015, 19182/2015 & 19183/2015

ANIL KUMAR

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi
Gupta, Advocates for SDMC.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ LPA 621/2015 & CM Nos.19189/2015, 19190/2015 & 19191/2015

PRITHI PAL SINGH ARORA

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &
Mr.Naushad Ahmed Khan, ASC for
GNCTD with Mr.Sanjoy Ghose,
Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar
Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.Mukesh Gupta, Standing Counsel
with Mr.Ajay Arora and Ms.Mansi
Gupta, Advocates for SDMC.
Mr.Ajay Verma, Standing Counsel
with Mr.Amit Mehra and Mr.Pawan
Mathur, Advocate for DDA.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

+ **LPA 622/2015 & CM Nos.19434/2015, 19435/2015 & 19452/2015**

M/S KULWANT RAI COAL DEPOT

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate
instructed by Mr.Sanjay Kumar
Pathak, Mrs.K.Kaumudi and Mr.Sunil
Kumar Jha, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan & Mr.Naushad Ahmed Khan, ASC for GNCTD with Mr.Sanjoy Ghose, Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar Rao, Mr.Charnjeet Singh, Mr.Deeptakirti Verma, Mr.Dhananjai Rana, Mr.Devendra Dedha and Ms.Prabhsahaya Kaur and Mr.Avinash K.Sharma, Advocates. Mr.H.S.Phoolka, Sr.Advocate instructed by Ms.Mini Pushkarna, Standing Counsel, North DMC, Ms.Yoothica Pallavi, Advocate for R-2 with Mr.Mantoo, ALO, L&E Deptt., North DMC in person. Mr.Ajay Verma, Standing Counsel with Mr.Amit Mehra and Mr.Pawan Mathur, Advocate for DDA. Mr.Sanjeev Narula, Mr.Bhagwan Swarup Shukla, Mr.Rajesh Gogna & Mr.Ripu Daman Bhardwaj, CGSC with Mr.Ajay Kalra, Mr.Adrija Thakur and Mr.T.P.Singh, Advocates for UOI.

+ **LPA 624/2015 & CM Nos.19438/2015, 19439/2015 & 19440/2015**

RAMAN KOHLI

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate instructed by Mr.Sanjay Kumar Pathak, Mrs.K.Kaumudi and Mr.Sunil Kumar Jha, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan &

Mr.Naushad Ahmed Khan, ASC for GNCTD with Mr.Sanjoy Ghose, Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar Rao, Mr.Charnjeet Singh, Mr.Deeptakirti Verma, Mr.Dhananjai Rana, Mr.Devendra Dedha and Ms.Prabhsahaya Kaur and Mr.Avinash K.Sharma, Advocates. Mr.H.S.Phoolka, Sr.Advocate instructed by Ms.Mini Pushkarna, Standing Counsel, North DMC, Ms.Yoothica Pallavi, Advocate for R-2 with Mr.Mantoo, ALO, L&E Deptt., North DMC in person. Mr.Sanjeev Narula, Mr.Bhagwan Swarup Shukla, Mr.Rajesh Gogna & Mr.Ripu Daman Bhardwaj, CGSC with Mr.Ajay Kalra, Mr.Adrija Thakur and Mr.T.P.Singh, Advocates for UOI.

+ **LPA 757/2015 & CM Nos.24252/2015, 24253/2015, 24254/2015, 24255/2015 & 24256/2015**

SADHNA GROVER

..... Appellant

Represented by: Mr.Sanjay Poddar, Sr.Advocate instructed by Mr.Sanjay Kumar Pathak, Mrs.K.Kaumudi and Mr.Sunil Kumar Jha, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Represented by: Mr.Satyakam, Mr.Gautam Narayan & Mr.Naushad Ahmed Khan, ASC for GNCTD with Mr.Sanjoy Ghose, Mr.Nikhil Bhardwaj, Mr.D.Rajeshwar

Rao, Mr.Charnjeet Singh,
Mr.Deeptakirti Verma, Mr.Dhananjai
Rana, Mr.Devendra Dedha and
Ms.Prabhsahaya Kaur and
Mr.Avinash K.Sharma, Advocates.
Mr.H.S.Phoolka, Sr.Advocate
instructed by Ms.Mini Pushkarna,
Standing Counsel, North DMC,
Ms.Yoothica Pallavi, Advocate for R-
2 with Mr.Mantoo, ALO, L&E
Deptt., North DMC in person.
Mr.Sanjeev Narula, Mr.Bhagwan
Swarup Shukla, Mr.Rajesh Gogna &
Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Ajay Kalra, Mr.Adrija
Thakur and Mr.T.P.Singh, Advocates
for UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

CM No.24255/2015 (Delay) in LPA 757/2015

1. For the reasons stated in the application the delay of 40 days in filing the appeal is condoned.
2. Application is disposed of.

LPA Nos.542/2015, 575/2015, 579/2015, 581/2015, 592/2015, 593/2015, 594/2015, 595/2015, 619/2015, 621/2015, 622/2015, 624/2015 and 757/2015

1. In the writ petitions filed by the 13 appellants, they inter alia prayed for directions to the respondents to place on record the policy prohibiting the sale of coal in Delhi, setting aside of Circular/Policy dated July 06, 2011,

setting aside Resolution No.874 dated March 16, 2011 and Resolution No.10 dated May 27, 2011 and setting aside order dated November 16, 2011. Vide order dated November 16, 2011 the tehbazari rights of the appellants were cancelled and the properties in question were to be retrieved from the allottees/successors or occupiers and handed over to R.P.Cell, MCD pursuant to the show cause notices dated November 11, 2011. In LPA No.621/2015 there is an additional prayer of quashing the notice dated May 23, 2012 whereby the appellant was directed to remove the structure from the site and handover the possession to the respondent.

2. Broadly the averments in the writ petitions filed by the appellants and the counter affidavits by the respondents are:

Writ No.	LPA No.	Status of acquiring the property
3749/2012	542/2015	The father of the appellant Late Nand Lal Narula migrated from Pakistan after partition and settled in India. He was carrying on the coal business from the property in question somewhere in 1952. The respondent started charging tehbazari fee for occupation of property in question in 1957. The Public Distribution System was implemented 1971. In the counter affidavit the above noted contents are stated to be matter of record though migration to India is denied for want of knowledge.
3741/2012	575/2015	The father of the appellant Late Ram Lubaiya came to India somewhere in 1947 after partition and started the coal business. He started paying the

		tehbazari fee in respect of property in question from 1967. However, prior to 1967, no charges were collected from the deceased. After the death, the wife of deceased started the coal business along with the appellant. In the counter affidavit the above noted contents are denied for want of knowledge.
3486/2012	579/2015	The appellant and his family after partition in 1947 migrated to India as refugee. The father of appellant occupied the property at Tihar Gaon in 1950 and started doing the coal business. Thereafter the appellant's father was evicted from the said area and granted the possession of the property in question. He was granted the tehbazari rights in 1970. In the counter affidavit the above noted contents are denied for want of knowledge.
3747/2012	581/2015	The father of the appellant migrated from Pakistan after partition and settled in India. Appellant's grandfather was doing the coal business from Tilak Nagar somewhere in 1963. In 1973 the appellant's father carried out the business in his name and thereafter he was shifted to the property in question and paid tehbazari fees. In the counter affidavit the above noted contents are

		stated to be matter of record.
3739/2012	592/2015	The Appellant's father was running the coal business with his partner Harbans Lal who was the allottee of tehbazari in 1970. The partnership came to an end on June 21, 1982. After that, the appellant was doing coal business with his father. In the counter affidavit the above noted contents are stated to be wrong and denied except the tehbazari right granted in favour of Harbans Lal. The contents with respect to dissolution of partnership are denied for want of knowledge.
3485/2012	593/2015	The Appellant's family migrated to India after partition in 1947. The appellant's father acquired the property in question and started the coal business from property in question. Tehbazari rights were originally granted in the name of late Shri Mulakh Raj Gulati who was the father of the appellant. Thereafter, the appellant filed an application for transfer of property in question in his name and started paying the tehbazari fees. In the counter affidavit the above noted contents are denied for want of knowledge. However, the contents with respect to transfer of property in question and payment of tehbazari were stated to be a matter of record.

3750/2012	594/2015	The appellant's grandfather migrated to India after partition in 1947 and settled in India. He occupied the property in question and started the coal business. The appellant's grandfather was running the coal business without paying any charges to any authority. Subsequently, the respondent started charging the tehbazari fees somewhere in 1965. After the death of grandfather, a family settlement was arrived between the family members and tehbazari right was granted to the appellant. In the counter affidavit the above noted contents are denied for want of knowledge. However, with respect to family settlement, it is submitted that tehbazari right cannot be granted by family member.
3455/2012	595/2015	Appellant's father-in-law Late Shri Bodh Raj and his family after partition in 1947 migrated to India and late Shri Bodh Raj was granted the certificate of refugee on April 24, 1948. He occupied the property in question which belonged to respondent No.5 (Department of Rehabilitation Settlement Wing). He started the bakery business and dairy business initially for two-three years somewhere in 1955 and thereafter he started the coal business from the said premises after closing down the bakery and dairy

		business. No occupation charges were paid prior to 1970. Appellant's father in law was granted the tehbazari rights in the year 1970. In the counter affidavit the above noted contents are denied for want of knowledge.
6493/2012	619/2015	Shri Dayal Chand Sharma entered into a partnership deed with the appellant to carry out the coal business. The partnership deed was executed on 30th October, 1981. The property in question was allotted to Shri Dayal Chand Sharma who handed over the possession to appellant's father after the dissolution of partnership in 1982. In the counter affidavit the above noted contents are denied for want of knowledge.
3631/2012	621/2015	The appellant's father was issued tehbazari receipt in respect of the premises on January 29, 1969 whereby the MCD accepted the rent from April 01, 1965 to March 31, 1969. Vide letter dated April 16, 1991 SDMC approved the shifting of the tehbazari site to the present property in question. Initially the tehbazari rights were granted to Shri Diwan Singh (Appellant's father). After his death an application was made that the tehbazari be mutated in the name of Smt.Pritam Kaur (wife of appellant). In the counter affidavit the above noted contents are stated to be matter of record.

3744/2012	622/2015	The father of the appellant and his family after partition in 1947 migrated to India as a refugee. The father was running the coal business when the property in question was purchased by the appellant from Kulwant Rai on October 11, 1994. The tehbazari rights were granted to the predecessor of the appellant which were subsequently acquired by the appellant. The predecessor of the appellant was doing the business of coal prior to the implementation of the Public Distribution System. In the counter affidavit it was stated that the premises in question was allotted on tehbazari basis to Shri Kulwant Raj who was running coal depot on tehbazari. Thereafter he sold the land to the father of the appellant. It is also submitted that the land occupied by the appellant is public land which is not capable of being purchased or sold.
2372/2013	624/2015	The family of the appellant migrated to India after partition in 1947 and the appellant's father occupied the property in question and started the coal business from the property in question. Originally, the tehbazari rights were granted to the father of the appellant since 1963. The appellant's father was allotted the land under rehabilitation scheme as he was a refugee.

		No counter affidavit has been filed.
6518/2013	757/2015	The property in question was originally allotted to the father-in-law of the appellant. On March 25, 1969 in lieu of the existing coal depot at Shankar Road, he was allotted the coal depot in New Rajender Nagar. After his death on July 19, 1979 the appellant started running the coal business and obtained the licence in her name. In the counter affidavit, the above noted contents are stated to be wrong and denied.

3. A brief background leading to the filing of the writ petitions is that one Smt.Sadhna Grover was forcibly dispossessed from tehbazari site in 1999 pursuant where to she filed W.P.(C) No.6827/1999. The said writ petition was allowed in favour of Smt.Sadhna Grover by the learned Single Judge vide order dated November 26, 2005 against which an appeal was preferred by MCD being LPA No.240/2006. During the pendency of the appeal Smt.Sadhna Grover was directed to be put back in possession as per the orders of the learned Single Judge by the Division Bench on March 31, 2009. Representation was made by the Retail Coal & Fire Wood Traders Welfare Association (Regd.) to the Chairman of Standing Committee of the respondent No.2 to review the policy decision and a statement in this regard was made by respondent No.2 before the Division Bench that they would be framing a policy. Finally a policy dated July 06, 2011 was framed pursuant to Resolution Nos.874 dated March 16, 2011 and 10 dated May 27, 2011

which was placed on record in LPA No.240/2006. LPA No.240/2006 was disposed of on March 18, 2015 with the following directions:

“22. We have considered the matter in the light of the contention raised and the history of these proceedings as noted hereinabove.

23. Though it is quite evident from the orders made from time to time in the appeal that the direction issued by the learned Single Judge to the appellant MCD to allot a plot of land admeasuring 200 sq. yds. on tehbazari basis to the respondent No.1/writ petitioner has been given a go-by and it has been held that the respondent No.1/writ petitioner is entitled to the same treatment as the other erstwhile coal depot tehbazari holders but we may also observe that we are unable to agree with the reasoning given by the learned Single Judge for issuing the direction to the appellant MCD to allot plot admeasuring 200 sq. yds. to the respondent No.1/writ petitioner, even if on licence basis. The learned Single Judge appears to have been swayed into passing such a direction, dismayed at the false stand purportedly taken by the official of the MCD in the course of the proceeding in the writ petition. However, the stand, even if false, taken by some officials of the MCD also does not justify conferment of a benefit of allotment of land to the respondent No.1/writ petitioner, if otherwise not entitled to. We may also observe that the stand taken by the officials of the MCD of denial of grant of tehbazari rights to the respondent No.1/writ petitioner/her predecessor, was in the face of no records of such grant being available in the MCD. It cannot thus really be said that the stand was false; perhaps it was not properly worded.

24. It cannot be lost sight of that the predecessor of the respondent No.1/writ petitioner was but a tehbazari holder. A tehbazari holder is merely a licensee, entitled only to use the land for the purpose licensed and has no right, title or interest in the land. It cannot also be lost sight of that the

said tehbazari was expressly for running a coal depot. It is not in dispute that the business of running of coal depot came to an end in the year 1995 and beyond which it was not permissible in law to run a coal depot on the said land. In our opinion, the tehbazari of the respondent No.1/writ petitioner thus came to an end in 1995 itself and the respondent No.1/writ petitioner has not pleaded any right in law to continue in use of the said land for other purpose or to get any alternative land. The right of the respondent No.1/writ petitioner could at best be of rehabilitation in accordance with the policy, if any in this regard, as has rightly been observed in the orders aforesaid in this appeal. Reference may also be made to our judgment in Saptagiri Restaurant Vs. Airports Authority of India MANU/DE/2575/2014 where, on a conspectus of case law it was held that owing to Section 64 of Indian Easements Act, 1882, a licensee, if evicted, even though grounds for revocation of licence do not exist, or is forcefully evicted, his only remedy is to recover compensation from grantor and not to resume occupation.

25. Thus, the order dated 22nd November, 2005 of the learned Single Judge impugned in this appeal cannot stand and is set aside.

26. As far as the right of the respondent No.1/writ petitioner for rehabilitation is concerned, a policy in this regard has already been framed under the directions in this appeal from time to time. However, now the respondent No.1/writ petitioner and others similarly placed as the respondent No.1/writ petitioner are not satisfied with the said policy and have challenged the same in the other writ petitions aforesaid.

27. Thus, while allowing this appeal, we observe that nothing contained herein would affect the rights of the respondent No.1/writ petitioner in the other writ petition preferred by her, challenging the Circular / policy dated 6th

July, 2011.”

4. Resolution No.874 dated March 16, 2011 and Resolution No.10 dated May 27, 2011 which were under challenge in the writ petitions are:

“Resolution No.874 of the Standing Committee dated 16.3.2011.

Resolved that it be recommended to Corporation that the proposal of the Commissioner as contained in his letter No.F.33/CL&EC/2376/C&C dated 16.3.2011, be approved with the following modification:

- 1. The size of Tehbazari site 6x4' be read as 7'x5'.*
- 2. Those persons who continue to do business of sale of coal with proper permission/licenses as applicable will be permitted to continue the said business. However, these persons should not encroach/exceed/beyond the permitted size of the site.”*

RESOLUTION NO.10 DATED 27.5.2011:

Resolved that as recommended by the Standing Committee vide its resolution No.874 dated 16.3.2011 the proposal of the Commissioner as contained in his letter No.F.33/CL&EC/2376/C&C dated 16.3.2011 be approved with the following modification:

- 1. The size of Tehbazari site 6x4' be read as 7'x5'.*
- 2. Those persons who continue to do business of sale of coal with proper permission/licenses as applicable will be permitted to continue the said business. However, these persons should not encroach/exceed/beyond the permitted size of the site.*
- 3. Those persons who are running coal depots on till date*

and has encroached the land more than allotted by the allotting agency, that excess land be taken back immediately from them.

*Sd/-
Superintendent
Secretary's Office
Municipal Corporation of Delhi."*

5. Pursuant to these resolutions, the policy of MCD dated July 06, 2011 is as under:-

***"MUNICIPAL CORPORATION OF DELHI
CENTRAL LICENSING & ENFORCEMENT CELL
14th FLOOR, CIVIC CENTRE, MINTO ROAD NEW DELHI-
110002***

*NO.AO/CL & EC/2011/87
6.7.2011*

DATED:

***Sub: -Sites Coal Depots on tehbazari basis on Municipal Land
CIRCULAR***

Hon'ble High Court of Delhi passed an order in LPA No.240/2006 –MCD vs. Sadhna Grover vide which MCD was directed to frame a policy with regard to the Coal Depots. Pursuant to above said order of the Hon'ble High Court of Delhi, the matter relating to policy guidelines in connection with sites for Coal Depot on tehbazari basis on Municipal land was placed before Corporation through Standing Committee. The Standing Committee vide its resolution No" 874 dated 16.3.2011 made certain modifications in the proposal on the subject and subsequently the corporation during its deliberations in slightly modified the proposal and finally passed Resolution No.10 dated 27.5.2011 in which the comprehensive policy on the sites of Coal Depot was adopted and inter alia the following guidelines have been passed which are issued as under for information and compliance:-

1. *Since the business of coal is no longer permissible and relevant in the present context, the Tehbazari holders or their legal successors should be offered Tehbazari site measuring 7' x 5' preferably in areas near their existing coal depot sites failing which in the same zone or nearby zones.*
2. *The specific site allotment in each case would be made by the Zonal-Vending Committee/Authority after checking all documents establishing the identity and other credentials of the allottees.*
3. *The MCD land where the coal depots were running, will be resumed and taken over by the Land & Estate Department Dy Commissioner of the Zone who will also initiate steps to protect/secure the land so that encroachments are prevented. After checking the permitted land site and completing other formalities as per law/policy suitable projects, to benefit the public and community can be started on the said resumed land by the Remunerative Project Cell/other Departments of MCD.*
4. *Those persons who continue to do business of sale of coal with proper permission/licenses as applicable will be permitted to continue the said business. However, these persons should not encroach/exceed beyond the permitted size of the site.*
5. *Further, those persons who are running coal depots till date and are in occupation of land more than allotted to them, the excess land shall be taken back immediately from them.*
6. *Out of 59 Coal Depots as referred in preamble dated 23.4.2009, 29 Coal Depots sites are on Municipal Land on Tehbazari basis under the control of Zonal Licensing Branch and other coal depots are on private land. There are also 13 Coal Depot sites on License fees basis under*

the control of Land & Estate Department of MCD other than those recently transferred by the L&DO, Government of India to the Land & Estate Department, MCD.

7. *This issues with the approval of competent authority.*

*Sd/-
Addl. Dy. Commissioner
(Central Licensing & Enforcement Cell)”*

6. The learned Single Judge vide the impugned order noted that though concededly the health trade licenses produced and relied upon by at least 9 writ petitioners were forged and fabricated which would disentitle them for any relief, however, since the issue of validity of the policy had been raised which would affect a large number of persons, it was appropriate to decide the challenge to the impugned policy on merits. The learned Single Judge held as under:

“12. Essentially, the petitioners have challenged the impugned policy on the ground that the same is a colorable exercise of power and lacks bona fides. The petitioners have further contended that the respondent corporation would not have the jurisdiction to take any action against the petitioners since the land in question has been transferred to DDA.

13. Insofar as the first contention is concerned, i.e. that the impugned policy lacks bona fide, there is no material to substantiate this contention. The proceedings in this court referred to by the petitioners must be considered in proper perspective. One Ms. Sadhna Grover had filed a petition in this court being W.P.(C) 6827/1999. In the said writ petition, the petitioner therein (Sadhna Grover) claimed that in 1969 her father-in-law, Madan Lal Grover, was allotted a plot measuring 200 sq. yards on tehbazari at Rs.20 per month for use as a coal depot. She further asserted that her father-in-law expired on 19.07.1979 and, thereafter, DDA had demolished

the structure built up on the said plot. Sadhna Grover prayed that DDA and MCD be restrained from dispossessing her from the said land in question. MCD contended that Sadhna Grover was at best a licensee and the licence in the name of her father-in-law had not been extended beyond 31.12.1989 and, thus, she had no right or interest in the plot in question. The MCD also disputed that it had ever issued a tehbazari licence in favour of the Sadhna Grover's deceased father-in-law for running a coal depot. MCD asserted that there was no policy to issue tehbazari sites for coal depots and only tehbazari sites of an area measuring six feet by four feet had been granted. Subsequently, the MCD filed a counter affidavit which, inter alia, stated that the Sadhna Grover's father-in-law had been selling coal at the site near Shankar Road but there were no records available, which indicated that the site was allotted by MCD to Sh. Madal Lal Grover. A Coordinate Bench of this Court found that the stands taken by MCD were inconsistent. Further, DDA had taken a stand that the petitioner Sadhna Grover was not entitled for an alternate rehabilitation because of the stand taken by the MCD that it had not allotted any site to Madan Lal Grover.

14. In the circumstances, a co-ordinate bench of this the Court passed an order dated 22.11.2005 (in W.P.(C)6827/1999) directing the MCD to allot a site measuring 200 sq. yards to the Sadhna Grover for running a coal depot on licence basis. The application filed by the MCD for recall/modification of the said order was dismissed by the Court on 30.11.2005. The MCD appealed against this order before a Division Bench of this Court in LPA 240/2006. During the course of the appellate proceedings before the Division Bench of this Court, the Additional Deputy Commissioner (Land and State) of MCD appeared and stated that in 1995 a policy decision had been taken by Delhi Administration that no fresh licences would be issued for coal depots and the existing licences would also not be renewed. He also asserted that in view of the aforesaid decision, all tehbazari sites were required to be re-possessed. In this context, the Division Bench observed in its order dated 31.03.2009 that either the respondent (the

writ petitioner) should be permitted to operate the coal depot or a uniform policy is adopted and implemented to close down coal depots and repossess the sites. Pursuant to the aforesaid order, an affidavit dated 30.04.2009 was filed by the concerned officer of MCD, inter alia, affirming that a decision had been taken to re-possess the tehbazari sites of all coal depots which had been shut down. The Court was also informed that there was a proposal to allot tehbazari sites measuring six feet by four feet to the erstwhile tehbazari holders. DDA filed an affidavit dated 04.05.2009 affirming that it did not allot plot for tehbazari or for coal depots. On 08.05.2009, the learned counsel for the MCD stated before the Division Bench that a policy decision had been taken and the necessary action would be taken in pursuance thereof. Subsequently, on 07.08.2009, the learned counsel for the MCD sought further time and it was contended that the matter was pending consideration before the Standing Committee. The Division Bench observed that there was some change in the stand of MCD since earlier it had contended that a policy decision had been taken. The matter before the Division Bench was deferred at the instance of the MCD on several occasions thereafter, as it was contended that policy matter was pending. Thereafter, the impugned policy was placed before the Division Bench. The impugned policy incorrectly recorded that the Court had passed an order in LPA 240/2006 to frame a policy with regard to coal depots. The facts as narrated above, clearly indicate that no such order had been passed and the court (Division Bench) had only taken note of the submissions made on behalf of the MCD. It is in this context that the Division Bench by an order dated 04.05.2012 passed in LPA 240/2006 clarified that no such direction had been given and their observations were limited for a uniform implementation of any policy devised by the MCD.

15. It is apparent from the above that the entire emphasis of the Division Bench, at the relevant time, was to ensure that a uniform policy is followed by the MCD and there is no pick and choose policy adopted by the concerned authorities.

16. In the aforesaid perspective, it cannot be disputed that it

was necessary for the respondent corporation to frame a uniform policy with respect to the tehbazari licences for coal depots.

17. Clearly, the respondent corporation had considered the relevance of granting the tehbazari licences for running coal depots and taken a policy decision which is embodied in the impugned policy. It cannot be disputed that coal has lost its relevance as a fuel for common man. It is no longer a commodity which is distributed under the PDS. It is in the aforesaid perspective that the MCD adopted the impugned policy. The relevant extract of which is quoted below:-

“1. Since the business of coal is no longer permissible and relevant. In the present context, the Tehbazari holders or their legal successors should be offered Tehbazari site measuring 7’ x 5’ preferably in areas near their existing coal depot sites failing which in the same zone or nearby zones.

2. The specific site allotment in each case would be made by the Zonal-Vending Committee/Authority after checking all documents establishing the identity and other credentials of the allottees.

3. The MCD land where the coal depots were running, will be resumed and taken over by the Land & Estate Department Dy Commissioner of the Zone who will also initiate steps to protect/secure the land so that encroachments are prevented. After checking the permitted land use and completing other formalities as per law/policy suitable projects, to benefit the public and community can be started on the said resumed land by the Remunerative Project Cell/other Departments of MCD.

4. Those persons who continue to do business of sale of coal with proper permission/licences as applicable will be permitted to continue the said business. However, these persons should not encroach/exceed beyond the

permitted size of the site.

5. *Further, those persons who are running coal depots till date and are in occupation of land more than allotted to them, the excess land shall be taken back immediately from them.”*

18. *Undeniably, a comprehensive policy in respect of sites allotted for coal depots was warranted. The Division Bench had also emphasised that a policy be uniformly be implemented. Thus, in my view, the contention that the policy is a colourable exercise of power or lacks bona fide only because certain inaccurate statement had been made before the Division Bench in LPA 240/2006, is wholly unsustainable and without merit. It is relevant to note that on 30.01.2013, North Delhi Municipal Corporation has issued a corrigendum amending paragraph 1 of the impugned policy. The relevant extract of the said corrigendum is quoted below:-*

“The matter has been examined and it is noticed that in the Resolution No.10 dated 27.05.2011 passed by the Corporation, there was no mention of the directions issued by the Hon’ble High Court for framing a policy, however, the orders of the Hon’ble High Court were reproduced as such along with the supporting material. While drafting the Circular dated 06.07.2011, due to an inadvertent mistake, the words “Hon’ble High Court of Delhi passed an order in LPA No. 240/2006 titled MCD Vs Sadhna Grover vide which MCD was directed to frame a policy with regard to the Coal Depots. Pursuant to the above said orders of the Hon’ble High Court of Delhi” were mentioned in the circular.

3. *With the approval of the Competent Authority, it has been decided to amend the Circular No. AO/CL&EC/2011/87 dated 06.07.2011 as under:-*

The expression “Hon’ble High Court of Delhi passed an order in LPA No.240/2006 titled MCD Vs Sadhna Grover vide which MCD was directed to frame a policy with

regard to the Coal Depots. Pursuant to the above said orders of the Hon'ble High Court of Delhi..." appearing in para-1 of the Circular No. AO/CL&EC/2011/87 dated 06.07.2011 may be deleted and in that place the following words may be substituted:-

"In continuation of this Office Circular No. AO/CL&EC/2011/87 dated 06.07.2011, the policy relating to sites allotted to Coal Depots by CL&EC department of MCD on Municipal Land on Tehbazari basis is again circulated with the request to initiate immediate action at zonal level."

4. All terms and conditions of the aforesaid Circular of the dated 06.07.2011 shall remain unchanged."

19. In view of the above, the contention that the impugned policy was framed only to sustain a statement made before a Division Bench of this court, cannot be accepted.

20. The second aspect to be considered is whether the respondent corporation would have the jurisdiction to take any action for retrieval of the sites in question. It is not disputed that the tehbazari licence for the said sites had been issued by the MCD and the necessary licence fee in respect of the said sites was paid to MCD. It is well settled that a licensee is granted only a permissive user not conferred any right in respect of the said property. It is not disputed that the licences granted to the petitioners/their predecessors have expired; thus, indisputably, the petitioners have no right to continue to occupy the said premises. The DDA has also filed an affidavit, inter alia, stating as under:-

"b) It is submitted that the Petitioner herein is only an encroacher over the government land and has no right, title and interest in the property in question. It is pertinent to note that neither DDA nor the Ministry of Rehabilitation have ever permitted the Petitioner to run Coal Depot and firewood works at the said property. Moreover, the coal and firewood work is restricted under

the Trade Policy in Delhi. Thus the Petitioner is an encroacher and is liable to be evicted from the said Property.”

21. It is clear from the aforesaid that even according to DDA, the petitioners have no right to continue on the respective sites occupied by them. In the case of MCD v. Sadhna Grover & Anr: LPA240/2006 decided on 18.03.2015, a Division Bench of this Court had set aside the order passed by a Single Judge, as the Division Bench had concluded that a licensee is only a permissive user and acquires no right, title and interest in the land. The relevant extract of the said decision is quoted below:-

“24. It cannot be lost sight of that the predecessor of the respondent No.1/writ petitioner was but a tehbazari holder. A tehbazari holder is merely a licensee, entitled only to use the for the purpose licensed and has no right, title or interest in the land. It cannot also be lost sight of that the said tehbazari was expressly for running a coal depot. It is not in dispute that the business of running of coal depot came to an end in the year 1995 and beyond which it was not permissible in law to run a coal depot on the said land. In our opinion, the tehbazari of the respondent No.1/writ petitioner thus came to an end in 1995 itself and the respondent No.1/writ petitioner has not pleaded any right in law to continue in use of the said land for other purpose or to get any alternative land. The right of the respondent No.1/writ petitioner could at best be of rehabilitation in accordance with the policy, if any in this regard, as has rightly been observed in the orders aforesaid in this appeal.”

22. It is also necessary to bear in mind that the petitioners are claiming their rights to occupy the said premises based on licences issued by the MCD. In the circumstances, it would not be open for the petitioners to resist eviction from the site, particularly, in view of the finding that they have no right, title or interest in the land in question. Further, even according to DDA, the petitioners are land encroachers. Since the

predecessors of the petitioners were granted license for use of the property by MCD, its successor, North Delhi Municipal Corporation, would certainly have the power to retrieve the sites. It is well settled that the licensee only occupies the site pursuant to permissive use granted by the grantor. In the circumstances, it would not be open for a licensee to challenge the right of the grantor with whose permission the site is occupied. The decision in S. Thangappan (supra) would not be applicable in the facts of this case. In that case, the issue regarding applicability of Section 116 of the Evidence Act, 1882 was in the context of a relationship of landlord and tenant and not that of a licensor and a licensee. This is significant, because whilst a lessee acquires interest in property, a licensee does not. As indicated above, a licensee occupies premises only on the basis of permission granted by the grantor and acquires no right, title or interest in the property. Once the license is revoked, the licensee does not have any right to continue in occupation of the premises and is liable to be evicted. Stricto Senso, section 116 of the Evidence Act, 1882 may not apply as it only postulates that a licensee is estopped from challenging the title to possession of the licensor at the beginning of the licence. However, in this case, admittedly, the petitioners have no right to occupy the premises in question. In absence of any legal right, no relief under Article 226 of the Constitution of India can be granted to the petitioners. It is relevant to note that it is not the case of the petitioner that DDA has permitted them to continue to occupy the premises. On the contrary, DDA has also asserted that the petitioners are trespassers and are occupying the premises without any authority.

23. I am also inclined to accept the contention that any controversy with regard to the ownership of the land in question between DDA and MCD cannot be used by the petitioners to extend their occupation of the respective sites.

24. The petitions are, accordingly, dismissed. Pending applications stand disposed of. No order as to costs."

7. Learned counsel for the appellants contends that a perusal of the policy circular would reveal that the same was applicable to coal depots on tehbazari basis on “Municipal Lands”. The land occupied by the appellants was not municipal land but belongs to respondent No.3 DDA as confirmed in the replies to the applications filed under RTI. It is thus contended that in the absence of MCDs being owner of the land, they could not have dispossessed the appellants from the lands in question. Further the additional affidavit filed by the Additional Secretary (UD), Ministry of Urban Development, Govt. of India clarifies that in 14 writ petitions, there is a confusion with regard to the ownership/jurisdiction to the lands vesting in DDA or MCD.

8. In the meetings of the Committee, the MCD could not show any law, rule, regulation or instructions of Government whereby it could claim that collection of tehbazari gave it ownership rights in the lands in question. Thus these disputed questions could not be decided by writ court but by a competent civil court. It is thus urged that learned Single Judge erroneously held that any controversy with regard to ownership of land between DDA and MCD cannot be used by the appellants to extend their occupation of the sites. It is urged that only the owner of the property could have disturbed the settled possession of the appellants for more than 5 decades from the properties in question which was even prior to the grant of tehbazari by the MCD in 1965 and implementation of the public distribution system in 1971. It is further urged that the appellants do not claim possession on the properties in question pursuant to tehbazari rights and even prior thereto they were in possession of the properties in question. Further the very basis of the MCD policy that coal trade is impermissible in Delhi since 1994-95 is

false as in WP (C) No.6848/2000 it is revealed that DDA had been regularizing the sites of coal depots. Appellants have been running pre-1962 commercial establishments and are thus protected under Clause 5.1 of the latest Master Plan of Delhi 2021. The appellants being ready and willing to pay regularization charges, damages and use and occupation charges, they could be permitted to change coal trade to any permissible trade. The policy framed by the MCD is arbitrary, discriminatory and colourable exercise of power based on two fundamentally wrong premises that the Division Bench of this Court in LPA No.240/2006 had directed MCD to frame that policy and coal trade was not permissible in Delhi since 1994-95.

9. The contentions on behalf of the two MCDs i.e. South Delhi Municipal Corporation and North Delhi Municipal Corporation (in short 'the MCDs') are same. Learned counsels contend that appellants' claim only a tehbazari right over the land in question and the tehbazari being a license, the right was purely personal given to a particular person to do a particular business at a particular place. Discretion is vested with the MCDs to renew or not the tehbazari license and it cannot be sought as a matter of right. The appellants have no right, title or interest over the land in question. The appellants also cannot claim tehbazari rights over any particular piece of land. Tehbazari right is merely a license for carrying out a particular trade at a particular site and can be revoked/modified at any time. The license has been revoked/modified by the MCDs as per their policy decision. The appellants do not have any right to perpetual possession over the land in question and having accepted tehbazari rights, they have acquiesced to the ownership of MCDs to the properties in question in view of Section 116 of Indian Evidence Act. The appellants are neither the owners of the land nor

have any document to show permissible use by any authority whatsoever. Since there is no malafide or arbitrariness or irrationality or illegality in the policy, it is not subject to interference by the Courts. The appellants cannot claim any right on public land. The properties in question have been retrieved in most of the cases by sealing and the appellants have not challenged the final order hence no relief can be granted to them.

10. The grievances of the appellants in the writ petitions were two fold firstly that the policy decision as noted above is arbitrary, illegal and liable to be struck down and secondly their right to possess the property in question.

11. The challenge of the appellants to the policy dated July 06, 2011 cannot be sustained on the reasons urged. The appellants claim that the policy needs to be struck down for the reason the Division Bench of this Court in LPA No.240/2006 did not direct MCD to frame the policy rather recorded the statement of the counsel. Vide the amendment dated July 06, 2011 the expression "*Hon'ble High Court of Delhi passed an order in LPA No.240/2006 titled MCD Vs Sadhna Grover vide which MCD was directed to frame a policy with regard to the Coal Depots. Pursuant to the above said orders of the Hon'ble High Court of Delhi...*" appearing in para-1 of the Circular No.AO/CL&EC/2011/87 dated 06.07.2011" has been deleted in the policy and thus the challenge on this ground does not survive.

12. Nothing has been placed on record to show that the policy as framed is arbitrary, illegal or that the MCDs have no authority to lay down the policy. No doubt coal as a utility has lost its value in day-to-day life of man. Except being used in hotels, restaurants etc. the coal is not being used as a commodity in the household on day-to-day basis and the storage spaces for

the coal depots as required earlier are not required in the present scenario. The use of coal is further prohibited by the various orders passed under the Air (Prevention and Control of Pollution) Act, 1981. Thus we find no reason to strike down the policy dated July 06, 2011 of the respondent MCDs as arbitrary and illegal.

13. As regards the second issue of repossession of the properties in question is concerned the learned Single Judge proceeded on a factual fallacy with regard to the appellants in LPA Nos.542/2015, 575/2015, 593/2015, 594/2015, 622/2015 and 624/2015 that the properties in question were occupied by them pursuant to the tehbazari rights issued to their respective predecessors in interest and they were put in possession by the MCDs. The relevant portion of para 1 of the impugned order is as under:-

“1. The petitioners in these petitions are claiming rights to occupy premises which had been allotted as coal depots to their respective predecessors. Some of the petitioners are third parties who have allegedly acquired occupancy rights pertaining to the respective premises occupied by them, from the original allottees of those premises. Some of the petitioners are claiming to be the heirs of the original allottees....”

14. In LPA Nos.542/2015, 575/2015, 593/2015, 594/2015, 595/2015, 622/2015 and 624/2015 the appellants have stated in the writ petitions that their father or predecessor in interest after partition started the coal business at the properties in question even prior to tehbazari licenses were issued by the MCDs. The counter affidavits in all these cases either state these facts to be matter of record or do not deny these facts for want of knowledge. No material has been placed by the MCDs to show that the properties in question were allotted/granted by them. Thus the issue would be whether in

terms of the policy, the MCDs could have evicted the appellants in the appeals as noted above from the properties in question.

15. It is trite law that even a trespasser can be removed only by due process of law that too by the owner or someone who has better title in the property than the trespasser. [See: 2003 (7) SCC 350 Ramesh Chand Ardawatiya vs. Anil Panjwani]. In LPA Nos.542/2015, 575/2015, 593/2015, 594/2015, 595/2015, 622/2015 and 624/2015 the claim of the appellants in the writ petitions is that the properties in question were not allotted to them by the MCDs, whereas in LPA Nos.579/2015, 581/2015, 592/2015, 619/2015, 621/2015 and 757/2015, the appellants state that the properties in question where they were last doing the coal business was allotted to them by the MCDs. Clause 6 of the policy notes that some coal depots are on private lands. Once MCD put the appellants in possession of the properties in question by issuing tehbazari licenses, the MCDs were within their right to not only revoke the tehbazari rights which are mere licenses but also repossess the property in question allotted by them. Whether MCDs are the owners or not of such properties in question would not be relevant as it has a better title than the allottee. However, the situation would be different in cases where the properties in question have not been allotted by the MCDs to the occupiers while issuing tehbazari licenses.

16. The ground urged by the appellants that the MCDs have no jurisdiction to take any action against the appellants for the reason that the land in question belongs to DDA as is evident from the various RTI replies received by the appellants cannot be determined in a writ petition. Clause 3 of the Policy itself provides that MCD lands where the coal depots were running will be resumed. However, this does not mean that the MCD is

required to show absolute ownership of the properties in question. Suffice it is to note that if the possession of the properties in question has been handed over by the MCDs they would be within its rights to resume the same as a licensee who enters upon a property pursuant to a license cannot have a vested right in the property on revocation/expiry of the license. Section 116 of the Evidence Act estops a licensee who came upon any immovable property by a licence, to deny the title of the licensor to such property. However, where the property in question has not been allotted/handed-over by MCD though a tehbazari license has been issued the revocation/ expiry of the said tehbazari license would only entail the person not to continue with the trade of coal, however he cannot be dispossessed from the property in question by MCD as it has no better title than the person occupying it.

17. The contention of learned counsels for the MCD that the final order of the MCD has not been challenged deserves to be rejected for the reasons that in all the cases show cause notices issued to the appellants and the orders dated November 16, 2011 cancelling the tehbazari licenses and retrieving properties in question from the allottees/successors/occupiers pursuant to which sites were sealed on various dates have been challenged besides the policy.

18. In view of the aforesaid discussion the Policy dated July 06, 2011 is upheld. Consequently, LPAs No.579, 581, 592, 619, 621 and 757 of 2015 are dismissed. LPAs No.542, 575, 593, 594, 595, 622 and 624 of 2015 are allowed. Impugned judgment and the orders of the MCD dated November 16, 2011 in LPAs No.542, 575, 593, 594, 595, 622 and 624 of 2015 are set aside.

19. This judgment has been passed on the basis of the pleadings of the

parties in the writ petition. However, if the parties are in a position to prove to the contrary on the issue of possession of the properties in question they would be at liberty to take appropriate remedies before the Civil Court to ascertain their rights on the properties in question. Any observation made hereinabove will have no bearing thereon.

20. Further if there is any rehabilitation policy in respect of tehbazari rights or the land belonging to Central Government, the same would be complied with.

CMs.15646/2015 (stay), 15647/2015 (new facts/grounds), 15648/2015 (addl.documents) in LPA 542/2015

CMs.17179/2015 (stay), 17180/2015 (new facts/grounds), 17181/2015 (addl.documents) in LPA 575/2015

CMs.17363/2015 (stay) in LPA 579/2015

CMs.17543/2015 (stay), 17544/2015 (new facts/grounds), 17545/2015 (addl.documents) in LPA 581/2015

CMs.18106/2015 (stay), 18107/2015 (new facts/grounds), 18108/2015 (addl.documents) in LPA 592/2015

CMs.18110/2015 (stay), 18111/2015 (new facts/grounds), 18112/2015 (addl.documents) in LPA 593/2015

CMs.18114/2015 (stay), 18115/2015 (new facts/grounds), 18116/2015 (addl.documents) in LPA 594/2015

CMs.18130/2015 (stay), 18131/2015 (new facts/grounds), 18132/2015 (addl.documents) in LPA 595/2015

CMs.19181/2015 (stay), 19182/2015 (new facts/grounds), 19183/2015 (addl.documents) in LPA 619/2015

CMs.19189/2015 (stay), 19190/2015 (new facts/grounds), 19191/2015 (addl.documents) in LPA 621/2015

CMs.19434/2015 (stay), 19435/2015 (new facts/grounds), 19452/2015 (addl.documents) in LPA 622/2015

CMs.19438/2015 (stay), 19439/2015 (new facts/grounds), 19440/2015 (addl.documents) in LPA 624/2015

CMs.24252/2015 (stay), 24253/2015 (new facts/grounds), 24254/2015 (addl.documents) in LPA 757/2015

The appeals having been decided as noted above, the applications are dismissed.

CM 24256/2015 (impleadment) in LPA 757/2015

Dismissed.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

**JANUARY 04, 2016
'ga/vn'**