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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 19th May, 2017

Judgment Pronounced on: 3rd July, 2017

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W.P. (C) 2556/2015

VYAPARI KALYAN MANDAL MAIN PUSHPA & ANR

..... Petitioners

Through Mr.Pranav Proothi, Adv. with
Ms.Pruna Arora, Mr.Vishal Dabas &
Ms.Manasi Chatpalliwar, Advs. along
with Mr.Shyam Sunder Sharma &
Mr.B.L. Grover, Chairman of Market
Association, in person.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through Mr.Pushkar, Adv. for Mr.Gaurang
Kanth, Adv. for SDMC.
Mr.Devesh Singh, ASC with
Mr.Vinod Kumar Bhati, Adv. for R-3
to 7.
Ms.Indira Unninayar with Mr.Narayan
Krishan, Adv. with Ms.Rasna Kalkat,
Adv. for R-8.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J.

C.M. 5125/2017

1. This is an application on behalf of the respondent no.8/NASVI for placing on record additional documents. *Prima facie* we are of the view that the application is merely an attempt to further prolong the

litigation after the judgment was reserved on 01.02.2017, but since we have considered the documents sought to be placed on record, the application is allowed.

2. The application is disposed of.

W.P. (C) 2556/2015

3. The present writ petition has been filed by Vyapari Kalyan Mandal Main Pushpa (Central) Market Lajpat Nagar under Article 226 of the Constitution of India for issuance of a writ of *mandamus* directing the respondents to restrain/remove squatters, vendors and hawkers vending in a 'No Squatting Zone' at Central/Pushpa Market, Lajpat Nagar, New Delhi. The petitioner no.1 association comprises of shopkeepers carrying on trade and business in the said market, while the petitioner no.2 is a member of the association carrying on his business from shop no. 90.

SUBMISSIONS OF THE PETITIONERS

4. The facts of the case as stated in this writ petition are that on 21.05.1996 a massive bomb blast took place in the area of Pushpa Market, Lajpat Nagar-II, in which 13 people died, several persons were injured and there was a loss of several crores of goods. A high-level enquiry was ordered by the then Lieutenant Governor of Delhi. The report was submitted to the Lieutenant Governor, as per which the casualties and loss of property was due to delay in reaching the site by emergency services on account of encroachments by squatters/hawkers in the lanes and by-lanes of Central/Pushpa Market. It was recommended that no squatting/hawking should be permitted in future in the said area.

5. On the basis of the enquiry report, the Lieutenant Governor by his order dated 13.11.1996 directed the authorities to clear all the roads, lanes and by-lanes in Central/Pushpa Market, Lajpat Nagar of all encroachments in a joint operation to be conducted by the MCD and the police. The Lieutenant Governor also declared the entire Central/Pushpa Market as a 'No Squatting Zone'.
6. In ***Gainda Ram and others v. Municipal Corporation of Delhi and others***, W.P. (C) No.1699/1987 pending before the Supreme Court, I.A. Nos.340-348 were filed by those who were carrying on *tehbazari* facing Blocks D & J, Lajpat Nagar-II who had been removed after the bomb blast. By order dated 04.08.2000 in the said I.As., the Supreme Court directed the Government of NCT of Delhi to look into the matter and inform the Court whether Blocks D & J could be declared as squatting areas in view of the fact that certain other areas close to the place where bomb blast has taken place are being used for squatting purposes.
7. In response to the order, an affidavit was filed by Dr. B.S. Banerjee, Additional Secretary, Department of Urban Development, Government of India *inter alia* stating that:

“5. That the action of the MCD in permitting *tehbazari* in sites closer to the bomb blast site even while excluding Blocks “D and J” is not sustainable and the Lieutenant Governor is of the view that it would be appropriate to permit *tehbazari* only on sites or squatting zones properly selected in accordance with the directions of the Hon'ble Supreme Court in its order dated 1.5.1997 in I.A. Nos.37, IA No.97 in W.P. (C) No.1699 of 1987 with I.As. Nos.193, 37, 194 to 200, Contempt Petition (C) No.231 of 1997 and SLP (C) No.12618 of 1992 in CWP No.1699 of 1997 in the

matter of Gainda Ram and others Vs. MCD and others and not permitting this in any non-squatting zones.”

(Emphasis Supplied)

8. On 01.12.2000 in I.A. Nos. 336, 340-348 in W.P. (C) No.1699 of 1987, the Supreme Court taking into consideration the foregoing affidavit passed the following order:

“If it is the policy decision of the Government of NCT of Delhi to maintain the earlier prohibitory orders dated 13.11.1996 of the Lt. Governor to clear all roads, lanes and bye-lanes of all encroachments in that area and now a further decision has also been taken that the MCD ought not to have permitted tehbazari in some pockets closer to the Bomb Blast Site. Then there is no question of excluding Blocks “D and J” from the purview of prohibition contained in the earlier orders of the Lt. Governor. Not will Blocks “D and J” be treated as non-squatting area but the areas which are shown in the same plan closer to the Bomb Blast site. Where MCD has permitted tehbazari will now be treated as non-squatting area and all those who are occupying those areas will be removed from that area and provided tehbazari site for squatting in accordance with their seniority elsewhere. ...”

(Emphasis Supplied)

9. The aforesaid stand was reiterated by the MCD in its affidavit, dated 27.02.2001 filed before the Supreme Court by Sh. O.P. Balwani, Assistant Commissioner, Municipal Corporation, Delhi *inter alia* stating:

“[C] In the area of Pushpa Market a massive Bomb Blast had taken place on 21st May, 1996 in which 13 people had died and a high level Enquiry was ordered by the Lieutenant Governor and in the said Enquiry report it was recommended that no squatters should be permitted in the said area. On 1st December, 2000 also while passing orders this Hon’ble Court had considered the response of Lt. Governor’s office and according this Hon’ble Court had

declared that no squatting will be allowed in the area of Pushpa Market. Even otherwise, Municipal Corporation of Delhi had already declared Pushpa Market as a non-squatting area and as such applicants under no circumstances can be allowed to squat in the said area. As per order dated 1st December, 2000 passed by this Hon'ble Court in Contempt Petition No.288-289/2000 squatting in a non-squatting area has been prohibited. ...”

(Emphasis Supplied)

10. On 25.08.2005 in I.A. No.394 in I.A. No.356 in W.P. (C) 1699/1987 in the order passed by the Supreme Court as regards demarcation of hawking and non-hawking zones it was recorded that:

“...We are also informed that under the schemes formulated by the MCD and NDMC hawking and non-hawking zones have been demarcated and the hawkers/squatters will be located only in those zones which have been demarcated by the NDMC and MCD as hawking zones in accordance with the priorities mentioned in the Scheme...”

11. The Assistant Commissioner, Central Zone, MCD by its letter dated 30.12.2005 rejected the choice for squatting sites at Pushpa/Central Market by the applicants in I.A. No.394 before the Supreme Court informing that:

“Following the above observation of the Hon'ble Court the choice submitted by you along with the photographs of the proposed sites were sincerely examined by this office and found that the same falls in the “Non-squatting Zone” declared under the guidelines of Hon'ble Supreme Court of India in W.P. (C) No.1699/87 in the matter of “Gainda Ram Vs MCD.”

(Emphasis Supplied)

12. On 06.02.2007, the Supreme Court in I.A. No.394 in I.A. No.356 in W.P. (C) No.1699/1997 while considering the scheme submitted by the MCD passed the following order:

“The Scheme shall also provide that no license shall be granted to any person in no-hawking/squatting zones. The Station House Officer of the concerned police station shall take immediate steps to remove any person found hawking/squatting in a non-hawking/squatting area. If an allottee who has been allotted a tehbazari/vending site in a hawking/squatting zone, is found carrying on such activity in a non-hawking/squatting zone, the Municipal Corporation may consider cancelling his allotment.”

(Emphasis Supplied)

13. It is submitted by learned counsel for petitioners that the Supreme Court in the case of ***Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others***, (2014) 1 SCC 490 (paragraphs 8 and 20) has again upheld the demarcation between vending and no-vending zones.
14. The learned counsel for the petitioners, thus, submits that the Pushpa/Central Market is a no-squatting/no-vending zone, but the authorities have failed to maintain it as such. The primary grievance of the petitioners is that even though sporadic removal actions are taken, the vendors return almost immediately and again start squatting with the active connivance of the officers of the MCD and the police. This led to the petitioners making a representation to the respondents, but of no avail, the petitioners have filed the present writ petition.

STAND OF SDMC

15. An affidavit in the form of a status report was filed by the SDMC. As per the status report, Pushpa Market/Central Market is a no-squatting zone and in the said area no one can be allowed to squat/hawk. It is submitted that the safety of the general public is of paramount

importance and if the area is not kept as a no-vending zone, the same would severely undermine public safety.

16. Learned counsel next contended that the concept of no-vending zone is not alien to the Act, but that its implementation is being deferred. National interest would prevail over private interest and the streets of Pushpa Market have to be kept free from encroachment on road and footpath to safeguard the lives of each citizen.
17. Based on the record, it has been deposed that the SDMC is taking/carrying out encroachment removal programme in respect of the temporary encroachments in the entire area falling within the jurisdiction of Central Zone by fixing monthly encroachment removal programmes. It is also mentioned that immediately upon taking encroachment removal action a letter was sent to the concerned SHO for keeping watch and to ensure that no re-encroachment takes place. In paragraph 8 of the status report details of number of removal/encroachment removal actions have been provided for the years 2011-15, which reads as under:

“8. That as per record, details of number of removal/encroachment removal action, as carried out by the General Branch Central Zone, SDMC in respect of Central/Pushpa Market Lajpat Nagar in the year 2011-12, 2012-13, 2013-14, 2014-15 and 01.04.2015 to till date are given herein below:

<i>S.No.</i>	<i>Period</i>	<i>No. of actions</i>	<i>No. of items seized</i>
<i>01.</i>	<i>2011-12</i>	<i>38</i>	<i>433</i>
<i>02.</i>	<i>2012-13</i>	<i>30</i>	<i>351</i>
<i>03.</i>	<i>2013-14</i>	<i>35</i>	<i>477</i>
<i>04.</i>	<i>2014-15</i>	<i>28</i>	<i>259</i>
<i>05.</i>	<i>01.04.2015 to till date</i>	<i>26</i>	<i>438”</i>

18. In support of their plea that Pushpa Market/Central Market is a no squatting zone, the SDMC has placed on record copy of an order dated 01.12.2000 passed by the Supreme Court of India in I.A. No. 336 in W.P. (C) 1699/1987, which reads as under:

“I.A. Nos. 336, 284, 340-348 in W.P. (C) No. 1699/1987 and Cont. Pet. (C) No. 398/98 in IAs 245-246 in WP (C) 1699/1987.

On 4th of August, 2000 this Court directed the Govt. Of NCT of Delhi to look into the question whether it is still necessary to prohibit tehbazarai in blocks ‘D’ & ‘J’ near the bomb blast site, shown in the plan filed alongwith I.A. Nos. 340-348 etc. Unfortunately, no decision was taken after 4th August, 2000, therefore we passed a further order on 28.11.2000 that the Govt. of NCT of Delhi should look into the matter and inform the Court whether blocks ‘D’ & ‘J’ could be declared as squatting areas in view of the fact that certain other areas close to the place where bomb blast has taken place are being used for squatting purposes.

An affidavit has now been filed by Dr. B.S. Banerjee, working as Additional Secretary in the Department of Urban Development, Govt. of NCT of Delhi wherein after referring to the earlier decision of the Lt. Governor of Delhi dated 13.11.1996 it is stated in paragraph 5 as follows: -

5. That the action of the MCD in permitting tehbazari in sites closer to the bomb blast site even while excluding Blocks ‘D’ and ‘J’ is not sustainable and the Lieutenant Governor is of the view that it would be appropriate to permit tehbazari only on sites or squatting zones properly selected in accordance with the directions of the Hon’ble Supreme Court in its order dated 1.5.1997 in IA Nos. 37, IA Nos. 97 in W.P. (C) No. 1699 of 1987 with IAs. Nos. 193, 37, 194 to 20, Contempt Petition (C) 231 of 1997 and SLP (C) No. 12618 of 1992 in CWP No. 1699 of 1987 in the matter of Gajinda Ram and Others Vs. MCD

and others and not permitted this in any non-squatting zones.”

If it is the policy decision of the Govt. of NCT of Delhi to maintain the earlier prohibitory orders dated 13.11.1996 of the Lt. Governor to clear all roads, lanes and bye-lanes of all encroachments in that area and now a further decision has also been taken that the MCD ought not to have permitted tehbazari in some pockets closer to the bomb blast site, then there is no question of excluding Blocks ‘D’ and ‘J’ from the purview of prohibition contained in the earlier orders of the Lt. Governor. Not only will blocks ‘D’ and ‘J’ be treated as non-squatting areas but the areas which are shown in the same plan close to the bomb blast site, where MCD has permitted tehbazari will now be treated as non-squatting areas and all those who are occupying those areas will be removed from that area and proved tehbazari site for squatting in accordance with their seniority elsewhere. Before the aforesaid persons who are in occupation of the other areas near the bomb blast site are asked to vacate, the MCD is directed to give reasonable time to vacate. The reasonable time shall be a period of 3 months from today. No objection will be entertained from those persons for squatting in view of the earlier order passed by the Lt. Governor and the policy of the Govt. of NCT of Delhi which has been reiterated and now accepted by this Court. It is expected that the MCD will be able to allocate other particular places for these persons in squatting areas as per seniority i.e. non-prohibited areas, within the aforesaid period of 3 months.

The applicants also will be allowed to continue for three months till alternative temporary or final allotment is made. While asking these eligible squatters (illegible) from the prohibited areas near the bomb blast site, the eviction will start with the junior most.

All these I.As. stand disposed of.

Contempt petition (C) No. 308/1998 in I.As. 345-346 is also disposed of.”

(Emphasis Supplied)

19. In paragraph 11 of the status report, it was revealed that encroachment removal drives have been undertaken even on 28.10.2015, 2.11.2015 and 3.11.2015, i.e. during the pendency of the present writ petition. The paragraph reads as under:

“11. As mentioned above regarding the encroachment removal actions/removal actions as taken/carried out by the General Branch, Central Zone, SDMC, it is pointed out that recently the Department has carried out/taken the necessary encroachment removal/removal actions on 28.10.2015, 02.11.2015 and 03.11.2015. The details of the said recently removal actions is as here under

<i>Sr.No.</i>	<i>Date of Action</i>	<i>Action taken</i>
<i>01.</i>	<i>28.10.2015</i>	<i>On the availability of police force, action was taken in the area of Central Market/Pushpa Market Lajpat Nagar and confiscated items were stored in Mpl. Store. List of the same are annexed herewith as Annexure R-1/D (coly).</i>
<i>02.</i>	<i>02.11.2015</i>	<i>As above.</i>
<i>03.</i>	<i>03.11.2015</i>	<i>As above.</i>

*The said actions have also been video-graphed hence copy of the CD and photographs are annexed as **Annexure R-1/E (Coly)**.”*

STAND OF DELHI POLICE

20. Learned counsel for respondent nos.3 to 7 submitted that as and when force is asked for by the SDMC, the same is provided and the area is cleared. In 2016, SDMC conducted special drives 51 times for the removal of encroachment from Pushpa Market and sufficient police

assistance was provided for the same. A status report dated 13.02.2017 has also been filed wherein it is mentioned that between 01.01.2011 to 31.12.2016, the local police took legal action against 273 hawkers and squatter who re-encroached upon the land. During the same period, the police seized articles of total 4256 persons vide 1114 seizure memos.

21. Accordingly, both the petitioner and the respondent SDMC are *ad idem* that the area in question is a no-vending zone. During the pendency of the writ petition, CM 2628/2015 was filed by New Association of Street Vendors of India (hereinafter referred to as 'NASVI'). Without admitting any of the averments made in the application, the petitioners did not oppose the impleadment, even though a detailed reply to the application for impleadment was filed. Accordingly, by an order dated 21.04.2016, NASVI was impleaded as respondent no. 8 in the writ petition.

SUBMISSIONS OF RESPONDENT NO.8/NASVI

22. Ms.Unninayar, learned counsel for the respondent no.8, has submitted that the legal position has changed and Pushpa Market is no longer a no-vending zone. The submissions of the learned counsel are as under:
- 22.1. She submitted that the orders/laws may be viewed in three broad time periods since 2007:
- (i) Pre-*Maharashtra Ekta Hawkers Union (Supra)* dated 09.09.2013;
 - (ii) Post-*Maharashtra Ekta Hawkers Union (Supra)*; and

(iii) After the coming into force the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereinafter the 'Act').

22.2. In respect of the first period, learned counsel has relied upon two judgments of the Apex Court: first being ***Sudhir Madan v. Municipal Corporation of Delhi*, (2009) 17 SCC 597**, wherein the Scheme of the Municipal Corporation of Delhi was accepted by the Court subject to certain modifications and the Scheme of the NDMC. At the same time, the Supreme Court clarified that if the legislature frames any scheme, the same shall supersede the schemes prepared by the MCD and the NDMC (paragraph 30).

22.3. The second judgment relied upon is ***Gainda Ram v. MCD*, (2010) 10 SCC 715** (paragraphs 48, 50, 54-56, 59-64 and 67-71) to submit that the old schemes were in force till 30.06.2011 and not thereafter and thus, the previous declaration of any area as a non-vending zone shall be rendered a nullity.

22.4. Since no law was forthcoming, the Apex Court in ***Gainda Ram v. MCD*, (2013) 11 SCC 623** (paragraphs 2, 4 and 5) observed that the law had still not been passed and the Supreme Court continued to grapple with the problem of regulation of street vendors. Time was sought by the Government to consult the public and the authorities concerned, pursuant to which, the Supreme Court directed complete *status quo* in respect of all engaged in hawking and street vending as on date. The *status quo* was to continue until the next date of hearing, i.e. 05.03.2013. At the same time, a direction was passed to this Court not to entertain any petition by or against the hawkers and street vendors till the matter is heard and decided by the Supreme Court.

22.5. Ms.Unninayar submits that it was in this background, that the judgment in ***Maharashtra Ekta Hawkers Union (Supra)*** was pronounced. It was directed to constitute Town Vending Committees ('TVC') in a time bound manner; which were to function strictly in accordance with the 2009 Policy. Learned counsel submits that the Town Vending Committee was free to divide up the city into vending and no-vending zones, subject to the rider that no location will be designated as 'no vending' without full justification, i.e. the public benefit of such designation should clearly outweigh the potential loss of livelihoods and non-availability of affordable and convenient access of the general public to street vendors. It is submitted that as per the Scheme, due notice was to be served prior to clearing up or relocation. The Apex Court further directed that all street vendors shall be registered and once registered, they shall be entitled to operate in the area specified by the Town Vending Committee. All existing street vendors were allowed to operate till the exercise of the registration and creation of vending zones in terms of the 2009 Policy and once the exercise is completed, in terms of the directions/orders of the Town Vending Committee. These directions were to remain in force till an appropriate legislation is brought into force. The stay upon cases before the High Court was vacated and the High Courts were to decide the matters keeping in view the directions. It is submitted that the Apex Court had directed in paragraph 21.12 of ***Maharashtra Ekta Hawkers Union (Supra)*** that the 2009 Policy would prevail over all delegated legislation and thus, earlier schemes were no longer good. Additionally, the declaration of no-hawking/vending zones as contemplated in the 2009 Policy and ***Maharashtra Ekta Hawkers***

Union (Supra) had not been completed as although couple of meetings of the TVC took place, the demarcation could not take place. Relying upon this judgment, Ms.Unninayar contends that all former vending zone and non-vending zones as per the earlier orders were no longer in force and the zones were to be freshly demarcated by the Town Vending Committee.

22.6. Learned counsel submitted that once the Act came into force, the declaration of no-vending zone was to be as per the Plan contemplated in Section 21 to be prepared by the local authority on the recommendations of the Town Vending Committee. Ms.Unninayar has drawn our attention to the Clause 3 (e) of the First Schedule to the Act which states that “*till such time as the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as a no-vending zone.*” Our attention has also been drawn to the Second Schedule, which provides for matters to be provided in the Scheme for street vendors. More particularly, Clause (zb) provides for the principle of relocation to be subject certain criteria, including the avoidance of relocation in absence of a clear and urgent need for the land in question.

22.7. Learned counsel for NASVI, has next relied upon paragraph 2 of the judgment of a coordinate bench of this Court in ***National Association of Street Vendors of India v. South Delhi Municipal Corporation and Ors.***, 2014 SCC OnLine Del 4198 dated 20.08.2014 to submit that insofar street vending is concerned, the matter is entirely covered by the Act and that S.3(3) prohibits the eviction of any vendor until the completion of survey. Our attention is also drawn to orders dated 10.12.2014, 15.01.2015 and 22.04.2015 of this Court in ***National***

Association of Street Vendors of India (NASVI) v. South Delhi Municipal Corporation and Ors., W.P. (C) 8661/2014 where a coordinate bench directed that no street vendor shall be evicted in terms of S. 3(3) and if any person has been evicted, they shall be permitted to return.

- 22.8. Ms.Unninayar submits that the judgment in *Bhola Ram Patel v. New Delhi Municipal Corporation*, 2016 (157) DRJ 584 and the subsequent clarification judgment dated 27.09.2016 directing *inter alia*, two stage survey and first stage to identify vending sites and removal of vendors to clear walkways while giving priority to pre-existing rights, are against the provisions of the Act and the prior judgments of the Supreme Court and this Court.
- 22.9. Similarly, it is submitted that the orders dated 08.08.2016 (paragraphs 14 and 16), 09.09.2016, and 05.10.2016 (paragraph 30) in *Hawkers Adhikar Suraksha Samiti v. Union of India & Ors.*, W.P. (C) 6130/2016 are against judgments of the Supreme Court, provisions of the Act and the prior judgment of this Court reported at 2014 SCC OnLine Del 4198.
- 22.10. It is also contended that the dismissal of the consequent SLP [SLP (C) 32023/2016] from the order dated 05.10.2016 does not affirm the interim order in any way as *in limine* dismissal of SLP does not take away any alternate rights. Reliance is placed on *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359; *Fuljit Kaur v. State of Punjab*, (2010) 11 SCC 445 (paragraph 7); and *State of Punjab v. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770 (paragraph 113).
- 22.11. On the factual aspect, Ms.Unninayar submitted that the street vendors have been squatting/hawking at Pushpa Market since a long time prior

to 30.06.2011 and the judgment in *Maharashtra Ekta Hawkers Union (Supra)* dated 09.09.2013 and thus, the submission of the petitioners that they have started squatting under the garb of the judgment of the Apex Court is misplaced. To this end, respondent no.8 has filed an affidavit dated 09.01.2017 annexing sample *challans* of street vendors proving that they have been vending from prior to 30.06.2011.

22.12. Thus, learned counsel concludes that the present writ petition may be dismissed with costs and the issue of declaration of the said market be left to the local authority on the recommendation of the Town Vending Committee and after the Survey in accordance with Sections 21, First and Second Schedules of the Act.

CM 5125/2017

22.13. We may add that the arguments in the present writ petition were concluded and the judgment was reserved on 01.02.2017; but thereafter, the respondent no.8 filed fresh application bearing CM 5125/2017 for placing certain additional documents. The documents sought to be produced were certain *tehbazari* receipts issued by the respondent SDMC for “*Squatters Regular 6X4*” and “*7X5 Rehri Stalls/Others*” at Pushpa Market. Relying upon these documents, it has been submitted that the same belie the submission of the SDMC that the area is a no-squatting zone.

22.14. In response to the stand taken by the SDMC, Ms. Unninayar submitted that the SDMC is trying to dilute the definition of ‘street vendors’ by creating fictitious categories of vendors. Further the SDMC has taken divergent stands at different times before this Court as it has fluctuated between the area being a no-vending zone and vending zone on one hand and on the other, contradicted itself by allowing certain squatters.

REJOINDER SUBMISSIONS OF THE PETITIONERS

23. Mr.Proothi, learned counsel for the petitioners, has sought to rebut all the contentions raised by the counsel for NASVI/respondent no.8 as under:

23.1. Learned counsel has reiterated the factual position with regard to the declaration of Pushpa Market as a no-vending zone as mentioned in the writ petition and reiterated in the foregoing paragraphs. It was added that in W.P. (C) 1699/1987, Sh.R.C. Chopra (ADJ) was appointed to look into the question as to whether the implementation of the scheme by the erstwhile MCD has been consistent with the norms and procedure indicated by the Supreme Court. In its report, the Chopra Committee was of the opinion that the said area in question i.e. Main Pushpa (Central) Market is a very congested area and hence, squatters may not be permitted to carry on their business from this area. It is submitted that the Supreme Court has on numerous occasions laid down the principles on the basis of which hawkers and squatters may be granted licences such as the National Policy, 2004 and the National Policy, 2009 and the hawkers at the said market do not fall within the scope of any of them. The hawkers have neither applied under any of the schemes nor have been granted any rights by the MCD to carry on *tehbazari* in the area.

23.2. Our attention was also directed towards an affidavit filed in the Supreme Court in W.P. (C) 1699/1987, pursuant to an order dated 26.07.2006, clarifying the position of the hawkers occupying spaces in non-hawking zones as under:

“10. It is most respectfully submitted that the orders passed by the Hon’ble High Court of Delhi in these matters ought

to be set aside since the claimants in this case are misleading the courts time and again. The claimants are not eligible for squatting in Pushpa/Central Market. Moreover the same is a non-squatting zone. These claimants have no right to squat in this area.”

- 23.3. It is next submitted that despite the numerous orders and the resolutions, the members of the petitioner no.1 have been tackling the nuisance created by the squatters on a daily basis and no assistance is forthcoming from the local police.
- 23.4. In response to the legal submissions of Ms.Unninayar, it is submitted that the specious argument that the hawkers are protected by the judgment of the Apex Court in ***Maharashtra Ekta Hawkers Union (Supra)*** has been raised time and again, but the hawkers in the Central Market area have failed to show as to how they are covered by the judgment. Learned counsel submits that the judgment makes it clear that firstly, no hawking shall be permitted in no-hawking/no-vending zones; secondly, it protects the rights of all existing hawkers and not the ones who have come forward claiming their rights as hawkers. It is submitted that under the garb of ***Maharashtra Ekta Hawkers Union (Supra)***, as many as 800 new hawkers and squatters have sprung up in the area of Pushpa Market, making it difficult for the public to pass therein.
- 23.5. Learned counsel for the petitioners has submitted that the hawkers and vendors, who were vending in this area were pursuant to the orders of the Apex Court and this Court, relocated and provided alternative spots to squat and the area of Pushpa Market was directed to be kept free from any encroachment.

- 23.6. Mr.Proothi contended that the submission of NASVI to the effect that schemes put in place by MCD and other authorities do not hold good after 30.06.2011 is misplaced. He submits that the judgment in ***Maharashtra Ekta Hawkers Union (Supra)*** specifically deals with the contention of the respondent no.8.
- 23.7. In response to the pre-***Maharashtra Ekta Hawkers Union (Supra)*** era it is submitted that the reliance on paragraphs 30 and 31 of the judgment in ***Sudhir Madan (Supra)*** are mere submissions made by the counsel for the parties. It is submitted that ***Gainda Ram [(2010) 10 SCC 715]*** recognizes Sections 225, 226, 330 and 369 (2) of the New Delhi Municipal Council Act, 1994 as law and as per the provisions, a hawker can only be permitted to squat after due permission from the commissioner, NDMC (paragraph 56). Further, paragraph 60 of the judgment provides that the schemes shall provide for hawking and no-hawking zones and the role and obligations of the hawkers towards society for maintenance of law and order have been defined. It is contended that the judgment, for the first time, placed an embargo on the operation of schemes put in place by the MCD, NDMC and other statutory authorities till 30.06.2011 and the appropriate government was directed to enact a law on the basis of the pending bill, so that the hawkers precisely know the contours of their rights.
- 23.8. Mr.Proothi next contends that the reliance upon ***Maharashtra Ekta Hawkers Union (Supra)*** to the effect that all former vending and non-vending zones are no longer in force and such zones are to be freshly demarcated by the Town Vending Committee is also misplaced as:

- (i) No such order was ever made by the Apex Court, on the contrary, the Apex Court removed the embargo placed in W.P. 1699/1987 of the applicability of the schemes only till 30.06.2011 and also directed that until the enactment of a legislation, the guidelines of National Policy of 2009 shall be followed (paragraph 20);
- (ii) The Guidelines of the National Policy clearly show that the concept of hawking and non-hawking zones must be applied ensuring vending in a manner that there is no overcrowding and unsanitary conditions in public places which is the case of the petitioners herein [paragraph 4.2 (d)];
- (iii) The consequent Town Vending Committee was to while demarcating zones, in the case of Delhi and Mumbai, consider the work already undertaken by the municipal authorities in furtherance of the directions of the Apex Court and the municipal authorities shall take action in terms of paragraphs 4.2(b) and (c) [paragraph 21.6];
- (iv) The 2009 Policy also provided for registration of vendors, but it is an admitted case that the vendors do not have any licence and are not paying any fee to the municipal corporation but, infact, have sprung up after the judgment in ***Maharashtra Ekta Hawkers Union (Supra)***.

23.9. Learned counsel has submitted that even after coming into force of the Act in 2014, the hawkers cannot be permitted to squat. The protection is only granted to 'existing' vendors till the time the survey is conducted. Existing vendors, as per Section 4 of the Act, are those who have a *tehbazari*/other licence to vend from the authorities

concerned, which is not the case of the hawkers before this Court. Since none of the hawkers in the Lajpat Nagar area have been granted any permission of licence after the year 1996, the vendors/hawkers before this Court cannot be said to be covered under the protection of Section 3. Thus, a combined reading of sections 3 and 4 show that the street vendor is one who has a right to squat/hawk in a particular area and such right has been given in the form of the licence. This has also been reiterate by a coordinate bench of this Court in ***Bhola Ram Patel (Supra) (LPA 136/2016)*** vide order dated 27.09.2016.

23.10. It is next submitted that the Act also provides for vending areas to be demarcated as non-vending zones and thus, the concept is not alien to the Act. The Supreme Court has repeatedly held that the rights of vendors under Article 19 (1) (g) are subject to reasonable restrictions and if the same are not imposed, the hawkers would hold whole cities to random, hence the argument that till the time the Town Vending Committee conducts its surveys and demarcates hawking and non-hawking zones, no zone is a non-hawking zone, is bad in the eyes of law and against the larger interest of the public. Further, the said issue has already been considered by a coordinate Bench of this Court, which after hearing the petitioners herein, vide order dated 05.10.2016 in W.P. (C) 6130/2016 directed the continuance of the non-squatting zones declared under the schemes prior to the enforcement of the Act as non-squatting zones so as to balance the larger interest of the genereal public (paragraph 28 and 29).

23.11. That the said order was challenged before the Supreme Court by an SLP [SLP (C) 32023/2016] and the Apex Court has affirmed the order of this Court by dismissing the SLP. Mr.Proothi submits that all the

precedents and opinions of various courts go to show that the argument of the respondent no.8 that there is no concept of hawking/non-hawking zones is untenable and incredibly farfetched and therefore, should be rejected by this Court.

23.12. Learned counsel relied upon ***Sudhir Madan (Supra)*** to submit that the Supreme Court has been very strict in maintaining the areas once cleared from encroachment as encroachment free and has time and again held that the civic authorities must do their job of clearing the areas from encroachments.

23.13. Alternatively, Mr. Proothi submitted that Pushpa Market has been on high security threat list as per the intelligence agencies on numerous occasions. Already one incident has occurred causing loss of life and property and a second one prevented. The loss was amplified as relief could not reach the spot due to encroachments. It is also submitted that despite specific orders of this Court and the Supreme Court, the hawkers have disregarded such orders.

CM 5125/2017

23.14. In response to the application bearing No. CM 5125/2017 filed by the respondent no.8, Mr. Proothi submitted that the same is nothing but an attempt to mislead this Court and prolong the present litigation. The *mala fides* of NASVI are writ large by the fact that the application was filed after extensive arguments were heard and the judgment was reserved in the present matter. It is submitted that the persons in respect of whom these receipts/*challans* have been issued are actually shopowners and not squatters. The mentioning of the terms *tehbazari/squatters/stalls* is merely nomenclature used by the SDMC when actually the holders are shopowners.

RESPONSE OF SDMC

24. Learned counsel for the SDMC has maintained the categorical stand that the area in question is a no-vending/no-squatting zone and the area has been cleared on numerous occasions, only to be occupied again within hours. Learned counsel further submitted on the following lines:

24.1. It is submitted that the respondent no.8 and petitioners have failed to understand the true import of the order dated 13.11.1996 of the Lieutenant Governor as the same goes to protect the lives of all citizens, be it members of the petitioner no.1 or the respondent no.8.

24.2. In response to the documents sought to be brought on record with C.M.5125/2017, learned counsel submitted that in Pushpa Market, there are the following types of shops:

- (i) Shops occupied by the members of the petitioners;
- (ii) *Tehbazari* sites measuring 7'X5' (covered) and 6'X4' occupying since the 1960s under the Gadgil Assurance Scheme, being prior to the Gairda Ram Scheme; and
- (iii) Besides these, the others are unauthorised encroachers which have been removed by the corporation from time to time.

24.3. Additionally, there are 49 covered *tehbazari* sites measuring 6'X13' allotted to shop owners. The SDMC has never removed this category of shop owners and have been occupying permanent shops/sites under allotment. Our attention was also diverted to an affidavit filed before the Supreme Court in W.P. (C) 1699/1987, the relevant portion of which reads as under:

“5. The gist of the relevant orders of this Hon’ble Court in relation to the above categories of tehbazaris were as follows

- *Order dated 01.05.1997*

This Hon’ble Court held that squatters found eligible under the R.C.Chopra Committee shall be rehabilitated in notified squatting zone to be decided by the authorities.

- *Order dated 01.12.2000*

This Hon’ble Court noticed the policy decision taken by the Government of the NCT of Delhi based on the Lt.Governor’s earlier decision dated 13.12.1996 where it was decided that no Tehbazari was to be allowed in sites close to the Bomb Blast site including Blocks D & J. Thus the entire area was to be treated as a non-squatting area and all those who are occupying those areas will be removed and provided alternate site for squatting in accordance to their seniority elsewhere.

- *Order dated 10.05.2001*

This Hon’ble Court has held that the old 6’X4’ tehbazaaries would not be covered by the judgment of this Hon’ble Court in Gaiinda Ram and thus allowed I.A. 356.

6. The applicants in I.A.No.394 are eligible squatters under the Gaiinda Ram Scheme 6’X4’ open to sky. Alternate sites have been offered to these squatters in alternative sites like Tughlakabad, Defence Colony etc. Thus alternative site are available in squatting areas to accommodate this category of squatters.

7. The applicants in I.A.No.356 are old 6’X4’ tehbazari holders in Central Market D & J Blocks, Lajpat Nagar and were allotted Tehbazari during the period 1962-1968 pursuant to Gadgil Assurance Scheme.

8. As far as 7’X5’ category is concerned, these are covered tehbazari holders and were allotted tehbazari during 1962-1968 pursuant to Gadgil Assurance Scheme.”

(Emphasis Supplied)

- 24.4. It was clarified that the occupants of shops, described as 'covered *tehbazari*', which are allotted on plots with specific shop numbers in Pushpa/Central Market are neither on pavements/roads nor encroaching on any public area. There are 53 *tehbazari* sites measuring 7'X5' (covered) and 71 *tehbazari* sites measuring 6'X4' in the area of Central/Pushpa Market, Lajpat Nagar. The *tehbazari* sites measuring 7'X5' (covered) were allotted during the years 1962-1968 under the Gadgil Assurance Scheme to licences *rehriwalas* or wooden *khokha* holders whose *khokhas* were in existence prior to 31.12.1965. Sites measuring 6'X4' were also allotted during the same years i.e. much prior to the Gaiinda Ram Scheme in 1992.
- 24.5. Learned counsel next submitted that after the Gaiinda Ram Scheme came into existence in the year 1992 and under the guidelines/directions of the Supreme Court, cases of the vendors in the area of Central Zone were considered and the vendors whose cases were approved by the Chopra Committee were shifted and allocated sites at approved squatting sites. All other vendors, whose cases were not approved, were removed from the Central Market Area.
- 24.6. Since the squatters were dispossessed and the area was declared a no-squatting zone, the squatters filed applications/petitions before the Supreme Court with the plea that there exist 53 *tehbazaris* of 7'X5' and 71 of 6'X4' prior to the Gaiinda Ram Scheme. This led to the passing of the order dated 01.12.2000 in W.P. (C) 1699/1987 as mentioned in paragraph 8 foregoing.
- 24.7. Pursuant thereto, the erstwhile MCD issued notices to both the *tehbazaris* to vacate the sites in the year 2001. The notices were

challenged by permanent *tehbazari* holders of 7'X5' alleging that they are not *tehbazari* holders, but are shopkeepers having allotment of land measuring size 7'X5' with the permission to construct shops thereupon on their own expense. It is submitted that this stand was accepted by the MCD.

- 24.8. Subsequently, final notices were issued to the *tehbazari* holder of size 6'X4' to vacate the sites within the stipulated period. The said *tehbazari* holders again moved the Supreme Court in I.A. 356 in W.P. (C) 1699/1987. The MCD filed an affidavit stating that they were 6'X4' open *tehbazari* holders. Thereafter, the Supreme Court passed the following order dated 10.05.2001:

“I.A.No.356: The sole dispute in this interlocutory application is whether applicants mentioned herein, who are admittedly not the hawker on the pavement, but were shop owner abutting the pavement (covered Tehbazari) are not covered by the judgment of this Court in Gainda Ram. In view of the affidavit filed on behalf of the MCD, which is reiterated by the learned counsel appearing for the MCD, and in view of the statement that earlier notice was issued on account of certain confusion, we dispose of the matter by holding that these persons are not covered by the judgment of this Court in Gainda Ram.”

(Emphasis Supplied)

- 24.9. Learned counsel concluded that it is clear from the foregoing that the *tehbazari* holders who were allotted sites between 1962-68 were allowed to operate from Central/Pushpa Market being old squatters prior to the Gainda Ram Scheme. These persons, being allotted permanent places and are not encroaching upon road or pavement, thus, were not covered by the order dated 13.11.1996 of the Lieutenant Governor. It is submitted that the removal of these authorized

tehbazari holders would tantamount to removal of private shops from the area.

24.10. It was submitted that the members of the respondent no.8, who are encroachers on public land and have not been authorized by the SDMC on any account and cannot equate themselves at par with the authorised *tehbazari* holders allotted under the Gadgil Assurance Scheme. Hence, reliance upon the *tehbazari* receipts issued to such persons is misplaced.

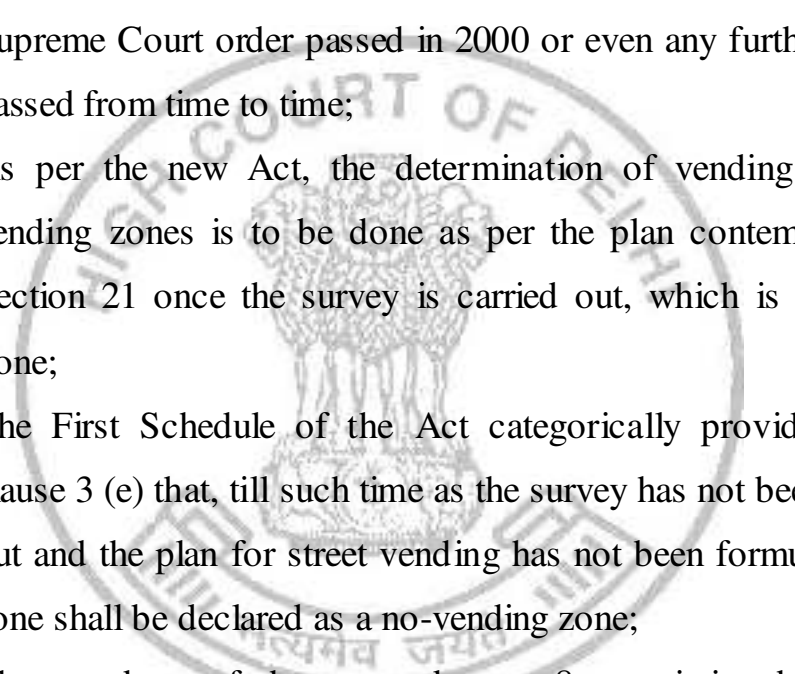
25. We have heard the learned counsel for the parties and considered their rival contentions. Since the submissions of the learned counsel are quite verbose owing to the abuse of filing of 'brief' written submissions/legal points, we deem it appropriate to summarize the contentions of the parties.

26. The submissions of Mr.Proothi, learned counsel for the petitioner, can be summed up as under:

- (i) Pursuant to a bomb blast on 21.05.1996 leading to loss of 13 persons coupled with monetary loss of crores of rupees, a high level enquiry was ordered by the then Lieutenant Governor and as per its recommendations, the Lieutenant Governor had by order dated 13.11.1996 directed the authorities to clear all the roads, lanes and by-lanes in Pushpa Market and further declared the area to be a no squatting zone;
- (ii) Thereafter, it has been the consistent stand of the erstwhile MCD and SDMC that the area is a no squatting zone before the various judicial forums;
- (iii) The reliance placed by the respondent no.8 on ***Maharashtra Ekta Hawkers Union (Supra)*** is misplaced inasmuch as it has

been unable to show as to how the street vendors are covered by the judgment particularly when the judgment makes it clear that no hawking shall be permitted in no-hawking/no-vending zones and as the judgment does not cover vendors who have propped up after the judgment;

- (iv) The submission of Ms.Unninayar that the schemes of the municipal authority do not hold good after 30.06.2011 or after ***Maharashtra Ekta Hawkers Union (Supra)*** is misplaced;
 - (v) Protection under Section 3 (3) of the Act is only to 'existing' street vendors, i.e. those holding *tehbazari*/other licence to vend from the authorities concerned;
 - (vi) The issue of no-vending zones has already been considered by a coordinate Bench of this Court in W.P. (C) 6130/2016 and it has been directed by order dated 05.10.2016 that the non-squatting zones declared under the schemes prior to the enforcement of the Act shall continue as non-squatting zones so as to balance the larger interest of the general public;
 - (vii) The order dated 05.10.2016 in W.P. (C) 6130/2016 has already been challenged before the Supreme Court by a petition seeking special leave to no avail and thus, has attained finality; and
 - (viii) The persons whose receipts are sought to be relied upon in CM 5125/2017 are not street vendors, but infact shopowners and that mentioning of terms like *tehbazari*/squatters/stalls on the receipts is merely a nomenclature adopted by the MCD;
27. The submissions of the learned counsel for the respondent no.8/NASVI can be summarized as under:

- 
- (i) In light of *Sudhir Madan (Supra)*, *Gainda Ram (Supra)* and *Maharashtra Ekta Hawkers Union (Supra)*, there was no existing scheme declaring any zone let alone, Pushpa Market/Central Market Lajpat Nagar, as a no-hawking/vending zone at the time that the Act came into force;
- (ii) The judgments of the Supreme Court including *Maharashtra Ekta Hawkers Union (Supra)* and the Act enacted in 2014 would prevail over any executive decision passed in 1996 or Supreme Court order passed in 2000 or even any further orders passed from time to time;
- (iii) As per the new Act, the determination of vending and no-vending zones is to be done as per the plan contemplated in Section 21 once the survey is carried out, which is yet to be done;
- (iv) The First Schedule of the Act categorically provides under clause 3 (e) that, till such time as the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as a no-vending zone;
- (v) The members of the respondent no.8 association have been squatting at Pushpa Market since a long time as evidenced from the *challans* placed on record and thus, the submission that they have sprung up under the garb of *Maharashtra Ekta Hawkers Union (Supra)* is misplaced; and
- (vi) The SDMC have taken contradictory and inconsistent stands as on one hand they have permitted certain squatters and at the same time excluded others, thereby creating fictitious categories of vendors.

28. The categorical stand of the SDMC/respondent no.1 and 2 remains that the area in question is a no-vending/no-squatting zone and the area has been cleared on numerous occasions, only to be re-encroached upon immediately. The persons whose receipts are sought to be brought on record by CM 5125/2017 are of 7'X5' (covered) and 6'X4' *tehbazari* holders, who were allotted under the Gadgil Assurance Scheme during the period 1962-1968, much prior to the Gaiinda Ram Scheme. These persons, having been allotted permanent places and not encroaching upon the road or pavement and are not covered by the order dated 13.11.1996.
29. We proceed to analyse the rival contentions of the parties. This is a classic case where having learnt our lesson, we still refuse to adhere to the same. A bomb blast took place in the area of Pushpa/Central Market on 21.05.1996 causing loss to both human life and property. The damage was augmented by the failure of emergency services to arrive at the site owing to congestion in the roads and lanes of the market. This led to the order dated 13.11.1996 of the Lieutenant Governor directing the authorities to clear all the roads, lanes and by-lanes in Central/Pushpa Market.
30. At the time, the Apex Court was dealing with the problem of influx of population to urban centres and proliferation of street vendors in W.P. (C) 1699/1987. Numerous petitions and applications were being filed before the Supreme Court, but the erstwhile MCD maintained that the area was a no-squatting/no-vending zone.
31. Despite the bomb blast, order of the Lieutenant Governor dated 13.11.1996 and various orders of the Supreme Court from time to time, respondent no.8/NASVI has sought to allege that owing to

Sudhir Madan (Supra), Gainda Ram (Supra) and Maharashtra Ekta Hawkers Union (Supra), followed by the new Act solely empowering the Town Vending Committee to declare any area as a no-vending zone, no area can be said to be a no-vending zone.

32. The said contention and the life of the schemes formulated prior to the Act was considered by a coordinate bench of this Court in ***Hawkers Adhikar Suraksha Samiti v. Union of India and Ors., W.P. (C) 6130/2016***, which vide order dated 05.10.2016 directed that as an interim measure, the schemes existing prior to the enforcement of the Act shall continue to be non-squatting zones for the time being. The relevant portion of the order reads as under:

“4. ...It was alleged in the said writ petition that the Respondents were carrying out eviction drives and have been illegally removing the street vendors across the National Capital in complete violation of the mandatory provisions of the Act and the directions of the Supreme Court dated 09.09.2013 in Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai & Ors.; (2014) 1 SCC 490. It was contended that since no scheme has been in operation by virtue of the interim order dated 08.08.2016, the Respondents are not entitled to proceed with the so-called survey and resort to illegal and highhanded eviction of the existing hawkers/ street vendors.

...
9. On behalf of South Delhi Municipal Corporation (SDMC), a short affidavit dated 24.09.2016 has been filed stating that Pushpa Market/Central Market, Lajpat Nagar is a non-squatting zone and therefore encroachment removal actions were being carried out regularly as per the provisions of the Delhi Municipal Corporation Act, 1957 (for short 'DMC Act'). It is alleged that after the interim order dated 09.09.2016 was passed by this Court not to evict the street vendors without following due process of law, the street vendors occupied the non-squatting zones also at the instance of the writ petitioner and the officials

are unable to take any steps for removal of the said encroachments in the light of the order dated 09.09.2016.

10. On the basis of the said short affidavit, it is vehemently contended by Shri Neeraj Kishan Kaul, the learned ASG appearing for SDMC that it is necessary to permit the SDMC to take steps for removal of unauthorized street vendors from the non-squatting zones.

...

27. So far as the submission of Sh. Neeraj Kishan Kaul, the learned ASG appearing for South Delhi Municipal Corporation that no street vending can be permitted in the non-vending zones is concerned, we have noticed that in the counter affidavit filed on behalf of NDMC in W.P.(C) No.8042/2016 it is stated that prior to enactment of Street Vendors (Protection of Livelihood and Regulations of Street Vending) Act, 2014, under the schemes formulated by MCD and NDMC, hawking and non-hawking areas were demarcated and the hawkers/squatters were located only in demarcated hawking zones in accordance with the priorities mentioned in the schemes. It is also stated that in accordance with the National Policy on Urban Street Vendors formulated by the Government of India in the year 2004, which MCD had agreed to implement in principle, Ward Vending Committees were constituted in all the 134 wards of MCD and that the said Committees were charged with the duties of identifying the sites, declaring hawking and non-hawking zones in consultation with various stakeholders like Associations of Vendors/Traders, Resident Welfare Associations, Traffic Police, etc.

28. It is relevant to note that the Act of 2014 also provides for designation of vending zones and declaration of no-vending zones. However, though the Act has come into force on 01.05.2014, there are several lapses in proper implementation of its provisions and consequently, no-vending zones have not yet been declared in terms of the provisions of the Act of 2014. Therefore, Sh. Neeraj Kishan Kaul, the learned ASG submits that appropriate directions may be issued to protect no-vending zones from encroachments till the Government takes the necessary action in terms of the provisions of the Act of 2014.

29. Having regard to the fact that declaration of non-squatting zones and non-vending areas is not inconsistent with the provisions of the Act of 2014 which expressly prohibits carrying out vending activities by street vendors in no-vending zones, we consider it appropriate to direct as an interim measure that non-squatting zones declared under the schemes existing prior to enforcement of Act of 2014 shall continue to be non-squatting zones for the time being so as to balance the larger interest of the general public.

30. We therefore direct as an interim measure that :

(i) the order dated 09.09.2016 in W.P.(C) No.8042/2016 shall not be made applicable to the areas identified as non-squatting zones under the schemes existing prior to the enforcement of the Act of 2014.”

(Emphasis Supplied)

33. From the foregoing, it is clear that the contention that the old schemes were no longer in operation was considered by the coordinate bench with specific reference in particular to Pushpa/Central Market while seeking a direction to maintain the non-squatting zones. Further, the respondent no.8 herein/NASVI was represented through their counsel before the Bench when the order were passed. The order was challenged before the Apex Court in ***Ajay Maken v. Commissioner of Police and Ors., SLP (C) 32023/2016***, which was dismissed *in limine*. Despite the same, Ms.Unninayar has effectively sought to re-argue the matter. We may note that the dismissal of an SLP *in limine* does not lead to merger of the order of the inferior court and thus, the original order remains intact and other remedies, including review, remain open. At the same time, challenging the order in separate proceedings is not an alternate remedy which can be availed. We remain bound by the order of the coordinate bench.

34. Even otherwise, we are unable to accept the submissions of the learned counsel for the respondent no.8 as the judgments of the Supreme Court sought to be relied upon do not lead to the conclusion that all the old schemes were put to naught and vendors were given a free hand to vend at any place of their choice. Such an interpretation would lead to an incongruous situation where on one hand the implementation of the Act *qua* conducting of survey and certification of vendors remains in limbo, while on the other hand activities of vendors continue in an unregulated manner.
35. There is no quarrel with the proposition that the schemes framed by the municipal authorities and approved by the Courts would be subject to any scheme/regulation/act framed by the legislature [*Sudhir Madan (Supra)* (paragraph 30)]; but the same would be limited to the repugnancy/inconsistency.
36. The Supreme Court in W.P. (C) 1699/1987 was dealing with the regulation of street vending activities in Delhi. By a detailed judgment dated 09.10.2010 [(2010) 10 SCC 715], the Division Bench of the Supreme Court observed that the right to hawk on the streets of Delhi having been recognised as a fundamental right under Article 19 (1) (g) and subject to reasonable restrictions under Article 19 (6) [*Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155]. Such restrictions could only be imposed by ‘law’ and not by the schemes and policies framed by the MCD and the NDMC. Thus, the Apex Court disposed of the writ petition with the direction that the problem of hawking and street vending could be regulated by the schemes until 30.06.2011 and before such date, the appropriate Government was to enact a law based upon the Model Street Vendors

(Protection of Livelihood and Regulation of Street Vending) Bill, 2009. The relevant paragraphs of the judgment dated 09.10.2010 are reproduced as under:

“45. It has been held by the Constitution Bench of this Court in Sodan Singh [(1989) 4 SCC 155] that right to hawk on the streets of Delhi is a fundamental right under Article 19(1)(g) of the Constitution but such right is not absolute and is subject to reasonable restrictions under Article 19(6) of the Constitution.

46. On a perusal of the aforesaid constitutional provision, it is clear that the rights under Article 19(1)(g) can only be controlled by law as contemplated in Article 19(6). ...

47. On an analysis of the provisions under Article 19(6), it is clear that the provisions under Article 19(6) are broadly in two parts. The first part authorises that nothing in sub-clause (g) of Article 19(1) shall affect the operation of existing law insofar as it imposes reasonable restrictions, in the interest of general public, on rights conferred by Article 19(1)(g). The second part is that nothing contained in Article 19(1)(g) shall prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of rights conferred by Article 19(1)(g). Here we are not concerned with clauses (i) and (ii) of Article 19(6).

48. It is, therefore, clear that reasonable restrictions on the fundamental right under Article 19(1)(g) can be imposed either by existing law or by a law which may be made by a State in the interest of general public. Therefore, nothing short of law can impose reasonable restrictions on a citizen's fundamental right to carry on hawking under Article 19(1)(g) of the Constitution.

*...
61. Subsequent to the 2004 Policy a new National Policy on Urban Street Vendors, 2009 (hereinafter “the 2009 Policy”) was framed on 17-6-2009. The most important part of the 2009 Policy is that it recognises street vending as an integral and legitimate part of urban retail trade and distribution system, even when otherwise street vending is sometimes projected as a major menace in urban areas*

aggravating traffic problems. But the 2009 Policy aims at giving the street vendors a legal status by providing them legitimate vending and hawking zones in the city in the town master plans and development plans.

62. The National Policy, therefore, directs “Municipal authorities should frame necessary rules for regulating entry of street vendors on a time-sharing basis in designated vending zones keeping in view three broad categories — registered vendors who have secured a licence for a specified site/stall; registered street vendors in a zone on a time-sharing basis; and registered mobile street vendors visiting one or the other vending zone;”.

...

67. In the background of the provisions in the Bill and the 2009 Policy, it is clear that an attempt is made to regulate the fundamental right of street hawking and street vending by law, since it has been declared by this Court that the right to hawk on the streets or right to carry on street vending is part of fundamental right under Article 19(1)(g). However, till the law is made the attempt made by NDMC and MCD to regulate this right by framing schemes which are not statutory in nature is not exactly within the contemplation of constitutional provisions discussed above. However, such schemes have been regulated from time to time by this Court for several years as pointed out above. Even, orders passed by this Court, in trying to regulate such hawking and street vending, is not law either. At the same time, there is no denying the fact that hawking and street vending should be regulated by law. Such a law is imminently necessary in public interest.

68. Certain broad facts cannot be lost sight of. Whatever power this Court may have had, it possibly cannot, in the absence of a proper statutory framework, control the ever increasing population of this country. Similarly this Court cannot control the influx of people to different metro cities and towns in search of livelihood in the background of the huge unemployment problem in this country. While there is burning unemployment on one hand, on the other hand there is a section of our people, that, having regard to its ever increasing wealth and financial strength, is buying any

number of cars, scooters and three wheelers. No restriction has apparently been imposed by any law on such purchase of cars, three wheelers, scooters and cycles. There is very little scope for expanding the narrowing road spaces in the metropolitan cities and towns in India. Therefore, the problem is acute. On the one hand there is an exodus of fleeing population to metro cities and towns in search of employment and on the other hand with the ever increasing population of cars and other vehicles in the same cities, the roads are choked to the brim posing great hazards to the interest of general public. In the midst of such near chaos the hawkers want to sell their goods to make a living. Most of the hawkers are very poor, a few of them may have a marginally better financial position. But by and large they constitute an unorganised poor sector in our society. Therefore, structured regulation and legislation is urgently necessary to control and regulate the fundamental right of hawking of these vendors and hawkers.

69. This Court finds that innumerable IAs have been filed in this Court along with various objections by the hawkers, most of the time collectively, complaining about steps taken by the municipal authorities, namely, NDMC and MCD to prevent them from hawking and vending. This Court has tried its best to somehow deal with the situation. But it is difficult for this Court to tackle this huge problem in the absence of a valid law. The nature of the problem defies a proper solution by this Court by any judicially manageable standards.

70. This Court, therefore, disposes of this writ petition and all the IAs filed with a direction that the problem of hawking and street vending may be regulated by the present schemes framed by NDMC and MCD up to 30-6-2011. Within that time, the appropriate Government is to legislate and bring out the law to regulate hawking and hawkers' fundamental right. Till such time the grievances of the hawkers/vendors may be redressed by the internal dispute redressal mechanisms provided in the schemes.

...

78. However, before 30-6-2011, 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. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental rights of the citizens.

79. The hawkers' and squatters' or vendors' right to carry on hawking has been recognised as a fundamental right under Article 19(1)(g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). These two apparently conflicting rights must be harmonised and regulated by subjecting them to reasonable restrictions only under a law. The question is, therefore, vitally important to a very large section of people, mostly ordinary men and women. Such an issue cannot be left to be decided by schemes and which are monitored by this Court from time to time.

80. The second reason is that the appropriate Government has already enacted a Bill and, therefore, the initial decision-making in the field of legislative exercise is complete. It has, of course, to be converted into a law by following the constitutional process. That is why time till 30-6-2011 is given."

(Emphasis Supplied)

37. It is clear that the Apex Court was of the view that neither the schemes nor the 2004 or 2009 Policy were 'law' as contemplated in Article 19 (6) and thus, were impotent to regulate the fundamental right to hawk. At the same time, the Supreme Court allowed the regulation of the street vending till 30.06.2011 by the present schemes in the forlorn hope that an appropriate legislation shall be enacted by then.
38. The appropriate Government had failed to comply with the direction of the Apex Court in paragraphs 70 and 78 inasmuch as it failed to bring in legislation by 30.06.2011. This led to the Apex Court to

direct maintenance of *status quo* on 15.07.2011. The order reads as under:

“ *Heard learned counsel for the applicants and perused the record.*

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.”

39. On 02.02.2012, the previous order was slightly modified and the NDMC was directed not to “*remove any encroachment other than those which are on footpath or road.*” The Supreme Court on 01.05.2012 vacated the order dated 15.07.2011 and directed the NDMC to make allotment of identified spaces and identify sites in accordance with the 2006 scheme. Therefore, it had become clear that the Supreme Court had once again attempted to regulate street vending as per the old regime having given up hope of timely enactment of a law. Thus, it cannot be said that the old regime of schemes and policies can no longer regulate the activities of street vendors.
40. Later on 31.03.2013 [(2013) 11 SCC 623], the Apex Court observed that the appropriate legislation had not been enacted and the Court was once again grappling with numerous applications and petitions. Since the Government of NCT of Delhi had sought time to consult the public and other authorities, the Court directed a complete *status quo* in respect of all persons engaged in hawking and street vending in entire area of Delhi. The interim order was continued on 05.03.2013 and 29.04.2013. On the latter date, it was contended by the counsel for few applicants before the Supreme Court that since the legislation has been unduly delayed, the Court may direct implementation of the

National Policy for Urban Street Vendors, 2009. The matter was ultimately disposed of in terms of the order dated 09.09.2013 in ***Maharashtra Ekta Hawkers Union (Supra)*** and the directions contained therein were to read as a part of the same.

41. When the Apex Court was hearing ***Maharashtra Ekta Hawkers Union (Supra)***, it was submitted by a counsel representing the street vendors/hawkers that until the enactment of a legislation, the Supreme Court may ordain the implementation of the 2009 Policy. This found favour with the Court, which directed the implementation of the 2009 Policy. The Policy provides for principled demarcation of ‘Restriction-free Vending Zones’, ‘Restricted Vending Zones’ and ‘No-vending Zones’ (Para 4.2) by the Town Vending Committee (Para 4.5.1). No area was to be notified as a ‘No-vending Zone’ without full justification wherein public benefit overweighed the loss of livelihood and access of general public to street vendors [Para 4.2 d)]. For the purpose of demarcation, the Town Vending Committee was to work out a non-discretionary system [Para 4.5.2 (e)]. The Apex Court had further issued directions in order to facilitate the implementation of the 2009 Policy in a time-bound manner. We deem it appropriate to extract the relevant directions hereunder:

“21. For facilitating implementation of the 2009 Policy, we issue the following directions:

21.1. Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/directions to the department(s) concerned to ensure that the Town Vending Committee is constituted at city/town level in accordance with the provisions contained in the 2009 Policy. For the cities and

towns having large municipal areas, more than one Town Vending Committee may be constituted.

...

21.4. The task of constituting the Town Vending Committees shall be completed within two months of the issue of instructions by the Chief Secretaries of the State and the Administrators of the Union Territories.

...

21.6. The Town Vending Committees shall be free to divide the municipal areas in vending/hawking zones and sub-zones and for this purpose they may take assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paras 4.2(b) and (c).

21.7. All street vendors/hawkers shall be registered in accordance with Para 4.5.4 of the 2009 Policy. Once registered, the street vendor/hawker, shall be entitled to operate in the area specified by the Town Vending Committee.

21.8. The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories.

...

21.12. The State Governments, the Administration of the Union Territories and municipal authorities shall be free to amend the legislative provisions and/or delegated legislation to bring them in tune with the 2009 Policy. If there remains any conflict between the 2009 Policy and the municipal laws, insofar as they relate to street vendors/hawkers, then the 2009 Policy shall prevail.

...

21.15. All the existing street vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending/hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only

in accordance with the orders/directions of the Town Vending Committee concerned.

21.16. The provisions of the 2009 Policy and the directions contained hereinabove shall apply to all the municipal areas in the country.

21.17. The aforesaid directions shall remain operative till an appropriate legislation is enacted by Parliament or any other competent legislature and is brought into force.”

(Emphasis Supplied)

42. The judgment of the Apex Court signalled two aspects: first, the Supreme Court had refused to wait for an appropriate legislation and directed the regulation of street vending as per the 2009 Policy and second, the street vendors/hawkers were granted protection until registration. Such process was to be completed within four months from the receipt of directions of Chief Secretaries; which were in turn to be issued within one month of the receipt of the judgment. Thus, the process of registration was to be completed within a maximum period of five months from the receipt of the order of the Supreme Court. At the same time, the Supreme Court directed that the Town Vending Committee was to undertake the exercise of demarcation having regard to the work already undertaken by the municipal authorities in furtherance to the directions issued by the Supreme Court.
43. From the foregoing, it is clear that the Town Vending Committee was to take into consideration the old schemes of the municipal authorities in Delhi and Mumbai. This again goes to show that the old schemes were not dead as the same were once again relied to regulate the activities of vendors. The vendors were only granted interim protection until registration and demarcation of vending/hawking

zones, which was to be concluded in a time bound manner. These directions were issued by the Supreme Court in the anticipation that the problem relating to street vending and the conflicting interests of various stakeholders could now be regulated by the 2009 Policy and the consequent Town Vending Committee.

44. Therefore, we are unable to agree with the submission of Ms.Unninayar that the judgments in ***Gainda Ram [(2010) 10 SCC 715]*** and ***Maharashtra Ekta Hawkers Union (Supra)*** erased the previous classification of non-vending zones into a nullity and gave a clan chit to the street vendors to hawk/squat at any place found fit by them in disregard of the rights of the other stakeholders.
45. Even thereafter, before the 2009 Policy could regulate street vending as directed in ***Maharashtra Ekta Hawkers Union (Supra)***, the 2014 Act came into force on 01.05.2014.
46. Under the new Act, the Government of NCT of Delhi framed Rules and Scheme for the implementation of the Act. The Rules and the Scheme have been challenged before this Court and are hanging fire. A coordinate bench of this Court in ***Janodaya Ekta Samiti (Regd.) v. Govt. of NCT of Delhi and Ors., W.P. (C) 6622/2015*** and connected matters vide order dated 08.08.2016 stayed the enforcement of the Scheme and thus, the constitution of the Town Vending Committee is deferred. It was in this background that the order dated 05.10.2016 was passed in ***Hawkers Adhikar Suraksha Samiti (Supra)*** as mentioned in paragraph 32 foregoing.
47. As per the Act, the declaration of no-vending zone is to be carried out by the Plan for Street Vending to be prepared by the local authority in consultation with the Town Vending Committee [Section 21 read with

the First Schedule]. At the same time, Clause 3(e) of the First Schedule provides that till the completion of survey and formulation of the plan, no zone shall be declared as a no-vending zone. This clause merely prohibits any further declaration of no-vending zones and does not nullify the existing demarcation by the municipal authorities. On the contrary, it tacitly recognises that certain areas might have already been declared as no-vending zones.

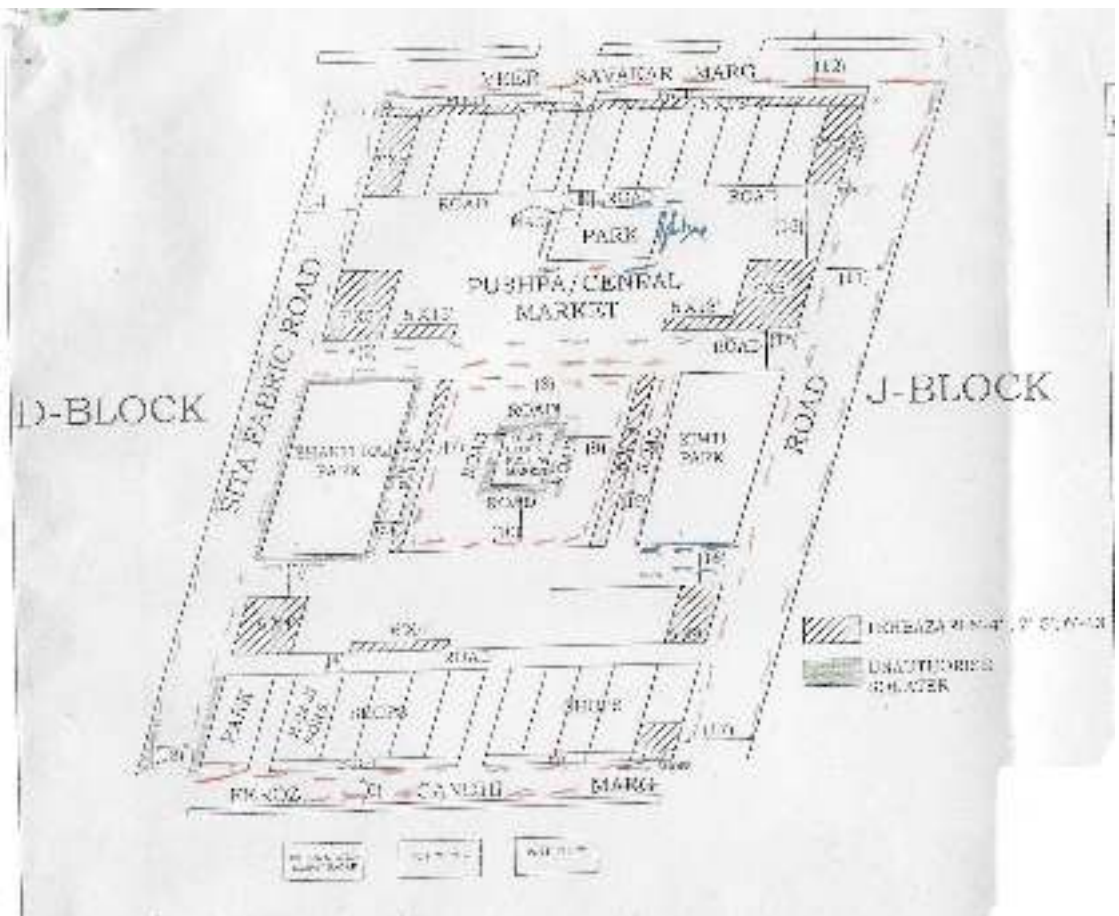
48. Accordingly, we also subscribe to the view taken by the coordinate bench of this Court *Hawkers Adhikar Suraksha Samiti (Supra)* in its order dated 05.10.2016 that as an interim measure, the non-squatting zones declared under the old schemes shall continue to be non-squatting zones for the time being. Hence, the protection of Section 3 (3) shall not extend to vendors in no-vending zones.
49. The other judgments sought to be relied upon by the learned counsel for the respondent no.8 also do not come to its aid. The reliance on *National Association of Street Vendors of India (Supra)* is misplaced as the said judgment deals with the applicability of the provisions of Food Safety and Standards Act, 2006 vis-à-vis the provisions in the Delhi Municipal Corporation Act, 1957 impinging on food safety and health concerns. Further, the judgment or orders dated 10.12.2014, 15.01.2015 and 22.04.2015 in W.P. (C) 8661/2014 cannot be read to lay any precedent in respect of no-vending zones.
50. Learned counsel for respondent no.8/NASVI had also drawn the attention of this Court to certain receipts issued by the respondent no.1/SDMC for “*Squatters Regular 6X4*” and “*7X5 Rehri Stalls/Others*” alleging that the same belied the stand of the petitioner and the SDMC of Pushpa/Central Market being a no-vending zone and

further accusing SDMC of discriminating between similarly placed squatters. The stand of the SDMC is that these persons were allotted sites during the period 1962-1968 pursuant to the Gadgil Assurance Scheme and occupy permanent sites neither upon the road or the pavement.

51. To appreciate this submission, we deem it necessary to trace the background to the order dated 01.12.2000. The Supreme Court in 1994 while dealing with the problem of hawking in Delhi in W.P. (C) 1699/1987 had directed the appointment of a judicial officer to look into the question as to whether the implementation of the Scheme by the MCD had been consistent with the norms and procedure indicated by this Court and to make a report. Accordingly, this Court had nominated Mr.R.C. Chopra, Additional District and Sessions Judge to examine the erstwhile scheme and make his report. The Chopra Committee submitted its report on 20.12.1996, about a month after the declaration of Pushpa/Central Market as a no-vending zone. The Report was considered and accepted by the Apex Court in W.P. (C) 1699/1987 on 01.05.1997 [(1998) 1 SCC 188] while issuing certain directions. It was directed that after the completion of the process of identification of eligible squatters and allotment of sites, the zonal heads of the MCD and SHOs of the areas shall be made personally liable for ensuring that there is no squatting in non-squatting zones.
52. It was in this background that the order dated 01.12.2000 was passed. Pursuant to the directions, the approved street vendors were shifted while others were removed. Both the 7'X5' and the 6'X4' *tehbazari* holders under the Gadgil Assurance Scheme were issued eviction notices. Since the 7'X5' *tehbazari* holders are entitled to construct

covers and are effectively proper shops, they were no longer treated as street vendors. This remains the consistent stand of the SDMC even today.

53. There seems to be slightly less clarity as to the status of the 6'X4' *tehbazari* holders. These persons were too allotted sites under the Gadgil Assurance Scheme and were issued eviction notices pursuant to the order dated 01.12.2000. The said *tehbazari* holders had approached the Apex Court by filing I.A. 356 in W.P. (C) 1699/1987, which was disposed of by the Court holding that the persons are not covered by the judgment in W.P. (C) 1699/1987.
54. Thus, this category of *tehbazari* holders were held to be distinct and apart from other street vendors which were to be removed/relocated as per the order dated 13.11.1996 of the Lieutenant Governor and order dated 01.12.2000 of the Supreme Court in W.P. (C) 1699/1987. Accordingly, the squatters represented by respondent no.8 cannot claim parity with either the *tehbazari* holders of 7'X5', being infact shop owners nor the holders of 6'X4' which have been held by the Apex Court to be excluded from the order dated 01.12.2000.
55. Further, in order to ensure that these *tehbazari* holders are not blocking the roads, lanes or by-lanes, we had directed the SDMC to place a site plan on record. The SDMC has placed the site plan on record marking the location of *tehbazari* holders and that of the unauthorized vendors, which is reproduced hereunder:



DETAIL OF CENTRAL MARKET	
ROAD WIDTH	FOOT PATH WIDTH
11	30.00M
12	10.00M
13	8.00M
14	1.00M
15	1.00M
16	1.00M
17	1.00M
18	1.00M
19	1.00M
20	1.00M
21	1.00M
22	1.00M
23	1.00M
24	1.00M
25	1.00M
26	1.00M
27	1.00M
28	1.00M
29	1.00M
30	1.00M
31	1.00M
32	1.00M
33	1.00M
34	1.00M
35	1.00M
36	1.00M
37	1.00M
38	1.00M
39	1.00M
40	1.00M
41	1.00M
42	1.00M
43	1.00M
44	1.00M
45	1.00M
46	1.00M
47	1.00M
48	1.00M
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67	1.00M
68	1.00M
69	1.00M
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71	1.00M
72	1.00M
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81	1.00M
82	1.00M
83	1.00M
84	1.00M
85	1.00M
86	1.00M
87	1.00M
88	1.00M
89	1.00M
90	1.00M
91	1.00M
92	1.00M
93	1.00M
94	1.00M
95	1.00M
96	1.00M
97	1.00M
98	1.00M
99	1.00M
100	1.00M

Note: Area marked in red is blocked by the unauthorised street vendors.

56. From the site plan, it is clear that these *tehbazari* holders are not blocking the roads, lanes, by-lanes or pavements; on the contrary, the roads, lanes, by-lanes and pavements are being blocked by the unauthorised street vendors despite the area being declared as non-hawking/non-vending zone. The effect of this is fatal and suicidal as in case of a calamity, no vehicles of emergency services, including ambulances or fire trucks, can reach the spot and relief would be hampered on account of obstruction on the roads and by-lanes. The order dated 13.11.1996 was passed in the background of a horrific bomb blast which had resulted in the loss of several lives. The emergency services could not reach owing to blockages and encroachments on the passageways. With the passage of time, the situation has only worsened with the unabated influx of people and street vendors. Numerous persons visit the market on a daily basis and this Court would be putting all of their lives and security in jeopardy if we were to be a privy to the encroachers. Being pitched between the conflicting rights of the livelihood of the street vendors versus the life and security of the public in general, including the street vendors. We are of the opinion that the former must bow to the latter as without life and security, no question of earning a livelihood can arise.
57. Additionally, we are informed by the counsel for the police and SDMC that the area shown in red in the foregoing map is blocked by the unauthorised street vendors, but the conditions at the site are much worse as the balance open areas are used by pedestrians, movement of traffic and customers who no longer have access to the pavements. To this effect various photographs were shown in Court.

58. Accordingly, we conclude that in view of the order dated 05.10.2016 in *Hawkers Adhikar Suraksha Samiti v. Union of India and Ors.*, **W.P. (C) 6130/2016** and reasons recorded in the foregoing paragraphs, Pushpa/Central Market continues to remain a no-squatting zone. Needless to say that the same may be re-considered by the Town Vending Committee once the same comes into operation.
59. Though the issue was covered in W.P.(C) 6130/2016, where respondent no.8/NASVI was a party represented by the same counsel, Ms.Unninayar had insisted that she be heard again and despite the opposition of Mr.Proothi, a prolonged hearing was granted, matter was adjourned as and when requested by Ms.Unninayar either on personal grounds or that of her client being unavailable only to avoid any grievance that the street vendors were not heard.
60. We allow the present writ petition with the following directions:
- (i) The SDMC and the Delhi Police are directed to ensure that Pushpa/Central Market, i.e. the area covered by the order dated 13.11.1996 of the Lieutenant Governor is maintained as a no-squatting zone;
 - (ii) Once the area has been cleared, it shall be ensured that the vendors are not allowed to return or squat again;
 - (iii) The SDMC shall conduct regular eviction drives;
 - (iv) Delhi Police is to render all the necessary assistance in eviction of vendors to the SDMC;
 - (v) The zonal head of SDMC and the concerned SHO shall be personally liable to ensure that direction (ii) is not flouted;

- (vi) Both the SDMC and the Delhi Police are to prepare and maintain lists of persons removed from the area to ensure that repeat offenders are brought to the book;
- (vii) On receipt of the order, a meeting shall be convened of all the concerned authorities to discuss the implementation of the order and measures proposed to maintain the area as a non-hawking/non-squatting zone; and
- (viii) Any person aggrieved by unlawful vending in the area is at liberty to approach the SDMC or the SHO at the first instance and then this Court.
61. The directions shall continue until the Town Vending Committee comes into operation and finally decides whether the area is to be a vending zone or no-vending zone.
62. The writ petition is disposed of.
- C.M. 33202/2016**
63. This is an application filed by the respondent no.8/NASVI seeking interim protection of the vendors during the pendency of the present petition. In view of the order passed in the writ petition, no further orders are required to be passed.
64. The application is disposed of.

G. S. SISTANI, J.

VINOD GOEL, J.

JULY 3rd, 2017 //