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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 22.08.2016

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W.P.(C) 7501/2010 and CM APPL No. 6535/2015

SATISH KHURANA AND ANR

..... Petitioners

Through

Counsel for the petitioners

(appearance not given.)

versus

MCD AND ORS

..... Respondents

Through

Mr. Ajjay Arora and Mr .Kapil Dutta,
Advs for MCD.

Ms. Archana Gaur, Adv for UOI.

Mr. Rajiv Garg, Mr.Suryakant and

Mr. Rajeev Kapoor, Advs for R-4.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 There are two petitioners before this Court namely Satish Khurana and Harish Khurana, both sons of Khem Chand Khurana. Their contention is that the property bearing shop No. 46, New Qutub Road, Delhi (measuring 15 X 8 feet) was allotted to their father Khem Chand Khurana in accordance with the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Late Khem Chand Khurana had a sole proprietary transport agency business under the name and style of Khurana Transport

Company. In 1976, the respondent-MCD has issued a policy wherein the chemical traders and transporters of New Qutub Road were to be shifted out of the area. The petitioners and their father were unaware of this policy. On 13.07.1982, a perpetual lease deed (subsequent to the first lease deed dated 30.12.1967) in respect of land measuring 81.94 square feet falling behind their shop (shop No. 46) was executed in favour of late Khem Chand Khurana. Both these lease deeds made the petitioners (their predecessor in interest) namely Khem Chand Khurana a lessee of the MCD. The argument on this score of the learned counsel for the petitioner being that the rights of the petitioners could not have been varied/transferred/cancelled to the prejudice of the petitioners without the respondent Corporation having filed a suit; the submission of the respondents that they had given an alternate plot qua this shop i.e. shop No. 46 to M/s U.P. Delhi Goods Corporation (respondent No.4) in 1984 was to the prejudice of the petitioners and without their knowledge and information; their rights which were directly affected by this act of the respondent without a notice to the petitioners, is an order which calls for interference and accordingly the writ petition has prayed that the order passed by the Corporation dated 12.10.2010 wherein the petitioners have been directed to vacate the aforementioned shop is required to be set aside.

2 The Municipal Corporation of Delhi (respondents No. 1 & 2) have filed a counter affidavit. Their contention is that as per the policy of the Corporation which had been formulated in the year 1976 (culminating in 1987), a survey had been conducted in the year 1986 of the aforementioned shop and on the date of the survey (24.06.1986), as per the record (page 271 of the paper book) respondent No. 4 was found functioning at the site i.e. at shop No. 46, New Qutub Road, Delhi. This document had been filed on record in terms of the order dated 04.08.2012. A perusal of this survey report shows that on the date of the inspection of the site (24.06.1986), M/s U.P. Delhi Goods Corporation was found functioning there. The submission of the respondent is that as per the eligibility criteria (for allotment of an alternate plot) it was the person who was found at the site, may he be the occupier or the owner would be entitled to the alternate allotment. Additional submission being that respondent No. 4 was validly at the site in view of the additional affidavit filed by the petitioners wherein the petitioners have themselves admitted that in the year 1978, Agency Agreements (firstly on 16.01.1978 followed by subsequent renewals on 01.07.1984 and 01.08.1987) were entered between the petitioners and respondent No. 4 thus was rightly

found functioning at 46, Qutub Road, Delhi. This additional affidavit of the petitioners is dated 09.11.2010 (page 85 of the first paper book).

3 Counter affidavit of respondent No.4 is also on record. He submits that in terms of the Agency Agreements with the petitioner, he was carrying on his trade at the site at the time of inspection which was on 24.06.1986. He was earlier functioning from shop No. 45, Qutub Road, Delhi but thereafter he had shifted to 46, Qutub Road and it was for this reason that all correspondences were addressed by the Municipal Corporation to him. His submission is that the transport business at shop No. 46 was always being carried out by him under the name and style of M/s U.P. Delhi Goods Corporation. He was allotted the alternate plot at AG-23, Sanjay Gandhi Transport Nagar (SGTN) on 27.07.1986 in lieu of shop No. 46 as he was the eligible occupier carrying on the business from his site. His undertaking dated 02.09.1991 is also on record which reflects that he has received the physical possession of the alternate plot at SGTN on 27.07.1986 and he undertakes to vacate the present site i.e. 46, New Qutub Road.

4 The record (a part of which stands destroyed for which an enquiry had been ordered by this Court) thus confirms the fact that respondent No. 4 was found at the site on the date of the survey which was on 24.06.1986. This is

also not in dispute; this was obviously pursuant to the Agency Agreements (dated 16.01.1978, 01.07.1984 and 01.08.1987) entered inter-se the petitioners and respondent No. 4; meaning thereby that respondent No. 4 was found at the site legally as he had a valid sanction in terms of these Agency Agreements. At the cost of repetition, the fact that these Agency Agreements were executed by the petitioners and respondent No. 4 finds mention in the additional affidavit of the petitioner himself (para 4 dated 19.11.2010). A perusal of clause 7 of the Agency Agreement (reproduced in the additional affidavit of the petitioners) also shows that a license had been granted by the Principal (petitioner) to the Agent (respondent No. 4) which is also the rule of agency as is contained in the statutory law. The fact that respondent No. 4 had applied for an alternate plot at SGTN within time and the same was allotted to him on 27.07.1986 is also a matter of record; physical possession of the said plot is admittedly with respondent No. 4.

5 The vehement contention of the petitioners that they have no connection with respondent No. 4 is in the view of this Court belied from their own additional affidavit.

6 Learned counsel for the petitioners at this stage points out that the policy of the Department did not in its eligibility criteria stipulate that the owner/occupier is entitled to an alternate plot.

7 The Policy of the Government relating to allotment of plots in Sanjay Gandhi Transport Nagar at G.T. Road, Samaipur Badli was contained in Resolution No. 1137 dated 12.01.1987. It reads herein as under:-

*“A proposal for setting up a Transport Nagar at Waziradab was mooted in 1976. The idea was to decongest the city by curtailing the movement of trucks and also by shifting workshops and godowns in the out skirts of the city. In all 1464 applicants filed their applications and also deposited the earnest money. The project however did not take off because of objections by the Hinden Airport/Airforce authorities. **The ad hoc R.P. Committee vide its resolution NO. 30 dated 21.06.1979, therefore, resolved that the applicants be allowed to take back their money.** About 250 of the applicants withdrew but the remaining persisted with their demand for setting up a proper Transport Nagar.*

2 *In 1980, the then Ltd. Governor decided that the MCD shall construct the Transport Nagar and that the land for this purpose will be provided by the DDA at Samepur Badli Opp. Jahangir Puri. **Those who took the refund were also eligible to get allotment by the order of LG.** It was only the October, 1983 that the DDA transferred about 161 acre land. Some of the land includes in the layout however could not be made available because of Court cases. The project report was sent to Delhi Administration and its*

approval was received in October, 1983. The project was to be executed on 'no profit' and 'no loss' basis.

3 The development work was taken in hand immediately after the transfer of land by the DDA. With a view however to meeting its cost instalments were demanded from the applicants registered in 1976. On a very rough estimate, the cost of development intimated by the Engg. Department in 1983 was Rs. 250/- per sq.metre of plotted area. This has been demanded in instalments. The cost of land, first intimated by the DDA, was Rs. 6 lacs per acre but later was reduced to Rs. 3 lacs per acre. On a very rough estimate, assuming that the plotted area will be 50% of the total layout, it worked out to be Rs. 150/- per sq. metre subject to final calculations on the basis of actual area utilized for plots. The tentative cost intimated to the applicants thus came to Rs. 375/- per sq. meter subject however the final calculations of the cost of development.

4 XXXXXXXXXX

5 XXXXXXXXXX

6 Scrutiny of the applications has also been taken in hand. **A survey has been ordered for determining the site position.** The work for integrated and management of the project has been entrusted to a senior officer of the level of Asstt. Commissioner Shri M. R. Bhardwaj, AC/R.P.Cell who has been designated as Manager, Sanjay Gandhi Transport Nagar. For this work, it is proposed to give him a special pay of Rs. 275/- pm w.e.f. 13.05.1986 the date he took over as A.C./R.P.Cell on the same analogy as other officers of his rank in the Mpl. Shri's office as well as Secy. To Mayor, etc. are receiving.

7 *The allotment will be made to those applicants who were registered in 1976. Subject to their eligibility being established as per following policy:-*

(a) Those firms or individuals who applied for plots in 1976 and are now in the relevant trades will be eligible for allotment of godown / workshop/plots of the area applied for allotment for shops will be for the uniform size of 17.5 sq.mts.

(b) If the original applicant firm/individual has undergone a corporate or individual succession (legal evidence for which is duly produced), the successor firm/individual will be given the allotment. After the allotments have been made, any changes in proprietorship partnership constitution of the firm company etc. will be in accordance with the rules prevalent for DDA leases, including payment of unearned value increases etc.

(c) Applicant, qualified by criteria (a) and (b) above will all be given one plot each in lieu of their premises / area of usage measuring up to 500 sq.metres. For every 500 sq. metres additional area or fraction thereof under their usage, applicants will be entitled to an additional plot of applicable size. For the next one commercial price (which will be three times the reserved price) and for the remaining additional plots market price (which will be five times the reserve price).

(d) If a group of applicant firms individual wish to take allotment together in one row or block, they may be allowed to do so, treating these groups as single units. However, the plot numbers and the block number will be decided through a draw of lots.

(e) The number of plot as well as block to the eligible applicants will be made by a drawn f lot.

(f)The allottee shall give undertaking that after allotment of plot they will discontinue their transport / allied business from the present site. Where ever the applicant / applicants are in occupation Govt. land / public premises the same will be restored by them to the land owning Deptt. / Authority.

(g) The allottees shall have to conform to the architectural controls for their buildings to be prescribed by the Chief Architect MCD and undertaking to this effect shall be filed by the applicants.

Approval of the Corporation is sought to the proposals (i) as contained in para 4,5 and 7(c) above regarding the prices to be charged, (ii) as contained in para 7 on the policy for allotment and (iii) as contained in para 6 regarding grant of special pay to the officer to hold the concurrent charge as Manager, Sanjay Gandhi Transport Nagar.

This may be placed before the Ad hoc R.P.Committee / Standing Committee / Corporation for approval as an item of Urgent Business.

Item No. 8:- Allotment of plots in Sanjay Gandhi Transport Nagar on G.T. Road, Samepur Badli, Delhi.

Commissioner's supplementary letter No. F33/R.P.Cell/4971/C&C dated 15.09.1986.

In continuation of letter No. F 33/R.P.Cell/4493/C&C dated 20.08.86, it is requested that Sub Para (a) & (b) of Para No. 7 be read as under:-

Sub Para (a)

“Those firms or individuals who applied for plots in 1976 and are now in the relevant trades in Delhi will be eligible for allotment of godown / workshop / plots of the area applied for allotment for shops will be for the uniform size of 17.5 sq. mts.

Sub Para (b)

“If an applicant individual / firm has undergone a succession or corporate change but the running of business at site is established the original applicant will be considered for allotment. Since, a number of documents and other formalities will have to be completed, the name of original applicant / individual/firm may be included in the list for the draw of lots and changes may be later on incorporated on filing of necessary documents and in accordance with the rules prevalent for the DDA leases including payment unearned value increases.

This may be placed before the Ad hoc (R.P.) Committee / Standing Committee / Corporation for approval as an item of Urgent Business.

Item No. 11:- Allotment of plots in Sanjay Gandhi Transport Nagar on G.T.Road, Samepur Badli, Delhi.

Commissioner's letter No. F33/R.PCell/5542/C&C dated 24.10.86.

A proposal on the subject noted above was submitted vide letter n. F 33/R.P.Cell / 4493/C & C dated 20.08.86 and letter No. F 33 RP Cell /4971/ C&C dated 15.09.86 for approval of the Ad hoc R.P.Committee / Standing Committee / Corporation. The copies of the letters are enclosed as Annexure

‘A’ & ‘B’. The Ad hoc R.P.Committee vide item No. 7 & 8 in its meeting held on 17.09.86 has however, postponed the consideration of the case for want of certain information. The copy of the decision of the Ad hoc R.P.Committee is enclosed at annexure ‘C’.

The information asked for is voluminous and the relevant list /lists will however, be laid on the table during the meeting . The main points as asked for are that in all 1564 applications had been received. The M.C.D. was required to develop the site on ‘No profit No loss’ basis. As there was no clear picture about the cost of land and cost of development, the payment was therefore demanded from the applicants as under:-

<i>Year</i>	<i>Instalment</i>	<i>At the rate of</i>
<i>1976</i>	<i>1st Instalment</i>	<i>25/- per sq. metre</i>
<i>1984</i>	<i>2nd “</i>	<i>75 “</i>
<i>1985</i>	<i>3rd “</i>	<i>100/- “</i>
<i>1986</i>	<i>4th “</i>	<i>70/- “</i>

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A meeting was convened by the L.G. in his office on 20.10.86 at 5.30 P.M. which apart from others was attending by the Dir.(P&M), E-in C, S/Shri Jagdish Tytler, M.P. Shri Nand Lal Choudhary, M.C. and representative of the transporters. They were apprised with the facts. It was also explained in the meeting that the M.C.D. had received 1464 applications in the meeting that the M.C.D. had received 1464 applications

in the year 1976. Out of which 1228 applicants have been established as functioning transporters or having allied business establishments. In 236 cases the applicants are either not traceable at site or certain documents / information are yet to be received from them. The names of all these 236 applicants have been published in the News papers requesting them to contract the AC/RPC for furnishing their documents / whereabouts / location of their business establishments.

The last date for furnishing the information is 24.10.86. The clear picture of actually eligible candidate will emerge only after receipt of survey report from the Engineering Deptt. In respect of these 236 applicants. The L.G. & Shri Jagdish Tytler have desired that the draw of lot be held on 19th Nov, 1986 the date of birth of our late beloved Prime Minister Smt. Indira Gandhi.

In view of the position as explained above, the case is re-submitted for taking a decision in respect of rates and policy of allotment. This may be placed before the Ad hoc (R.P.Committee)/ Standing Committee / Corporation as an item of Urgent Business.”

8 A scrutiny of this policy shows that the object of this policy was to decongest the city by creating a new Transport Nagar i.e. at Sanjay Gandhi Transport Nagar, GT Road, Samepur Badli, Delhi. The scheme was floated for the **bonafide** transporters. For the purpose of determination as to who would be the eligible applicant, a survey had been ordered for determining the site position. This is stated in para 6 of Resolution No. 1137 dated

12.01.1987. Para 7 specified that the allotment would be made to those applicants who were registered in 1976 and subject to eligibility. The eligibility criteria is contained in the subsequent sub-paras of para 7. Sub-para (a) and sub-para (b) of para 7 were (vide supplementary letter No.F33/R.P. Cell/4971/ C & C dated 15.09.1986) were modified. Modified sub-para (a) stipulated that only those firms/individuals who had applied for allotment of plots in 1976 and were relevant traders in Delhi would be eligible. Admittedly the petitioner in the present case had not made any application either in the year 1976 nor later. His cloudy submission that he was unaware of this policy cannot be accepted as the gospel truth; in the absence of his having made any application (admittedly not made) in the year 1976 or till today and he not having been able to establish that he was a trader doing transport business at the relevant time (which would be the date of the survey) thus did not fit into eligibility criteria in terms of para 7 (a). Modified sub-para (b) stipulated that if the individual/firm has undergone a succession or corporate change but the running of the business at site is established, the original applicant will be considered for an allotment. It further stipulated that since a number of documents and other formalities had to be completed, the name of the original applicant/individual/firm would be

included in the draw of lots on filing necessary documents. Admittedly, this condition has also not been adhered to by the petitioners. Not only did they not file any document but admittedly they have not made any effort to get themselves registered in 1976 or even thereafter for consideration of an alternate plot. Sub-para (b) of para 7 is also relevant to the effect that the facet of running of business at site had to be considered by the surveyor in terms of the survey report which had been envisaged in para 6 of the Commissioner's letter No. F-33/R.P. Cell/4493/C&C dated 20.08.1986 which had culminated in the Resolution (No.1137 dated 12.01.1987).

9 The eligibility criteria was thus, an applicant whether he was the owner or whether he was a lessee would not be relevant. This position is further fortified by the proforma used by the Department seeking information from the proposed allottees on their rights of allotment. Relevant would it be to extract this proforma:-

"No. AC/RPC/SGTN/86/2350

Dated 23.07.1986

*To
U.P. Delhi Goods Corporation,
46, New Qutub Road,
Delhi.*

*Sub: Allotment of plot in Sanjay Gandhi Transport Nagar.
Sir,*

I am to inform you that the scrutiny performa was sent to you to furnish the necessary information / documents in support of your claim of functioning as transporter or having allied business establishment to ascertain your eligibility but it has been observed that certain requirements / documents as mentioned in the performa are still awaited.

You are, therefore, again requested to complete the documents as mentioned hereunder failing which it will not be possible to consider your claim for allotment of plot.

- 1 Name of owner(s)/Partner(s), Date of establishment of firm/ Company (attach copy of the partnership deed etc.).*
- 2 Whether registered with (i) Sales Tax, (ii) Income Tax (iii) Delhi Shops & Establishment Act, (iv) Other Govt. Agencies (Give No. & Date of registration Certificate along with copy thereof).*
- 3 No. & Date of Municipal License if any, & date upto which it is valid.(copy may be attached).*
- 4 No. & Date of Sanction for Elect. Power connection (copy may be attached).*
- 5 Site Plan showing (a) Total covered area in Sq.Ft.(b) Total open area in Sq.Ft.*
- 6 Whether the present premises are owned / on rent. (alongwith proof such as House Tax receipt / Rent receipt.)*

7 If the premises are located on Govt. land, give No. & date of allotment of land & purposes for which allotted.

8 Whether any alternative plot has been given by any agency in Delhi? If so, its details.

9 Whether any application for allotment of plot for workshop etc has been made to MCD/DDA earlier?

10 Any other documentary proof which the applicant may like to submit. If so, append the same.

11 Complete information on scrutiny performa already sent is still awaited.

12 Balance payment of Rs. Nil as adhoc earnest money and 18% interest is awaited.

13 An indemnity bond duly attested by Oath Commissioner / notarized on Rs. 10 /- Court stamp paper.

Yours faithfully,

(M.R.BHARDWAJ)
Asstt. Commissioner / R.P.Cell
Phone No. 2514763”

10 Even as per this proforma, documents were sought from the applicants in support of their claims of functioning as transporters; this was the ground

of eligibility. At serial No.6, the information sought was whether the premises were owned or were on rent meaning thereby that it was not only the owners but also those who were lessees/tenants who fitted within the concept of entitlement for consideration of allotment of a plot in SGTN. Serial No.10 allowed the applicants to submit other documentary proof which they so desire.

11 In terms of clause 7 (f) an undertaking of the allottee also had to be furnished which has admittedly been furnished by respondent No.4 in terms the affidavit of Bhupinder Singh dated 02.09.1991 wherein he affirmed that he has got the site of AG-23, Sanjay Gandhi Transport Nagar in lieu of his existing trade at the site i.e. 46, New Qutub Road in the name of M/s U.P. Delhi Goods Corporation and which he would vacate.

12 All this time, the petitioners remained quiet. The submission of the petitioners that they were unaware of the Policy of the Government does not lie and even as per the averments made in the writ petition, their submission on this point is hazy and cloudy; they are not sure of their stand; their submission is that they were unaware of the policy of 1976 but inspite of this information, they could not procure the policy hardly appears to be justifiable. It was for the petitioners to have applied in terms of the policy if

their rights were affected (which this Court is of the view were not affected) because they had voluntarily entered into Agency Agreements with respondent No. 4 giving him the license to operate as a transporter from this site. They have filed this writ petition only in the year 2010. Their averments in the petition persuades this Court to hold that they had no stake left in the matter. Up to the date of filing of the writ petition, there appears to be nothing which had happened to the prejudice of the petitioners except their submission that their father has passed away in the year 2005 and on 12.04.2010, they were shocked to receive a notice that they had been allotted a site at Sanjay Gandhi Transport Nagar and its lease terms had been violated. His submission that in W.P. (C) No.3678/1998 All India Lawyers's Association and Anr Vs. Union of India, he had filed an affidavit that if an alternate plot is granted to him at SGTN, he would vacate the present plot is neither here and nor there; this affidavit of the year 2001 recorded in this writ petition dated 13.03.2001 did not vest any right in the petitioners as admittedly they had never applied under the Policy of the Government for allotment of an alternate plot at SGTN.

13 The petitioners only appear to be taking a chance before this Court hoping that they could fit into the criteria for allotment of an alternate plot

but their case is not based on any documentary evidence, it has no legs to stand upon. At the cost of repetition, the additional affidavit of the petitioners wherein it was admitted that they had entered into an Agency Agreement with respondent No.4 and thereafter on subsequent date and as such at the time of the survey which was carried out by the Corporation on 24.06.1986, respondent No.4 (U.P. Delhi Goods Corporation) was legally found at the site. It was respondent No.4 who fitted into the eligibility criteria having been found functioning as a trader in the survey report present at the site carrying on his business of a transporter and not the petitioner. The petitioners up to date have never applied for the alternate plot. It was obviously for the reason that they had no stake in the matter and their rights were never prejudiced. Had the petitioner been a bonafide transporter carrying on his business from the site, he would not have waited for his rights to have been taken away by someone else and this is not a small gap but a gap being extended from 1976 to the year 2010 as the Policy of the Government was floated in 1976 and this writ petition came to be filed in the year 2010. At the cost of repetition, nothing has been done in this intervening period.

14 Another contention vehemently argued by the petitioners is that respondent No. 4 had applied for the alternate plot in 21.09.1976 but this was in lieu of shop No. 45, New Qutub Road and not shop No. 46. This document (page 208 of the paper book) shows that respondent No. 4 had applied for an alternate plot on 21.09.1976 at Municipal Transport Nagar in lieu of his occupational address of 45, New Qutub Road. A further perusal of this form shows that the money for the registration of this plot appears to have been refunded as the word 'refunded' appears written on the top column of this form and which was again in terms of the Policy as Resolution No.30 (21.06.1979) resolved that the applicants should be allowed to take back their money as the project had not taken off. However those who had taken back their refund were also eligible for an allotment. This was also a part of the Policy (supra). That apart, the stand of the petitioners and respondent No. 4 has clarified the position. The clarification being that admittedly respondent No. 4 was earlier carrying on its business from 45, New Qutub Road but subsequent to the first agency agreement entered into between the petitioners and respondent No. 4 on 16.01.1978 and followed by subsequent agreements, respondent No. 4 was validly functioning from the site at 46, New Qutub Road and thus on the date of

survey (24.06.1986) he was found present doing the transport business at the site. Moreover what is also relevant is that this survey report records that two plots had been booked for respondent No. 4.

15 The submission of the petitioners that the respondent should have filed a suit does not lie in view of the submissions as noted supra. The judgment heavily relied upon by him reported as (1986) 1 SCC 133 Express Newspapers Pvt Ltd and Others Vs. Union of India and others would not be applicable to the facts of the instant case. The question in that case which had arisen for a decision was whether a suit should have been filed or whether the proceedings under the Public Premises Act could be taken up; the Court was of the view that since by no process of reasoning could it be held that the Indian Express Building was a “public premises”, the applicability of Public Premises Act would not lie and it was in this context it was held that a suit would be an alternate remedy.

16 The further submission of the learned counsel for the petitioners is that the impugned order exceeds the show cause notice issued to him, as this show cause notice has not detailed the alternate plot this argument is without any merit as merely because the details of the alternate plot did not find any mention in the show cause notice, would not take away the gist of the notice

which was followed by the impugned order dated 12.10.2010 which at the cost of repetition had recorded that both the petitioners had been given a personal hearing and it had been informed to them that as per record of the site inspection in 1986, M/s U.P. Delhi Goods Corporation was found functioning at the site. The fact that respondent No. 4 had registered themselves for allotment of an alternate plot in 1976, also finds mention in the order dated 12.10.2010.

17 This petition is clearly without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

AUGUST 22, 2016

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