

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

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Judgment delivered on: 20.09.2024

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W.P.(C) 7984/2023**MOHD. SHAHZAD**

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr M.M. Kashyap, Ms Poonam Seth and Mr I. Saraswat, Advocates.
For the Respondent : Mr Sriharsha Peechara, Standign Counsel with Mr Akshat Kulshrestha, Mr Shubham Mishra and Mr D. Subrahmanya Bhanu, Advocates.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MS JUSTICE SACHIN DATTA****JUDGMENT****VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent (hereafter *the NDMC*) to transfer the *tehbazari* rights of late Smt. Akhtari Begum in respect of a site opposite Shop No.58, Sarojini Nagar Market, New Delhi (hereafter referred to as *the said Site*), in favour of the petitioner.

2. The petitioner claims that he has been vending articles/goods at the said Site. He states that his maternal grandmother (*Nani*), late Smt.



Akhtari Begum was allotted the said Site and therefore, he, as the legal heir, is entitled for the benefit of the said allotment. He contends that the other legal heirs of late Smt. Akhtari Begum have given their no-objection certificates for transfer of the said Site in his favour. The petitioner relies on the decision of the Supreme Court in ***Sudhir Madan and Ors. v. MCD and Ors.***¹, and on the strength of the decision, claims that he is entitled to allotment of the said Site in his favour, being the legal representative of the deceased Smt. Akhtari Begum.

FACTUAL CONTEXT

3. A number of writ petitions under Article 32 of the Constitution of India were filed before the Supreme Court of India by persons claiming right to trade on pavements in areas within the jurisdiction of the Municipal Corporation of Delhi (hereafter *the MCD*) and the New Delhi Municipal Council (hereafter *the NDMC*) in different parts of the city. These petitions along with certain appeals preferred from the decision of this Court were referred to the Constitution Bench of the Supreme Court. The petitioners/appellants in the said batch of petitions/appeals claimed that the municipal authorities were violating their fundamental rights under Articles 14, 19(1)(g) and 21 of the Constitution of India by not permitting them to trade on street and footpaths in different localities in the city of Delhi.

4. The Constitution Bench of the Supreme Court rendered a judgment dated 30.08.1989 in ***Sodan Singh and Ors. v. New Delhi***

¹ (2007) 15 SCC 497



Municipal Committee and Ors.² holding that subject to proper regulations, the street vendors could not be denied the right to vend their goods. The Supreme Court had recognised the right of the street vendors under Article 19(1)(g) of the Constitution of India. Therefore, subject to reasonable restrictions being placed, a street vendor has the right to carry on its trade on the streets. In the aforesaid context, the NDMC approved the scheme for street vending (hereafter *the 1989 Scheme*) by the Resolution No.28 dated 10.11.1989. Thereafter, pursuant to the recommendations made by Lok Adalat on 19.11.1989, the Supreme Court passed an order dated 21.12.1989 in ***Sodan Singh and Ors. v. NDMC and Ors.: SLP(C) 15287/1987 and Other Connected Matters***, appointing a Committee (Thareja Committee) to examine the claims made by various street vendors in the light of the 1989 Scheme and the decision of the Constitution Bench in ***Sodan Singh and Ors. v. NDMC and Ors.***². The Committee (Thareja Committee) was also required to identify street pavements in different areas where street vending could be regulated. 460 (four hundred and sixty) claims were registered with the Thareja Committee and it had scrutinized 440 (four hundred and forty) claims. Out of the aforesaid claims, the Committee upheld as many as 114 (one hundred and fourteen) claims.

5. The name of late Smt. Akhtari Begum was approved by the Thareja Committee. Thereafter, another Committee was appointed by the Supreme Court under the Chairmanship of V.C. Chaturvedi (hereafter *the Chaturvedi Committee*) for allotment of *tehbazari* license

² 1989 (4) SCC 155



to eligible vendors. The Chaturvedi Committee issued a common order dated 15.03.1999 for allotment of open to sky *tehbazari* sites in Sarojini Nagar Market and Bapu Market, to certain street vendors. The said order reflects the name of late Smt. Akhtari Begum at Serial no.529. The said entry reflected that she was carrying on trade in bangles and was allotted an open to sky site measuring 4 feet by 6 feet located at the said Site.

6. However, Smt. Akhtari Begum expired on 30.10.1998, which was prior to the date of the aforementioned allotment order dated 15.03.1999.

7. The fact that late Smt. Akhtari Begum had expired was not communicated to the NDMC. The NDMC being unaware of her demise, issued a *tehbazari* permission letter dated 08.07.1999 addressed to late Smt. Akhtari Begum, granting her permission to carry on her trade in bangles from the said Site subject to certain terms and conditions. The said terms and conditions also expressly provided that “*the Teh Bazari permission shall be personal to grantee and it shall not be shared or transferred to anyone in any manner whatsoever*”. It was also stipulated that no covering/tarpaulin/momjama/structure would be allowed at the said Site.

8. The petitioner claims that he was carrying on the trade from the said Site, but was removed from the said Site on several occasions. The petitioner has produced various challans issued during the years 2010 to 2012.



9. In the meanwhile, the petitioner had also obtained no objection certificates for transmission of the *tehbazari* licence in his favour from one of the daughters (Sugra Begum) of late Smt. Akhtari Begum in the form of an affidavit affirmed on 21.12.1998, and another daughter (Hazra Begum) by way of an affidavit affirmed on 14.04.2011. The petitioner claims that, thereafter, he pursued with the NDMC for transfer of the *tehbazari* permission, which was granted to late Smt. Akhtari Begum, in his favour. However, the NDMC did not comply with his request. Aggrieved by the same, the petitioner filed a writ petition [being W.P.(C) 3402/2012] complaining that he had approached the Zonal Vending Committee constituted by the NDMC for restoration of his application seeking transfer of the *tehbazari* site but no steps had been taken by the said Committee.

10. The aforementioned writ petition was disposed of by this Court by an order dated 29.05.2012 with the direction to the petitioner to appear before the Director (Enforcement), the NDMC on 07.06.2012 at 04:00 p.m. for a decision regarding his application for mutation of the *tehbazari* rights in his favour. The Court further directed that the said application would be duly considered in accordance with the policy framed by the NDMC, within a period of four weeks from the date of conclusion of the submissions made by the petitioner.

11. The petitioner states that he, thereafter, filed another writ petition [being W.P.(C) 298/2013] claiming a similar relief. In the said proceedings, this Court passed an order dated 09.04.2013 directing the petitioner to appear before Sh. Chaturvedi, Chairman of the Disputes



Redressal Committee on 23.04.2013 at 02:30 p.m. The said order was passed on the basis of the submission that if the petitioner submits all necessary supporting documents in his favour, the NDMC would carry out the necessary change as per its policy.

12. The aforesaid petition was disposed of by an order dated 10.07.2013. The said order records the petitioner's statement that he had submitted the documents pursuant to a communication dated 27.06.2013 as well as the statement of the learned counsel for the NDMC to the effect that the same would be considered and an appropriate decision would be taken. In view of the said submissions, the petition was disposed of.

13. Since the petitioner's request for permission to vend at the said Site has not been granted, the petitioner has filed the present petition.

REASONS AND CONCLUSION

14. The question to be considered is whether the petitioner is entitled for grant of permission to carry on vending activities at the said site in place of his maternal grandmother. As noted above, it is the petitioner's case that his maternal grandmother was granted the *tehbazari* permission to carry on her vending activities at the said site. According to the petitioner, the said permission is required to be transferred to him as an heir of his maternal grandmother.

15. The petitioner submits that his maternal grandmother was survived by two daughters (including his mother) and both of them had



stated their no objection to her rights being transmitted in favour of the petitioner.

16. The respondent contested the petitioner's claim on the ground that late Smt. Akhtari Begum had expired prior to the order dated 15.03.1999 – the date on which the order granting her permission to vend at the said site was issued. It is submitted that the said order was, thus, void *ab initio*. Consequently, the petitioner also cannot claim any benefit of the same. It is contended on behalf of the petitioner that the maternal grandmother was granted the *tehbazari* permission by virtue of the decision of the Thareja Committee dated 22.09.1993. The petitioner contends that the order dated 15.03.1999 passed by Chaturvedi Committee was confined to only allocation of sites to street vendors and the rights of the petitioner's maternal grandmother for a *tehbazari* licence had fructified on 22.09.1993. The petitioner also relies on the decision of the Supreme Court in ***Sudhir Madan and Ors. V. MCD and Ors.***¹ in support of his contention that in case of death of an allottee, the site is required to be allotted to one of his legal representatives, who carries on business at the site.

17. It is, at the outset, necessary to note that late Smt. Akhtari Begum was not granted *tehbazari* license in respect of any site. She was one of the street vendors that was found to be eligible for permission to carry on street vending and was, accordingly, granted permission to do so. It is also apparent that the permission granted to her was never operative because the order dated 15.03.1999 granting such permission was issued after late Smt. Akhtari Begum had expired. The petitioner's



contention that *tehbazari* rights had fructified in favour of Smt. Akhtari Begum prior to the issuance of the order dated 15.03.1999 is unpersuasive. There is no order on record, which was issued prior to 15.03.1999, which supports the contention that late Smt. Akhtari Begum had been granted any license or was accorded any permission to carry on vending activities.

18. In terms of the orders passed by the Supreme Court, the Thareja Committee had examined the applications made by several street vendors and had found certain applicants to be eligible on the basis of the criteria as set out. It is the petitioner's case that the Thareja Committee had on 22.09.2023 found that late Sh. Akhtari Begum was eligible for a *tehbazari* permission. Plainly, the process of scrutiny and determining the eligibility of a candidate did not vest any right with late Smt. Akhtari Begum to carry on any vending activities from a designated spot. The general order allocating various sites to eligible street vendors on 15.03.1999 concluded the said exercise and none of the street vendors were entitled to claim any right to carry on street vending from the designated spots allocated to them in terms of the said order, prior to the said date.

19. The permission letter dated 08.07.1999 granting permission to late Smt. Akhtari Begum to carry on her vending activities from the given site clearly indicates that Site no.166 was provisionally made by an earlier order dated 16.01.1999 and the said letter was in continuation of the order dated 15.03.1999 allocating the said site to her. It is also material to note that the said permission was subject to various



conditions including that the *tehbazari* was only temporary [incorrectly typed as ‘compulsory’] in the inchoate document produced by the petitioner. Thus, the said permission was only on a month to month basis. The said letter also specified that it was subject to grantee depositing a sum of ₹960/- equivalent to four months *tehbazari* charges in advance. The monthly *tehbazari* fees were required to be paid on or before tenth day of each calendar month. Clearly, the said permission, which was personal to Smt. Akhtari Begum, was inoperative as she had expired prior to the said date.

20. In *Sudhir Madan and Ors. v. MCD and Ors.*¹, the Supreme Court had examined the Scheme of vending as prepared by the Municipal Corporation of Delhi in accordance with the National Policy on Hawkers, 2004. In the said context, the Supreme Court had outlined the Scheme and also directed certain changes. The extract of the said decision, which is relevant to this case is set out below:

“14. In the case of death of an allottee the site may be allotted to one of his legal representatives who shall actually carry on the business at the site. In case, there are more than one legal representatives, those already in employment, shall be excluded. Thereafter if the remaining legal representatives agree, allotment may be made in favour of one or more of them (jointly) who shall actually carry on squatting/vending activity at the site allotted. Such an allottee(s) shall not be permitted to allow any other person to carry on the business at the site allotted and shall in no event transfer his rights therein to any other person. These norms require to be incorporated in the Scheme.”



21. There is no cavil that in case of demise of a street vendor, who has been allotted a license, its one legal heir would be entitled to carry on vending activities. However, in the present case, there is no allotment in favour of late Smt. Akhtari Begum as she had expired prior to 15.03.1999 – the date on which the order granting permission to vend at the site was issued in her favour. Further, as noted above, the grant of permission was only on temporary basis and personal to Smt. Akhtari Begum. Thus, no indefeasible rights were created in favour of Smt. Akhtari Begum. Admittedly, Smt. Akhtari Begum did not hold any license or permission to vend during her lifetime. Thus, the question of mutating any such rights in favour of the petitioner, does not arise.

22. The question whether the petitioner has any right to vend at the said site is to be tested on the anvil whether any such permission would have been granted to late Smt. Akhtari Begum, if NDMC had been duly apprised of her demise. Plainly, the answer is in negative.

23. It is also material to note that there are large number of persons who seek rights to vend at Sarojini Nagar Market. This Court is informed that the number of persons seeking to vend at the market far exceeds its capacity. At this stage, NDMC is regulating the street vending activities at the said market by permitting vendors who held the old *tehbazari* licences and those that are included in the list of 628 street vendors, who were found eligible for participating in allocation of 386 *tehbazari* spaces, in the year 2012. It is also material to note that this Court in another petition [*Kuldeep Singh Sahani and Ors. v. Government of NCT of Delhi and Ors.*: W.P.(C) 9928/2021] had



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issued directions, *inter alia*, for decongestion of the said market, which allegedly has been overrun by street vendors and further encroachment by shopkeepers.

24. In the given circumstances, we are unable to accede to the prayer made in the present petition. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SACHIN DATTA, J

**SEPTEMBER 20, 2024
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