

(2005) 04 DEL CK 0036

In the Delhi High Court

Case No : WP (C) No's. 4001 and 4355-58 of 2000

Sardar Jagat Singh and Another, Sardar Rajinder Pal Singh, APPELLANT
Sardar Charanjeet Singh, Sardar Mohan Singh Dhillon and
Smt. Saranjeet Kaur

Vs

New Delhi Municipal Council and Others RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226
New Delhi Municipal Council Act, 1994 — Section 224, 247(1), 416
Punjab Municipal Act, 1911 — Section 176, 195, 195(1), 3(13)

Citation : (2005) 120 DLT 283 : (2005) 82 DRJ 327

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Arun Kr. Sharma, in WP C Nos. 4001 and 4355/2000 and Kirti Uppal, WP C Nos. 4356-58/200, for the Appellant; Adarsh B. Dial and Arvind Shah, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioners are licensees of telephone booths / taxi booths near Hotel Imperial, Janpath, New Delhi. The grievances of the petitioners arise from the impugned orders passed cancelling the allotment.

2. Learned counsel for both the parties agreed that the writ petition bearing WP (C) No. 4001/2000 be treated as the lead matter for the purpose of hearing since there were no material factual differences and the principles sought to be contended by the respective parties were the same. In the said writ petition, it has been stated that there was an allotment of shop made on a plot opposite Imperial Hotel where now Chandralok Building has been constructed by the respondent / NDMC. At the stage when a project of Chandralok Building was taken up, petitioner No. 1 was shifted outside the Imperial Hotel and was allotted a masonry taxi booth No. 7 at 36, Janpath, New Delhi comprising an area of 6" x 14" on a monthly license fee of Rs.75/-. The said masonry structure is stated

to be constructed and provided by the NDMC and included a loft for the purpose of storage of spare parts of the taxis. In the year 1968, at the request of petitioner No. 1, the respondents are stated to have allotted a further space of 6" x 4" at the back of taxi booth vide order dated 26.12.1968 w.e.f. 01.04.1968 on payment of damage charges amounting to Rs.12/- per month @ Rs.0.50 per sq.ft. on the condition that the structure on the back space would become the property of NDMC. It may, however, be noticed that the letter dated 26.12.1968 itself states that the allotment is purely temporary and will not be sublet to any person for any trade. The contents of the letter dated 26.12.1968 are reproduced hereunder:

Office of the Secretary

New Delhi Municipal Committee

No. _____ New Delhi, Dated 26.12.1958

Shri Jagat Singh

Taxi Booth No. 1, Janpath,

New Delhi.

Subject :- Allotment of back space.

Memo :-

Reference your request, you are hereby informed that space m.g. 6 x 4 Sq.Ft. at the back of Taxi Booth, Janpath, New Delhi has been allotted to you from 1-4-68 on payment of Damages charges amounting to Rs.12/- P.M. @ Rs.0.50 per Sq.Ft. in addition to the following conditions :-

- (1) The allotment will be purely temporary and would not entitle the party to claim any compensation whatsoever.
- (2) The area will not be extended beyond what has been allowed.
- (3) The structure put up will become the property of N.D.M.C.
- (4) It will not sublet to any person for any trade.

Accordingly, you are requested to make the payment of Rs.108/- in the Mpl. Treasury within a week from the date of receipt of this letter.

sd/-

(Subhash Chandra)

Secretary

3. That a further order dated 21.02.1979 was issued by the respondent NDMC for regularisation of occupation of the additional space as well as construction carried out by petitioner No. 1 by enhancing the license fee from Rs.75/- per

month to Rs.300/- per month. This was, however, revised vide letter dated 24.04.1980 to Rs.150/- per month w.e.f. 01.06.1978 on the request of the petitioners.

4. Petitioner No. 2 is stated to be the son of petitioner No. 1 and it is alleged that both were running partnership business in the name and style of M/s. Hindustan Tools and Taxi Services. Petitioner No. 1 retired from the partnership in the year 1988 and an application is stated to have been made for the transfer of license in the name of the firm.

5. The petitioners state that they did not carry out any structural alterations but in the year 1999, there was a proposed demolition action in respect of the taxi booth and petitioner No.2 filed a civil writ petition being CWP No. 2174/1999, which was disposed of on 20.04.1999. Apart from other grievances made, a grievance was made that no notice was given for demolition of the unauthorised construction. Learned Single Judge observed that in view of the provisions of the proviso to Section 247(1) of the New Delhi Municipal Act, 1994 (hereinafter to be referred to as, "the NDMC Act") making it mandatory that a reasonable opportunity to show-cause should be given prior to any demolition order, no demolition action should take place otherwise than in accordance with law.

6. In view of the aforesaid order, the petitioners were issued a show-cause notice which has resulted in the impugned order dated 16.03.2000.

7. The petitioners have relied on the resolution passed by the respondents from time to time to support their plea that there has been no violation. In this behalf, resolution No. 50 dated 11.03.1977 has been referred to. The relevant matters in the resolution dealing with the issue of loft and deletion of names of allottees during lifetime are as under:

Copy of Resolution No. 50 of Ordinary

Meeting held on 1.3.1977.

BROAD BASED POLICIES FOR REGULARISATION OF ALLOTMENT IN MPL. SHOPS / STALLS, KIOSKS CONTROLLED BY THE ESTATE BRANCH IN THE MATTER OF TRADES USE OF LOFT SIDE / BACK OPENING, LEGAL HEIRS AND DELETION OF THE NAME OF THE ALLOTTEES DURING LIFE TIME.

1.

2. Use of loft for purposes other than storage and side door and back door openings:

The committee vide Resolution No. 16 dated 6.4.76 decided that all internal changes such as wooden particulars / cabins / glazing / wooden paneling etc. be allowed / regularised in all the Municipal Markets temporary as well as permanent. Similarly 100% coverage of lofts for storage purposes only (excluding public verandah) were also deemed to be regularised in all the Mpl. Markets including temporary ones subject to a minimum clear height of 7" from

the floor and maximum standing height of 5" between the loft floor and ceiling. While recommending regularisation of allotment in the light of committee's resolution No. _____ dated 6.4.1976, it was considered that use of loft for purposes other than storage be tolerated and that side door openings be regularised if it does not cause any obstruction to the pedestrians. Back door openings have not been recommended for regularisation as it encourages misuse of land at the back of the shops / stalls. However, those seem no objection if they provide a window with grill in the back of ventilation purpose.

3.

4. Deletion of the name of one of the allottee's during life time:

As per resolution No. 3 dated 23.____.72 the name of the living wife the allottee can be indulged in the matter of allotment, without obtaining no objection affidavit from other legal heirs. The name of only son can also be added if the living wife gives a no objection affidavit in his favor. The name of only son can only be added if the living gives No Objection affidavit in his favor. The name of one or more sons of the allottee if the living wife and sons whose names are left out of allotments gives No Objection Certificate in favor of the sons whose names are proposed to be added. In no other cases the name is added in the matter of allotment during the life time of the allottee. In such cases of persons coming forward to add their names were deemed as subletting and their requests were acceded too by enhancing license Fee as per policy of the committee, in cases where the allotment in the joint names of blood relations, the name of one of allottees is not deleted during the life time of the allottee. It is recommended that deletion of the name of one of the allottee (blood relation) during life time be allowed during life time of retiring allottee give No Objection affidavit in favor of continuing allottee.

8. The petitioners have also tried to point out that adjacent to taxi booths of the petitioners, there are 26 stalls of Tibetan Market along the boundary wall of Hotel Imperial and no demolition, eviction or dispossession orders have been passed in respect thereof.

9. There seems to be some issue relating to the appropriate license fee chargeable in view of resolution No. 18 dated 28.06.1991 of the respondent. It is the petitioners' case that the same has no application to them. The same is the plea with respect to a subsequent resolution No. 3 dated 02.09.1994. The relevant portion of the resolutions are as under:

REVISION OF TEHBAZARI / license FEE / BOOKING CHARGES IN RESPECT OF NDMC LAWNS / PARKS AND TAXI BOOTHS.

The rates of Tehbazari/license Fee/Booking Charges, etc. were last revised vide Committee's Reso. No. 18 dt. 31.3.89. In order to review the existing rates of Tehbazari/license Fee/Booking Charges in respect of NDMC/Lawns/Parks and Taxi Booths a Sub Committee was constituted under the orders of the Administrator

comprising of FA (In chair), CA, CE(C), OSD & Director (Enf.). The Sub Committee after examining the rates in totally has recommended the rates of Tehbazari/ license Fee/Booking Charges in respect of NDMC/Lawns /Parks and Taxi Booths of various categories as shown below:

-----	a)	Wooden
Booths (4"x4")	Present license	Proposed license (Taxi Booths) Fee Fee
-----		Rs.150/- P.M.
Rs.450/- in South of Rajpath and	Rs.700/PM falling in North of Rajpath.	b)
Masonry Booths Rs.750/- P.M.	Rs 1,000/- PM falling (Standard Size) in South	
of Rajpath and Rs.2,000/- PM	falling in North of Rajpath."	

The matter has been further examined in consultation with Law Officer, Secretary and FA. Keeping in view the withdrawal of cases by the Taxi Operators Association from the Courts and steep increase in the license fee and arbitrary imposition of levy @ Rs.300/- P.M. and Rs.600/- P.M. Respectively for South and North of Rajpath area on each taxi; it is proposed to revise the license fee in R/o taxi booths in NDMC area w.e.f. 1.7.91 as follows:-

Existing Revised rates rates ----- a) Wooden Booth Rs.150/- p.m.
Rs.250/- p.m. b) Masonry Booth Rs.750/- p.m. Rs.1,000/- p.m.

The Monthly levy imposed on each taxi will be withdrawn.

10. The petitioners admit that a civil writ petition being CWP No.2751/1991 was filed by New Delhi Taxi Operators Association against the NDMC challenging the enhancement of lease / license fee in respect of taxi stands in the entire New Delhi and since the petitioners were members of the Association, their names were also included in the list of members. It is, however, stated that despite this fact, the resolutions of 1991, 1994 and a subsequent resolution of 1997 would also have no application to them. This writ petition was withdrawn to reconsider the whole issue.

11. In the show-cause notices issued to the petitioners, it has been alleged that license fee of the booths in question was raised even earlier which the petitioners had failed to pay. This was denied by the petitioners. The petitioners, in fact, filed a writ petition bearing CWP No. 5639/1999 challenging the show-cause notice dated 08.09.1999, which was disposed of on 20.09.1999 stating that it was open to the petitioners to raise all the objections in response to the show-cause notice.

12. The petitioners have pleaded that though they have not carried out any unauthorised construction, even for the sake of argument, if it was assumed that some unauthorised construction was made, no action for demolition could take place by the respondents after the expiry of six months in view of the provisions of Section 195 of the Punjab Municipal Act, 1911 (hereinafter to be referred to as, "the PM Act"), which was the Act applicable at the relevant stage of time

prior to coming into force of the NDMC Act. In this behalf, reliance was placed on a Division Bench judgment of this Court in *Municipal Corporation of Delhi v. Smt. Surjit Kaur*, 1972 R.L.R. 13. The arrears due towards the license fee have also been denied. The petitioners are stated to have obtained a No Objection Certificate (NOC) from the Deputy Commissioner of Police (Traffic) to park the taxis on the pavement at Janpath. Demolition was stated to have been carried out after disconnecting electricity contrary to directions passed by the competent court. This action took place in June, 2000 and thereafter even the taxi booth was sealed on 09.07.2000.

13. Interim orders of status quo were passed in the present proceedings and the owners of Hotel Imperial were also impleaded as respondents at their request.

14. The allegation in the impugned order is about both unauthorised construction and failure to pay the license fee. The license fee is stated to have been revised from time to time in pursuance to resolutions passed as under:

(i) Reso.No.55(23) dated 27.7.1979 @ Rs.250/- p.m. w.e.f. 1.6.1979.

(ii) Reso.No.18 dated 31.3.1986 @ Rs.750/- p.m. w.e.f. 1.4.1986.

(iii) Reso.No.18 dated 28.6.1991 :

(a) Rs.1,000/- p.m. in South of Rajpath

(b) Rs.2,00/- p.m. in North of Rajpath

In addition to this, additional Rs.300/- p.m. per taxi in South of Rajpath and Rs.600/- p.m. per taxi in North of Rajpath.

15. It was these aforesaid rates, which were challenged in CWPs No.2751 and 3341/1991 and it is stated that this High Court in its Order dated 24.09.1993 directed the petitioners to pay the license fee at the rates fixed by the Administrator, NDMC. The revised rates were fixed by the Administrator, NDMC contained in resolution No. 6 dated 10.09.1993 as under:

Rs.800/- p.m. on South of Rajpath and Rs.1,500/- p.m. on North of Rajpath. In addition to this, additional license fee @ Rs.250/- per taxi on South of Rajpath and @ Rs.500/- p.m. per taxi in North of Rajpath shall be payable.

16. The aforesaid writ petition was subsequently withdrawn and the NDMC constituted a Sub-Committee on representation of the Association to look into the grievances and as per the recommendation of the said Committee vide resolution No. 3 dated 02.09.1994, the license fee was further reduced to Rs.1,000/- per month from 01.07.1991. The allottees in the present case are stated to have continued to pay only at the original rate of Rs.75/- per month fixed in the year 1968 apart from Rs.150/- per month for the additional area regularised in their names. It is in view thereof that the amounts of arrears are stated to be running into lacs. The findings are in the following terms:

6. The Chairman, NDMC has been satisfied that the following encroachments

have been made by the allottee unauthorisedly:

- (a) Public land has been encroached on the rear side of the telephone booth.
- (b) Additional storey has been erected on the NDMC property, which is an encroachment on the public premises.
- (c) Public passage on Janpath has been encroached by parking large number of taxis, which is causing obstruction in free movement of pedestrian traffic.

17. It has been stated that the petitioners had no right, title or interest. In fact, this position emerges in almost all the petitions on account of either transfer or demise of the original owner. It is stated that there was no reason for the petitioners to continue in possession of the telephone booths converted into taxi stands and, thus, the allotment has been cancelled.

18. In so far as Tibetan Market is concerned, in the affidavit filed by the Chairman, NDMC dated 03.11.2000, it has been stated that Tibetan squatters had been given permission to squat on pavement on tehbazari basis. Initially they were allowed permission for squatting for six months in 1953, but thereafter vide resolution No. 3 dated 02.11.1962, their permission for squatting was extended to a full year. NDMC subsequently allotted 24 stalls in front of Hotel Imperial to rehabilitate the squatters in April, 1971 and in terms of resolution No. 16 dated 06.04.1976, the Committee had decided to allow 100 per cent coverage of loft for storage purposes in all municipal markets. Since the stalls were located in municipal markets, the allottees were allowed to construct lofts in their respective stalls. It has been categorically stated in the affidavit that the telephone / taxi booths do not form part of the municipal market and as such the construction of loft over the telephone / taxi booth was unauthorised.

19. The respondents in their counter affidavit have more or less defended the impugned order on the same facts of encroachment on public land without authorisation and non-payment of license fee. It is in addition submitted that a similar impugned order was the subject matter of civil writ petition being WP(C) No. 1362/2000 decided on 25.05.2000 titled Sarabjeet Singh v. NDMC where learned Single Judge upheld the order and the Letters Patent Appeal filed against the said Order was also dismissed. A perusal of the judgment dated 25.05.2000 of learned Single Judge shows that a finding was arrived at that what was really allotted was a telephone booth and that too in the name of the predecessor. Unauthorised construction was found to have been carried out and there were obstructions to free movement of pedestrian traffic. Additional storey had also been constructed. In fact, the justification in the said petition to this additional storey was that all the neighbouring and adjacent shops had also constructed such floors and the petitioner therein should not be singled out. All these pleas were rejected and the writ petition was dismissed. The Letters Patent Appeal was also dismissed on 12.06.2000 in limini.

20. In so far as the present dispute is concerned, a copy of the Agreement in the

name of Sardar Jagat Singh was placed on record, which had been executed in the year 1968. The permission is for a telephone booth. The conditions of the license are as under:

1) The first party hereby admits and declares that the site underneath the telephone booth is and shall continue to be part of a public street and vests in the second party.

2) That the first party hereby agrees and undertakes to surrender the said booth as and when the permission to occupy the booth is cancelled and a demand to this effect is made by the second party, even without assigning any reason whatsoever.

The first party shall not be entitled to any compensation for any resultant loss or injury.

3) The first party hereby agrees to pay @ Rs.75/- P.M. and also undertakes to pay fee at any other rate, which may be prescribed by the Committee from time to time.

4) The first party hereby undertakes not to damage the telephone booth erected by the second party.

21. The size of the booth itself has also been denied as 6" x 14". It is stated that the masonry telephone booth was of 6" x 8" as would be apparent from the agenda item of the respondent dated 30.08.1997 where the discussion about the revision of rates took place. A reading of the said resolution shows that while considering the revision of rates at each stage, the masonry booth was mentioned as 6" x 8". The existence of the loft was also denied or authorisation for the same and it is stated that the same was constructed unauthorisedly in 1987.

22. In so far as the additional further space at the back of the taxi booth is concerned, the same was permitted subject to enhancement of license fee to Rs.300/- per month w.e.f. June, 1978 on the representation of the petitioner. On a representation of the petitioner, this license fee was reduced to Rs.150/- per month. The case, thus, set out by the respondents is that what was permitted was only a booth measuring 6" x 8" with permission later on granted to occupy the back space. The petitioners constructed double storey structure over the telephone booth. In fact, the petitioners are stated to have requested for permission to construct the first floor on 03.05.1985, which was declined on 13.06.1985. These letters have been placed on record to show that the respondents had taken a stand that it is not policy of the Council to permit any vertical extension of these booths.

23. In so far as what can be permitted as loft, etc. on which reliance has been placed, the same is stated to be for the functioning of the Estate Department and applied to shops / stalls / kiosks situated in municipal markets, while the taxi booths are not governed by such policy. This is the distinction between Tibetan

Market and the petitioners. The respondents have also emphasised the fact that the petitioners were part of the writ petition of the Association seeking to challenge the enhanced license fee and withdrew the said writ petition. It is not, thus, open for the petitioners to now say that revision of rates has no application to them.

24. The double storey structure constructed unauthorisedly is stated to have been demolished in the year 1986, but was rebuilt in June, 1986 and a show-cause notice was issued to the allottees on 30.10.1987, a copy of which has been placed on record. The construction was denied in the reply dated 05.11.1987, though there was an admission that a puce platform had been constructed. Subsequently, it was found that the allottee had constructed a double storey partition booth and was parking taxis in front of the booth as per the survey report of 12.03.1997. It is on the basis of the said survey report that the show-cause notice was issued at which stage of time even arrears of license fee were due.

25. The respondents have also brought to the notice of this Court the Gazette notification in respect of The Punjab Municipal (New Delhi Amendment) Act, 1984, which came into effect on 27.05.1984. Section 195(1)(b) of the PM Act was amended. In terms of the amendment, the requirement for issuance of notice within six months of completion of the building for action to be taken was deleted. Since the permission itself was asked for on 03.05.1985 as mentioned above, it is the amended provision which would come into force, which was not circumscribed by the requirement of six months' notice for taking any valid action. This is, of course, apart from the plea of the respondents that Section 195 would not apply to the present case since the construction was on a public street.

26. A recent Order dated 24.08.2004 passed in WP (C) No. 6603/1999 titled New Delhi Taxi Operators Association v. N.D.M.C. was also brought to the notice of this Court. The said writ petition sought declaration that only the District Magistrate had the power to fix the license fee in respect of taxi booths and for restraint orders against the NDMC, MCD as well as Commissioner of Police from cancelling the license pending consideration of the issue of license fee and for quashing of the resolutions dated 10.09.1993 and 02.09.1994. A perusal of the Order of learned Single Judge shows that learned senior counsel appearing for the petitioner Association stated that the challenge pertaining to the license fee demanded by NDMC was not being pressed. This being the position, the issue of challenge to the resolutions fixing the license fee no more remained open as the petitioners are members of the Association.

27. The submissions of learned counsel for the petitioners were based on the premise that the substratum of the impugned order was erroneous on account of both arrears of license fee and unauthorised construction. The loft was stated to be constructed by NDMC and in any case, the same had been demolished in the year 2000. Such lofts had been regularised for Tibetan Market. The parking of

taxi was permitted in terms of the permission granted by the DCP (Traffic). Whatever be the unauthorised construction was, in any case, removed in June, 2000. In so far as the issue of license fee was concerned, it was stated that the same was still open in view of the resolutions of 1979, 1994 and 1997. The fact that the petitioners were the legal heirs and in direct line of descent would entitle the petitioners to be substituted as licensees.

28. The distinction sought to be made by the respondents on account of Tibetan Market being a municipal market was disputed. The PM Act does not define "municipal market", though the NDMC Act defines "municipal market" in Section 2. The "municipal market" is defined to mean a market vested in or managed by the Council. A taxi stand was stated to be implicitly in the municipal market as it was adjacent to Tibetan Market. It was submitted that a reference to the definition in Wharton's Law Lexicon itself would show that it is implied that a taxi stand is in the municipal market.

29. The aforesaid pleas were disputed by learned senior counsel for the respondents. Learned senior counsel for the respondents emphasised the fact that the petitioners did not even file the documents of their rights, which was the Agreement dated 30.03.1968. The Agreement itself showed that what had been granted to the petitioners was a telephone booth. A reference was made to the document to submit that the Agreement of 1968 itself records that the permission had been granted u/s 173 of the PM Act. The said Section is as under:

173. Power to permit occupation of public street and to remove obstruction.- (1) The committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighborhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to:-

(a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer drain or water course or any movable overhanging structure projecting into such public street at a point above the said ground level.

(b) take up or alter the pavement or other materials for the fences or posts of any public street, or

(c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or

(d) make any hole or excavation on, in or under any street, or remove materials from beneath any street, so as to cause risk of subsidence, or

(e) erect or set up any fence, post, stall or scaffolding in any public street.

(2) Whoever does any of the acts mentioned in sub-section (1) without the written permission of the committee shall be punishable with fine which may extend to five hundred rupees and the committee or the secretary of the

committee or the Medical Officer of Health or any person authorised by the committee may -

(i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and such materials, goods or articles, or merchandise and any such fence, post, stall, or scaffolding.

(ii) and take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

(3) If the material specified in clause (i) of sub-section (2) has not been claimed by the owner within a fortnight of its having been deposited for safe custody by the committee or if the owner shall fail to pay to the committee the actual cost of removal or deposit in safe custody, the committee may have the material sold by auction at the risk of the owner, and the balance of the proceeds of such sale shall after deduction of the expenditure incurred by the committee be paid to the owner, or if the owner cannot be found, or refuses to accept payment the balance shall be kept in deposit by the committee until claimed at the risk of the person entitled thereto and if no claims is made within two years the committee may credit the amount to the municipal fund.

Explanation. - For the purposes of this section "movable encroachment" includes a seat or settee and "movable overhanging structure" includes an awning of any material.

It was, thus, submitted that this Section authorises and empowers to permit occupation of public street and removal of obstruction. Learned senior counsel for the respondents had referred to the judgment of learned Single Judge of the Punjab High Court in *Administration Municipal Committee, Rohtak v. Milap Chand Lurinda Ram*, AIR 1953 Pun 260 to advance the plea that if the permission as granted u/s 173(1) of the PM Act is withdrawn u/s 173(2), the person becomes a tress-passer as in the case of the petitioners.

30. A reference was also made to the provisions of Section 56(1)(g) of the PM Act to submit that all property vested in the Commissioner and / or erections vested in the municipality as may be made on a public street. The said sub-section is as under:

56. Property vested in committee. - (1) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified and situated within the municipality, shall vest in and be under the control of the committee, and with all other property which has already vested or may hereafter vest in the committee, shall be held and applied by it for the purpose of this Act, that is to say :-

(g) all public streets, not being land owned by Government and the pavements, stones and other materials, thereof and also trees growing on and erections,

materials, implements and things provided for such streets.

31. Section 3(13)(b) of the PM Act is stated to define "public street", which is as under:

3. DEFINITIONS - In this Act, unless there is something repugnant in the subject or context -

(13) (b) public street shall mean any street -

(i) heretofore leveled, paved, metalled, channelled, sewerred, or repaired out of municipal or other public funds, unless before such work as carried out there was an arrangement with the proprietor that the street would not thereby become a public street or unless such work was done without the implied or express consent of the proprietor; or

(ii) which under the provisions of Section 171 is declared by the Committee to be, or under any other provision of this Act becomes, a public street.

32. In view of the aforesaid, the provisions of the NDMC Act were referred. It was submitted that the Repeal and Saving clause is Section 416 of the NDMC Act and in terms of clause (a) of sub-section (2) of Section 416, the license granted under the PM Act was to continue under the provisions of the NDMC Act. The relevant provision is as under:

416. Repeal and Savings - (1) As from the date of the establishment of the Council, the Punjab Municipal Act, 1911, (Punjab Act 3 of 1911) as applicable to New Delhi, shall cease to have effect within New Delhi.

(2) Notwithstanding the provisions of sub-section (1) of this section -

(a) any appointment, notification, order, scheme, rule, form, notice or bye-law or issued, and any license or permission granted under the Act referred to in sub-section (1) of this section and in force immediately before the establishment of the Council, shall, in so far as it is not inconsistent with the provisions of this Act continue in force and be deemed to have been made, issued or granted, under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued or any license or permission granted under the said provisions;

33. A "public street" was defined in sub-section (39) of Section 2 of the NDMC Act, while sub-section (51) of Section 2 thereof defines "street" as under:

2. Definitions -

... ..

(39) public street means any street which vests in the Council as a public street or the soil below the surface of which vests in the Council or which under the provisions of this Act becomes, or is declared to be, a public street;

... ..

(51) street includes any way, road, lane, square, court, alley, gully, passage, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the roadway or footway over any bridge or causeway;

34. Section 224 of the NDMC Act was stated to be the corresponding provision of Section 173 of the PM Act, which is as under:

224. Prohibition of structures or fixtures which cause obstruction in street ?- (1) No person shall, except with the permission of the Chairperson granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street or upon over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a project over, or to occupy any portion of such street, channel, drain, well or tank.

(2) Nothing in this section shall apply to any erection or thing to which clause (c) of sub-section (1) of Section 229 applies.

35. Section 225 of the NDMC Act prohibits deposit of anything on the street except with the permission of the Chairperson and Section 226 empowered the removal of anything deposited or exposed for sale in contravention of the Act.

36. Learned senior counsel for the respondents also made a reference to the provisions of Section 11(n) and 11(p) of the NDMC Act. Section 11 prescribes the obligatory functions of the Council and sub-section (n) and (p) of Section 11 of the NDMC Act are as under:

11. Obligatory functions of the Council ?- Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Council to make adequate provisions by any means or measures which it may lawfully use or take, for each of the following matters, namely:-

... ..

(n) the construction, maintenance, alteration and improvements of public streets, bridges, culverts, causeways and the like;

... ..

(p) the removal of obstructions and projections in or upon streets bridges and other public places;

Thus, the construction, maintenance, etc. of public streets and removal of obstructions and projections on such streets falls within the obligatory function of the Council.

37. Learned senior counsel for the respondents emphasised that there were different Chapters in the NDMC Act dealing with different aspects. Chapter xviii

deals with Markets, Trades and Occupation, while Chapter XIII deals with Streets and Chapter XIV deals with Building Regulations. It was, thus, emphasised that these are all three different concepts and cannot be mixed up.

38. Taking into consideration the aforesaid factors and pleas, the rival contentions are required to be dealt with in five broad categories.

39. The first of these arises from the existence of Tibetan Market. The affidavit filed by the Chairman, NDMC referred to above itself shows that in respect of Tibetan Market, originally tehbazari rights were given in 1953 and subsequently, the NDMC allotted 26 stalls in front of Hotel Imperial to rehabilitate the squatters in April, 1971 and permitted 100 per cent coverage of loft for storage basis in all municipal markets. A municipal market cannot be compared with a taxi stand. A municipal market would fall within Chapter xviii dealing with Markets, Trade and Occupation. Section 316 of the NDMC Act provides for provision of the municipal markets. The deeds or license executed in respect of these persons occupying Tibetan Market stalls are for three years with right to renewal. In case of non-compliance of terms of license, proceedings can be initiated under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as per the deed itself. It is not the validity of Tibetan Market, which has to be determined in the present proceedings, but the fact that the petitioners are not and cannot be treated on para materia basis. The petitioners were originally allotted telephone booths which cannot be said to be a municipal market. There cannot be any implied coverage of the petitioners as a municipal market as is sought to be contended by learned counsel for the petitioners. For the same reason, the petitioners cannot place reliance on resolutions passed in respect of municipal markets and the shops therein including of 11.03.1977. The plea of the petitioners, thus, based on the existence and structures of Tibetan Market cannot be accepted.

40. The second aspect arises from the plea of non-existence of any unauthorised construction. This is based on the fact that the construction is alleged to have been made by NDMC or had been regularised as also the fact that this was more than 30 years old and no action could be taken against the petitioners.

41. In so far as the existence of construction is concerned and the same being 30 years old, the same cannot be borne out in view of the communications of the petitioners themselves seeking to construct the same on 03.05.1985, which had been rejected by the respondent on 13.06.1985. By that time, amendment to the PM Act as applicable to Delhi had come into being on 27.05.1984 in terms whereof the restriction of six months had already been removed. How could the construction exist if the plea of the petitioners was to permit construction on 03.05.1985? The judgment of the Division Bench of this Court in Municipal Corporation of Delhi v. Smt. Surjit Kaur, 1972 R.L.R. 13 would have, thus, no application as it was prior to the amendment.

42. The issue of the size of the booth, which as undisputedly masonry, itself is not in doubt in view of the resolutions filed by the respondents NDMC showing

the same to be of standard size of 6" x 8". The regularisation of the back portion was on the terms and conditions mentioned herein by increasing the license fee to Rs.300/- per month, which was subsequently reduced to Rs.150/- per month. This regularisation vide letter dated 21.02.1979 was only for occupation of additional space by the side of the booth and the unauthorised construction therein. This has nothing to do with the second storey constructed which was undoubtedly demolished in the year 2000 while taking action by the respondents in pursuance to the impugned order.

43. The show-cause notice issued on 30.10.1987 by the respondent referred to the additional construction on the first floor and staircase, which was admitted in the reply of 05.11.1987. The plea, however, raised was that the same was in existence since decades and the other constructions had been made for beautification and cleanliness. The inspection of 12.03.1997 found the extension of a double-storey structure and specific show-cause notice dated 17.06.1997 was issued in this behalf. The response to this dated 20.06.1997 stated that the second floor has been provided by the NDMC.

44. The false plea of the petitioners is apparent from these aforesaid facts since in 1985, the petitioners were seeking to construct the second floor.

45. The judgment in *M.C.D. v. Smt. Surjit Kaur* (supra) may also be referred to, which as discussed above, will not apply in view of the amendment brought about on 27.05.1984. The facts of the said case show that the building in question was constructed in 1957 and, thus, the notice under the unamended provision could have been issued only up to 30.06.1958. The right to take action under the unamended provision, thus, stood extinguished. This is not so in the present case as the amended provisions have been brought into force w.e.f. 27.05.1984 whereby the restriction of taking action within six months stands extinguished.

46. In this regard, learned senior counsel for the respondents referred to judgment of the Supreme Court in *Municipal Committee, Karnal Vs. Nirmala Devi*, which dealt with the definition of a public street under the Haryana Municipalities Act, 1973. It was held that private property on a public street is a part of the public street and in case of an unauthorised construction, the municipality is empowered to remove such unauthorised construction if encroacher does not voluntarily remove the same even after issuance of a notice for demolition.

47. It has also to be appreciated that the premise of the action to be taken u/s 195 of the PM Act is that there is a right to construct on grant of permission, but no such permission was taken. The question of construction and removal of a public street, however, falls under different Chapter since the power to permit such construction is u/s 173 of the PM Act. Section 195 cannot be said to apply to a public street. The very object of the unamended section was to protect construction, which may be permissible, but for which no permission was taken.

It cannot apply to encroachments on public streets or extensions made in violation of the license granted to occupy any portion of the public street. In any case, either way, the question is looked upon, the petitioners do not get the benefit of Section 195 of the PM Act.

48. The third aspect arises from the issue of the license fee payable. The plea of the petitioners is that they were paying Rs.150/- per month and there was no increase, so the demand of the higher fee was not maintainable.

49. New Delhi Taxi Operators Association of which the petitioners form a part inter alias challenged the increase in fee. The relevant prayers made in this behalf are as under:

(c) Issue a writ of mandamus directing the respondents not to collect license fee, tehbazari and pending charges in terms of the resolution marked as Annexure - F and G to the writ petition.

(d) Issue a writ of certiorari quashing the impugned resolutions dated 10.9.93 and 2.9.94 marked as Annexure - F and G.

A perusal of para 5 of the judgment dated 24.08.2004 in WP (C) No. 6603/1999 shows that this plea was not pressed. The said para 5 is as under:

5. At the outset, Mr. Ravinder Sethi, learned Senior Counsel appearing for the petitioner states that he is instructed not to press the challenge pertaining to the license fee demanded by NDMC. He states that under the interim orders passed by this Court, persons to whom the kiosks have been allotted have paid Rs.1 lac to NDMC. They would be paying the balance sum demanded within the time as may be reasonably granted by this Court. Counsel, however, states that prayer (b) be granted. In that, NDMC as well as police authorities be restrained from cancelling the taxi stand or harassing the members of the petitioner association.

50. The effect of the aforesaid is that since as per the resolutions passed by the respondents, the petitioners were liable to pay more and challenge to the same has been given up, as such they are liable to pay the higher amount. Even earlier, the Association had challenged the increase in 1991 by filing CWP No. 2751/1991, which was subsequently withdrawn. Thus, at no stage of time, the petitioners obtained any judgment in their favor.

51. The fourth aspect arises from the claim of the petitioners that they are not unauthorised occupants as they are the legal representatives or in direct line of descent as in the case of petitioner No. 2 in WP (C) No. 4001/2000 where petitioner No. 1 is the allottee. This plea is based on the resolution No. 50 dated 11.03.1977, which entitles substitution of the legal representatives. However, as noticed above, the resolution has been passed in respect of municipal markets by the Estate Department and would have no application in the case of such telephone booths or taxi booths. Be that as it may, this aspect is not really important even if the substitution is being sought for the reason that there is violation of the norms whereby unauthorised construction has been made and

license fee are in arrears.

52. The last aspect arises from the claim of the petitioners that the DCP had given a NOC for 15 taxis. This aspect again is of not much importance as there are no prayers made in this behalf and, in any case, what has to be considered is the action of the respondent against the unauthorised construction and non-payment of the license fee. In this regard, learned senior counsel for the respondents referred to judgment of the Full Bench of this Court in *Chandu Lal Etc. v. Municipal Corporation of Delhi*, (1978) 1 Del 292 by reference to para 25 to contend that in case of a license as distinguished from a lease, there is something less than a right to enjoy the property. A bare licensee cannot, thus, have any interest on property and cannot maintain an action for its possession since the right is only to use the property. Such right does not amount to an easement or interest in the property, but is only a personal privilege to the licensee. After termination of the license, the licensor is entitled to deal with the property as he likes. It was, thus, submitted that once an action has already been taken, the petitioners cannot seek re-possession.

53. Learned senior counsel further referred to judgment of the Supreme Court in *M/s. Anamallai Club Vs. Government of Tamil Nadu and others*, to emphasise that once possession has been taken, it cannot be restored in proceedings under Article 226 of the Constitution. The matter dealt with a license under the Government Grants Act. It was held that even in case of resumption of possession unilaterally without taking recourse to law, proceeding under Article 226 would not be the appropriate remedy to restore possession or establish title. Learned senior counsel also relied on judgment of the Division Bench of this Court in *Rajasthan Breweries Ltd. v. The Stroh Brewery Company*, 2000 4 AD Del 741 to contend that even if a license was wrongly terminated, the only right would be to claim for damages. However, it may be noticed that what is in test before this Court is validity of the decision to determine the license and the action has been taken pursuant thereto.

54. The result of the aforesaid is that the impugned decision of the respondents cannot be doubted on the issue of the action against unauthorised construction. The challenge to the license fee also does not sustain in view of the concession made by the Association in WP (C) No. 6603/1999, though it was subsequent to the impugned decision. It has to be appreciated that the respondent NDMC is the body entrusted with the job of maintenance of the public streets and to see that no obstruction is caused to the pedestrians thereon. The respondents have acted in furtherance of the same whereby the petitioners have made extra construction and encroachments apart from the fact that the petitioners failed to pay the enhanced license fee. The respondents in their wisdom have created the municipal market known as Tibetan Market and the petitioners cannot take advantage of the same to get themselves included in the same for claiming similar rights. The petitioners, in fact, did not disclose all the material facts while filing the writ petitions in as much as they failed to declare and produce the most

material document which was the original license agreement created in their favor by the respondents which specifies the rights created. Thus, the document creating the right itself was not produced.

55. In view of all the aforesaid facts, I am of the considered view that the petitioners are not entitled to reliefs claimed in the writ petitions.

56. The writ petitions are dismissed leaving the parties to bear their own costs.

57. Interim orders stand vacated.