

**(2022) 01 DEL CK 0213**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1403 Of 2022

**Suleman Abbas & Ors Vs North Delhi Municipal Corporation & Ors.**

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**Date of Decision :** 24-01-2022

**Acts Referred:**

**Citation :** ??????????

**Hon'ble Judges :** Vipin Sanghi, J; Jasmeet Singh, J

**Bench :** Division Bench

**Advocate :** Rekha Aggarwal, Monika Arora?

**Final Decision :** Dismissed

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## **Judgement**

Vipin Sanghi, J

CM No. 4043/2022

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 1403/2022 and CM No. 4042/2022

3. The petitioners have preferred the present writ petition to seek a writ of mandamus to respondent No. 1/ North Delhi Municipal Corporation

(â??Nr.DMCâ??) not to disturb, or create obstacles in the business activities of the petitioners on the alternate Tehbazari sites allotted to them vide

order dated 29.12.2021. They seek a direction for either withdrawal, or quashment of the letter dated 14.01.2022 issued to the petitioners to remove

the temporary tin roof structures placed by the petitioners on the Tehbazari sites allotted to them on 29.12.2021.

4. The case of the petitioners is that they had been re-located for the purpose of re-development, and upon completion of the re-development activity,

they have now been re-allotted the space for carrying on their hawking and

vending activity by the Nr.DMC vide order dated 29.12.2021.

5. We may notice that almost the terms and conditions of re-location, the second condition imposed on the petitioners is that, "you will not raise any structure at the site".

6. What the petitioners have done is to place temporary lockable structures with shutters at the hawking and vending sites allotted to each of them.

The photographs of the temporary structures placed by the petitioners have been placed on record at pages 69 and 70. We deem it appropriate to

reproduce the photograph at page 70 of the record, which appears as follows:-

7. The respondents have issued a notice dated 14.01.2022 to the petitioners directing them "to remove the structure raised at the relocated

Tehbazari site at Footpath of Red Light in between Lothian Bridge & Recruitment Office (Footpath of Nagpal Dairy Site Corner) within two days and

make it open to sky failing which the same will be removed by the department on your risk and costs". The said notice has driven the petitioners to

this Court to seek the aforesaid reliefs.

8. The submission of Ms. Aggarwal "learned counsel for the petitioners, firstly, is that the Supreme Court, in its order dated 06.02.2007 passed in

Sudhir Madan & Ors. Versus MCD & Ors., W.P.(C) 1699/87, had, inter alia, observed as follows:-

"In sub para (e) of paragraph (D), it is provided that the tehbazari/vending site shall measures 6' X 4' and open to sky. The

Municipal Corporation proposes to allow the tehbazari/vending sites to be covered wherever possible, for which a standard design will be

evolved by the Corporation. The expense on this account shall be borne by the allottee. This has been proposed with a view to prevent

illegal extension of tehbazari sites and also with a view to maintain uniformity.

We would like to add, that while doing so, no permanent structure shall be raised. The tehbazari/vending sites may be covered in such a

manner as to identify and demarcate the area available for tehbazari and with a view to afford protection against the elements to the

allottee(s) and their goods lying within the allotted site.

We also suggest that necessary provision be made in the Scheme for taking strict action against any allottee found to change or alter the

structure raised by the Corporation. If at any time, it is found that any change or alteration in the structure has been made by the allottee,

his license may be canceledâ??

9. Ms. Aggarwal submits that the aforesaid direction of the Supreme Court itself shows that the Municipal Corporation proposed to allow the

Tehbazari/ vending sites to be covered â?" wherever possible, for which a standard design would be evolved by the Corporation.

10. Ms. Aggarwal submits that the MCD came up with a public notice regarding squatters/ street vendors/ weekly bazaars on 17.08.2007 inviting

applications in terms of the order passed by the Supreme Court in Sudhir Madan & Ors. Versus MCD & Ors., I.A. No. 394 in I.A. No. 356 in W.P.

(C) No. 1699/87. She submits that the scheme framed by the MCD for Squatters/ Hawkers â?" 2007 under the National Policy on Urban Street

Vendors â?" 2007, inter alia, provided that â??Tehbazari/ Vending site shall measure 6â?? X 4â?? and will be covered by a standard design

in such a manner as to identify and demarcate the area available for tehbazari and with a view to afford protection against the elements

such as; Sun, Cold and Rain to the allottee (s) and their goods lying within the allotted sites. The expense on this account shall be borne by

the allottee. On the proposals from the Zones, site-wise standard designs will be provided by the Chief Architect of MCD alongwith designs

for moving carts, auto-rickshaw three-wheelers and four wheelers â??.

11. Ms. Aggarwal submits that the MCD itself came out with its design of the temporary structures to be provided to the hawkers and vendors in

terms of the aforesaid policy, which itself is referable to the order passed by the Supreme Court. She submits that a comparison of the design

prepared by the MCD, with the temporary structure placed by the petitioners at the Tehbazari sites, shows that there is no difference and the

petitioners have strictly complied with the same design as approved by the MCD. Ms.Aggarwal, therefore, submits that there is no illegality in the

conduct of the petitioners in placing the temporary structures at their hawking and vending site, which has been done only with a view to save the

petitioners and their goods and wares from the vagaries of weather, and to protect their goods.

12. We have heard Ms. Aggarwal and we are of the view that there is absolutely

no merit in the present petition. Firstly, the communication dated 29.12.2021 issued to the petitioners, re-locating the petitioners, expressly states that they shall not raise any structure at the site. Contrary to the said condition, the petitioners have gone ahead to bring the structures with shutters and a lockable door, and placed them at the hawking and vending sites. This itself tantamounts to breach of the condition imposed upon them in the order dated 29.12.2021.

13. Secondly, the concept of Tehbazari and Street Hawking and Vending does not envisage that the hawkers or vendors would occupy "round the clock, any particular place, or erect on the allotted site any structure" whether permanent or temporary, much less, on their own. All that the Supreme Court observed in the aforesaid order was that the MCD was proposing to allow the Tehbazari/ vending sites to be covered "wherever possible, for which standard design would be evolved by the Corporation. It does not mean that the hawkers and vendors can occupy permanently, or even round the clock, Tehbazari/ vending sites. The activity of Tehbazari / vending itself postulates that the activity would be carried out only on the days the said activity is permitted; during the times of the day when such activity is permitted, and within the area, within which the activity is permitted. There is no question of any hawker or vendor, staking a claim to occupy any public space in the name of hawking and vending, round the clock, by placing a lockable structure with shutters" temporary or otherwise, at the site and converting the same into a shop, where the hawker/ vendor and his goods can permanently remain round the clock.

14. In fact, the order dated 06.02.2007 passed by the Supreme Court itself cautions that no permanent structure shall be raised, and the Tehbazari/ vending sites may be covered in such a manner as to identify and demarcate the area available for Tehbazari and with a view to afford protection against the elements to the allottee(s) and their goods lying within the allotted site. The said protection can be only for the permitted duration of vending, and cannot be round the clock by creation, erection, or installation of a covered lockable kiosk with shutters. In fact, the Supreme Court also observed that the scheme should provide for taking strict action against any allottee found to change, or alter the structure raised by the Corporation.

Thus, even if some kind of structure were to be raised by the Corporation, that

would necessarily have to comply with the fundamental principles of hawking and vending taken note of hereinabove, and it was not left to the Tehbazari allottee to create, or place any structure, much less a lockable structure with shutters" on his own and as per his own sweet will. Such action" even the Supreme Court observed, may lead to cancellation of the license.

15. Ms. Aggarwal has also submitted that several other Tehbazari holders have erected similar structures in several parts of the city. If that has been

done, even that is illegal, and even that cannot be permitted. Two wrongs do not make a right, and there is no concept of negative equality.

16. It is clear to us that the MCD itself appears to have misunderstood the concept of street hawking and vending" if the submission of Ms.

Aggarwal were to be accepted, that they have themselves come up with the design of a lockable kiosk with shutters, which may be erected at the

Tehbazari site to provide protection against inhospitable weather conditions to the hawkers and vendors. A Tehbazari license is merely a hawking and

vending license on the street. The street is meant primarily for the use of the people to commute" either on foot or in a vehicle" motored or

manually driven. The Tehbazari license does not give a right to the licensee to claim or usurp any part of the public street, or foot path, for his or her

exclusive use by placing, either permanent or temporary structure. Just like the public, the hawker/ vendor can use the street, however, for carrying

out the activity of hawking/ vending on the street, he/ she must obtain a license. He may keep/ display his goods and wares strictly in terms of the

license However, that license cannot be construed as an allotment of a parcel of land on the street for the exclusive use of the licensee. The

installation of the lockable kiosk with shutters- of the kind placed by the petitioner, seeks to do that. We may also observe that the kiosks/ structures in

question are" in the context of the rights of the pedestrians and other users of streets, pathways and public spaces, permanent and cannot be

considered as temporary. This is because these structures/ kiosks" though not rooted and embedded into the earth, are not capable of being moved

by persons while use in public streets, pathways and spaces, if they are found to be causing obstruction. They would require several people to move

them from one place to another, and may even require machinery and equipment

for being moved. Thus, for all practical purposes they are permanent.

17. The state of the city today is alarming vis-à-vis hawking and vending activities which are taking place in already crowded markets. The open spaces meant for pedestrians, commuters and market goers have been completely taken over by the street vendors and hawkers, to the grave detriment of the citizenry.

18. Recently, we had occasion to look at photographs of hawkers and vendors in Chandni Chowk area, carrying on their hawking and vending activity on open pavements and path ways. We found that the said activities were being carried out in a completely unregulated manner, and hawkers and vendors have sprawled themselves, and their goods, at will, all over the place, including right in the middle of the walk ways and even under the bus shelter.

19. If the submission of Ms. Aggarwal were to be accepted, it would mean that those granted Tehbazari licenses would then be in a position to bring lockable structures with shutters "of the kind that the petitioners have brought on the hawking and vending sites, and place them round the clock under the garb of protection from the vagaries of weather thereby, in effect, taking over the open space for their exclusive use and occupation, and taking away the open space for use by others, even during the times when they are not supposed to hawk, or vend at the allotted sites. This is completely impermissible.

20. We, therefore, dismiss the present petition with costs quantified at Rs.5,000/- payable by each of the petitioners. The costs be deposited with the DSLSA within two weeks.