

Equivalent citations: 124 (2005) DLT 466

Bench: S R Bhat

Dharam Singh And Ors. vs Municipal Corporation Of Delhi And Ors. on 7/10/2005

JUDGMENT

S. Ravindra Bhat, J.

1. The petitioners in these proceedings, under Article 226 of the Constitution have questioned an agreement entered into between the first respondent (hereafter called as the `MCD') and the respondent No. 2, which is a non-governmental organization (NGO, hereafter called by its name as `Manushi'). That agreement introduces a pilot scheme (hereafter "the project") aimed at rehabilitating street vendors. The project is located at Sewa Nagar, New Delhi.

2. The petitioners reside in Sewa Nagar, a Government colony comprising nearly 2,500 quarters; the colony is inhibited by Government employees. The land owning agency of the colony is the Land & Development Office, the 5th respondent (hereafter called as `the L & DO'). The petitioners object to the project on the ground that it is contrary to decisions of the Supreme Court as also express provisions of law. It is averred that the MCD is seeking shelter and order of the Supreme Court dated 10.4.2003 made while disposing of IA No. 393 in WP (C)1699/1987.

3. The petitioners take exception to the fact that the MCD relies upon the order of the Supreme Court, to say that the project was approved by the Court. It is averred that terms of the order establish that the attitude of MCD is mischievous; the Court never approved the scheme. The petitioners aver that the terms of the agreement entered into between the MCD and Manushi envisaged only redesigning of rehris on footpaths, which imply structures that are platform on wheels or takhts. It is further alleged that Manushi has proceeded to erect permanent structures on the footpaths/pavements in the implementation of the project. The petitioners also draw a distinction between the hawking and squatting (the expression being known as `tehbazari'). It is stated that in the case of hawking, the vendor is permitted to move around and sell his wares or goods. He does not possess the right to sit in a particular place. In the case of squatting, however, the vendor is permitted to sit and trade his goods at a given place; such a license is called tehbazari.

4. It is alleged that apart from the road being affected by the kind of construction which is proposed, squatters also affect the quality of life; they will create insecurity in the colony, lead to increase in noise pollution levels and other forms of undesirable activity. It is averred that though the project envisages redesigning of rehris/takhts, in reality the road is being constructed upon by raising a platform/pavement on which permanent structures have been put up for the vendors. This is impugned as contrary to the provisions of the Delhi Municipal Corporation Act, 1957 (hereafter called `the Act').

5. The petitioners rely upon letters/communications written to the MCD by Central Government agencies such as L & D O, CPWD and also the DJB, which voice concern and record reservations about the feasibility of the project. These are a letter dated 29.11.2004 written by the Director, Central Public Works Department ("CPWD") to the MCD requiring that wherever footpath in government colonies are considered for vending, the concerned Executive Engineer of CPWD may be included as member of the Committee and also that norms prescribed in Delhi Master Plan ought to be complied with. Another letter again of CPWD dated 6.12.2004 written to the MCD has been relied upon. The Executive Engineer, CPWD stated that the residents of the locality were complaining about the implementation of the project on account of obstruction to enter, security etc. It was also stated that the CPWD was not consulted and that L & DO was owner of the land.

6. The petitioners place further reliance on another communication from the office of the L & DO written to the Executive Engineer (CPWD), asking the latter to advise MCD not to put up stalls or unauthorized structures without prior permission of CPWD since the colony is under the care and supervision of CPWD. A similar letter, dated 16.12.2004 was written by the office of Land & Development Officer to the Chief Engineer, CPWD.

7. The petitioners submit that the agency concerned with the maintenance of the colony is the CPWD which has objected to the scheme, particularly unauthorized construction of stalls etc. The letter dated 20.12.2004 written by the CPWD is relied upon for the purpose. Through this, the CPWD sought the intervention of L & DO, to request the MCD to remove/stop construction of the pilot project at the present location. The CPWD alleged that MCD did not consult before the project. The petitioners also allege that Delhi Jal Board (DJB), which has to maintain water supply and sewerage lines did not consent to the project. Letters/communications written by the DJB particularly the letter dated 18.1.2005 requesting the MCD to issue necessary instructions to stop work in the project and shift it to a suitable distance from the water and sewage services, have been relied upon.

8. It is alleged by the petitioners that the original permission granted by the MCD was only for redesigning rehris and platforms; in reality, Manushi constructed permanent structures. MCD appears to have realized this and its agreement with Manushi was subsequently amended. These clearly point at the fact that the MCD is aware of ground realities and is nevertheless proceeding without any concern about opposition from several government agencies and without being sensitive to the residents of the locality.

9. The petitioners submit that even as per the scheme under which the project has been entered into, hawking cannot be permitted in residential colonies, if local residents object to the arrangement. The respondents have to ensure that the structures put up by Manushi are removed. The petitioners further allege that the MCD is under a duty by virtue of provisions under Sections 317, 320-322 of the Act to ensure that streets and pavements are kept free of obstruction, of any kind whatsoever. The impugned project would negate those obligations. The erection of permanent structures with the help of iron angles and covered footpaths/pavements are illegal encroachments; they cannot be tolerated under the provisions of the Act.

10. It is also submitted that in the guise of rehabilitation of hawkers/street vendors the petitioners' right to life under Article 21 of the Constitution cannot be impaired. The right to squat on public streets is not a part of right to life under Article 21 of the Constitution of India; it is part of the right to carry on trade or business activity, under Article 19(1)(g) of the Constitution. That right is regulated reasonable restrictions which can be imposed by appropriate legislation. In this case the provisions of the Act compel the MCD to ensure that the hawkers/vendors do not cause obstructions on the road and also do not create nuisance.

11. The MCD in his counter affidavit alleges that the petition is motivated. It has relied upon a resolution No. 502 dated 11.9.2002 by which certain policy measures with regard to street hawkers and street vendors was proposed; according to those new norms certain rights would be given to hawkers and tehbazari on footpaths, keeping in mind socio-economic requirements of the neighbouring locality; hawking would be permitted in residential colonies since it is a necessary service. However, if local residents object, that would be subject to change. In other words, where there is no ban on hawking/tehbazari; such activity, both covered and open should be allowed as per the new registration system. The MCD has also stated that no tehbazari can be allowed in banned areas. The MCD further states in its counter affidavit that the resolution was brought to the notice of the Supreme Court; as also the intention to support two pilot projects/model projects.

12. The MCD has described the project as a model one, aimed at creation of a modern market for hawkers in order to find a viable and dignified way of absorbing vital service providers in the city's economy. It is averred that the agreement with the Manushi has been entered into, in bona fide exercise of power for the public good; it was preceded by extensive consultations between the MCD and Manushi on all aspects including the technical concerns. The project is well within its powers under the Act; its agreement with the

Manushi is neither illegal nor in any way improper.

13. Manushi in its affidavit has questioned the credibility and locus standi of the petitioners, particularly the petitioner association, which is attacked as a bogus organization formed principally to undermine the project. It is alleged that the claim of the petitioners to be representing the residents is entirely incorrect; such associations in Government colonies are not recognized. Allegations of harassment by the first petitioner, of certain residents in the locality have also been leveled. Manushi has relied upon a first information reports said to have been registered against a petitioner, who is facing criminal charges and is on bail. Particulars of the first information report etc. have been detailed in the counter affidavit of the second respondent. It is also alleged that the petitioners and certain other elements in the locality are hand in glove with certain anti-social elements who are involved in extortions.

14. Manushi avers that modern markets for hawkers in Delhi were conceived to give effect to certain judgments of the Supreme Court in Bombay Hawker's Union and Ors. v. Bombay Municipal Corporation - (1985) 3SCC 520, Sodan Singh v. NDMC - Gaiinda Ram v. MCD and Ors. (1993) SCC 178. It has relied upon the National Policy on Street Vendors. It is averred that the number of vendors in Delhi is estimated to be 2,00,000 or so; nevertheless, the number of licenses granted is less than 4000. Consequently, about 98 per cent of such vendors are illegal and have to bear the brunt of officials' ire and face the routine trauma of clearances. It is stated that on account of its efforts the Central Government issued a new policy for rehri vendors and rikshaw pullers. Thus, it is submitted recognizes that as employment of the hawkers have to be free from the clutches of license/permit/rehri system.

15. The Salient features of the pilot projects are that each vendor :-

(1) pays rent to MCD and sit within Sanyam Rekha that is a mutual agreed line.

(2) contributes fixed amounts of Rs. 50-100/-, for garbage cleaning and recycling. It is averred that four persons' services have been engaged to clean and sweep the market three times a day.

(3) pay for their own stalls also contribute to the development fund for up-gradation of civic facilities; the payment for electricity and water consumption is also made.

(4) can occupy and trade from only one stall.

16. It is alleged by Manushi that no inconvenience is faced by local residents. Manushi relies upon what it terms as signature campaign of genuine residents, who have no objection and who support the project; it denies the allegations that it has affected the supply lines of Kasturba Nagar. It is alleged that those vendors have existed always; photographs have been relied upon to support this submission, and also to show the pre-project conditions, whereby the vendors were occupying the roads, and the pavement had all but vanished. It is denied that clearance was not taken from the DJB. It has relied upon meetings held between officials of the DJB MCD and itself for the purpose.

17. The CPWD which is respondent No. 4 in the proceedings filed a short affidavit. According to its averments the land owning agency of Sewa Nagar is the L&DO, the 5th respondent. The colony is maintained by CPWD. As per prevalent guidelines the external services of the colony have been transferred to local bodies for maintenance. Accordingly, the maintenance of roads, footpaths, drains and removal of garbage etc. are under the care and maintenance of MCD; external water supply lines and external sewage lines are under the care and maintenance of DJB. It is averred that such local bodies levy service charges from the CPWD for such services; however, ownership of the land vests with the L&DO. The CPWD avers that since it is entrusted with the task of maintenance and other services related to the colony it objected to the construction in question. The CPWD relies upon a meeting held on 7.1.2005 in which various representations of various bodies were present. It is stated that certain conditions were to be adhered to :

- a) there should not be any obstruction on the movement of residents in the colony;
- b) construction should not interfere in the maintenance and provisioning of the services to the colony;
- c) local residents should be taken into confidence before implementation of the scheme;
- d) permanent shops should not be constructed; so that disrupted service lines can be conveniently maintained and replaced;
- e) shops should be located away from boundary walls.

18. The DJB which is respondent No. 6 in its affidavit avers that it was invited to attend only one meeting by the MCD; certain water and sewage lines exist at the place. Hence, it wrote a letter to the MCD on 18.1.2005 stating that the construction should not create obstructions that would hinder the removal of blockages or falls in the water supply/sewage lines. The DJB admits however the work undertaken by the MCD is for betterment of hawkers and also make the efforts more habitable. However, it stated that it would be in the interests of all that the stalls in question ought not to be constructed so as to cause hindrance however the existing water supply and sewage lines. A small plan has been annexed with the affidavit disclosing the existence of these lines; they are in the middle of the road. Certain photographs which show the state of affairs existing at the time of the implementation of the project, [which disclose the existing pavement as compared with the new pavements that have been constructed] have been annexed with the affidavit.

19. Mr. V.K.Shali, learned counsel appearing for the petitioners submitted that MCD's seeking shelter under the Supreme Court's order is incorrect. The project is contrary to provisions of law. The action of MCD in approaching the Supreme Court with an application and somehow trying to secure an order shows its mala fide intention. The order makes it clear that the Court never put its seal of approval on the project. He also relies upon the order which contains resolution of MCD, of 2002; particular reliance is placed upon the condition that if local residents have objections or reservations to the policy for rehabilitation of street vendors/hawkers the project would be subject to change.

20. Learned counsel submits that the agreement between the MCD and Manushi itself had some lacunae inasmuch as the MCD appears to have allowed permanent construction on the site. After protests by the petitioners and local residents, and concerns expressed by government agencies, a supplementary MOU was entered into which sought to remove the deficiency and clarify that permanent structures cannot be put up. However, in reality footpaths have been constructed and permanent constructions by way of putting up iron angles which are covered on the top. These are nothing but obstructions under the Act. They caused hindrance to the pedestrian public. Besides the existence of these structures, permission granted to the hawkers has resulted in great nuisance to the residents in the colony.

21. Learned counsel for the petitioner has relied upon the letters written by the CPWD, L&DO and the DJB as well as contents of some of the minutes of the meetings to contend that the MCD and Manushi are proceeding with the project in the teeth of opposition by governmental agencies. It is submitted that the MCD, a local authority is merely a service provider entitled to maintain the roads and streets. However, the ownership of the land and the duty to maintain the internal service is with Central Government authorities. In these circumstances, the MCD should not have proceeded with the project, howsoever laudable the objective might be.

22. Learned counsel for the petitioner has relied upon the provisions of Sections 298, 299, 317, 320-322 of the Act to say that the kind of pavement/structures put up by Manushi are obstructions which have to be removed by MCD. Learned counsel for the petitioner relies upon the two judgments of the Supreme Court in support of his submission that neither the MCD nor the court can permit such structure and activity. These judgments are Municipal Corporation of Delhi v. Gurnam Kaur, AIR 1989 SC 101, AL Ranjane v. Ishwar Das Sethna .

23. Learned counsel submits that judgments of the Supreme Court in Sodan Singh v. NDMC - and also the judgment in Bombay Hawker's Union and Ors. v. Bombay Municipal Corporation - (1985) 3SCC 520, laid down that no person has a right to carry on his or her trade or business so as to cause nuisance or inconvenience to other member of the public; streets by their nomenclature are to be used by the general public and have not been laid to facilitate the carrying on of profit, trade or business.

24. The counsel for the petitioners lastly submitted that the project is contrary to the provisions of the Master Plan for Delhi which has the force of law. He submitted that the project cannot derive any legitimacy on the ground of being conceived in furtherance to the national policy for hawkers or any other initiative at the behest of the cabinet if it is in violation of express provisions of law.

25. Mr. Anoop Bagai, learned counsel for the MCD submitted that the project is in order; it was meant as a step towards rehabilitation of hawkers and street vendors. He relied upon the judgment of the Supreme Court Gaiinda Ram v. MCD . Learned counsel also stated that the Supreme Court had been informed about the policy to rehabilitate the hawkers and street vendors pursuant to MCD's initiative. Reliance was placed on the order of the Supreme Court dated 10.4.2003 in IA 393 (in WP No. 1699/1987). It was submitted that the MCD had made its intention clear and moved an application by way of abundant caution; the Court had expressed its prima facie, approval with the public purpose and welfare of the people intended to be achieved. It is submitted that this was pursuant to the resolution of the MCD made in the year 2002. Hence, the occasion for its implementation arose later.

26. Mr. Bagai also stated that the petition is motivated and all the agencies were consulted and taken into confidence by the MCD while conceiving and implementing the project. Learned counsel relied upon minutes of the meeting conveyed by the Commissioner of MCD which was attended by representatives of the Delhi Jal Board (in short `DJB') the BSES (the electricity licensee) etc. He also submitted that subsequent to that meeting another meeting was held in which the representatives of the CPWD as well as L&DO were present. Learned counsel placed reliance upon the following extract of the minutes of the meeting held on 7.1.2005, which were drawn on 10.3.2005:-

"(i) CPWD representatives suggested that construction should not be done in the bye-lanes as it may create problems for maintaining various civic facilities in the residential area. It was decided that the project will be restricted to both sides of the main road area excluding the bye-lanes.

(ii) The L&DO representatives stated that the construction should only be temporary in nature and ownership vested with the Government. It was conveyed that no vendor will be given ownership of the land in the project and they are only being given the tehbazari to earn their livelihood. It was also assured that all the construction will be temporary in nature only and the instructions has already been passed on the facilitating NGO's.

(iii) It was also discussed that these hawkers and street vendors have been earning their livelihood for quite some time in the area and the present project only a step towards providing them a decent livelihood option."

Learned counsel also relied upon minutes of meeting dated 11th May, 2005, to say that all the agencies were called even during course of hearings, and their views were taken.

27. Mr. Kailash Gambhir, learned counsel for the L&DO submitted that intention of the project might be laudable; however, the L&DO had expressed its reservations. He submitted that the situation that existed before the project was conceived and implemented was indeed appalling; the road, and well as pavements were badly encroached. The project undoubtedly was a measure aimed at improving the situation and also rehabilitating the existing hawkers and street vendors. He however, relied upon the letters that were placed on record by the petitioner to say that being the land owing agency, the L&DO was within its right to express concern that the hawking and vending activity should not be carried out within the colony. Besides, he

submitted that even though the MCD is the agency and legally bound to maintain the public streets, nevertheless, it has to ensure that hawking and street vending do not result in nuisance. Learned counsel further submitted that permanent structures are impermissible either in terms of the arrangement between MCD or under law. He sought to rely upon certain letters written by the L&DO in relation to the minutes of meeting dated 10.3.2003, to state that they were not properly recorded. However, no further affidavit or letter/minutes in that regard were filed.

28. Mr. Sandeep Agarwal, learned counsel for the DJB submitted that in principle the DJB did not have any objection or reservation about the project. He, however, submitted that in the event of any blockage in the sewer lines or problems with the water supply, the DJB would have to dig up the road. In such eventuality, the existence of structures would cause an impediment and there was likelihood of opposition by street vendors. He submitted that if the second respondent would ensure that all the hawkers gave a proper undertaking that in such an eventuality, they would not obstruct repair work that may include digging and dismantling of existing pavements, etc , the DJB would have no objection.

29. Ms. Pinki Anand, learned counsel for submitted that the entire petition is motivated. She objected to the maintainability of the petition on the ground that it is a mala fide by certain undesirable elements living in the colony to sabotage the project which is a rare instance of State intervention aimed at rehabilitation of the weaker sections of the society. In support of her contentions, she relied upon various complaints written by the residents of Sewa Nagar, against petitioner No. 1. Certain affidavits stated to be of people living in the locality and also having their shops has been produced in support of the submissions that some of the petitioners are threatening the people as well as the vendors and those involved with respondent No. 2. Reliance has also been placed on representations written by some house wives living in Sewa Nagar against Mr. Umesh Rawat, the President of the Resident's Welfare Association of Sewa Nagar and Kasturba Complex complaining of objectionable conduct. She also submits that the Central Government itself has not recognized the two associations which claim to be representing residents of the locality.

30. Ms. Anand further submitted that the locus standi and intentions of Sh. Rawat and petitioner No. 1 are highly suspect, since, criminal proceedings were filed, by two women living near his house. They had complained against him and consequently proceedings were initiated which led to his being named in a First Information Report (FIR) and later, his securing bail. These incidents allegedly occurred in 2003 when the Chief Welfare Officer, intervened against said Mr. Rawat and recommended registration of the case. Consequently, an FIR was registered against Mr. Rawat under Sections 509 read with Section 506 Indian Penal Code. It was alleged that said Mr. Rawat absconded and eventuality his bail application was rejected. He later secured regular bail on 28.2.2004. It is alleged that said Sh. Rawat had continuously terrorized people in locality whom he is allegedly representing and the complainants in those proceedings, who had alleged sexual harassment had to seek alternative allotment of government accommodation. Learned counsel also submits that despite detailed allegations in this regard, about conduct and nature of the said Mr. Rawat, the petitioner has not denied existence of such criminal proceedings; in fact there is just a bald denial; and vis--vis the proceedings, the comment made in the rejoinder is that they are sub-judice. Learned counsel further submitted that the conditions prevailing earlier in the Sewa Nagar and Kasturba Complex were primarily on account of persons who had vested interest by deriving advantage by patronage and clearing hafta from the vendors and hawkers. That whole system was now being dismantled and the vendors/ hawkers are getting an opportunity to lead a life of dignity, free from harassment by vested interests; since such persons [including the petitioners] stand to loose by the arrangement they are objecting to the project.

31. As far as merits of the project are concerned, counsel submits that a task force for street vendors by the Ministry of Urban Development in 2002. It formulated a policy, which was ultimately approved by the Central Government in January, 2004. The developed the pilot project for street vendors keeping in mind the national policy as well as the new policy measure adopted by the MCD by a resolution No. 505 dated 11.9.2002. and MCD signed an agreement, dated 12.5.2003, for execution of the project. The terms and conditions of the agreement between two parties were contained in MOU dated 5.11.2003. Prior to this

Manushi submitted detailed architectural plans for strengthening infrastructure in the area including park fronts as well as designs for three types of stalls. None of these involved any concrete permanent structure.

32. It is submitted, that the project has been undertaken, by for the betterment of vendors. In terms of the arrangement, the acts as a facilitator and designs the rehri/takht. It also ensures that street vendors are kept within a limit and for this purpose; a concept known as `sanyam rekha' is drawn; it is a line beyond which the vendors cannot operate. Learned counsel submitted that the project does not violate any provisions of law. She submitted that MCD is authorized to grant license to hawkers within the framework of law. In fact these hawkers were within the area and all that is being done is to improve their lot. has undertaken the project and developed hawking in an organized and scientific manner so that the vendors are assimilated in the society and are not exploited.

33. Learned counsel submitted that in terms of Section 298 read with Section 420 of the Act, the MCD was within its right to permit hawking. It is submitted that the ownership of streets and responsibility to maintain it, lies with the MCD. Learned counsel has relied upon 5 Judges bench judgment of the Supreme Court in Sodan Singh v. New Delhi Municipal Committee to say that the right to engage in street trading amounts to profession or avocation under Article 19(1)(g). She relies upon paragraphs 17 and 18 of that judgment to said that right to carry on business under Article 19(1)(g), on street pavements if properly regulated cannot be denied on the ground that spaces are solely meant for pedestrians and for no other use. The Court had held that allowing the right to trade without appropriate control would lead to undesirable results. Particular reliance was placed on the observations of the Supreme Court that provisions of Municipal Acts should be construed in a beneficial manner and that if there was some ambiguity, to enable municipalities to liberally exercise their authority both for granting permission to individual for making other uses of pavements and for removal of any encroachments, which in their opinion may construed undesirable obstruction. The Court made a specific reference to provisions of Delhi Municipal Corporation Act.

34. The locale of the project, it was submitted, is a 21.7 meters wide road that starts from Sewa Nagar railway crossing and leads to Kotla Village, covering a total area of 169 meters to accommodate about 100 stalls. After a 6x6 ft. stall and 6 ft. wide pavement, the road space left is 14 meters or 42 feet wide, which is an accepted standard for urban planning. This is not a heavy traffic road and serves only the needs of local residents. The second locale is on 18 meters (54 ft) wide main road that comes from defense Colony Flyover and ends at the Sewa Nagar nalla, where only mobile stalls are provided. It was submitted that previously, the local mafia was "selling" electricity illegally for Rs. 100 per month; in contrast, has provided safe wiring and separate meters for vendors of the pilot project area so that they are not compelled to pay exorbitant amounts for stolen electricity. By providing them safe and legal connections not only ensures that the vendors pay regular market price of electricity consumed but also that they escape being to be at the mercy of criminal mafias for availing this necessary facility.

35. Counsel also relied upon judgment of the Supreme Court in Ganda Ram v. MCD to say that vendors would fall within the categories recognized by the Court and that they were functioning in the same localities. The other judgment relied by learned counsel was a subsequent decision in Saudan Singh by the Supreme Court of India reported as . She states that squatting rights were expressly recognized as is evident in para 11 of the said judgment.

36. Ms. Geeta Diwan Verma, applicant in CM No. 3447/2005 sought permission to intervene in the proceedings, in support of the petitioner. She was allowed to address the Court. In addition to her oral submissions, a written note was prepared and handed over to the Court. The main submissions made by Ms. Verma were that the project violates the Master plan policy for informal sector and that it violates or jeopardizes the plan scheme of the area. According to Ms. Verma lay out plan procedure in the master plan indicate use premises to operationalize master/ zonal plans. The concerned used premises are the informal sector unit, which have to be indicated in the approved lay out plan as per Clause VII of the Code. It is submitted that there is flaw about the unit which leads to the scheme being contrary to the lay out plans.

37. The project has also been attacked by the intervenor on the ground that the MCD is not permitted under any of the provisions of the Act to enter into arrangements that NGO's or other groups for facilitating or carrying out hawking activity. It is further submitted that provisions of Section 12 of the Delhi Development Act enjoin or restrain people from undertaking development except in accordance with the provisions of the Act. It is also submitted that approval of MCD is required for putting up an improvement scheme which is what the project purports to be.

38. Before proceeding with the discussion on merits, it would be necessary to notice the terms of the order of the Supreme Court dated 11.8.2003, which reads as follows:-

"The Municipal Corporation of Delhi states in its application that consistently with the guidelines and directives issued by this Court they have applied their mind to several aspects related therewith, also having taken into consideration the Concept Note for Reforming the Licensing Regime for Street Hawkers and Rickshaw Pullers in Delhi by Hon'ble the Prime Minister of India and accompanying letter from the Lieutenant Governor of Delhi, and the policy formulated by the Ministry of Urban Development (Annexure `B'). The Municipal Corporation of Delhi has adopted Resolution No. 505 dated 11.9.2002, which reads as under:

"New Policy Measures Proposed"

- a) MCD would declare certain roads as "No Hawking Roads" and "No Tehbazari Roads (only the foot paths above the road are to be considered for the Tehbazaris)
- b) On certain parts of roads, certain open areas could be earmarked for hawking and Tehbazaris on foot paths, keeping in mind the socioeconomic requirements of the neighbouring locality.
- c) Hawking would be permitted in the residential colonies, as it is a necessary service for those areas. However, if local residents object this is subject to change.
- d) In all areas other than banned areas, permission of vending, hawking and Tehbazari both open and covered would be allowed as per the new registration system evolved by the MCD.
- e) Street Traders would pay their license fee to the MCD, in order to enable them to continue their activity, which is recognized by this Hon'ble Court, and allowed to earn their livelihood under protection of Article 19(1)(g) of the Constitution of India.
- f) No tehbazari or hawking would be allowed in the banned areas.
- g) MCD would charge a Fee ranging from Rs. 50 to Rs. 500 per month for open tehbazari and up to Rs. 1000 for a covered tehbazari site."

Mr.Rohtagi, the learned senior counsel submitted that this policy is proposed to be implemented as pilot projects/ model projects at Sewa Nagar and CGO complex, which if found to be successful would be expanded to other areas as well.

In response to the query of the Court that if the implementation of the policy and the projects is within the competence of the Municipal Corporation and is also consistent with the guidelines and directives issued by this Court, how does an occasion arises for moving this application to this Court, the learned Additional Solicitor General replied that the purpose of the Municipal Corporation was only to invite the attention of this Court ex abundanti cauteia so that the proposed move does not run the risk of unwittingly or in any manner coming in conflict with the directives/ guidelines issued by this Court.

Prima facie we are satisfied with the public purpose and welfare of the people sought to be fulfilled by the Municipal Corporation in implementing the projects.

The application is therefore allowed. However, make it clear that what is being implemented is the resolution/ decision/ project of the Municipal Corporation and this order would not in any manner be construed as a writ or command issued by this Court.

A word of caution before parting. The implementation of any policy or project, howsoever well-motivated it may be, depends on the bona fides and whole-hearted faithful implementation by the agencies involved in execution. We only hope and trust that such projects and policies shall not be shadowed by corruption and red-tapism which unfortunately has become the order of the day."

39. Relevant provisions of the Act are extracted below:

Section 298. Vesting of public streets in the corporation - (1) All street within Delhi which are or at any time become public streets, and the pavements, stones and other materials thereof shall vest in the Corporation:

Provided that no public street which immediately before the commencement of this Act vested in the Union shall, unless the Central Government with the consent of the Corporation so directs, vest in the Corporation by virtue of this sub-section.

(2) All public streets vesting in the Corporation shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the bye-laws made in this behalf.

(3) Notwithstanding anything contained in sub-Sections 1 and 2, the Central Government may, by notification, direct that all or any of the functions of the Corporation or the Commissioner, in respect of public streets under this Act shall be performed by such authority as may be specified therein.

...

Section 317. Prohibition of projections upon streets, etc.--(1) Except as provided in section 318, no person shall erect, set up, add to, or place against on in front of any premises any structure or fixture which will-

(a) overhang, jut or project into, or in any way encroach upon, and obstruct in any way the safe or convenient passage of the public along, any street, or

(b) jut or project into or encroach upon any drain or open channel in any street so as in any way to interfere with the use or proper working of such drain or channel or to impede the inspection or cleansing thereof.

2) The Commissioner may by notice require the owner or occupier of any premises to remove, or to take such other action as he may direct in relation to, any structure or fixture which has been erected, set up, added to or placed against, or in front of, the said premises in contravention of this section.

3) If the occupier of the said premises removes or alters any structure or fixture in accordance with such notice, he shall be entitled, unless the structure or fixture was erected, set up or placed by himself, to credit into account with the owner of the premises for all reasonable expenses incurred by him in complying with the notice.

...

Section 318. Projections over streets may be permitted in certain cases.--(1) The Commissioner may give a written permission, on such terms and on payment of such fee as he in each case thinks fit, to the owner or

occupier of the building abutting on any street--

(a) to erect an arcade over such street or any portion thereof; or

(b) to put up a verandah, balcony, arch, connecting passage, sun-shade, weather frame, canopy, awning or other such structure or thing projecting from any store y over or across any street or portion thereof:

Provided that no permission shall be given by the Commissioner for the erection of an arcade in any public street in which construction of an arcade has not been generally sanctioned by the Corporation.

(2) The Commissioner may at any time by notice require the owner or occupier of any building to remove a verandah, balcony, sun-shade, weather frame or the like put up in accordance with the provisions of any law and such owner or occupier shall be bound to take action accordingly but shall be entitled to compensation for the loss caused to him by such removal and the cost incurred thereon.

...

Section 320. Prohibition of structures or fixtures which cause obstruction in streets---(1) No person shall, except with the permission of the Commissioner 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 or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection 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 of sub-section (1) of section 325 applies.

Section 321. Prohibition of deposit, etc of things in streets- (1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in case thinks fit, place or deposit upon any street, or upon any open channel drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon.

(2) Nothing in sub-section (1) applies to building materials.

...

Section 420. Licenses for hawking articles, etc.--No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf,-

(a) hawk or expose for sale in any place any article whatsoever whether it be for human consumption or not;

(b) use in any place his skill in any handicraft or for rendering services to and for the convenience of the public for the purposes of gain or making a living.

40. The original records of MCD were produced at the conclusion of hearing. They contain the entire correspondence between Manushi and MCD, concerning the conceptualization of the arrangement, and the record of discussions between those parties, the internal thinking of MCD about the project, culminating in the Memorandum entered into between the two respondents. It also contains detailed description of the existing state of affairs, prior to the arrangement, whereby the vendors were functioning on the road, and there were considerable encroachment. Also, the maps and photographs along with the documents reveal a picture where the road space had been left largely unregulated. The scheme approved by MCD, and eventually leading to the MOU contemplated a regulated utilization of the space, and creation of pavements, where none

existed.

41. The official records also show that internal correspondence existed between CPWD, and inter se correspondence between the L&DO and CPWD stressed on the need to ensure that the lands owned by L&DO were not encroached. The L&DO even suggested that no scheme should be formulated without the consent of the Residents Welfare Association. All these agencies were involved in meetings held on 7th January, 2005, in respect of which minutes were apparently prepared on 10th March 2005. Minutes of that meeting, produced by the MCD during the hearing, record the concern of CPWD that no construction should be made on the bye-lanes in the colonies, as it would lead to problems relating to maintenance of civic amenities. A decision was therefore taken to restrict the project area to two sides of the main road, excluding the bye lanes. L&DO representatives informed that the construction should only be temporary, as ownership of the lands vested with the government. On this, MCD clarified that no vendor would be given any ownership rights, and only tehbazari rights were being given; it was also stated that the stalls were temporary, and no permanent construction was being put up. It was also stated that the vendors were earning livelihood for some time, and the arrangement was only to ensure a decent livelihood option.

42. During the course of hearing, the MCD had produced a copy of the minutes of meeting held on 11th of May, 2005; the Counsel for L&DO had relied upon a letter written on the same day, to MCD, in respect of the minutes of meeting dated 7-1-05 (drawn on 10-3-05). The minutes of meeting dated 11-5-05 show that L&DO was informed that the construction of stalls was not permanent, and that the MOU had been amended. The letter written by the L&DO the same date, in connection with the meeting of 7th January, 2005 dealt with those two concerns; additionally, it required that design of the portable stalls was to be approved by the CPWD and the Residents Welfare Association.

43. The pleadings and documents raise the following points for consideration:

- i) Legality and propriety of the arrangement entered into between the MCD and Manushi;
- ii) Whether the arrangement/ agreement was entered into without the involvement of the land owning agency, and in spite of its opposition;

Point No. 1

44. The facts of the case are not in dispute. The project of Manushi, approved and adopted by MCD is to put up certain stalls on the two sides of a road, at two different locales. The site in question, viz Sewa Nagar, previously had vendors on the public road. No pavement existed there. By the arrangement between Manushi and MCD, the street vendors are given newly designed stalls, and tehbazari rights were conferred on them. They function under the aegis of Manushi, which has devised certain guidelines to ensure cleanliness and hygiene. The payment of license fee, and all aspects relating to the functioning of the vendors, is discussed in the MOU. Since there was some ambiguity about the nature of the stalls, the MOU was amended to clarify that the stalls would not be permanent in nature.

45. The records produced, and the photographs placed on record in these proceedings, show that prior to the MOU, and the arrangement, there was considerable squalor and filth in the area. Indeed, there was no pavement. The records of MCD show that the trading by vendors was unplanned, and poorly regulated.

46. The most serious objection to the arrangement is to its legality. The Petitioners impugn the entire scheme as violative of provisions of the Delhi Municipal Corporations Act. Particular reliance is placed on Section 298, 317 and 318 of the Act, to say that no vending and permanent structures can be permitted on public streets.

47. Section 298 has the effect of vesting all the public streets in the MCD. The proviso to the section enacts that it takes effect even in respect of streets that had belonged to the Central Government, unless the latter exempted its application in respect of any street. It is therefore clear that all public streets vest in the MCD. It is under the legal obligation to maintain them, and regulate all activity in accordance with provisions of the Act. The provisions contained in Sections 317, 318 and 320 taken together, do suggest that the Commissioner, MCD can give permission subject to conditions, for a restricted and narrow category of cases, to put up arcades, balconies, and other similar structures over the public streets. The conditions, regulating such permission, have been enacted by these provisions.

48. Section 321 and 420 are important for a discussion of the controversy in issue in these proceedings. Section 321 imposes a bar on the utilization of stalls, chairs, bench, box etc on, inter alia, a street; however, such use is possible, if the Commissioner grants permission. Section 420 enables MCD to issue hawking licenses.

49. The above analysis shows that there is legislative concern that public streets ought not be used for other purposes; their essential character as streets has to be maintained. At the same time, Parliament, which enacted the Act was alive to the activities carried on traditionally in the form of permissive vending. Such activities were not prohibited; they were permitted in a limited category of instances, and were regulated. This balancing feat was deemed necessary on account of the traditional nature of such vending activity, and its use for the populace in general.

50. In the decision reported as Sodan Singh v. New Delhi Municipal Committee, pari materia provisions of the Punjab Municipal Act, 1911, governing the New Delhi Municipal Committee, at that point in time, were considered, by a Constitution bench of the Supreme Court. The Court was also called upon to decide whether a fundamental right under Article 19(1)(g) of the Constitution of India existed. The court held as follows:

"17. So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognised for a long period. Of course, that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations. What about the right to squat on the roadside for engaging in trading business? As was stated by this Court in Bombay Hawkers' Union v. Bombay Municipal Corporation the public streets by their nomenclature and definition are meant for the use of the general public: they are not laid to facilitate the carrying on of private business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is one side of the picture. On the other hand, if properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after day's work can pick up these articles without going out of his way to find a regular market. If the circumstances are appropriate and a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, we do not see any objection to his carrying on the business. Appreciating this analogy the municipalities of different cities and towns in the country have been allowing such traders. The right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads "to facilitate traffic" may be defeated. Allowing the right to trade without appropriate control is likely to lead to unhealthy competition and quarrel between traders and traveling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) or Article 19. If the matter is examined in its light it will appear that the principle stated in Saghir Ahmad case⁵ in connection with transport business applies to the hawkers' case also. The proposition that all public streets and roads in India vest in the State but that the State holds them as trustee on behalf of the public, and the members of the public are entitled as beneficiaries to use them as a matter of right, and that this right is limited only by the similar rights possessed

by every other citizen to use the pathways, and further that the State as trustee is entitled to impose all necessary limitations on the character and extent of the user, should be treated as of universal application.

18. The provisions of the Municipal Acts should be construed in the light of the above proposition. In case of ambiguity, they should receive a beneficial interpretation, which may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment which may, in their opinion, be constituting undesirable obstruction to the traveling public. The provisions of the Delhi Municipal Corporation Act, 1957, are clear and nobody disputes before us that the Municipal Corporation of Delhi has full authority to permit hawkers and squatters on the sidewalks where they consider it practical and convenient. Insofar as the Punjab Municipal Act, 1911 applying to the New Delhi area is concerned, the bench constituted by three learned Judges observed in Pyare Lal case¹ that the provisions did not authorise the municipality to permit stalls to be set up in the streets except temporarily on special occasions, like festivals, etc. and that the permission to the petitioner in that case had been wrongly granted initially. We do not agree with these observations, although it appears that in the light of the other circumstances, indicated in the judgment, the decision was a correct one. The provisions of both Sections 173 and 188 should receive liberal construction, so that the New Delhi Municipal Committee may be in a position to exercise full authority. Indeed some of the documents on the records before us indicate that the Committee had been in the past actually permitting hawkers and squatters on pavements in certain areas.

19. The controversy in the present cases, however, cannot be settled by what has been said earlier. The claim of the petitioners before us is much higher. They assert the right to occupy specific places on road pavements alleging that they have been so doing in the past. As has been stated earlier, the facts have been disputed and individual cases will be considered separately in the light of the present judgment. The argument, however, which has been pressed on behalf of the petitioners is that they have their fundamental rights guaranteed by Articles 19 and 21 of the Constitution to occupy specific places demarcated on the pavements on a permanent basis for running their business. We do not think there is any question of application of Article 21 and we will be briefly indicating our reasons therefore later. But can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business ? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place."

The court had considered the decision in Bombay Hawker's Union case, decided by the Supreme Court, earlier, in 1985. The court affirmed that whereas everyone has a fundamental right to trade, including to hawk, no one has a fundamental right to insist that he can trade at a particular portion of a public street. Social interest imperatives empower the local and municipal authorities to put in place regulatory mechanisms regarding places, zones, kinds of activity, etc. The Supreme Court has been continuously monitoring this exercise, to balance the two competing concerns, viz the public interest in ensuring that public spaces are strictly regulated and obstructions are minimized, and, at the same time, provide some breathing space to those engaging in traditional activities of hawking, and trading as tehbazari holders. These orders are reported in a series of directions, such as Gainda Ram v. MCD ; Gainda Ram v. MCD , etc. The Supreme Court had appointed two committees to go into all the areas, where squatting and permission had been granted by the civic authorities, with a view to streamline the activities.

51. The common defense taken by Manushi and MCD is that the project is further to a policy, which had been placed before the Supreme Court in proceedings, dated 10-4-2003, when the Court implicitly approved it. The relevant part of that order shows that the Court was cautious before it put its seal of approval on the proposal contained in the resolution of MCD; it therefore recorded its prima facie approval, even while emphasizing that the order could not be construed as a command to implement it.

52. A conjoint reading of the provisions of the Act, quoted above and the decisions in Gainda Ram and Saudan Singh's case would lead to the conclusion that no one has a fundamental right under Article 21 to

hawk on public spaces, or squat and trade there; such right to carry on trade is referable to Article 19(1)(g), and subject to all the restrictions which may be imposed by law, such as regulation on the nature of activity, number of licenses, location where such trades can be carried on, the hours of the day when it can be carried on, etc. The civic authorities, primarily charged with the duty of enforcing municipal laws, are within their rights to regulate the grant of licenses, and impose such conditions as are deemed necessary.

53. The judgments Saudan Singh, and the Gainda Ram cases indicate the concern of the Court to ensure proper and strict regulation of public spaces and pavements. However, the court was guided by the existing policies of the MCD and their enforcement. The court did not prohibit the formulation of any pilot project pursuant to new policies aiming at long term rehabilitation of street vendors and others carrying on trading activities in public spaces, whose businesses were beyond the pale of law, once the existing schemes reached saturation levels. Apparently, in the city of Delhi itself, there are about 1,50,000 street vendors. They cater to a felt social necessity, of providing goods and services. It may not be possible for the civic agencies to assimilate and provide for all of them; yet it is open to innovate and see if, within the framework of law, schemes can be formulated to provide for them. The National Policy, formulated by the Central Government, and adopted by the MCD in its resolution of 2002, aims at such an objective.

54. In judging whether any state action is impermissible, the court has to see whether it is in accordance with any provisions of law. The relevant provisions here are Sections 317, 318 and 321; they prohibit obstructions on pavements and public streets, except with the permission of the Commissioner. The discretion to be exercised here, in granting or refusing permission is to be in accordance with any policy in that regard, or having regard to the relevant facts and circumstances. The pilot scheme aims at providing licenses to about 150 odd street vendors, with standard design, and specific condition of locating the mobile platforms in a particular manner. One important factor to be noticed is that pavements have been put up on a public road, where none existed, and in some cases, fresh pavements, where the existing pavements had worn out completely. This is evident from the photographs relied upon by both parties, and also on the submission on behalf of the L&DO. The objection therefore is not so much as to the lack of power, as to the manner of its exercise; the correctness of the decision is on the basis that the circumstances of the case dictated that such a project ought not to have been located where it is. The other objection, articulated as to the legality of the scheme is that it permits permanent structures to be put up, something which is unacceptable.

55. On the first issue, as to the location of the project, the general objective as to utility of the services provided by the street vendors to a large section of the people living in the vicinity is not disputed. What is disputed is that their location would lead to nuisance. The location of the project had to be shifted; originally some parts of it overlapped with the common areas in the colony itself; the locale was later shifted out; at present it is outside the walls of the colony. It is claimed that the broken stretches of the wall enclosing the government colonies were repaired by Manushi. Whatever be the position in that regard, the fact today is that the project is located outside the colonies, and occupies part of the freshly put up pavement.

56. There is one more relevant factor, which is necessary for a proper appreciation of the issues. The street vendors had been carrying on their trades, admittedly for a long period of time, in the same area, though not at the present location. These very residents apparently utilized their services, and benefited from their trade. The road where the project has come up is neither an arterial road, nor admittedly congested and busy so as to result in traffic snarls, on account of the project. The road width indicated, after providing for the scheme is sufficiently ample. All these factors apparently were taken into consideration by the MCD while approving the project and entering into agreement with .

57. It was contended on behalf of the petitioners that the canopy forming shelter over the mobile platforms designed by and approved by MCD is actually a permanent structure, which cannot be allowed on a pavement, since it hinders pedestrian movement. Photographs were produced by the petitioners in that regard; , too, relied upon its photographs to contend that what has been put up is not a permanent structure, but a temporary shelter, to protect people from the elements, and that it can easily be removed or dismantled. As

stated earlier, no pavement existed on the road in question earlier; whatever did exist had been worn out. Hence, the project has resulted in a new pavement. The rehris or platforms are all of a uniform design, and as per the scheme, they are aligned by a Sayam Rekha. Hence, the objection of the petitioners that the pavements are obstructed by permanent structures is not borne out. If in fact the entire street was open, without a pavement earlier, the creation of a new pavement, and coverage to a certain width cannot be called an obstruction which is unreasonable as to warrant interference in the exercise of power by the MCD, in granting licenses under provisions of the Act. Apart from the aspect of obstruction, the petitioners had contended that the scheme is located over water and sewer lines, and that the activities of the street vendors would constitute a hindrance in the event of an emergency or blockage, which would require urgent repairs. The Counsel for DJB had stated that that agency would have no objection if each street vendor undertakes to vacate the place under his occupation at short notice, in the event of an emergency, requiring repairs to the water or sewer mains.

58. The petitioners had placed reliance on the decision in A.L. Ranjane v. Ravindra Ishwardass Sethna . In that case, the Supreme Court considered the correctness of a decision of the Bombay Court, which had held that the license granted to put up a tea stall in front of a building located at an intersection, being an area of 2.5 metres x 3.28 metres, was not correct, and that the structure put up constituted a nuisance. It is true that in that judgment, there are observations which suggest that public spaces have to be carefully regulated, and no permanent structures ought to be permitted. However, I am of the considered opinion that the judgment is not apt in the present case. For one, the dimensions of the spaces in the present cases are much smaller; two, the designs are standard, and approved by the MCD. The and MCD asserted that the what is put up is purely temporary, and can be dismantled easily, and fast. One more important factor, which cannot be lost sight of, is that the scheme is an experimental one, aimed at implementing a National Policy, to ensure fulfillment of multiple objectives, such as long term assimilation of the marginalized street vendors, into society; the efficient utilization of public spaces, in a systematic manner. I am of the opinion that there is no illegality on this score.

59. During the course of proceedings, the MCD produced the relevant official records. They contain the various communications between and MCD spread over three years, on various facets of the scheme, its initial proposals, and the various modifications which it underwent, after objections to one or the other ideas were raised. These records also show that a series of site visits were undertaken by MCD, and inspections of the site made, before, during and after putting up the scheme. As a result of these efforts, the original proposal both regards the design, as well as location of the project underwent change. Even the terms of the agreement were changed. Hence, the accusation of non-application of mind or arbitrariness does not have any merit. Several high ranking and senior officials of the MCD were actively involved in conceiving and overseeing the project. As per the arrangement, the MCD is under a duty to constantly monitor the project, and step in to remedy at any time.

60. The intervenor, Ms. Verma's basic objection was that under the National Policy, the MCD had to involve agencies in a particular manner; besides, she complained of undermining of the Master Plan applicable to the city of Delhi. According to her, the MCD could not have merely proceeded ahead to award the project to ; such an exercise had to be based on parameters laid down in the Policy itself. "NGO mediation" resulting in taking charge of the project is objected to. As far as the objection vis--vis the Master Plan was concerned, the submission was that the project disturbs the hierarchy in development, and violates the Lay out Plan requirements.

61. MPD-2001 itself contains a provision for the informal sector. It notices that large sections of unemployed and underemployed in rural areas and small towns look forward to the metropolis of Delhi, for employment opportunities, and enter the city to move up in the economic ladder. The Plan recognizes that Delhi has "equally large if not larger traditional bazaar type informal sector. This sector with highly reduced needs of equipment and buildings is important as a source of employment and also for the economic functioning of the city.

The informal sector units locate themselves strategically near work centers, commercial areas, outside the boundaries of schools, colleges and hospitals, transport nodes and near large housing clusters. As a single item, eatables constitute the highest number (35.14%) followed by personal service (14.36%).

It is proposed to incorporate the informal sector in trade in the planned development of the various use zones. The norms are given below:

viii) Residential 1 unit/ 1000 population

It would be desirable if a few standard efficient and colourful designs for mobile as well as stationary units are evolved and are placed all over the city. It would add to the city scape and would be bringing in lot of richness and experience of the city in a developing country.

At the time of sanction of the building plan/layout plans, the provision of informal sector trade units should be ensured so that (a) the poor clientele to which the informal sector serves are not exploited upon, and (b) Informal sector units are developed to cater to the target group."

The above provisions in the Master Plan are not merely conceptual, but reflective of town planning norms, requiring adherence wherever applicable. Thus, the norm of one informal unit per 1000 population, is the guidance for taking into consideration wherever residential colonies/ clusters exist. In view of these express provisions, I do not see any infirmity in the scheme, as alleged by the intervenor.

Point No. 2

62. This aspect is concerned more with the propriety of the project vis--vis involvement of the Central Government, than its legality. Indisputably the project is located near a Central Government colony. Land in the vicinity vests with the L&DO. The question therefore is whether the decision impugned, and the arrangement arrived at, was contrary to the mandate of that authority.

63. The record indicates that about 5-6 letters were exchanged on the issue between the CPWD, the L&DO and MCD. In some of these letters, the L&DO has expressed to the CPWD that the project cannot be proceeded without its approval. However, equally, the record suggests that at least three meetings were held, in December, 7th January, and 11th of May, 2005, where the representatives of MCD, L&DO and other agencies were present, and expressed their views. Although there was some controversy about recording of minutes of the meeting of January, on 10-3-2005, the tenor of the participants was not strident; L&DO expressed concern about non-consultation of the Residents Welfare Association and the need to ensure that permanent structures were not put up; also that no permanent rights should be granted to any licensee.

64. It was not disputed during course of the hearing that all public streets vest in the MCD; indeed the petitioner relied upon Section 298 for the purpose. That being the agreed premise, the objection of L&DO appears to stem from its understanding that the project is located within the colony, and it is the land owning agency. While the ownership of the lands in the colony is admittedly that of the L&DO, the authority who has to ensure maintenance of the "public street" in areas within its control, is the MCD. If this perspective is kept in sight, it would be immediately apparent that the consultative process with the L&DO had to proceed on the basis that the proposal did not result in nuisance to the residents. However, the conditions with regard to pro-active involvement of the residents could not have applied in the facts of this case. Alotees of quarters in government colonies are licensees, who do not have any interest over the land. They are entitled to occupy the premises during the tenure of their employment, or posting. Hence, unlike occupants of private residential

units on ownership or lease basis, these allottees cannot claim to occupy the premises on the basis of personal right or contract. The concept of residents welfare associations in Delhi, was primarily conceived as a measure to create platforms to interface with civic authorities, for efficient functioning of the services. Those concerns do not exist in such government colonies, because the maintenance of the buildings are with government agencies, and the residents have no right to alter or build upon the structure. The insistence of the L&DO for consent of the residents welfare association, therefore, was not apposite. As a concerned agency, it could, of course express its views and objections; it could not however, insist that the project could be made functional only with the consent and involvement of the residents association.

65. The final objections voiced by L&DO, in the minutes of meeting dated 11th May, 2005 are three fold; one, there should be no permanent structure; that there should be no permanent construction on the internal roads; and that there should be no obstruction to the underground services. Thus, fundamentally, the objectives of the projects, the nature of the designs, the location, were not objected to. As held in the earlier part of the judgment, the MCD and have taken the position that what is put up are temporary structures, which can be removed fast, and easily. The project is not located on any of the internal roads in the colony; MCD appears to have addressed that issue, in the year 2004 itself. As far as obstruction to underground services is concerned, the agency, DJB, has indicated its approval in principle, subject to undertakings by individual street vendors.

66. In view of foregoing discussion, I am of the opinion that there is no illegality or irregularity in the impugned agreement and the project entered into between and MCD. Having regard to some of the concerns, and admissions made, the following directions, are issued, while upholding the agreement/ arrangement impugned by the petitioners:

(1) The project in question shall be monitored by a senior officer of MCD; records of inspection, to be carried out at regular intervals, shall be maintained in that regard. Any deficiencies noticed in the implementation of the project shall be reflected in the notes of inspection, and also notified to for remedial action, in terms of the agreement;

(2) shall ensure that a suitable written undertaking is executed by each street vendor, participating in the project, agreeing, and undertaking to co-operate in the event of an emergency in relation to the underground water/ sewer pipelines, needing repairs. The format of such undertaking shall be finalized to the satisfaction of the Delhi Jal Board, and such undertakings shall be furnished to the DJB within 8 weeks from today;

(3) The and MCD may consider evolving a joint grievances committee which shall consider and redress the grievances of the surrounding localities, in regard to individual complaints;

(4) The MCD shall ensure that no design, other than the present one approved by it, is used, which would result in the putting up of a permanent structure, is put up by any street vendor. If this condition is violated, it is open to MCD to take action according to law against the erring individual.

The petition is accordingly dismissed, subject to the above directions. No costs.