

(2016) 01 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18262 of 2013

Akhilesh Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-01-2016

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), Article 21, Article 226

Citation : (2016) 01 PAT CK 0070

Hon'ble Judges : Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Y.V. Giri, Sr. Advocate and Nikhil Kr. Agrawal, Advocate, for the Appellant; D.K. Sinha, AAG-2, for the Respondent

Final Decision : Dismissed

Judgement

Kishore Kumar Mandal, J.—1. In this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for diverse relief's. In substance, they are aggrieved by the atrocious acts of the respondents in demolishing the shops situated on the red pedestrian area which is indisputably at a close distance from the Mahabodhi temple, Bodhgaya (for short "the Temple") which has been declared as world heritage site by the UNESCO. Under the Bodh Gaya Temple Act, 1949, the affairs of the temple is managed by a committee called Bodhgaya Temple Management Committee (for short "the BTMC") of which the District Magistrate of District is the ex officio chairman. Under lease agreement with the BTMC small area(s) having kiosks were allotted to the petitioners and several others against payment of periodical rent. Copies of some of the agreements/lease are enclosed as Annexure-1 series. Such unregistered agreement used to be created upon expiry of 11 months with a stipulation of renewal at the discretion of the BTMC with further contemplation that upon expiry of the period of lease/tenancy the allottee(s) shall vacate the premises and hand over vacant possession thereof until the agreement is renewed for further term. There is no controversy that the tenancy agreement(s)

with the writ petitioners were lastly renewed in August 2000 and expired sometime in June/July 2001. However, they continued to run/operate their shops. In the morning of 07.07.2013, the temple became the target of terrorist attack and several bomb blasts took place in the vicinity of the temple. They were engineered with a view to disturb the public peace and harmony and thereby to disrupt the tourist flow from different parts of the world. The temple is a pious destination especially for the people all over the world who practice Buddhism. It is pilgrimage for them. The government was required to tackle the situation arising out of the serial blast near the site of the heritage structure and take remedial steps on emergent basis. Immediately on 8.7.2013 the Sub Divisional Officer, Sadar, Gaya imposed the prohibitory order (Annexure-2) around the temple and the shop keepers along the red pedestrian area were directed to close the shops. Representations were filed by the shop keepers like the petitioners there against requesting for lifting of the prohibitory order. The writ petition asserts that in the morning of 25.7.2013, the respondent authorities forcibly demolished the shop abutting the red pedestrian area outside the temple complex inasmuch as the goods/articles kept inside were also ravaged causing the owners thereof including the petitioners huge monetary loss. The petitioners represented against such arbitrary action of the district administration and subsequently requested the Secretary of BTMC (respondent No. 7) to reconstruct their shop and compensate for the loss of goods/articles. Before taking such extreme measure of forcible removal of the shops while prohibitory order was clamped no opportunity to file/submit their version was given. The manner in which the respondents acted in demolishing the shop of the petitioner was a blatant breach of the fundamental right of the petitioner enshrined under Articles 19(1)(g) and 21 of the Constitution of India. The writ petitioners were not the encroachers/trespassers. Upon expiry of the lease/agreement in the year 2001 although the respondent BTMC did not renew the lease the possession of the writ petitioners over the shop cannot be legally said as completely unauthorized. They were not encroachers. Their possession continue to be juridical in nature. Since the respondent have acted in blatant breach of public duty and used the force for removal of the shop the State is bound to compensate the petitioners of the loss sustained. The action of the respondents in ensuring forcible dispossession of the petitioners of the shop by demolishing them exhibits sheer callousness on their part. This was ex facie an extra legal method to deprive them of their right to run/operate the shops initially allotted to them by the respondent BTMC under agreement. The petitioners are therefore entitled to a writ of mandamus commanding the respondents to reconstruct the kiosks and restore their possession and further to restrain them from interfering in carrying on their business activities therefrom. They are also entitled to compensation.

2. I have heard Mr. Y.V. Giri, the Sr. Advocate in support of the application, Mr. D.K. Sinha, AAG-2 appearing for the State respondents and counsel for the respondent BTMC. Separate counter affidavits have been filed on behalf of the District Administration as well as the respondent BTMC. Petitioners have filed

rejoinder thereto.

3. Both the respondents have opposed the prayer. It has been submitted by the counsel for the respondent BTMC that the petitioners were operating/running the shop without any lease agreement. They were allowed to do so on humanitarian grounds against payment of some rent. Before taking the impugned action the shop keepers including the petitioners were given notice for removal of the shop vide letter dated 18.7.2013 (Annexure-A). Before taking steps for removal/demolition of the kiosks the shop-keepers including the petitioners were allowed to remove their articles/goods/accessories whereafter they did so in which the administration also helped. The impugned action was inevitable in the larger public interest. The security of the temple and the visitors thereto was at stake. The shops abutting the red pedestrian area are located alarmingly close to the temple and lie in sensitive zone for the purpose of security which became an alarming scenario due to the serial bomb blast(s) endangering life of the visitor(s) and thereby creating a havoc. Upon expiry of agreements of the shop-keepers in 2001 itself they were offered/allotted shops in the nearby Node-I, Node-II areas and were directed to shift there by several notices. Several occupants of the shop near the red pedestrian area had already shifted to the new business premises constructed and allotted to them which is not very far off from the temple. The shop keepers including the petitioners have not suffered any substantial loss on demolition of the shop(s) which belonged to and constructed by the BTMC. Shops/structures have already been created at Node-I and Node-II by the respondent. The petitioners are not entitled to compensation on account of loss of their property which were, in fact, removed by them with the assistance of the administration.

4. Mr. D.K. Sinha appearing for the respondent State supported the impugned action. It is urged that impugned action has been taken in larger public interest after giving notice to the owners of the shops at the red pedestrian area considering the serious security threats to the world heritage site after the serial bomb blasts by the terrorist group in the vicinity of the temple. The shops were lined along the red pedestrian area very close to the temple. It was done in the larger public interest as the tourists across the world visit the temple. The red pedestrian area was required to be a sanitized zone in order to prevent repetition of such terrorist attack on the temple and the visitors threats and disturb the public peace. An emergent situation had arisen which called for a security audit which was held on 9.7.2013 by a committee constituted for the said purpose. In such view of the matter, a general notice (Annexure-8) was issued on 4th of July, 2013 for immediate shifting of the shops to the newly developed shopping areas in Node-I and removal of the structures which was/were being used as a commercial area permitting unobstructed right to the people at large to visit those commercial outlets. Earlier to this several steps were taken by the Nagar Panchayat to get the shops vacated and shifted to the new shopping yard in Node-I and Node-II whereafter many such shop-keepers had already shifted their shops to those areas. Only handful of them like the writ petitioners did not

respond to the notice and continued with their business activities on the red pedestrian area. The writ application for the relief prayed for is not maintainable as they have not claimed compensation for their alleged loss in removal of the shop from the respondent BTMC which, according to them, is the landlord/shop owners leased out to the writ petitioners under 11 months agreement which too had expired in 2001 and were not renewed thereafter. The petitioners, if suffered any loss may raise such claim against the lessor and not the State. He also pointed out that a writ petition in the shape of Public Interest Litigation was filed by few such shop-keepers raising issues akin to one raised in the present application vide CWJC No. 17154 of 2013 when this Court appreciating that the actions were resultant security measures taken at the temple premises arising out of recent bomb attack incident did not interfere in the matter and the writ application was disposed of granting no relief.

5. I would first dwell upon the contention of the petitioners that they suffered loss of the articles which was kept inside the kiosks/shops, and as such, they should be suitably compensated. It is submitted that without giving any notice and affording an opportunity to them to remove the articles kept therein, the kiosks/shops were demolished. Per contra, the respondents have stated that a notice was issued to the petitioners before taking the impugned action of removal of the kiosks/shops queuing on the red pedestrian area. It has further been stated that, in fact, the shop keepers like the petitioners removed the articles before the demolition in which the administration also cooperated. There is, thus, rival contention on this issue. The dispute of such nature, in view of the rival pleadings, cannot be adjudicated in writ jurisdiction. It is a matter of evidence which the petitioners are required to prove on the strength of cogent evidence adduced before the Court of competent jurisdiction in order to get the relief. To what extent each shop keeper suffered loss is another relevant fact to be proved before such compensation against the loss can be awarded to them. This Court would, therefore, refrain from granting the said relief.

6. In *Bangalore Medical Trust vs. B.S. Muddappa & Ors.* reported in , (1991) 4 SCC 54, the Apex Court while dealing with an exercise to alter the scheme under the Bangalore Development Authority Act, 1976 observed that public interest or general good or social betterment has no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must have nexus with the objective of doing so.

7. It is contended by the petitioners in *Bishan Das & Ors. vs. State of Punjab & Ors.* (, AIR 1961 SC 1570) the Apex Court observed vide para 14 of the report that the State or its officers cannot interfere with the rights of citizens unless they can point to some provisions of law authorizing their action. The counsel for the petitioners has urged relying on *M/S. Hindustan Petroleum Corporation Ltd. vs. the State of Bihar & Ors.* (, 1996 (2) PLJR 621) that the petitioners having come in possession of the kiosk/shops initially under a lease executed by respondent - BTMC cannot be treated as trespasser on expiry of lease in 2001.

Their possession shall continue juridical in nature. They are not obliged to be forcibly deprived of their possession of the kiosks/shops in the manner the respondents have done. They could have taken recourse of law and evict them in accordance with law. Sheer display of force applied by the respondents in doing so exhibits a callous disregard of the normal requirement of rule of law.

8. As a proposition of law, the petitioners may be right in submitting that their continued possession shall be juridical in nature. If the respondents want to evict them, the normal procedure prescribed in law ought to have been resorted to. The question is whether it was a normal circumstance under which the action was taken by the respondents. Before dwelling further it may be recounted that the lease executed in favour of the petitioners had already expired in 2001. It was never renewed thereafter. Both the respondents have stated that several notices were issued earlier to the shop-keepers along the red pedestrian area to vacate the kiosks and shift to the newly developed Node I and Node II. It has also been stated that many such shop-keepers had already shifted to new market place on being allotted shops. The petitioners, however, remained deaf to these notices. In the meanwhile, the serial bomb blasts took place in the vicinity of the world heritage temple. It was an unusual circumstances which obtained due to such serial bomb blasts engineered by terrorists to disturb the public peace and order. It was considered as a serious threat to the temple and the visitors thereto which include the visitors from the countries all over the world particularly where Buddhism as a religion is practiced. Such incident of grotesque nature called for quick remedial action by the administration to avert any repetition thereof. A security audit of the area surrounding the temple was reportedly carried out by the administration whereafter, as a security measure, it was found absolutely essential to sanitize the vicinity of the temple. In this background, the respondents claim to have issued notice for immediate vacation of the kiosks. As claimed after getting the articles staked therein removed the shops/kiosks which necessarily resulted in dispossession of the petitioners. The core question emerging is whether the respondents have acted in blatant breach of the provision of law without there being any justifiable reason therefor. The objective of the respondents in doing so, is not under question. The legal rights of a few who, in spite of expiry of lease in 2001 continued in possession of the kiosk is thus pitted against the rights of the public at large as also the safety and security of the nation. People visiting the temple across the world have right to their life and security. It was the duty of the administration to provide safety to the world heritage temple.

9. The petitioners have prayed for a direction upon the respondents particularly the respondent - BTMC to reconstruct the shops/kiosks and put them in possession besides granting compensation for having acted in an absonant manner which does not behove of the State governed by a Rule of law. In these factual profile, I am afraid the relief can be granted to the petitioners. Obviously, there is close nexus between the action taken and the objective to be achieved. The serial bomb blasts near the temple shook the nation and created an

abnormal situation to be tackled on urgent basis. The cases on which the petitioners have relied in support of the contention can be differentiated. In normal course, State is not expected to act in the manner they have acted in forcible eviction/dispossession of the petitioners from the kiosks/shops. However, as I have noted, the situation created after the serial bomb blasts near the temple in the year 2007 was an abnormal situation.

10. In my considered view, the equitable and discretionary writ jurisdiction, in these facts and circumstances, would not be invoked. The Court would advisedly go by the well recognized principle of judicial economy in exercise of its discretionary writ jurisdiction. Nothing has been shown that even in such circumstances, the Court should extend its arm to protect the legal right of the petitioners. Even the Court hearing the public interest petition filed by some of the petitioners declined the relief observing that action taken was resultant of security measures arising out of serial bomb blasts.

11. The writ application is dismissed.

12. No cost(s)