

(2002) 11 RAJ CK 0028
In the Rajasthan High Court
Case No : C.W.P. No. 462 of 2002

Anil Chordiya

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2003 Raj 49

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Advocate : M.R. Singhvi and Manoj Bhandari, for Mohan Kanwar, for the Appellant; Sanjeev Johari, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—The instant writ petition under Article 226 of the Constitution of India has been filed by one Anil Chordiya under the label of public interest, litigation seeking following directions :--

"(i) The respondents may be directed to comply with the judgment dated 20-8-1998 within stipulated time;

(ii) If thought fit, this Hon''ble Court may also initiate contempt proceedings against the erring officers and take suitable action;

(iii) Any other appropriate order or direction which this Hon''ble Court considers just and proper in the facts and circumstances of the case, may kindly be passed in favour of the petitioner;

(iv) Writ be allowed with costs."

2. The facts briefly stated are that petitioner claims to be a licensee of Plot No. 126 in Link Pal Road Extension Plan Samanvay Nagar, Jodhpur. The said licence was issued to the petitioner by the Urban Improvement Trust, Jodhpur on 28th December, 1996. It is averred that when the licence was issued in view of the

conversion made in the entire area for that purpose a total scheme was prepared and certain parcels of land were left for Road, Park, Open Space etc. but the plot holders like the petitioner were deprived of the Scheme because of the miserable conditions prevailing in the area. It is averred that the entire area was occupied by unauthorised persons having no title whatsoever on the land. The Urban Improvement Trust failed to discharge its obligation in evicting them. It led to filing of writ petition before this Court which was registered as D. B. Civil Writ Petition No. 395/98. The Division Bench disposed of the writ petition by a brief order dated 20th August, 1998, which is reproduced as follows :--

"D. B. Civil Writ Petition No. 395/98 Date of order ; 20th August, 1998

HON"BLE SHRI V. G. PALSHIKAR. J.

HON"BLE SHRI MOHD. YAMIN. J.

Mr. M. R. Singhvi, for the petitioner

Mr. Sanjeev Johari, for the respondent

By this petition, the petitioner claims a direction, that the Trust be directed to complete the process of removal of encroachment by a fixed time, so that the rights of the petitioner are not indefinitely suspended.

On principle, the Trust also agrees to remove the encroachment. Interest of justice would therefore, be met, if the Trust is directed to complete the work of removal of encroachment in accordance with the provisions as applicable in the case by the end of year 1998.

With these observations, the petition is disposed of.

Sd/- Sd/- (MOHD. YAMIN) J. (V. G. PALSHIKAR) J."

3. The petitioner filed a Contempt Petition for the non-compliance of the said order which was registered as D.B. Civil Contempt Petition No. 140/99. In the reply it was submitted that the problem to remove the encroachment was complicated. A survey was also required to be undertaken. It was further expressed that the respondents were required to solve the problem balancing the equities. The Division Bench by its order dated 25-4-2001 disposed of the Contempt Petition having found that there was no wilful disobedience.

4. We have heard the learned counsel for the parties and perused the entire record. It appears that there has been some litigation pertaining to subject land before the Civil Court as well as before this Court. In one of the writ petition, this Court took a view of the Rajiv Gandhi Kachchi Basti a part of which situated at Samanvay Nagar that it cannot be disturbed because poor persons are occupying the place since years together. The said observations were made in the writ petition filed by the petitioner himself being S.B. Civil Writ Petition No. 2135/99 Anil Chordiya v.State decided on 5-11-1999. A special appeal against the said

judgment was dismissed by the judgment of the Division Bench dated 12-2-2001. A further survey was undertaken under the direction dated 18-7-2002. The details in regard to occupation has been placed on record. It is stated that Rajiv Gandhi Basti has got nearly 3000 encroachments of different type of houses in all. It is further stated that it is only a part of the Basti which is situated on the land of "Samanvay Nagar" Plan. The petitioner and similarly situated persons have taken the licence from the Urban Improvement Trust with an open eye that there was an encroachment on the subject land. In the peculiar facts and circumstances of the case, no direction can be given by this Court in exercise of powers under Article 226 of the Constitution of India to evict large number of families settled for number of years. Suffice it to say that it is not a fit case to invoke the extraordinary powers of this Court under Article 226 of the Constitution of India.

5. The writ petition is dismissed without prejudice to the rights and contentions of the parties before the appropriate forum. No order as to cost.