
(1992) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1589 of 1990

Asgar Khan

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 20-08-1992

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226

Citation : (1992) WLN 299

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jasraj Chopra, J.—By this writ petition filed under Article 226 of the Constitution, the petitioner Asgar Khan has prayed for the issuance of an appropriate writ, order or direction to the respondent Municipal Council, Udaipur to regularise his possession over the land in dispute and not to interfere with his possession over it.

2. The case of the petitioner is that he being unemployed and without any work, his financial position became critical and, therefore, he has put up a temporary cabin on the Panchsheel Marg, Surajpole Road, Udaipur so that he may earn his livelihood. This Cabin was installed somewhere in the month of June 1988. Thereafter, he moved an application (Annexure-1) alongwith a map (Annexure-2) for the aforesaid land being given to him on rent on 12.10.1988 and on that application, he was allowed to use this land temporarily for a period of three months from 13.9.1989 to 12.12.1989 by the Commissioner, Municipal Council, Udaipur. A sum of Rs. 90/- were deposited by him vide receipt Annexure-5 as rent for three months starting from 13.9.1989 to 12.12.1989. He also obtained electric connection in his cabin. According to him, near his cabin, other constructions i.e. a Cabin and a Petrol Pump also exist. On the back side of his cabin, a cabin has been put up by New Haryana Handloom and for the use of that land, a licence has also been granted by the Municipal Council, Udaipur in

favour of New Haryana Handloom.

3. The petitioner has contended that on his application Annexure-1, no formal order has been passed by the Municipal Council, Udaipur. However, there appeared a new item in the local news paper "Pratahkal" that the Municipal Council, Udaipur has requisitioned Police Force for the removal of illegally set up Cabins and on enquiries, it was revealed to him that his cabin is also amongst those cabins which deserve to be removed. According to him, denial to give this land on rent to the petitioner is violative of Articles 21 and 19(1)(g) of the Constitution. Although the Constitution of India does not guarantee the right to work but the Preamble of the Constitution sets such a goal. The petitioner's right of livelihood stands guaranteed under Article 21 of the Constitution and, therefore, nothing should be done to jeopardise his right to livelihood. It was contended that although the Constitution does not positively recognise that right i.e. right to work but that right is implicit in Article 21 of the Constitution. The squatting on this land is not at all injurious to public interest and, therefore, it should not be allowed to disturb and should be regularised by issuing a licence or lease of this land in favour of the petitioner.

4. I have heard Mr. M. Mridul, the learned Counsel appearing for the petitioner and have carefully gone through the record of the case.

5. Mr. M. Mridul, the learned Counsel appearing for the petitioner has contended that every citizen has a right to work and that right is guaranteed by Article 19(1) (g) of the Constitution. In this respect, he has drawn my attention to a decision of their lordships of the Supreme Court in *Sodan Singh and Others Vs. New Delhi Municipal Committee and Others*, . That was a case of Pavement Hawkers. In that case, it was held that Pavement Hawkers have a right to carry on trade on pavements of roads but subject to restrictions under Article 19(6) of the Constitution. It was further held that Hawkers or squatters have no right to occupy any particular place on the pavement. Nor can they assert their right to permanently occupy specific places demarcated on the pavements. The Municipality Corporation is entitled to grant permission to such hawkers to operate on roadsides and Municipal Acts should accordingly be construed beneficial and liberally to enforce their right to regulate such business. It was also held that hawking may be totally prohibited in certain areas but choice of licensees should have rational basis and policy decision taken on articles to be permitted for sale on pavements. It was further held that right to carry on trade or business is not covered by Article 21 of the Constitution and therefore, hawkers carrying on trade or business on pavements of roads cannot claim right under Article 21 of the Constitution. In this case, the petitioner is not a pavement hawker. The petitioner has put up his cabin on the land in question without permission of the Municipal Council somewhere in the month of June 1988. He moved the application Annexure-1 dated 12.10.1988 for temporary allotment of land on rent. He never moved an application for regularisation of this land. On his application Annexure-1, he was allowed to use this land for a

period of three months starting from 13.9.1989 to 12.12.1989 and consequently, rent or use or occupation charge for three months was recovered from him. He has never contended that prior to depositing of this rent, he has ever deposited any rent for the use and occupation of this land. It is a clear case of illegal and unauthorised occupation over the land in question. His application Annexure-1 dated 12.10.1988 has been decided by allowing him to use this land for a period of three months from 13.9.1989 to 12.12.1989. Thus, it cannot be said that his application Annexure-1 dated 12.10.1988 for temporarily allowing him to use this land on rent is pending because on the basis of this application, he was allowed to use this land for a period of three months from 13.9.1989 to 12.12.1989. Thus, it cannot be said that his application Annexure-1 dated 12.10.1988 for temporarily allowing him to use this land on rent is pending because on the basis of this application, he was allowed to use this land for a period of three months only and thereafter, he has moved no other application either for issuing a licence or lease of this land or for regularisation of this land. Thus, the decision in Sodan Singh's case has no application to the facts of the present case.

6. My attention was next drawn to a decision of their lordships of the Supreme court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , wherein it was observed as follows:

that the State may not, by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

It was further observed as follows:

The procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair just and reasonable. Just as a mala fide act has no existence in the eye of law, even so unreasonableness vitiates law and procedure alike. It is therefore, essential that the procedure prescribed by law for depriving a person of his fundamental right must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : the action must be within the scope of the authority conferred by law and secondly it must be reasonable. If any action within the scope of the authority conferred by law is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable.

In this case, It has not been contended on behalf of the petitioner that the provisions of the Rajasthan Municipalities Act as regards eviction of unauthorised occupants are contrary to any provision of the Constitution or he is being evicted

from his unauthorised occupation over the land in question without due process of law. What he has contended is that on the basis of his application Annexure-1 dated 12.10.1988 for temporarily allowing him to use this land on rent, his possession over the land in dispute should have been regularised. The petitioner has put up his Cabin over the land in dispute without any authority somewhere in the month of June 1988 and, thereafter, on 12.10.1988, he moved an application for temporarily allowing him to use this land on rent and that application stands disposed of by allowing him to use this land for three months temporarily from 13.9.1989 to 12.12.1989. Prior to it, he has never deposited any rent of this land. No rent has been recovered from him or has been deposited by him suo-moto after 12.12.1989. After the filing of his application Annexure-1 for allowing him to use this land on rent temporarily, he has not filed any application for regularisation. Thus, the petitioner is an unauthorised occupant of the land in question and, therefore, to remove his illegal encroachment over the land in dispute, any contemplated move or action of the Municipal Council, Udaipur cannot be said to be illegal or unconstitutional.

7. In this view of the matter, no prima facie case is made out for issuing notices to the respondents and hence, this writ petition having no force is hereby dismissed summarily.