
(2016) 06 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : CWP No. 5514 of 2010 a/w CWP Nos. 5677, 5741, 5817, 6017, 6025, and 6718 of 2010, 599 of 2011, 4567 and 8293 of 2012

Ashok Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 HimLR 1795 : (2016) ILRHP 1565

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Rajiv Rai and Mr. Lalit Sehgal, Advocates, for the Respective Petitioners; Mr. V.S. Chauhan, Additional Advocate General, with Ms. Parul Negi, Dy. Advocate General, for the Respondent-State; Mr. N.K. Thakur, Senior Advocate, with Ms. Jamuna Thakur, Ad

Final Decision : Disposed Off

Judgement

Mr. Ajay Mohan Goel, J.—These petitions are being disposed of by a common judgment as the issue involved in all the petitions is the same.

2. With the consent of the parties, CWP No. 5514 of 2010 is being treated as the principal petition and for the purposes of adjudication of these petitions, the pleadings in the said case shall be referred to. Learned counsel for the respondents have submitted that the replies filed in CWP No. 5514 of 2010 be treated as responses on behalf of the respondents in those petitions also in which replies have not been filed. No rejoinder was intended to be filed to the replies so filed, hence, this Court proceeded with the adjudication of the petitions on the basis of the material on record.

3. The petitioners in all these cases have prayed for directions to the effect that the respondents be directed to frame policy to deal with the problems of Rehri and Khokha holders or hawkers in consonance with the aims and objectives of the National Hawker's Policy, 2004 framed by the Central Government and they

have also prayed that this Court may direct the respondents to identify the hawkers zone at or near Bus Stand Bilaspur where large area is available and further to resettle the petitioners by allotting them small stalls on suitable terms and conditions so that the issue pertaining to the livelihood of the petitioners can be solved.

4. The petitioners claim themselves to be permanent residents of District Bilaspur and their grievance is against the act of the respondents who allegedly are forcibly removing and evicting them from the place of their business and livelihood without providing them alternative arrangements despite the fact that the petitioners had been assured by the respondents time and again that a policy shall be framed to settle them.

5. It is the case of the petitioners that new Bilaspur town was set up in the year, 1971 for rehabilitating the Bhakra Dam Oustees. For the purpose of construction of Bhakra Dam, large area of the public was acquired which disturbed and dislodged these people as their source of livelihood by way of traditional occupation was snatched away and they were compelled to leave their traditional occupation. In these circumstances, the petitioners were compelled to look for new employment because persons displaced on account of construction of Bhakra Dam were not provided any proper employment and the policies framed by the Government for rehabilitation of the Oustees were not implemented properly.

6. Petitioners are carrying out the business of hawking and have been granted licences for carrying out the said business from time to time. They are paying Tehbazari charges to respondent No. 7 and the business so carried out by them is neither illegal nor unauthorized. They are carrying out the said business for the last more than 35 years, which is in the knowledge of the respondents and on various occasions they have raised grievance with the respondents and have been given assurance by the Government from time to time that the State shall formulate some policy for settling the petitioners by constructing stalls near bus stand and the same shall be allotted to the petitioners.

7. Further, their case is that on 5th April, 2010 in CWP No. 968 of 2006, this Court has passed orders directing the respondents to finalise the steps in respect of all encroachments in Bilaspur town and to evict all the encroachers. In this back ground, the petitioners have been issued notices under Sub-rule 4(1)(b) of the Himachal Pradesh Road Infrastructure Protection Rules, 2004 by respondent No. 3, whereby the respondents have been directed to stop their business of hawking at the place where they have been carrying out the said business for the last more than last 35 years.

8. It is further their case that on the basis of the directions issued by the Hon''ble Supreme Court from time to time, the Central Government had framed a policy, i.e. National Hawkers Policy, 2004, wherein certain guidelines have been framed for running the hawking business. Further, as per the petitioners, the Hon''ble

Supreme Court in its judgment dated 12th February, 2007 in Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai and others reported in (2009) 17 Supreme Court Cases 151 has inter alia directed the State Governments to frame policy in order to solve the problems of hawkers.

9. Therefore, in this background, when the notices under the Himachal Pradesh Road Infrastructure Protection Rule, 2004 were served upon them, as the petitioners apprehended that they can be thrown out from their place of business at any time, they approached this Court by filing present petitions.

10. As per the respondent-State, the petitioners are not Bhakhra Dam Oustees. According to respondents, Bilaspur town has become haven for unscrupulous elements to encroach upon public places within the town and thereafter claim permanent rehabilitation on the pretext of being Bhakhra Dam Oustees and the petitioners in these cases also fall in the said category.

11. Further, according to the State, Bhakhra Dam Oustees have been allotted cultivable land, residential accommodation as well as commercial plots which provided them employment and most of the persons who have encroached upon roads were not oustees. It is mentioned in the reply that the existing road of bus stand has been encroached upon by the petitioners to such a large extent that the bus drivers face difficulty in negotiating smoothly through this stretch of road and the commuters which include senior citizens, old and disabled persons, ladies and school children etc. find it extremely difficult to walk through this stretch and many accidents of commuters being crushed by vehicles have occurred in this particular area because there is virtually no space left for the commuters on either side of the road as the same is encroached upon by the petitioners.

12. It is further the case of the respondent-State that the petitioners loose no opportunity to quarrel, mishandle and manhandle the bus operators as well as other vehicle operators whenever these vehicles come in contact with the projections which have unauthorisedly been raised by the petitioners over their Rehri which have been permanently fixed on both sides of the existing road of bus stand. It is mentioned in the reply that because of the encroachments done by the petitioners, no space is left even for the consumers to stand safely on the road. As per the State, the licences issued by the Municipal Committee do not allow the petitioners or so called hawkers to raise permanent structures on public roads, but the petitioners have raised permanent structures and have encroached upon public roads and their act is totally illegal and unauthorized.

13. Even the factum of the petitioners being doing the job of hawking for more than 35 years is refuted by the replying respondent-State. It is further the case of the State that the petitioners cannot be allowed to continue their illegal encroachments on the road side indefinitely for want of formulation of any policy for rehabilitation, especially in view of the fact that there was no material on record to substantiate that the petitioners in fact are Bhakhra Dam Oustees.

According to the State, they are not eligible for any benefits under the rehabilitation scheme framed by the State for Bhakhra Dam Oustees. It is further mentioned in the reply that the issuance of notices to the petitioners was in fact an act done in the performance of its statutory duty by the authority concerned.

14. It is further mentioned in the reply that after the issuance of the said notices, the petitioners had the right to file objections with the authority concerned within the time period prescribed. However, as the petitioners did not file any objections to the said notices within the prescribed period, as such, the said eviction order stand confirmed. It is further stated in the reply that the directions issued by the Hon"ble Supreme Court in the judgment relied upon by the petitioners are in the context of street hawkers and not encroachers like petitioners who have raised permanent structures on busy roads of the town. It is further the case of the State that on one hand the petitioners are claiming to be licenced to do trade of hawking and on the other hand they want to continue their trade along road side where they have raised stationery (non-movable) encroachments by fixing their Rehri and Khokhas. As per the State, there is no need to frame any policy for rehabilitation of hawkers because there is no such ban for carrying regulated hawking trade in Bilaspur town without causing any public nuisance and threat to the general public. Accordingly, the respondent-State prayed that the petition being devoid of any merit be dismissed.

15. I have heard the learned counsel for the parties and also gone through the records of the case.

16. At the very out set, this Court called upon the learned counsel for the petitioners to meet with the objection raised by the respondent-State that the petitioners were in fact not the Bhakhra Dam Oustees and they were unscrupulous elements who had encroached upon public places and were causing nuisance to the public at large and in this view of the matter, the petition deserved dismissal on this ground alone.

17. Mr. Rajiv Rai, learned counsel for the petitioners fairly submitted that the petitioners are not Bhakhra Dam Oustees in the sense that they are not the persons whose land has been acquired for the purpose of construction of Bhakhra Dam and who have been rendered homeless. However, he refuted the contention of the State that the petitioners were unscrupulous elements. According to him, the petitioners were carrying out their trade of hawking in order to earn their livelihood. The petitioners were law abiding citizens and they were not interested to cause any nuisance either to the public at large or in the functioning of the Government machinery.

18. During the course of arguments, it was pointed out by the learned Additional Advocate General that in fact many of the petitioners had been rehabilitated by way of allotment of Khokhas etc. to them. As per affidavit on record filed by Deputy Commissioner, District Bilaspur, H.P. dated 24th December, 2012, a proposal had been formulated for rehabilitation of persons like the petitioners

over the roof of Agriculture Marketing Committee Building, Bilaspur and in continuation of efforts made in the past, meetings had been held with Rehri/Khokha holders, wherein said Rehri/Khokha holders had been informed by the SDM about 27 new shopping booths constructed for their relocation on the top of the said building. According to the learned Additional Advocate General, few of the petitioners had already been rehabilitated by the respondents and some of the petitioners have in fact refused to be rehabilitated on one pretext or the other.

19. At this stage, Mr. Rajiv Rai, learned counsel for the petitioners has submitted that the petitioners shall be satisfied in case this Court permits the petitioners to approach the concerned authorities again with the request to rehabilitate them and this request of theirs is re-considered by the appropriate authority uninfluenced by the fact whether earlier their cases have been rejected by the authority or the petitioners have refused the offer of rehabilitation given to them.

20. Learned Additional Advocate General submitted that the State was not averse to this, provided the petitioners agree to vacate the area encroached upon by them in a time bound manner so that larger public interest of having the area in and around District Bilaspur bus stand free from any unauthorized encroachment is met and the buses and vehicles ply in and around the Bilaspur bus stand with free ingress and egress to the bus stand area unhindered by unauthorized encroachments/structures temporary or permanent.

21. In Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others (2014) 1 Supreme Court Cases 490, the Hon'ble Supreme Court has defined/described a street vendor/hawker as under:

"A street vendor/hawker is a person who offers goods for sale to the public at large without having a permanent structure/place for his activities. Some street vendors/hawkers are stationary in the sense that they occupy space on the pavements or other public/private places while others are mobile in the sense that they move from place to place carrying their wares on pushcarts or in baskets on their heads."

22. In my considered view, the petitioners herein strictly cannot be termed to be street vendors/hawkers because it is not their case that they offer goods for sale to the public at large without having a permanent structure/place for their activities. They are rank encroachers, who have encroached upon public places including public paths and pavements in Bilaspur town in general and in and around Bilaspur bus stand in particular. Therefore, by no stretch of imagination, these petitioners can claim themselves to be hawkers/street vendors. It is not their case that the authorities are not permitting them to carry out their trade, which is being conducted by them without having permanent structure/place for activities. It is also not their case that though they are occupying place on pavements or public place, but they are not having any structures on the pavements/public places.

23. Incidentally, in the present case, the petitioners have approached this Court

after they were served upon statutory notices under the provisions of the Himachal Pradesh Road Infrastructure Protection Act, 2002 (hereinafter referred to as "the Act") and Rules framed thereunder. The eviction of the petitioners has been protected by this Court vide its order dated 06.09.2010. The Himachal Pradesh Road Infrastructure Protection Act, 2002 read with the Himachal Pradesh Road Infrastructure Protection Rule, 2004 is both substantive as well as procedural law. In the body of the petition, the petitioners have challenged the notices which have been issued to them under the above mentioned Act/Rules. The order passed by the prescribed authority under the above Act is appealable under Section 9 of the said Act. The order passed in appeal by the appellate authority under Section 9 of the Act is further amenable to the power of Revision of the Government under the provisions of Section 10 of the said Act. However, the petitioners have not availed these alternative remedies and in order to save themselves from the proceedings which have been initiated against them under the above mentioned Act/Rules, they have filed these petitions, wherein inter alia a prayer is made for direction to the respondent-State to frame a policy to deal with the problems of Rehri and Khokha holders or hawkers and direction is also sought to the respondents not to evict the petitioners from their place of business without framing any policy regarding the settlement of Rehri and Khokha holders.

24. The jurisdiction of this Court has been invoked by pleading that the petitioners are Bhakhra Dam Oustees, whose lands were acquired for the purpose of construction of Bhakhra Dam and who have thus lost their business and livelihood on account of their lands being acquired for Bhakhra Dam. This contention of the petitioners has been found to be incorrect because the petitioners are not Bhakhra Dam Oustees, as has been admitted by the learned counsel for the petitioners also. Therefore, it is evident that in the garb of portraying themselves as Bhakhra Dam Oustees, the petitioners have attempted to mislead this Court.

25. This Court cannot lose sight of the fact that the petitioners in fact have encroached upon the public roads and paths in and around Bilaspur Bus Stand to such a large extent that the bus drivers face great difficulty in smoothly negotiating the buses through this stretch. Further, on account of the said encroachments of the petitioners, the commuters as well as local residents including senior citizens, old and disabled persons, ladies and school going children find it extremely difficult even to walk through this stretch and many accidents have occurred in this area because there is virtually no space left for the commuters to walk on either side of the road as the same has been encroached upon by the petitioners. Further, the licences which have been issued to some of the petitioners also do not permit them to raise permanent structures on these roads. But, the fact is that the petitioners have raised permanent structures and have encroached upon public roads by their illegal and unauthorized acts. Therefore, as the encroachments by the petitioners are mainly on the existing road of Bus Stand of Bilaspur and surrounding areas,

larger public interest demands that such encroachments should be removed at the earliest.

26. Keeping in view the fact that the petitioners are rank encroachers and the present petitions have been filed by them just to evade the process of issuance of notices initiated against them under the 2002 Act/Rules, in my considered view, the petitioners do not have any locus to call upon this Court to direct the State to frame policy to deal with problems of Rehri/Khokha holders or hawkers as per National Hawkers Policy, 2004 framed by the Central Government. Even otherwise, persons like the present petitioners who are rank encroachers cannot be permitted to hoodwink the process of eviction initiated against them in the guise of espousing a public cause.

27. Therefore, in my considered view, in the present petitions, no directions can be issued to the respondent-State either to frame a policy to deal with the problems of Rehri/Khokha holders on the asking of the present petitioners nor the State can be directed not to evict the petitioners from the alleged places of business without framing any policy regarding settlement of Rehri and Khokha holders.

28. However, in view of the fair stand taken by the learned counsel for the petitioners that the petitioners shall be satisfied in case this Court permits them to approach the concerned authorities with the request to rehabilitate them similarly as some of the petitioners have been rehabilitated, in my considered view, the interest of justice will be served in case those petitioners, who have not yet been rehabilitated, are permitted to approach the concerned authorities to consider their cases for rehabilitation in accordance with law within a time bound period.

29. Accordingly, the petitions are disposed of with the following directions:

"(1) All the petitioners who have not yet been rehabilitated by the respondents, shall be at liberty to move appropriate applications in this regard to the respondents/competent authorities on or before 31st July, 2016.

(2) The concerned authorities shall take appropriate decision on the said applications of the petitioners uninfluenced by any previous decision, if any, taken on their application and make all endeavour to rehabilitate the petitioners at suitable places.

(3) The decision by the authority shall be taken on the applications filed by the petitioners on or before 31st October, 2016 and till then, the petitioners shall not be evicted from their respective possessions.

(4) Thereafter, the respondents/authorities shall be at liberty to take appropriate steps to remove unauthorized encroachments by way of temporary or permanent structures/Rehri-Khokhas etc. in and around the Bus Stand in Bilaspur as well as in Bilaspur town of petitioners, as expeditiously as possible, strictly in accordance with law.

30. Interim orders, if any, accordingly stand vacated and all pending applications stand disposed of. No order as to costs.