
(2021) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : D.B. Civil Writ Petition No. 2929 Of 2019

Babu Lal Sharma

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 72

Citation : (2021) 07 RAJ CK 0012

Hon'ble Judges : Sangeet Lodha, J; Mahendar Kumar Goya, J

Bench : Division Bench

Advocate : Prahlad Sharma, Anil Mehta, Yashodhar Pandey, Shashwat Purohit, Nalin G. Narain

Final Decision : Disposed Of

Judgement

Sangeet Lodha, J

1. By way of this writ petition (PIL), the petitioner is seeking directions to the respondents to remove encroachments on New Sanganer in the area of

Mangal Mandir, Cheel Gadi Restaurant opposite Saint Wilfard College and Arawali Marg, V.T. Road, Heera Path, Rajat Path and Swarn Path of

Jaipur.

2. Precisely, the case set out by the petitioner is that the unscrupulous persons have made encroachments on the road from Mansarovar Metro Station

to Sanganer Flyover, which is shown in the Master Plan of Jaipur as 200 ft. wide. Besides the sector roads in the areas specified as aforesaid, have

also been encroached upon, which has resulted in traffic hazards. It is submitted that despite complaints being made, no steps are taken by the

respondent authorities to remove the encroachments.

3. A reply to the writ petition has been filed on behalf of Jaipur Development Authority (JDA), wherein it is not disputed that as per the Master Plan, the width of the sector road from Mansarovar Metro Station to Sanganer Flyover is 200 ft.. According to the respondents, on the said road, the encroachments made are not being regularised and the proceedings have already been initiated for removal of the encroachments by issuing notices under Section 72 of Jaipur Development Authority Act, 1982. It is submitted that the encroachments by two marriage gardens namely, Vivan and Golden Venue Marriage Home, have already been removed. It is submitted that the encroachments made on the sector road is being marked and enlisted for removal as per the procedure laid down.

4. Learned counsel appearing for the petitioner contended that admittedly, at the places specified in the writ petition, there exists encroachments, however, no effective steps are being taken by the local authorities to remove the encroachments. Learned counsel submitted that in *Gulab Kothari vs. State of Rajasthan*: 2017 (1) WLC 562, this Court has already issued directions to the local authorities and the State Government to take immediate steps to check and remove the encroachment and unauthorized constructions over the public ways and footpaths and thus, inaction on the part of the local authority is ex facie violative of the directions issued by this Court.

5. On the other hand, learned AAG appearing for the State and the JDA while not disputing the existence of the encroachments on the roads and the areas specified, submitted that the effective steps are being taken to remove the encroachments. It is submitted that the process for identifying the encroachments has already been started and some of the encroachers have already been served with the notice to remove the unauthorised constructions over the public road.

6. We have considered the rival submissions and perused the material on record.

7. In *Gulab Kothari*, this Court while dealing with the issue of encroachments over the public ways and footpaths, categorically observed:

“146. It is well settled that the footpaths and public roads are meant for convenience of public at large and no private person can be allowed to

make unauthorised use of the same for personal use. As a matter of fact, every citizen has right to pass over the footpaths and public ways and

custody thereof with the State and the Local Authorities is in realm of public trust

and therefore, what to say of private individuals even, the State

Government and Local Authorities are yoked under an inhibition not to put any structure on footpaths and public ways, which is not necessary for

regulating and maintaining the user thereof. Every inch of the land forming part of footpaths and public ways has to be preserved and maintained

meticulously and therefore, the State Government and the Local Authorities, who are under an obligation to check growth of unauthorised

encroachment made by unscrupulous persons on footpaths and public ways and remove the same, cannot shirk from their responsibility to take the

appropriate measures in this regard.

147. This Court takes judicial notice of the fact that the tendency to occupy unauthorisedly the land forming part of footpaths and public ways, is

rampant in various cities of the State and one hardly finds enough space on the footpaths and public ways which is creating numerous traffic hazards

and the pedestrians are compelled to move in the midst of vehicular traffic endangering their life. We are constrained to observe that this tendency to

encroach upon the footpaths and public ways amongst the unscrupulous citizens is flourishing because of deleterious inaction and tacit support of the

persons at the helm of affairs in the local authorities.

148. To conclude, it is high time that the menace of encroachment and unauthorised construction over the footpath and public way is viewed seriously

and dealt with strictly.â??

8. In view of the directions issued by this Court in Gulab Kothari (supra), the respondent local authorities were under an obligation to identify the

encroachments over the public ways and footpaths and remove the same expeditiously. The inaction of the local authorities in not taking appropriate

action for removal of the encroachments over the public land in the various cities of the State of Rajasthan amounts to defiance of the directions

issued by this Court. The encroachments over the public roads and footpaths need to be viewed seriously and dealt with sternly.

9. In this view of the matter, the writ petition is allowed. The respondent-Jaipur Development Authority is directed to identify all the encroachments

over the public road from Mansarovar Metro Station to Sanganer Flyover and other areas specified as aforesaid within a period of one month from the

date of this order. After identifying the encroachments made, encroachments

removal drive shall be undertaken and all encroachments shall be removed within a period of three months thereafter.

10. The compliance report shall be filed by the respondents before this Court on or before 6.12.2021.

11. Though, the writ petition stands disposed of, the matter shall be listed before the Court for perusal of the compliance report on 10.12.2021.