

(1988) 09 SC CK 0003

In the Supreme Court Of India

Case No : Civil Miscellaneous Petitions No's. 34114-15 of 1987

Calcutta Youth Front and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-09-1988

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (1988) 2 CALLT 19 : (1988) 3 JT 633 : (1988) 2 SCALE 594 : (1989) 1 SCC 8 Supp : (1988) 2 SCR 1017 Supp : (1988) 2 UJ 751

Hon'ble Judges : B. C. Ray, J;A. N. Sen, J

Bench : Division Bench

Advocate : Shanti Bhushan, G.L. Sanghi and S.R. Srivastava, for the Appellant; Somnath Chatterje, Tapas Ray, A.K. Mitra, B.P. Singh, Pratibha Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.—By these applications the applicants Calcutta Youth Front and its President Hridayanand Gupta pray for committing for contempt respondents Nos. 3-9 under the Contempt of Courts Act, 1971, namely: 1. Kamal Basu, Mayor & Administrator, Calcutta Municipal Corporation; 2. R.K. Prasannan, Municipal Commissioner; 3. B.C. Mitra, Municipal Engineer-in-Chief; 4. B.K. Roy, Deputy Municipal Commissioner (Sr.); 5. A.K. Sarkar, Chief Municipal Architect & Town Planner; 6. A.K. Goswami, District Engineer; 7. Dr. S.K. Chowdhury, Chief Municipal Health Officer, as well as the lessees respondents Nos. 13 and 14 Jugal Kishore Kajaria in his individual capacity as well as as Director, Messrs Happy Homes & Hotels Private Limited. The applicants alleged that these respondents were guilty of contempt in that they had in breach of the terms and conditions laid down by this Court in its order dated August 18, 1987 in SLPs 5678-79/87 See JT 1987 3 SC 348 permitted the lessees Messrs Happy Homes & Hotels Pvt. Ltd. to construct an underground air-conditioned market at Satyanarayan Park, and that they had connived and acquiesced in permitting the lessees to construct four pucca structures "15 feet in height above the road level partly covering the

surface of the Park and covering a major portion of the surface of the Park. It is alleged that the said constructions constitute gross and deliberate violation of the undertaking of the respondent No. 13 in his supplementary affidavit dated July 25, 1987 and the terms of the Court's order dated October 18, 1987. Applicant No. 2 Hridayanand Gupta in his affidavit dated July 14, 1988 placed reliance on the following observations made by this Court in its order:

Under the scheme there would be no construction on the park; the underground market would be under the park and not over the park. The only difference is that the park would be re-located at a height of 6 feet above the road level easily accessible by three separate staircases. Under the scheme, Satyanarayan Park would become a real park with a lush green garden with tall trees, shrubs etc. and a center for relaxation of the thickly congested Burrabazar locality and in particular for the children as a playground.

It was alleged that the assertion of the contemnors before this Court, as was before the High Court, was that tall trees and/or shrubs would be planted apart from the lush green lawn on the eastern garden under the direct supervision of the Agri-Horticultural Society of India, Alipore as per its letter dated July 25, 1987. This, according to the applicants, was nothing but a hoax. The applicants allege that the aforesaid respondents have committed deliberate violation of the terms and conditions of this Court's order by permitting the lessees to construct the aforesaid pucca structures of lofty heights which, apart from the four-storeyed building, cover a substantial portion of the surface of the park which would make it literally impossible to have a terrace garden with a lush green lawn with tall trees, shrubs etc. as a place of relaxation, and therefore liable to be committed for contempt. They in the meanwhile pray that respondents Nos. 13 and 14, the lessees, be restrained from subletting the underground air-conditioned park to anyone in the greater public interest. These allegations were controverted by the counter-affidavit of Jagdish Kanjilal, Deputy Chief Engineer (Design), Planning & Development Department of the Municipal Corporation dated February 10, 1988 and that by the lessees Jugal Kishore Kajaria impleaded as respondents Nos. 13 and 14. The applicants filed rejoinders to these counter-affidavits.

2. Having carefully gone through the applications for contempt, the counter-affidavit of respondents Nos. 13 and 14 and that filed on behalf of the Municipal Corporation, and having regard to the fact that the allegations made in the applications involve controverted facts, we thought it expedient to request Shri Justice Umesh Chandra Banerjee by our order dated April 21, 1988 to hold an enquiry as to whether there was a violation of the judgment and order passed by him, as affirmed in letters patent appeal by the Division Bench and also by this Court, and directed him to forward his findings by the second week of July 1988 that direction of ours was not to be construed as meaning that there was a breach of the terms and conditions laid down in the judgment. It was further directed that the High Court shall not, during the pendency of the enquiry, pass

any interim order which would tend to obstruct or delay the completion of the construction work of the underground airconditioned market.

3. In compliance therewith, Shri Justice Umesh Chandra Banerjee has submitted his report holding that there was no violation of his judgment. The learned Single Judge not only heard the parties but also took the trouble of personally visiting the park and note his observations on personal inspection. In the report the learned Judge records his visual impression in the following words:

Two open staircases have been provided for an entry onto the park apart from the three other covered entrances which would facilitate entry onto both the AirConditioned Market as well as to the park. The covered entrances are more or less at a height of about 15' ft. There are three other units for Air Handling Plants which are also more or less at a height of about 15' ft. On the eastern side there is a 4 storied building and on the top, a built-in-water reservoir has been erected and atop the built-in-water reservoir there are existing two huge water cooling tanks.

The 4 storied building admittedly has been constructed in place and stead of a one storied building which was existing prior to the licensing agreement and popularly known as "Service Block". On visual examination it appears that certain plant and machinery along with a switch room are located and housed in the service block.

4. The learned Judge then goes on to add:

On a close look at the entire nature of construction it cannot be said that the area looks totally green with some trees on one side, shrubs and other small trees all around. In my judgment dated 17th July 19861 observed:

Lovely lush green park soothing to the eyes would be visualised since the same would be at a raised level. Tall trees have already been re-planted. The entire area in question would have a different look. The sceptics might say that this is too much to expect but optimism prompts judicial conscience to allow such a project so that prospect of having such an area in the heart of a commercial center in the city of Calcutta is not ruled out.

The learned Judge expresses satisfaction that his expectations for beautification of the Metropolitan City of Calcutta were not belied, in these words:

It seems that the judicial optimism has paid a rich dividend in this particular case and the entire area in fact is having a decent and sophisticated look. There was not a blade of grass on the park prior to the licensing agreement. But now a lush green lawn is visible and the place in fact has turned out to be a place for recreation of tax payers-place for recreation for the children of the locality and a place to wither away the time for the old and aged people.

Along with the report he has annexed a photograph which depicts the existing state of Satyanarayan Park which was once a dark, dangerous place frequented

by persons with criminal record, has now turned out to be a beauty spot in a thickly congested area like Burrabazar. It shows that all the work of construction including the covered staircases together with the open staircase, including the four storeyed 'service block' is complete. The photograph depicts the state of affairs as to the shape, size and dimensions of these structures and gives an overall view of the proposed park atop the underground air-conditioned market at Satyanarayan Park. The learned Single Judge accordingly records a finding that by the raising of these constructions, question of committing any contempt of his judgment does not and cannot arise. We find no justification to come to any different conclusion.

5. At the hearing Shri Shanti Bhushan, learned Counsel appearing for the applicants was gracious enough to accept that the re-location of the park at a height of 8 feet above the road level instead of 6 feet is not a matter of moment because a few inches more or less here or there is hardly of any significance. He however confined his submissions to two aspects, namely (i) the raising of the lofty structures over the staircase leading to the underground airconditioned market constitutes a breach of the conditions laid down, and (ii) the construction of a four storeyed building covering an area of the park is a flagrant violation of the Court's order. We are afraid, the contention cannot be accepted. The so-called lofty structures-which we may call bunkers-are nothing but the covered space over the staircases from three directions leading to the underground market. The learned Counsel perhaps is not right in assuming that the staircases go upwards. Actually, the staircases provide an approach to the public to the underground airconditioned market and they go downwards. The staircases would not possibly be kept open and exposed to the sky having regard to the fact that the underground market is centrally airconditioned. We can take judicial notice of the fact that the central air-conditioning plant would not be functional unless there were these bunkers constructed over the staircases. That is how the staircases are covered at the Palika Bazar in New Delhi. Furthermore, the bunkers have been constructed according to the architect's plan duly sanctioned by the Municipal Corporation.

6. Shri Somnath Chatterjee, learned Counsel for respondents Nos. 13 and 14 rightly draws our attention to the finding of the learned Single Judge indicating that the four storeyed building has been constructed to locate the staff quarters. Since the underground market is fully air-conditioned, it is essential that the maintenance staff should be located in the park itself. Originally, there was a single storeyed building covering an area of 150 square metres. The newly constructed four storeyed building now covers only 72 square metres i.e. practically half the area earlier occupied. The learned Single Judge has also pointed out that in Clause (3) of the agreement it has been mentioned that the existing fittings and accessories and structures will have to be dismantled and the dismantled materials will be the property of the Municipal Corporation. Clause (4) provides that prior to the aforesaid demolition of the existing staff quarters and other infra-structures like pump room etc. which are in use,

alternative arrangement shall have to be made by the licensee 'for re-location of staff quarters and other infra-structures elsewhere which are necessary for maintaining the existing service during the construction period and then finally to rehabilitate them in the premises by the licensee'. The agreement further provides that the cost of temporary re-location and final rehabilitation shall be borne by the licensee. The learned Counsel pointed out that Shri Justice Umesh Chandra Banerjee in his judgment has also made a mention of overhead water tanks. It has been recorded therein as follows:

In any event, the scheme has been approved by the West Bengal Fire Service since adequate provisions have been made for supply of water in case of necessity. 55000 gallons of water will be available at the park, once the scheme is implemented. Apart therefrom, a further 38000 gallons of water will be available at the Lily Pool and 17000 gallons of water at the overhead water tanks.

In the premises my judgment records therefore:

- (a) that there be some structures atop the underground market, and
- (b) that there would also be overhead tanks with the storage facility of about 17000 gallons of water. Question of there being an overhead tank would not arise unless there are constructions atop the underground market.

The other aspect of the matter which ought also to be noticed is that the licensing agreement itself provides for approval of the drawing and design by the licensor and in fact drawings and designs as appears from the records were approved and constructions were effected as per the plan sanctioned by the Calcutta Municipal Corporation in accordance with the Building Rules. There is no dispute as to the factum of such a construction being made in accordance with the sanctioned plan.

7. Shri Chatterjee further drew our attention to paragraph 2 of the judgment delivered by the Division Bench wherein it has been stated:

After demolishing the old structures the trust had laid a public park commonly known as Satyanarayan Park having approximately an area of 20,000 sq. ft. The Calcutta Improvement Trust had made over the said park to the Calcutta Corporation now known as Calcutta Municipal Corporation (The Corporation for short) for the purpose of maintenance at its own cost.

This fact also finds mention in the order delivered by this Court. It would appear that the area of the said park initially was about 28 cottahs corresponding to 20,000 square feet. In the licence it appears that the area mentioned in 2500 square metres equivalent to 26,900 square feet. As such, by no stretch of imagination can it be asserted that a substantial portion of the park has been covered by encroachment and the statement that there cannot be a park or a terrace garden as visualised by this Court's order runs counter to the existing state of affairs.

8. To sum up, the learned Single Judge very rightly and properly addressed himself to the question whether there was a breach of the terms and conditions laid down in his judgment, leaving the question open for this Court to determine whether there was any deviation from the conditions set forth by the Division Bench or by this Court in appeal. We fully concur with the finding and reasoning of the learned Single Judge as also his approach.

9. There can be no doubt whatever that there is no breach either of the conditions laid down by this Court or the Division Bench of the High Court. The construction of the bunkers over the three staircases leading to the underground airconditioned market as well as of the four storeyed building were in the architect's plan and were expressly permitted in the licence and formed part of the sanctioned plan. It was therefore present in the mind of all concerned including the Chief Municipal Architect & Town Planner as also of the Administrator of the Municipal Corporation while planning the construction of the underground airconditioned market that these structures would be built up. As already stated, the construction of the bunkers over the three staircases was a matter of absolute necessity to make the central airconditioning plant fully functional. That is how a fully underground airconditioned market can be conceived, as has been done in the Palika Bazar in Connaught Place, New Delhi. As regards the four storeyed structure, the construction thereof does not constitute a breach of the conditions laid down. It has already been stated that the four storeyed structure is built to provide residential quarters to the staff and actually now it occupies much lesser space than before. In the premises, the allegation made by the applicants that the aforesaid structures cover a substantial portion of the surface of the park which cannot now be turned into a terrace garden with a lush green lawn, is wholly unfounded. We have already mentioned that the area of land covered by structures acquired by the Calcutta Improvement Trust for laying of a park in the Burrabazar area was 20,000 square feet whereas the area of the park in question as mentioned in the licence is 26,900 square feet. These peripheral structures now built are therefore well outside the area of the Satyanarayan Park proper.

10. The applications for contempt must therefore fail and are dismissed with costs. We cannot but deprecate the attempts made by the applicants to move the High Court as well as this Court time and again on one pretext or another in a frantic effort to prevent the construction of the underground airconditioned market at Satyanarayan Park which is a part of the beautification scheme of the great Metropolitan City of Calcutta by the State Government of West Bengal where a party in opposition is in power, to provide civic amenities to the citizens. It is fortunate that these attempts by the making of false and vexatious applications to hold up the construction of the underground airconditioned market, the estimated cost of which is about Rs. 4.50 crores, have been frustrated and what was conceived of a development scheme has come to a reality. The work of construction is nearing completion, as is evident from the photograph annexed to the report of the learned Single Judge, and we hope and

trust that the underground airconditioned market would be commissioned in the near future, and the terrace garden over the market will provide to the amenities to the people living in the locality as a place for recreation besides be a playground for the children.