
(1993) 09 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 3885 of 1992 (R)

Danmal Sharma and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 BLJR 1278 : (1994) 2 PLJR 651

Hon'ble Judges : S.B. Sinha, J; Narayan Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sinha and Narayan Roy, JJ.—A question as to whether a public path can be blocked by putting up stalls by the respondents is the central theme in this application.

2. The petitioners are residents of Giridih town. Some of them have their shops in their houses or have their house or shops alone. According to the petitioners small vegetable dealers on some occasions sit on the footpath on the road known as Bara Chowk Station Road. According to the petitioners, they have come to learn that local administration is going to construct pucca stalls on the road purported to under scheme known as NREP Scheme. Allegedly, the petitioners objected to constructions of such types of stalls on the footpath and have filed a representation on 19-12-1992 as contained in Annexure 1 to the writ application inter alia alleging therein that once the stalls are constructed their businesses shall be ruined. In paragraphs 11 and 12 of the writ application it has been stated as follows:

Bara Chowk Station Road in the town of Giridih is a busy road and there is heavy traffic on this road because of the facts that there are several business establishments such as shops, petrol pump and if the respondents are allowed to construct shops by the side of the roads the road would become narrow and

accidents may also take place and thus, would be endanger to the life and safety of people.

On this road there is one Jain temple, where people of Jain sect. worships. There is one Urdu Library where cultural programmes are organised by all the class of people, one Dharmshala which is used for marriage purposes and for the purposes of staying of the low income class people and if the shops would be allowed to be constructed there it would cause nuisance to the peace loving people of the locality.

3. A counter-affidavit has been filed on behalf of the respondents where -in it has been contended that a decision has been taken to allow some Par i lands belonging to the Public Works Department which is in the northern side of the road between Bara Chowk to Gandhi Chowk to different vendors so that they could install their respective stalls on the said lands or on wooden plank or on moveable things such as Thela fitted on wheels just in order to earn their livelihood to avoid congestion and encroachment on the public road which is causing hindrance in smooth flow of the traffic.

4. In the counter affidavit it has been stated as follows:

It hat; been experienced by the local administration that the vendors, who are in habit of encroaching the footpath causing congestion and in order to give better look to the road and the town, the District Administration have decided to construct platform so that the vendors confiner themselves only to the platform.

With regard to the point formulated in para 2(B) of the writ petition, I say and submit because the respondents are not going to construct any permanent building or structure with a clear directions to the allottee not to construct any permanent structures. Hence, in no manner the running business of the petitioners whose businesses are existed in their private houses are going to be affected.

With regard to the points formulated in para-2 (D) of the writ application, I say and submit that by removing the encroachment from the road side lands will in no manner is going to effect. Because, by this policy which is adopted by the respondents, the road side lands can be saved from the encroachment, town can be beautified, poor Hawkers/vendors will get places for their business and road accidents can be avoided, rush on roadside can also be avoided. In these days hawkers and vendors installed their shops in unplanned way and if the particular and definite places will be allotted then they shall lead to install their shops on the said definite places and in this way unnecessary rush could also be avoided, passerby and the person will get sufficient space to move on road/footpaths. The map, which is annexed, would show the clear picture of the plan of the respondents.

With regard to the points formulated in para-2(C) of the writ petition, I say and submit that the projection of the petitioners shops/houses would in no manner

blocked as there is no place to make any permanent construction with high root"s.

The respondents along with the counter affidavit have annexed a map wherein it has been shown that the road from Bara Chowk to Giridih station is 32" wide towards west in north to south and 32" wide towards East from north to South. The lands allegedly are going to be allotted towards north of the road and remaining 30" would be left for the pitch road. It has further been stated that the respondents would not touch 10" land by the side of the pitch road as the same shall be used by the passers by and thereafter the land having a width of 8" and then 20" more lands in width also would be left between the shop/residents/lands of the petitioners.

5. It has further been stated that the proposed action of the respondents would not affect the easmentary right of the petitioners as there would be sufficient space to carry on their business and it would not interfere with religious right nor the passage to Jain temple, Urdu Library or Dharmshala would be blocked.

6. It has been submitted that the aforementioned Scheme has to be made out in order to prevent the hawkers from putting up their shops on the entire road side lands. It has further been stated that the administration would not construct any permanent structures. It has further been stated that even if the said allotments are made, the road under reference would not become narrow and in fact, as the vendors/hawkers may install their business at a particular place, the same would help in removal of hindrances to the passage as a result of which chances of road accident would be minimised. According to the respondents, in fact they want to save the road from illegal encroachment as also to avoid rush and accident.

7. A reply/rejoinder to the said counter affidavit has been filed wherein it has been submitted that the road side lands are used by the drivers of heavy motor vehicles and also for parking of the vehicles by the people who come to market for the purpose of marketing. It has been stated that the road side land if allotted, will cause more congestion.

8. The law relating to the right of persons to have free access on the road vis-a-vis social welfare measures and adopted by the State is an intricate one.

The answer to the question as to in a given case an individual right would prevail over the right of the public in general depends upon the nature of the right, extent of injury, comparative hardships and other relevant factors.

The precedent in this regard are legion ; but in our opinion it would be sufficient to quote the following passage from Dias on Jurisprudence, Fifth Edition page 204-206:

There is a detectable priority at least as between national and social welfare, sanctity of the person and property in that order. Beyond this no hierarchy is discernible. It is difficult, for instance, to foretell in any given case, whether property rights or social welfare will be preferred, and the most that can be said

is that there has increasing awareness of the interests of society, especially within the past fifty years. The words of Bean J. indicate the present tendency:

It is another example of the in-road often made into individual rights in the interests of the wider community. In a modern civilised society, there must always be a delicate balance between the right of the individual and the need are often given powers which, so long as they exercise them reasonably, do entitle the authority to encroach, usually with compensation to be paid, on the rights of the individual.

This vast field can only be touched on with the aid of a few random examples. Thus, in deciding whether statutory authority to exercise a power justifies interference with private rights the old criterion was whether interference was the inevitable consequence of the act which Parliament had authorised. If so, no action lay. Where power had been given to run a railway, it was held that this inevitably implied some interference with the comfort of individuals by way of noise, vibration and smoke, but the power to erect a small post hospital was held not to imply authority to erect it in such a place as to interfere with the amenities of individuals. In more recent years there has been a tendency to take account of the social utility of an operation. For instance, it has been held that the utility of a public shelter outweighed the degree of interference with private rights that it caused and the Judicial Committee of the Privy Council has held that a statute, which empowered a local authority to supply "pure water", should be given a liberal construction so that the addition of fluoride was permissible as this was conducive to improve dental health. Again, efficient farming is now a matter of public importance and since a farmer cannot farm efficiently without a telephone on the premises, a landowner, who refused to consent to the installation of a telephone over and across her land, was held to have acted contrary to the public interest. On the other hand, even the social utility of an authorised activity will not justify causing widespread inconvenience.

In connection with the exercise of planning powers, the consideration involved were described by Holmes, J. as follows:

The general rule at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognised as a taking.

Particular interest has attached to the relaxation of judicial control over executive action in this matter by a narrowing of the concept of quasi-judicial.

9 In this case, there exists a serious disputed question of fact as to the nature and extent of right of the petitioners which may be infringed in the event the scheme of the administration is allowed to be implemented. There is also a dispute as to whether the land in question is a footpath or road side land.

10. It is now well-known that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot enter into a thicket of disputed question of fact.

11 In this view of the matter, it is not possible for us to give any positive finding on the question raised in this application. The petitioners may, therefore, take recourse to file a suit in a competent civil court.

12. For the reasons aforementioned, this writ petition is dismissed, but without any order as to costs.