

(2014) 05 DEL CK 0240
In the Delhi High Court
Case No : Cont. Cas (C) 176/2014

Delhi Shramik Sangathan

APPELLANT

Vs

Manish Gupta and Others

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 186, 332

Citation : (2014) 05 DEL CK 0240

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Indira Unninayar and Mr. Kirat Randhawa, Mr. Narayan Krishan, Ms. Nina Bhalla, Advocate for the Appellant; Gaurang Kanth, Advocate for SDMC in Cont.Cas (C) 176/2014 and W.P. (C) 144/2013, Mr. Nawal Kishore Jha, Advocate for R-11 and R-13, Mr. Anurag Gohil, Advocate for Mr. Sonal K. Singh, Advocate for R-12, Mr. Sanjeev Goyal, Mr. Anurag Pati, Advocates for R-16 in Cont.Cas (C) 176/2014 Mr. Anjum Javed, Advocate for R-11 to R-36 in Cont.Cas (C) 176/2014 and for Delhi Police in W.P. (C) 144/2013, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—W.P. (C) No. 144/2013 has been filed by the petitioner: Delhi Shramik Sangathan. It espouses the cause of 130 hawkers/vendors, statelý carrying on business in Harkesh Nagar. It is the case of the petitioner that the said 130 hawkers whose names are as per Annexure P-2 to the writ petition were tricked into temporarily shifting to a nearby place when the Delhi Metro Rail Corporation wanted to execute some works pertaining to its parking near Okhla Phase II Metro Station. It is the case of the petitioner that the said 130 hawkers were hawking their goods from a site in front of Shiv Mandir, Harkesh Nagar, Okhla Industrial Area Phase II. It is the further case of the petitioner that the place whereto said 130 hawkers were shifted was filthy. Sanitary conditions were pitiable. The right to dignity and the right to carry on trade in a congenial atmosphere of the said 130 persons was violated. Another grievance made was that the National Policy on Urban Street Vendors-2009, formulated on June 17,

2009 was not being given effect to, in that, the Street Vending Committees required to be constituted were not constituted and thus the street vendors had no fora where their grievances could be redressed. The petitioner lays emphasis on the fact that as per directions issued by the Supreme Court no existing street vendor can be removed from a vending site and that the existing street vendors would have a right to have their claims adjudicated before the said Vending Committee should a dispute arise regarding their status. The petitioner further lays emphasis on the fact that till the Street Vending Committees are constituted any issue concerning the 130 street vendors, whose cause is being espoused, have a right to carry on their trade unobstructed by the Municipal or the Police Authorities.

2. The respondents are not at variance with the petitioners on the legal position concerning street vendors as propounded by the petitioner and concede that till the Vending Committees decide their claims, since they assert to be existing street vendors, they would have a right to carry on trade. But in a legitimate manner. The case of the respondents is that the place wherefrom the 130 street vendors whose cause is being espoused by the petitioner are carrying on their business currently is not an approved squatting zone. As per the Corporation, the Delhi Metro Rail Corporation had a right to remove them from the land belonging to the Delhi Metro Rail Corporation. As regards the garbage, the stand of the Corporation is that the same is removed daily. Learned counsel for the Corporation also emphasize that even the vendors owe a responsibility to ensure that neither they nor their customers litter the site. Such of them who sell food stuff must ensure that they keep a receptacle nearby the place from where they sell food stuff so that the paper plates or pattals (dry leaves bound in a manner that they can be used as akin to a plate) are thrown by their customers in the receptacle which could then be empty into the Municipal garbage dumps nearby.

3. On January 16, 2013 an interim order was passed by this Court directing the Delhi Police to abstain from interfering with the pursuit of hawking business by the 130 hawkers at the site wherefrom they were carrying on their business. Directions were issued that the Corporation would ensure that no garbage was dumped in the place wherefrom hawking was being resorted to and that the daily garbage generated would be removed.

4. Contempt Case (C) No. 176/2014 was filed by the petitioner alleging that the police had connived with the officers of the Corporation to remove the hawkers and seize their handcarts because bribe was not being paid. On February 26, 2014 force was used by the police. Innocent hawkers were beaten up and on a false allegation, FIR No. 145/2014 dated February 26, 2014 for offences punishable u/s 147, 148, 149, 186, 332 and 353 IPC was registered at the local police station. Another grievance made was that the Municipal Authorities were attempting to construct a public toilet near the hawking zone. It was alleged that the same would create nuisance. Prayer made is to restrain the Corporation from constructing the public toilet at the proposed site. A video has been filed which is

of a 10 minutes duration and shows the Municipal Officers under police protection removing handcarts. A mild lathi charge being resorted to by the police is also to be seen.

5. The response to the contempt petition is that under the garb of the interim orders passed, the hawkers firstly raised semi-permanent structures, (and from the photographs we see that bamboo, tarpaulin and tin sheets have been used at a few places) and thereafter building material waste (malba) was brought at the site. The right of way was squatted upon by erecting the temporary structures. It is further alleged that the purpose of bringing the malba to the site was to use the old bricks in the malba to raise semi-permanent structures by using the old bricks to erect walls and the roof could be put in place by using old tin sheets or tarpaulin. Action was taken to not only remove the same, but even assist DMRC in constructing a public toilet next to the wall of the existing metro station. It is the case of Delhi Police that its Officers gave protection to the Municipal Officers when the unruly vendors resorted to violence.

6. During arguments learned counsel for the respondents also relied upon a video recording of the incident.

7. We had reserved the matter to view the video recordings properly and from the videos download photographs to graphically show what possibly happened on February 26, 2014.

8. The video prepared by the Delhi Police Officers, having fifty minutes duration, would evidence that a kaccha structure, made from old bricks with tin sheet terrace was to be demolished and a bulldozer was used by the Municipal Authorities. When the bulldozer arrived, people gathered. From the gesticulations one can make out anger in the crowds which gathered. The video shows a heap of malba lying nearby. After the temporary brick structure is demolished by the bulldozer it proceeds towards the place where the malba is lying. The ingredients of the malba would show that it consists predominantly of bricks which can be used easily to construct temporary structures overnight. Using the bulldozer the malba is dumped on to trailer trucks for being removed. The video shows that the bulldozer then moves towards shops, which are temporary, and one can clearly see a sweetmeat shop. People are seen lying in front of the shop. It is at this stage that hell breaks loose. People start pushing the police personnel and a few are seen running away and after some distance, one can see them pelt stones at the police officers. The demolished kaccha structures can be seen. From the video one can make out temporary structures erected on the right of way adjoining the wall of the metro station.

9. The still photographs generated by us from the video are being incorporated pictorially in our decision. The same would be:-

10. The photographs generated from the video make it clear that the street vendors are using judicial orders to flout the law. Street vending can be of two kinds. An open Tehbazari at a fixed spot or mobile hawking using handcarts.

Under no circumstances can street vending take the form of permanent or semi-permanent structures being erected on Municipal land or land belonging to a statutory public body, and that too on the right of way. During arguments we had asked learned counsel for the petitioner whether a person can set up a food stall in the middle of the road, and what right would the Municipal Authorities have if a person does so? Learned counsel responded by saying that if a person does so, he can be removed, but after following the process of law. What would be the said process of law? The learned counsel replied that it would be an opportunity to be heard.

11. It is trite that a person would be entitled to be heard if an action is proposed to be taken which could possibly affect a civil right of the person concerned. A trespasser who does not achieve the status of a person in settled possession cannot be treated in law to be in legal possession of the site. He has no right. The question of applicability of right to hearing does not arise.

12. Reverting to the facts which are graphically revealed in the video prepared by the police, it is apparent that the vendors have brought malba, consisting of retrieved bricks from buildings which have been demolished, to the site and the obvious intent would be to surreptitiously raised temporary brick structures and cover them with tin sheets or tarpaulin. The video would show a temporary market being erected using bamboo, tarpaulin and tin sheets. The video would show that refrigerating machines have been brought to the site to store sweetmeats. This is not what street vending is meant for.

13. The action taken by the police, at the asking of the Municipal Authorities, is ex-facie justified. Under the garb of Court orders nobody is entitled to violate the law.

14. It also assumes importance to note that the petitioner has not filed a single document evidencing any Tehbazari right being conferred upon the 130 street vendors whose cause is being espoused. We would be refraining not to note that the policy of the Corporation is to allot 6 feet x 4 feet Tehbazari sites at minimal license fee. If a person is found unauthorizedly squatting a fine is imposed. Not a single person has a document to evidence that in the past any fine was paid. To sell sweetmeats one needs a municipal health license. The vendor which we see in the video selling sweetmeats, who has even brought a refrigerating machine, is obviously brazenly violating the law. He is also compromising with public health standards.

15. But the Municipal Authorities are also at fault. By not constituting the Street Vending Committees they are bound to obey the judicial orders passed by the Supreme Court that no existing vendor be dislocated from the place where he is hawking goods and wares. The reason for the judicial order is apparent. If you do not provide a forum required by law for a dispute to be resolved, status quo has to be maintained. The slumber by the Municipal Authorities has created a situation where any person can spring up one fine day and claim that he is

squatting since long. This claim has to be decided by the Vending Committee. We would therefore commend to the Municipal Authorities that immediate steps be taken to constitute the Street Vending Committees. Till then, a person who claims to be an existing squatter be not disturbed, but at the same time we make it clear that nobody has a right to squat on a right of way or raise temporary or permanent constructions, and if any are raised, the Municipal Authorities would be free to demolish the same.

16. As regards the writ petition, since we find that the beneficiaries whose cause is being espoused have misused the judicial process, we immediately terminate the proceedings in the writ petition. We dismiss the same but that would not mean that the Municipal Corporation would not discharge its duty to remove the garbage from the area on daily basis.

17. The controversy concerning a public toilet to be erected adjoining the wall of the existing metro station is resolved by us permitting erection of the public toilet for the same would be in public interest. Those who use the metro station would require a public convenience. The customers who would be buying the goods sold by the street hawkers would also be needing the same.

18. As regards the contempt case, from the videos seen by us, no case is made out to initiate any contempt proceedings against any officer.

19. The contempt petition is dismissed.

20. We refrain from imposing any costs upon the petitioner.

CM Nos. 4772-73/2014 in Cont. Cas (C) No. 176/2014

CM Nos. 4921/14 & 4381/14 in W.P. (C) No. 144/2013

Disposed of as infructuous.