

(2010) 08 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (C) 12170 of 2009 and CM No's. 12379 and 14039 of 2009

Dr. Gurpreet Singh

APPELLANT

Vs

New Delhi Municipal Council and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 DEL CK 0163

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajshekhar Rao, for the Appellant; Pinaki Mishra Madhu Tewatia, Ashutosh Lohia, Sidhi Arora and Nikhil Bahri for R-1, R.G. Srivastava, for R-2 and Priyanka Kathuria, for Sangeeta Chandra, for R-3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The writ petition was filed in public interest. However, the PIL Bench found the grievance raised in the petition to be more or less of a personal character and ordered the petition to be tried not as a PIL.

2. The petitioner is a resident of 18-A, Aurangzeb Road, New Delhi-110011. He is aggrieved from the works commenced by the respondent No. 1 NDMC in Tees January Lane, in which the rear end of the property of the petitioner opens. He contends that the respondent No. 1 NDMC has commenced the said works in violation of the Master Plan for Delhi-2021 & guidelines with respect to the Lutyens Bungalow Zone of Delhi in which the aforesaid property is situated and without any sanction and without the approval of the respondent Delhi Urban Arts Commission (DUAC) impleaded as respondent No. 2 in this petition. The petitioner thus seeks the relief of restraining the respondent No. 1 NDMC from proceeding with the said works and of directing demolition of the works already carried out.

3. The petitioner, in the petition has also pleaded that through the medium of Right to Information Act, he has been informed that the works aforesaid were

part of a project of streetscaping and which was proposed to house Car Parking, Bus Parking and Outdoor Plaza, Memorial Plaza in the said lane; it was also informed that kiosks and vendors in front of Gandhi Smriti on Tees January Marg (as distinct from Tees January Lane) are proposed to be shifted to the roundabout at the end of Tees January Lane. The petitioner also contends that the proposal of the NDMC of converting the round about at the end of Tees January Lane into a market and to convert the Lane into a parking area for cars and buses of visitors to Gandhi Smriti, will render the Lane unusable for residents of houses opening in the said Lane, including the petitioner. It is perhaps on account of said plea that the petition was considered as venting private grievance. The petitioner along with the writ petition filed an application for interim relief for restraining the said works.

4. The writ petition and the application for interim relief came up before the Court on 13th October, 2009 when while issuing notice of the writ petition, the respondents were directed to maintain status quo with regard to creation of third party rights, title and interest and possession of the kiosks/shops construction/being constructed in the Tees January Lane. The said order continues to be in force.

5. The respondent No. 1 NDMC has applied for vacation thereof. It is inter alia the case of the respondent No. 1 NDMC that the visitors to Gandhi Smriti, a monument of international repute, on Tees January Marg, park their vehicles in front of the Smriti and which comes in the way and thus blemishes the beauty of the Smriti, that to cater to the said visitors, few kiosks were also set up to serve food items in front of the Smriti and which also leads to accumulation of waste at the road and nearby places and also diminishes the sanctity of the monument; that the respondent No. 1 NDMC thus decided to shift the parking lot and the kiosks aforesaid to the back side of the Smriti i.e. on Tees January Lane and the works aforesaid were commenced in this context.

6. The respondent No. 1 NDMC has also filed a counter affidavit to the writ petition. The respondent No. 2 DUAC has also filed a counter affidavit pleading inter alia that its approval is required for the works as of the nature commenced by the respondent No. 1 NDMC and that the respondent No. 1 NDMC has not applied for such approval.

7. The matter came up before the Court last on 18th August, 2010. The senior Counsel for the respondent No. 1 NDMC expressed urgency. It was contended that the vendors in front of Gandhi Smriti on Tees January Marg were required to be rehabilitated at the new site in Tees January Lane, the work of construction whereon has already completed and the said shifting is held up owing to the interim order aforesaid in this petition. It was contended that the kiosks in front of the Gandhi Smriti were required to be removed immediately in view of the ensuing Commonwealth Games when participants in the Games and the tourists are expected to visit the Smriti.

8. Since the occupants of the kiosks on Tees January Marg who are sought to be rehabilitated at the new site in Tees January Lane are tehbazari holders, it was enquired from the senior Counsel for the respondent No. 1 NDMC whether the new site in Tees January Lane had been approved as a vending site by the Zonal Vending Committee constituted under the National Policy on Urban Street Vendors, 2009. The respondent No. 1 NDMC was also directed to produce the layout plan of the area before this Court.

9. The respondent No. 1 NDMC in pursuance to the order aforesaid has filed an additional affidavit stating inter alia that the existing kiosks in front of Gandhi Smriti had been allotted long back; that they were required to be removed therefrom for reasons aforesaid; however, the respondent No. 1 NDMC before removing the said kiosks was required to rehabilitate the occupants thereof in terms of Clause 4.2 of the Scheme for Urban Street Vendors for NDMC; that under the National Policy on Urban Street Vendors, 2004, the areas covered by the Lutyens Bungalow Zone (LBZ) have been declared as non vending areas; however, wherever kiosks/stalls had been constructed by the respondent No. 1 NDMC including in the LBZ area; the same were allowed to continue. It is thus pleaded that the Vending Committee has no jurisdiction over the said area but respondent No. 1 NDMC was obliged to rehabilitate the kiosk owners and has decided to rehabilitate them behind the Smriti in Tees January Lane.

10. The counsel for the respondent No. 2 DUAC on 18th August, 2010 as well as today, reiterates that the works carried out by the respondent No. 1 NDMC in Tees January Lane without the permission of respondent No. 2 DUAC is illegal.

11. The senior Counsel for the respondent No. 1 NDMC has today fairly stated that the question whether the respondent No. 1 NDMC was required to obtain permission of respondent No. 2 DUAC or not requires consideration. He has suggested that the matter can be referred to the Lieutenant Governor for consideration of all aspects or may be decided by this Court after hearing the parties further. He has however contended that owing to the interim order in this petition, the kiosks in front of Gandhi Smriti on Tees January Marg are not being removed and owing whereto the entire work of beautification of the Smriti is held up. It is urged that in the ensuing Commonwealth Games not only the participants in the Games but also other visitors/tourists are likely to visit Gandhi Smriti, as normally all visitors to the city do and the country will cut a sorry figure if the beautification drive proposed is not implemented. The senior Counsel has fairly offered that if the newly constructed kiosks/plaza in the Tees January Lane are permitted to be occupied, the same shall be subject to further orders in this petition and the respondent No. 1 NDMC, in the event of it being held in the writ petition that the respondent No. 1 NDMC was not entitled to construct the said kiosks, would remove all persons so allowed to occupy the kiosks/shops.

12. The counsel for the petitioner has controverted the aforesaid contention of the respondent No. 1 NDMC. He contends that no commercial activity can be permitted in the Lane or in the plaza constructed on the roundabout towards the

end of the Lane. He further contends that once it is the stand of the respondent No. 2 DUAC also before this Court that its approval is required, the works in the Lane though completed are illegal and should not be permitted to be occupied. It is also the case of the petitioners that the works already carried out if permitted to be made functional would destroy the serenity of the lane in which the rear end of the property of the petitioner opens and would be a continuous source of nuisance. He further points out from the National Policy on Urban Street Vendors, that the respondent No. 1 NDMC is required to rehabilitate the existing tehbazari holders in its jurisdiction, only in consultation with the Residents Welfare Association and which has not been done. The counsel for the petitioner also draws attention to the judgments of this Court in Harsh Gupta and Others Vs. New Delhi Municipal Committee and Others, and in Central Service Station and Others Vs. N.D.M.C. and Others to contend that the respondent No. 1 NDMC could not have so made the constructions aforesaid in the Tees January Lane.

13. The writ petition would require consideration.

14. As far as the interim relief is concerned, I am of the view that the private rights of the petitioner must give way to the public interest. The Supreme Court in The Supreme Court in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, held that a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226. It is ultimately a matter of balancing the competing interest. In Modern Law Review, Vol. 44, 1981 Edition at Page 214, R.A. Buckley stated that "A plaintiff may still be deprived of an injunction in such a case on general equitable principles under which factors such as the public interest may, in an appropriate case, be relevant". The Supreme Court in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, held that it is common experience that injunction normally is asked for and granted to prevent the public authorities from proceeding with execution of or implementing scheme of public utility; public interest is therefore one of the material relevant considerations in either in exercising or refusing to grant ad-interim injunction. In that case, public purpose of removing traffic congestion was sought to be served by widening the road and which purpose was held up owing to stays granted by the Courts. The Supreme Court held that the Courts should necessarily consider the effect on public purpose and should suitably mould the relief. The Supreme Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., also held that where loss is caused to the public, there is no measure for determining the loss.

15. Reference may also be made to Baitarani Gramiya Bank Vs. Pallab Kumar and Others, reiterating that when public interest competes with private interest, the private interest will have to give way to public interest. The Supreme Court in

Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., again held that wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purpose, individual rights may have to give way. Public interest has always been considered to be above private interest. Interest of an individual may to some extent be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country see Panchkuian Road Refugee Vyapar Sangh and Others Vs. Delhi Metro Rail Corporation and Others, The Supreme Court in Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, also held that the writ court exercising powers under Article 226 cannot substitute its own judgment for the judgment of the Government as to what constitutes public purpose. It was held that whatever furthers the general interest of the community as opposed to a particular interest of the individual must be regarded as a public purpose and the emphasis is unmistakably shifting from the individual to the community.

16. The removal of the kiosks in front of Gandhi Smriti on Tees January Marg and shifting of the parking therefrom and beautification of the project is deemed to be in public good. It can reasonably be accepted that during the international event being hosted in the country, the Gandhi Smriti would be a big draw. The image of the country would certainly be sullied if the visitors to Gandhi Smriti go back with a poor image of maintenance thereof. I have also perused the layout plan produced by the respondent No. 1 NDMC of the area. The changes proposed are certainly for the betterment and beautification of the area even if they be ultimately held to be contrary to law. The works proposed and now carried out are in consonance with the international designs around prominent monuments, as Gandhi Smriti is. At all such sites" main approach is always kept clean and uncluttered and all public amenities, facilities are found at a separate end. The same is proposed to be done by the respondent No. 1 NDMC.

17. Thus, as a temporary measure and subject to final orders in this petition, it is directed:

(i) The respondent No. 1 NDMC is permitted to occupy kiosks/shops constructed in Tees January Lane. However, such occupation is subject to the undertaking of the respondent No. 1 NDMC to have the same vacated in the event of the works being found illegal and being ordered to be demolished. The respondent No. 1 NDMC is given liberty to, if deems appropriate take affidavits/undertakings from persons allowed to occupy the said kiosks/shops.

(ii) In the event of the works aforesaid being found to be illegal, no special equity will flow in favour of the respondent No. 1 NDMC or the persons allowed to occupy the said kiosks/shops.

(iv) The respondent No. 1 NDMC shall not allow any other hawkers/squatters than the number of shops/kiosks to squat/hawk in the area.

(v) The respondent No. 1 NDMC shall not enhance the number of shops/kiosks and shall not construct any further kiosks/shops in the area.

(vi) The respondent No. 1 NDMC shall not grant licence or enter into agreement with any of the persons in the aforesaid area for a period of more than one year.

18. With the aforesaid directions CM No. 12379/2009 & CM No. 14039/2009 are disposed of.

W.P.(C) 12170/2009

List for consideration on 8th December, 2010.

Copy of this order be given Dasti under the signature of the Court Master.