

(1998) 01 KAR CK 0033
In the Karnataka High Court
Case No : Writ Appeal No. 3549 of 1997

Dr. Nitin G. Khot and Others

APPELLANT

Vs

Station Commandant, Belgaum Cantonment, Belgaum and Others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Cantonment Land Administration Rules, 1937 — Rule 13, 13 (3) (i) (d), 5, 5 (1) (i)
Cantonments Act, 1924 — Section 280, 51
Constitution of India, 1950 — Article 19 (1) (d), 226

Citation : AIR 1998 Kar 300 : (1998) ILR (Kar) 2194 : (1998) 3 KarLJ 102

Hon'ble Judges : R.P Sethi, C.J.;A.M. Farooq, J

Bench : Division Bench

Advocate : Dr. Nitin G. Khot, for the Appellant; Sri K. Ananth Ram, Sri Ashok Harnahalli, Senior Central Government Standing Counsel and Sri A.V.S. Reddy, Government Advocate, for the Respondent

Judgement

R.P. Sethi, C.J.—Freedom of movement is a fundamental right guaranteed by Article 19(1)(d) of the Constitution of India. The free movement assured by clause (1)(d) of Article 19 relates not to general rights of locomotion but refers to the right of shifting and movement from one part of the territory of the country to another without discrimination, restrictions or restrains. This right includes freedom of movement within a State as also between one State and another. The State, cannot put restrictions upon the movement of a citizen without reasonable grounds. As and when such restrictions are imposed, the same are required to be tested by the permissible limits prescribed under clause (6) of Article 19. It has to be kept in mind that the right conferred by the aforesaid clause is a right enjoyable by a free man. The rights conferred by Article 19 are popularly known as Civil Rights as distinguishable from legal, political and contractual rights.

2. Such a golden right enshrined in Article 19(1)(d) of the Constitution was alleged to have been violated by the respondent Army Authorities in the City of Belgaum, a peaceful and historic city located in the North-West of Karnataka. It

is alleged that the Army Authorities have completely closed 16 roads in the city resulting in not only the inconvenience to the residents of the city but also the population living around the city who have been illegally prevented from using the roads. The 16 roads regarding which the writ petition was filed are:

1. Nagzari Road/Albert Ekka Road Pandering Salunke Marg.
2. Laxmi Mandir Road.
3. Esedar Road from Maj. Ramaswamy Avenue to Thimmayya Road.
4. Parade Road Burj Road.
5. Rajendra Singhji Road.
6. Arsenal Road Hoshiar Singh Road.
7. Frere Road.
8. Race Course Road/Point Road.
9. Ramghat Road.
10. Namdev Jadhav Road.
11. Thimmayya Road.
12. M.H. Road/K.V. Road.
13. Havlock Road/O.P. Malhotra Road.
14. Gymkhana Road.
15. Nalhan Marg.
16. Hilli Road.

3. The public interest litigation initiated by public spirited persons had been resisted by the respondents on various grounds as detailed in the statement of objections filed in the case. It was submitted that no fundamental right of any citizen had been violated. The respondents, however, had admitted the closure of the following roads:

1. Albert Ekka Road.
2. Laxmi Mandir Road.
3. Parade Road Burj Road.
4. Pandurang Salunke Marg.
5. Arsenal Road.
6. Frere Road.
7. M.H. / K.V. Road.

4. It was submitted that the aforesaid roads fell within the cantonment area. The civilians were admitted to have been permitted to reside in cantonment areas to cater to the needs of the garrison station there. The cantonment could not be treated on par with municipalities. Station commandant was claimed to be possessing the powers u/s 51 of the Cantonments Act, 1924 to suspend a decision of the Board which he considered prejudicial to the health, welfare, discipline and security of the force. The administration of the land within the cantonment was governed by Cantonment Land Administration Rules, 1937 (hereinafter called the Cantonment Rules) framed by the Central Government u/s 280 of the Cantonment Act. According to the aforesaid Rules the land in cantonment is divided into 3 Categories i.e., Classes A, B and C. Class "A" land is further sub-divided as Class A(1) and Class A(2) lands. Class A(1) land is a land which is under the active use and occupation of the Military Authorities and Class A(2) land is a land which is not in active use and occupation of the Military Authorities, but reserved for such use. The roads were claimed to be situated on Class A(1) land property belonging to the Central Government upon which no member of public could claim any right to enter. It was further contended that the opening or closing of these properties was at the discretion of the Ministry of Defence. As the roads, the subject-matter of dispute, were allegedly located within the property of Ministry of Defence, the petition was claimed to be misconceived and liable to be dismissed. It was further contended that the public were not put to any inconvenience by the closure of roads as there were alternate roads available to them. It was claimed that Article 19(1)(d) of the Constitution had not been violated as the said Article did not entitle a person to walk on the property of another. It is submitted that the Central Government had taken the steps of enclosing the defence area with the intention of safeguarding the defence property and installations to prevent any security risks. It was admitted that the public had been using the aforesaid roads prior to the imposition of the restrictions. It was alleged that the free passage on the roads had resulted in stealing of arms and ammunitions in certain cases. For such act of thefts reference had been made to the incidents alleged to have taken place at Pune in Maharastra. It was vaguely alleged that arms and ammunitions which were smuggled out of defence establishments were used for various anti-social activities. The respondents claimed to have restricted the use of the roads on several occasions earlier also.

5. Satisfied with the explanation rendered by the respondents, the learned Single Judge dismissed the writ petition vide the order impugned in this appeal holding that as the disputed roads vested in the Cantonment Board, their user could be regulated by such Board. So far as the roads which were under the control of the Army, it was held that their user could be restricted to the general public in view of the defence needs. The learned Single Judge further held that the question as to whether the roads were street or not within the meaning of Section 3 of the Cantonment Act, could only be established by way of a regular suit and that no relief could be granted in proceedings initiated under Article 226 of the

Constitution of India.

6. It has been conceded on behalf of the respondents before us that the roads, the subject-matter of dispute, were governed by the Cantonment Rules. Rule 4 of the aforesaid rules refers to the classification of land in a Cantonment area. It provides:

"Classification of land.--For the purpose of the General Land Register prescribed by Rule 3.--

(a) land in the cantonment which is vested in the crown shall be divided by the Central Government, or such other authority as the Central Government, may empower in this behalf, into two classes, namely.--

(i) Class "A" land which is required or reserved for specific military purposes; and

(ii) Class "B" land which is not so required, or reserved, but which is retained in the cantonment for the effective discharge of the duties of the Central Government in respect of military administration; and

(b) land which is vested in the Board u/s 108 of the Act shall be called Class "C" land.

(i) Land in cantonments must fall into one or other of three main categories, namely.-

1. Land which "is vested with Central Government (Classes "A" and "B");)

2. Land which "is vested in the Cantonment Board" (Class "C");)

3. Land which falls into neither of the first two categories.

(ii) Land in category (1) may be either.-

(a) Class A(1) land, that is land in the active occupation of the Army.

(b) Class A(2) land, that is land which for specific military reasons must be kept vacant and must not be built over.

(c) Class "B" land, that is land which, though not actively occupied by the Army nor reserved against building, yet must be retained in the cantonment is primarily a place of residence for troops and it is the duty of the Government of India, in the interests of the troops and of the civil population which is essential to the welfare of the troops, both to provide them with amenities such as postal, telegraphic and railway communications, rest houses, bungalows, shops, places of amusement, open spaces, agricultural produce and so forth; and also to keep in their hands a sufficient area to meet all possible future requirements that may arise in the course of the efficient discharge of their duties in respect of Army administration.

(iii) Land in category (2) is land which in the words of the Act, is required for "local public purposes" of a municipal nature, such as streets, markets, hospital,

rubbish depots and so forth.

(iv) Land in category (3) is private land over which neither the Government nor the Cantonment Board possesses any proprietary rights.

Rule 5 provides:

"5. Class 'A' land.-- Class 'A' land shall be divided by the Central Government, or such authority as they may empower in this behalf, into the following sub-classes, namely:

(i) Class A(1) land which is actually used or occupied by the Military Authorities, for the purposes of fortifications, barracks, stores, arsenals, aerodromes, bungalows for Military Officers which are the property of Government, parade grounds, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in Paragraphs 419, 421 and 425 of the Regulations for the Army in India and other official requirements of the Military Authorities".

Similarly Rule 9 deals with the management of Class A(1) land and provides that except for such areas or class of areas as may from time to time be declared by the Central Government to be under the immediate management of the Military Authorities themselves shall be entrusted to the Military Estate Officer. Rule 13 provides that the Military Estate Officer shall maintain plans and schedules of lands in Class A(1) and A(2) lands for each cantonment. Rule 13(3)(i)(d) provides that where roads, over which the public have a right of way, traverse a holding, such roads should be excluded from the holding, even if they are military roads. Rule 14 provides special Rules for Class 'A' lands. According to this rule the administrative control of Class 'A' land including the detection and prevention of encroachments thereon, shall vest in the Military Authorities for the time being in occupation of the land and the administrative control of Class A(2) land vests in the Central Government. It further provides:

"The control of Class 'A' land mentioned in sub-rule (1) of this rule is to be distinguished from the management referred to in Rule 9. The intention is that Class 'A' lands shall be entirely under military as distinct from cantonment and civil control, but subject to this distinction, the actual management of certain Class A(1) lands is entrusted to the Military Authorities themselves under sub-rule (1) of Rule 9, while the remaining areas of Class A(1) land and all Class A(2) lands are entrusted to the management of the Military Estate Officer.

Unless and until the Military Authorities raise the question of relinquishing any lands in Class A(1) which are under their immediate management, the Military Estate Officers have no functions to perform with regard to such lands except to maintain a proper record of them as laid down in Rules 3 and 13".

7. To resist the claim of the appellants it has been argued on behalf of the respondents that they have not closed any roads but have only enclosed their campus area, meaning thereby that the members of the public have been

disallowed to use the roads within the campus. It is further submitted that the roads are not cantonment roads, but private roads formed and maintained by the Military Authorities for their use over which the appellants or any other person have no right. It is contended that the roads in question coming within A(1) land were the property of the Army Authorities regarding which the respondents had absolute right to deal in the manner they like. It is further contended that the appellants have no right under Article 19(1)(d) of the Constitution to maintain the present petition. It is apprehended that if such a right is conceded, a person may claim right in sensitive defence establishments resulting threat to the nation's security. The respondents further contend that the Military Authorities are entitled to protect their private property just as a private owner can. The pleas raised by the appellants are termed to be based upon disputed questions of fact which could not be adjudicated by this Court in exercise of writ jurisdiction.

8. The learned Counsel appearing for the respondents vehemently argued that as the roads belonged to the Army, under the rules no citizen had a right to claim the freedom of movement on such lands. Attempts have been made to persuade us to hold that as the land belonged to the Army, the same should be treated as if belonging to a private individual or group of individuals, over which no other person could claim any legal or contractual right, much less a constitutional right. The attempt made is apparently futile and misconceived. The Indian Army cannot claim to be a distinct entity distinguishable from the Union of India. Nobody can say that Army Authorities are not the instrumentality of the State i.e., Union of India. The property belonging to the Army is the property of the Central Government, over which any citizen can maintain a petition if any of his fundamental right is infringed. Holding the Indian Army to be distinct entity would lead to dangerous consequences. Such a conclusion would result in giving a licence to various organs of the Union of India to claim independent and distinct rights in their favour. Such a tendency would be a great risk to the democratic institutions established and nourished in this country. The glory of the Indian Army is the pride of the people and the Central Government. No officer of the Army can usurp the sovereign functions by putting the limitations upon user of the property belonging to the Central Government.

9. Even the rules specifically provide that the land which is vested in the State has to be divided by the Central Government into various classes. Rule 4 clearly and specifically declares that the land in the cantonment is vested in the State. The classification of lands clearly shows that Class "A" lands are lands which are required or reserved for specific military purposes to be dealt with in the manner prescribed under the aforesaid rules. The argument of the learned Counsel for the respondents with respect to the land belonging exclusively to the Army is independent of the obligations attached to it being the property of Central Government, cannot be accepted and is hereby rejected.

10. As the land has been held to be the property of the Central Government, the respondents were under the legal obligation to justify their action of putting the

restrictions, particularly when it has been conceded before us that the aforesaid lands had for years been used by the citizens of Belgaum and adjoining areas. The respondents have not referred to any authority of law or specific order of the Central Government putting such restrictions resulting in curtailment of the right of freedom of movement enshrined by Article 19(1)(d) of the Constitution. Restrictions contemplated under Article 19(6) of the Constitution are such restrictions which are imposed by any law or in exercise of the powers vested in an authority under a valid law. Admittedly, the impugned restrictions have not been imposed by any statutory provision or under the authority of a Statute. Such restrictions, therefore, cannot be termed to be reasonable restrictions within the meaning of clause (6) of Article 19 of the Constitution.

11. In *Sujay Advertising v Union of India and Others*, the respondents had resisted the claim of the petitioner therein on the ground that the land in between the parade ground and Mahatma Gandhi Road in Bangalore belonged to them and they had the right to put restrictions regarding erection of any advertisement boards on the lands. The Court had in that case held that the public streets and roads vest in the State and that the State holds them as trustee on behalf of the public. Relying upon the judgment of the Hon'ble Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others*, , the Court held that:

"The legal position that is firmly established by the ruling is that whoever might have been the owner of a public foot path before, once a land is used as a public foot path, the rights of the previous owner if any thereon stand extinguished and the same vests in the State and every member of the public has a right to use the same subject to the rights of others and the law regulating traffic etc. On the application of the above legal principles, the Corporation being the local authority for the City of Bangalore and charged with the duty of maintaining the public foot paths, can "permit the installation of advertisement poles and regulate their erection. With this background it is useful to examine the statutory provisions".

The respondents have not specifically submitted that they have imposed the restrictions on the public roads on assumption of powers under clause (6) of Article 19 of the Constitution. They have however, vehemently tried to urge that the restrictions imposed were in view of the apprehended security risk to the Army installations. Such a plea is a hoax apparently carved out to resist the petition of the appellants. It is conceded that the City of Belgaum is a peaceful area, where, till now, no untoward incidents involving security risk had taken place. There is nothing on record to show or even suggest the basis for conceiving an apprehension of an alleged threat to the security. Despite our persistent queries the learned Counsel appearing for the respondents could not refer to any such restrictions imposed by the Army Authorities in any other cantonment area. We are satisfied that the restrictions imposed on the public roads which admittedly were used for decades by the public are unreasonable and unconstitutional.

12. Assuming but not conceding that the lands belonged to the Army and that they could deal with it in the manner they like under the rules, we are of the opinion that such a submission cannot be made the basis for rejection of the claim of the appellants. Class A(1) lands are such lands which are in the active occupation of the Army. The public roads cannot be termed to be in active occupation of the Army. Under Rule 5, Class "A" land is such land which is actually used or occupied by the Military Authorities for the purposes of fortification, barracks, stores, arsenals, aerodromes, bungalows for Military Officers which are the property of Government, parade grounds, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in Paragraphs 419, 421 and 425 of the Regulations for the Army in India. Admittedly, the lands used for the purposes of roads are not such lands which are used for any of the purposes referred to herein above. The land used for the purposes of roads, therefore, cannot be termed to be Class "A" land, authorising the Army Authorities to make regulations regarding its user. Rule 13(3)(i)(d) also provides that where roads, over which the public have a right of way, traverse a holding, such roads should be excluded from the holding, even if they are military roads. In presence of Rules 5 and 13 the respondent authorities cannot claim the exclusive right of manning, managing and regulating the control of the roads allegedly belonging to them. Sub-rule (3) of Rule 14 clearly and unambiguously provides that lands in Class A(1) shall not be used or occupied for any purpose other than those stated in sub-rule (1)(i) of Rule 5 without the previous sanction of the Central Government or such Authority as they may appoint in this behalf. Temporary use of such lands can be permitted by the authorities for storage of materials by contractors for the purposes of carrying out Government work. Admittedly the roads in dispute are not being used for the purposes specified in Rule 5(1)(i) of the Rules.

13. It may further be noticed that the rules deal with the classification and transfer of land, standard table of rents and management. The rules do not authorise the Army Authorities or the Central Government to put restrictions regarding the user of the land excepting such lands which are specified in Rule 5(1)(i) of the Rules. Such occupation for the purposes specified therein shall be deemed to be an active occupation of the Army within the meaning of Rule 4(b) (ii). Such is not the case with regard to the roads in dispute.

14. We have also perused Annexure R-5 which shows the nature and location of the roads in dispute. The said roads are the roads linked with other main roads in the City of Belgaum and other adjoining areas. The names of the roads also indicates that they are public roads and not Army roads as claimed. The mere fact that the roads pass through the Army areas or Cantonment Board would not change their nature authorising the Army Authorities to put restrictions resulting inconvenience to the general public affecting their fundamental right of the freedom of passage as enshrined in Article 19(1)(d) of the Constitution.

15. During the pendency of this writ appeal, interim stay was granted by the Court on 12-8-1997. The aforesaid stay though claimed to have been implemented by the Army Authorities has not in any way adversely affected the security of the forces living in the cantonment areas. It may be specifically pointed out that except for the main roads, this Court is not concerned with other roads which are used and maintained by the Army for the purposes connected with or ancillary to the purposes specified in Rule 5(1)(i) of the Rules. In the absence of legislative authorisation of putting restrictions, the respondents have apparently acted without jurisdiction. Despite our directions no specific order regarding imposition of the restrictions was produced.

16. It appears that the learned Single Judge did not refer to the real controversy raised by the appellants and passed the impugned order on the assumption that as the land belonged to the Army Authorities, they were at liberty to put any restrictions on the movement of the citizens. The learned Judge also did not consider that the Army was not an independent organisation but an organ of the Union of India. The Army Authorities could not have imposed such restrictions without the authority of law or by a valid legislative measure or Administrative order. The action of the respondents in imposing the restrictions is not only illegal, unwarranted but admittedly unconstitutional being violative of the fundamental rights enshrined in Part III of the Constitution of India. The order of the learned Single Judge is therefore liable to be set aside.

17. The appeal is accordingly allowed. The order of the learned Single Judge is set aside. The writ petition filed by the appellants is allowed. Rule is made absolute. The restrictions imposed by the Army Authorities on the roads noticed in this judgment are held unconstitutional. The respondents are directed not to restrict the movement of the freedom of passage of the citizens on the aforesaid roads. No costs.