

(1985) 04 CAL CK 0026
In the Calcutta High Court

Gopal Basak and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : AIR 1986 Cal 182 : 89 CWN 737

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Advocate : Pradip Kumar Mitra, for the Appellant; Arun Prokash Chatterjee, Senior Standing Counsel, Dipak Banerjee and Kalimuddin Mondal, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This instant writ petition was moved by 45 writ petitioners who earn their livelihood as hawkers, for restraining the Respondents from evicting the petitioners from the footpath and or the roads of the Howrah Municipal area. The case of the petitioners in short is that the petitioners are carrying on their livelihood as hawkers after obtaining Municipal licence for exercising the trade of a Hawker as provided under Sections 175 and 176 of the Calcutta Municipal Act, 1983 as extended to the Municipality of Howrah and that the petitioners were carrying on such business occupying the place between the Howrah Station wall and the footpath in the Howrah Station area. The petitioners father state that the petitioners came to know from a news item published in the Daily Newspaper "Jugantar" is its issue dated 10th February, 1985 that the hawkers of the Howrah Municipal area should be evicted from the footpath and/or the roads.

2. The learned advocate appearing on behalf of the petitioners contended that when the petitioners were carrying on the trade of hawker of dresses, fruits and other articles after contracting temporary sheds, the petitioners could not be evicted from the said place inasmuch as the petitioners are holders of valid

licences from the Howrah Municipal authorities to carry on the business as hawkers and that the petitioners had not encroached any right of any person and did not create any obstruction to the users of the footpath and as such the petitioners could not be evicted from that place without giving them hearing and/or opportunity of being heard in the matter.

3. Mr. Arun Prokash Chatterjee, Senior Standing Counsel appearing on behalf of the Howrah Municipality, contended that contrary to the terms and conditions of the licence issued by the Municipal authority, the petitioners had made temporary structures either by the side of the road or by the side of the footpath and were creating obstructions to the travelling public in the matter of user of the road and or the footpath. It was further contended on behalf of the Respondents that the petitioners have no right to encroach upon the land of the Municipal Authorities and/or the Railway Authorities and to create obstruction to the passers-by. It was further contended that unless the hawkers who are permanently squatting on the footpath either by constructing temporary structures or otherwise, are evicted and the roads and the footpath are made clean and made obstruction-free, it would not be possible to remove congestion on the road. It was further contended that because of the hawkers squatting here and there in the Howrah Municipal area particularly in the Howrah Station area, it has created problem not only to the public at large but also to the administration to maintain law and order and to remove congestion in the road.

4. Admittedly, the petitioners were carrying on such business on the basis of licence issued by the Howrah Municipality under sections 175 and 176 of the Calcutta Municipal Act, 1923 as extended to Municipality of Howrah. One of the main conditions of the said licence was that "This licence is only to peddle goods and not to spread them on the street or pavement and he must not stand on the pavement, but on the side of the road in the gutter." In view of the above condition the petitioners' contentions that the petitioners have a right to carry on trade of hawker in the manner the petitioners were doing cannot be accepted. The dictionary meaning of the word "hawker", according to Webster's Third New International Dictionary, is "to peddle, bear on the back." According to the said dictionary meaning of the word "peddle" means "to travel about with wares for sale, to sell or offer for sale from place to place." In view of the dictionary meaning of the word hawker and conditions of the said licence, the petitioners have no right to squat or to make any temporary shed on the pavement and have no right to spread the goods for sale either on the footpath or on the road. The meaning of the word hawker is that to carry goods on their shoulder or in whatever form they like and to move from place to place and at best they can stand on the side of the road in the gutter. But in the instant case they have encroached either a part of the road or a part of the footpath where they have either made some temporary structures or had displayed on the footpath or road their goods for sale. These activities of the hawkers are prohibited on the face of the said licence. The petitioners have no right to carry on such business encroaching a part of the footpath or the road.

5. The learned Counsel, appearing on behalf of the petitioners, referred to the judgment of the Madras High Court in the case of K. Sudarsan and Others Vs. The Commissioner, Corporation of Madras and Others, and contended that it was the duty of the State Government to provide an alternative site where these hawkers can carry on their trade in respect of which they have got fundamental rights, but they have no fundamental right to trade on public street. The learned advocate, appearing on behalf of the petitioners, also relied upon another decision of the Madras High Court reported in the case of M.A. Pal Mohammed and Others Vs. R.K. Sadarangani and Others, and contended that hawker trade so long as it is regulated in a proper manner by the concerned public authorities could never be a public nuisance. I respectfully agree with the above view expressed by the Madras High Court in the above two decisions that hawker trade so long as it is regulated in a proper manner by the concerned public authorities could never be a public nuisance. But the paramount consideration for municipal authorities is the requirement of the public of free access, public hygiene, public safety and the like. The above two decisions have no manner of application in the instant case inasmuch as it is nobody's case that the hawkers trade is a public nuisance and for removing nuisance actions are being taken against them. In this case the petitioners have been permitted to carry on such business with some conditions and restrictions and these are consistent with the provisions of law. It has been held by the Supreme Court of India in the case of Pyare Lal etc. Vs. New Delhi Municipal Committee and Another, that nobody has any fundamental right in street trading. In the instant case, the municipal authorities who are the trustees of the properties for and on behalf of the people and the essential characteristic of a highway is that every person should have the right to use it for the appropriate kind of traffic. The road or part over which only a particular class of people have a right to pass and re-pass. The public streets and their appurtenances vest in the Municipal Corporation and no one can erect a fence, obstruction, projection or encroachment. Further the municipal authorities have no jurisdiction to let out or allow any person to occupy any portion of the footpath or the roads for the purpose of carrying on any trade or business. It is the duty of the Municipal Authority to see that there is no obstruction on the roads and/or the footpath and not to allow any body to do anything which may create insanitary and unhygienic conditions in the neighbourhood. In the instant case, the municipal authorities have granted permission to carry on such trade with some conditions and restrictions which are perfectly legal and reasonable and that the Court cannot compel either the municipal authorities or the State Government to allow the hawkers to occupy a portion of the road and or the footpath for the purpose of carrying on their baseness which would not only be contrary to law but contrary to the express terms and conditions of the licence under which they are carrying on such business. It is a well established principle of law that the existence of a right and infringement thereof are the foundation of the exercise of the jurisdiction of the High Court under Article 226 of the Constitution of India. Such right must ordinarily be personal or individual right of the petitioners. In the instant case, the petitioners have no such legal right for

the enforcement of which the petitioners are entitled to any relief in the writ jurisdiction. In this case, the hawkers have no fundamental rights to carry on their trade on the public street and that the Municipal Authorities are under a statutory obligation and or duty to keep the roads clean and free from any obstruction and also to see that there is no projection or construction by the side of the road and/or the footpath which is likely to cause public inconvenience. The Municipal Authorities also have no authority or jurisdiction to let out and or to grant any lease or licence for user by the hawkers a part of the road and or the footpath under the provision of the Act. Such being the position, the petitioners have no right to carry on trade contrary to and in violation of the terms and conditions of the said licence and that it is well within the power of the Municipal Authorities to remove such hawkers who are creating obstruction and or causing public inconvenience violating the terms and conditions of the licence. Of course, regarding the alternative arrangement for the hawkers to earn on their trade in particular place, it is for the State Government to take any policy decision as they like to, but it is not for the court to make any comment on the matter inasmuch as there is no law in the State of West Bengal for rehabilitation of a person who is evicted even by operation of law and the Court cannot compel the Municipal Authorities and/or the State Government to provide with alternative accommodation in the matter. There is also no Statute for regulating such street-trade. Further as the said hawkers were carrying on the business in contravention of the provision of the said licence, the Municipal Authorities are not bound to give the hawkers any opportunity of hearing before evicting them from the footpath and or the roads where they have made encroachment and are carrying on their business violating the express terms and conditions of the said licence, which are practically admitted by the writ petitioners.

6. In the result, all the contentions raised by the petitioners fail and the writ petition is accordingly dismissed without any order as to costs.