
(1997) 08 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1380 of 1997

Govind Nagar Shop Keepers Association and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 213, 314
Constitution of India, 1950 — Article 14, 19, 21

Citation : (1998) 2 ALLMR 257 : (1998) 5 BomCR 280 : (1998) 4 BOMLR 788 :
(1998) 2 MhLj 45

Hon'ble Judges : V.S. Sirpurkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : M.G. Bhangde and V.V. Bhangde, V.C. Daga, for the Appellant; D.N. Kukade, G.P., S.K. Mishra and C.S. Kaptan, for the Respondent

Judgement

V.S. Sirpurkar, J.—This writ petition has been filed at the instance of about 400 shopkeepers of Jaripatka locality at Nagpur who claim to have formed an Association. The petitioner No. 2 who is also a member of that Association has Joined in his individual capacity probably because the said Association is not a registered Association. There is a list on record along with the reply of the Corporation filed by the respondent No. 3 Corporation mentioning the details of 305 members. Perusal of the list suggests that number of members are occupying their shops in the capacity of tenants thereof while in respect of others it is discreetly avoided to be told as to in what capacity the said persons are the occupiers of the shops in question. The detailed reference to this list will be made later on.

2. The precise complaint of the petitioners is that they are the occupiers of the shops which have been constructed by them only on either side of Jaripatka Main Bazar Road as also on some other roads in Jaripatka locality and that they are doing their business in the shops. It is claimed and not seriously disputed that Jaripatka locality was settled for the refugees from West Pakistan, almost all of whom were Sindhis. It is claimed and seen from the list that most of the

members of the petitioner No. 1. Association appear to be Sindhis. It is again a common ground that these being the displaced persons from West Pakistan were allotted the plots in Jaripatka area for the purposes of their rehabilitation. It is their further claim that though some area was earmarked for shopping complex in Jaripatka in or about 1984 the said land was allotted to the members of public for residential purposes and the regular allottees erected their respective houses on those plots. It is also an admitted position that these very persons having no other land started using the lands in front of their respective houses and constructed the shops right in front of their respective houses on both the sides of the main Jaripatka road with the result that the road which was originally a very broad road has almost become a lane. The petitioners further claim that they have been paying the taxes to the Nagpur Municipal Corporation but it is discreetly avoided to be stated in the petition as to whether the said taxes are for the houses alone or also for the shops which are standing on the encroached portions. It is the further contention of the petitioners that in the year 1993, the Nagpur Improvement Trust started a drive to demolish the constructions for removing the encroachments made on either side of the Main Road. It is, therefore, that all the occupants of the shop sites held a meeting with one Abdul Qadir the then Chairman of the Standing Committee of the City of Nagpur Municipal Corporation the respondent No. 3 herein. It is then suggested that in that meeting it was decided that the Main Road of Jaripatka should be kept 30 feet wide and the shopkeepers who had encroached should remove their encroachments to see that the Main Road and Jaripatka remains 30 feet wide. It is claimed that a representation dated 21-6-1993 for this purpose was made to the Commissioner, Nagpur Division, Nagpur who had issued the instructions and on these instructions, the Collector, Nagpur by his letter dated 23-6-1993 had addressed to one Sindhi Social Service Society, Jaripatka calling upon to submit documentary evidence showing the position of the shop-owners for more than 40 years. It is claimed that the documents were submitted accordingly before the Collector with the idea to get the said encroachments regularised or at least to get alternative site. It is claimed that nothing has been done on the basis of those letters or even the subsequent letter dated 23-6-1993. It is further claimed that on 19-6-1996, the Government Agencies, namely, State of Maharashtra, respondent No. 2 Nagpur Improvement Trust and respondent No. 3 Nagpur Municipal Corporation started removing the encroachments and in that process damaged number of shop structures belonging to the members of the petitioner No. 1 Association without giving any notice or without making any alternative arrangement and, therefore, agitation was started and a meeting was held with the Guardian Minister of Nagpur Hon'ble Shri Nitin Gadkari who visited the locality personally and got himself satisfied that the Main Bazar Road which resulted in a dead end on one side did not have a heavy traffic and the requirements of the public could also be met if the width of the road was maintained at 40 feet so that beyond the limits of this breadth the shops could continue. It is asserted that the Honourable Minister called the meeting at Ravt Bhawan, Nagpur on 4-7-1996 wherein all the Government Agencies were also

present and it was decided and announced that the width of the main road would be reduced to 40 feet and the development plan would be so amended and this would be treated as a minor change in the development plan. Again it is discreetly avoided to be told as to what was the width of the road suggested in the development plan and from the arguments at the Bar as also from the other material available it is clear that the said road was meant to be 60 feet wide. It is the further case that in the said meeting dated 4-7-1996 a Committee was constituted under the Chairmanship of one Shri Uttamchand Thawrani to suggest the other developments to the locality as also to solve the other problems of the locality and that the said Committee had suggested that the land lying vacant called "Dayanand Park" should be developed as the Stadium-cum-Shopping Complex and this should be done apart from regularising the existing shops on the road side. It is claimed that the Collector, Nagpur also welcomed this move and had requested the Nagpur Improvement Trust to look into the matter.

3. The petition then makes a reference to the Public Interest Litigation in shape of Writ Petition No. 1855/96 which was filed by some citizens in Jaripatka wherein the directions were sought to remove the encroachments on the road at Jaripatka, Nagpur. It is contended that there is a reference in this petition that the Minister had announced to reduce the width of the Main Bazar Road to forty feet. It is claimed that the petitioner association had sought to intervene in this petition but the application for intervention was rejected and a statement on behalf of the respondents came to be recorded that all the encroachments would be removed by 31st May, 1997. It is claimed that after this there was a panic in the members of the Association as to the interpretation of the High Court's judgment in this Writ Petition as to whether the Main Road was to be kept 60 ft. wide or 40 ft. wide. It is claimed that again the Honourable Minister was approached for resolving this controversy and again the Honourable Minister visited the locality on 7-4-1997 with the officers of the Nazul Department, Nagpur Municipal Corporation and Nagpur Improvement Trust to inspect the alternate site and a further meeting was held in Ravi Bhawan, Nagpur on 16-4-1997 wherein even the public representatives like the Members of Legislative Assembly and the other public servants, including the Collector, Nagpur; Chairman, Nagpur Improvement Trust; Superintending Engineer, Nagpur Municipal Corporation and other high officials were present. It is claimed that in that meeting it was decided that the Nagpur Improvement Trust would develop the said land at Dayanand Park and would construct a stadium-cum-shopping complex and the said shops would be allotted to the affected shop-owners of Jaripatka who would be affected by the widening of the roads meaning thereby removing the encroachments. It is also further alleged that it was decided in that meeting that the shop-owners would bear the costs of the shops which would be constructed on the periphery of the ground and it is only after the construction of the shops and the allotment of the same that the task of removal of the existing shop structures would be taken up. To support their contention, the petitioners have filed a copy of the notice of meeting but significantly enough, again the

petitioners have not filed any minutes of the meeting signed or counter-signed by the persons attending the same. It is contended further that even the Corporator attended this meeting and addressed a letter on 17-4-1997 to the Commissioner, Nagpur Municipal Corporation. The letter is also produced. It is further asserted that on 22-4-1997 the petitioner Association sent an undertaking in terms of what was decided in the meeting. A Government Resolution is also relied upon, a copy of which has been filed with the petition. An apprehension then was expressed that in spite of all this, the authorities would proceed to honour their undertaking before the Court given in the writ petition referred to earlier and, therefore, it would amount to a total injustice to the petitioners. The petitioners have also alleged violation of fundamental rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution of India. The present petition, therefore, came to be filed on 12-5-1997 wherein a declaration was sought that the proposed action of demolishing the structures and shops without providing alternate accommodation was illegal. An injunction was sought permanently restraining the respondents from demolishing the said shops without providing alternate accommodation. An interim order to this effect in the nature of an injunction was also sought during the pendency of the petition.

4. The petition came up before this Court before the Hon"ble Single Judge during the summer vacation wherein this Court proceeded to pass the following order :-

"Coram : M.B. Ghodeswar, J.

Dated: May 16, 1997.

The learned Counsel for the petitioner has stated that the sites allotted for shops to each Member of the Association and the actual sites in their possession will be submitted to Nagpur Improvement Trust and Nagpur Municipal Corporation-respondents Nos. 2 and 3 within a period of 15 days from today. The learned Counsel for respondent No. 3 has stated that on receipt of the details from petitioner Association, the Corporation will make enquiry in this matter as to the encroachment on the public road. The Corporation shall complete the enquiry within 15 days from the receipt of the details. The State Government respondent No. 1 also shall furnish the relevant material and documents to this Court in respect of allotment of shops sites to the members of the petitioner Association. The learned Counsel for the Corporation has submitted that in view of this Court's order dated 16-1-1997, the Corporation has to remove the encroachment on or before 31st May, 1997. In view of the latest development, Corporation is not in a position to remove the encroachment on or before 31st May, 1997.

S.O. After vacation. Meanwhile status quo."

Thus, it would be clear that in compliance with the earlier order passed by this Court, the members were to furnish the details regarding their occupation and the Corporation was to complete the enquiry within 15 days thereafter. It seems that the Corporation had made a statement before the Court that in view of this

latest development it was not in a position to remove the encroachments on or before 31-5-1997. At this stage, it would be worthwhile to know what the order of this Court was in the earlier writ petition. The order dated 16-1-1997 in Writ Petition No. 1855 of 1996 is in the following terms :---

"Coram : M.B. Ghodeswar and S. Radhakrishnan, JJ.

Dated: January 16, 1997 Held:

Encroachment of public properties have no absolute right of alternative accommodation.

In the celebrated case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, the Apex Court was candid enough to deleave that no person had a right to encroach by erecting a structure or otherwise on footpaths, pavements or others places reserved or earmarked for public purpose like gardens or play-grounds. The Apex Court of course in that case had made a reference to Section 314 of the Bombay Municipal Corporation Act and held that provision not to be unreasonable. Even in the reported decision in Sodan Singh and etc. etc. v. New Delhi Municipal Committee and Anr. etc. AIR 1989 SC 1988, where the question was whether it was a fundamental right of a citizen to occupy a particular place on the pavement where he could squat and engage in trading the business, the Supreme Court therein had very clearly given a negative verdict against such citizens. Carrying the same thread in Ahmedabad Municipal Corporation's case, the Supreme Court went on to hold that though the citizens have a fundamental right to carry on their trade or business of their choice, the said right cannot be extended so as to hold that the petitioners have a right to do so on a particular place. It was held that hawkers cannot be allowed to or be permitted to carry on the trade or business on every road in the city. If the road is not wide enough to conveniently accommodate the traffic on it, no hawking could be permitted at all. In Sodan Singh's case and in the Ahmedabad Municipal Corporation case, the Supreme Court had minimised the hardship to pedestrians. The Apex Court has, therefore, spelt out the extents of the rights to carry on trade and business and pointed out its limitations. So also the Supreme Court has pointed out the extents of right of life guaranteed under Article 21 and had pointed out that the width of Article 21 could not be read so as to provide a latitude for anybody to encroach the public places for the purposes of doing the business.

It cannot be, therefore, said that a common man would suffer if these encroachments are removed by the Corporation particularly when the Corporation is duty bound in law to remove the encroachments. It cannot further be said that the petitioners' right to life would be affected if these encroachments are removed by demolition of the illegal constructions. If the petitioners and most of them had the resources to construct the pucca built shops and carry on the business therein, it cannot be said that their right to life would be seriously jeopardised or even marginally jeopardised.

There can be no dispute that these petitioners do not have even a semblance of right. True it is that practically most of them were the refugees from Pakistan and were given the plots to construct the houses with the sole idea of rehabilitating them. The Corporation does not want to even touch the houses. However, if the persons like the petitioners become avaricious and start encroaching the road on which the encroachments are made is a road shown in the development plan to be of 60 feet width. With the encroachments the width of the road has been so much affected that not even the half of the road at some places has remained. Under such circumstances, it cannot be said that there was any justification on the part of the petitioners to encroach. Once this position is obtained, there would hardly be any right in the petitioners to demand an alternative site. The petitioners did not oblige anybody in encroaching upon the road-side. True it is that they have a right to exist and carry on their trade but not at the cost of the public properties and public enjoyment of those properties like the public roads. The assertion of the learned Counsel that unless an alternative arrangement was made, the demolitions would not be effected has, therefore, to be rejected forthwith.

In the wake of this clearest possible pronouncement of law, it cannot be held that there is an absolute right of alternative accommodation to the encroachers on the removal of their encroachments on the public properties. The command of the Supreme Court does suggest the consideration of facts in each case. We are afraid such relevant facts firstly are not brought on record nor have they been contended before. Excepting the large number of petitioners whose shops were going to be demolished and the so-called assurance given by the Hon'ble Minister for limiting the width of the road to 40ft. or in the alternate to provide the shopping complex for all those whose shops would be affected, there was no other fact which was canvassed in favour of the petitioners. It was haltingly said that the shops are therefore last number of years. We are of the clear opinion that none of these facts can justify the wild encroachments on the road side and thereby jeopardising the general traffic on the road in particular and residents of the locality in general.

>However, we should not be meant to say that nothing should be done for the petitioners. Our opinion is only limited to the issue of the removal of encroachments and/or the provisions of alternative sites to the petitioners as of right and as a pre-condition to the removal of the encroachments. It must be mentioned in case of the petitioners that after being displaced from their permanent lands in a shocking manner and after being uprooted completely, the petitioners have taken to the honest way of life by engaging themselves in trading in a legal manner and have not taken the life of crime. We fervently express a hope that the Corporation and the concerned authorities do case some positive steps in helping the petitioners by providing them alternate sites and/or constructing a shopping complex for them. However, that cannot be read to be and meant to be a pre-condition or a condition precedent for the removal of the encroachments. Encroachments have seriously jeopardised the city of Nagpur

and it is common experience that a common man has welcomed the removal of the encroachment. We cannot be indifferent to the need of the society of removal of the encroachments. Result - Petition discussed.

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