

(2017) 05 DEL CK 0126

In the Delhi High Court

Case No : 217 of 2017

HARI RAM

APPELLANT

Vs

RAMESH KUMAR

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Constitution of India, Article 215 - High Courts to be Courts of record
Contempt of Courts Act, 1971, Section 11,
Section 12, Section

Citation : (2017) 05 DEL CK 0126

Hon'ble Judges : G.S.Sistani, Navin Chawla

Bench : DIVISION BENCH

Advocate : Ramesh Kr. Mishra, Krishna K. Singh, Isha Khanna

Judgement

1. This is a petition under Sections 2 (b), 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India alleging wilful disobedience of the order dated 13.04.2015 passed by the learned Single Judge in W.P. (C) 3524/2015.

2. The petitioner claims to be squatting at pavement opposite Shop Nos.131-132, Main Sadar Bazar, Delhi, for the past 33 years and claims to be selling cold drinks and packaged snacks. It is also claimed that during the survey conducted by the MCD on 23.12.1982, he was found to be an eligible squatter in Category-III. The petitioner also claims that he was informed by the MCD by a communication dated 23.02.1998 that he has been allotted an open tehbazari at Indra Market. However, possession of the site could not be handed over to him. Thereafter, the petitioner claims to have continued to squat at the site and had also applied for an allotment under the 2007 Policy. The petitioner had also approached the Town Vending Committee, which had once again found him a category III eligible squatter and directed the MCD to process the allotment of a site. By the same order, the petitioner was also extended benefit of the Delhi Laws (Special Provisions) Act, 2011.

3. The petitioner further claims to have continued to squat when the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereinafter "the Act") came into force. Since the petitioner was being harassed, he approached this Court in W.P. (C) 3524/2015, which vide order dated 13.04.2015 was disposed of finding the petitioner herein entitled to protection under the provisions of the Act.

4. The complaint of the petitioner is that on 20.01.2017 he was removed on the instructions of the SHO, PS Sadar Bazar (respondent herein), despite the fact that he had been granted protection by the order dated 13.04.2015.

5. Learned counsel for the respondent submits that the present petition is misconceived. There is no wilful disobedience of the order dated 13.04.2015 which is a conditional order and thus, no contempt is made out. Counsel contends that a bare reading of the impugned order would show that the Court had simply indicated that "...Accordingly, if the petitioners have been squatting on the sites as indicated in the petitions, then the protection of the said Act would be available to the petitioners in respect of their vending activities at their respective sites...."

6. Additionally, counsel submits that the petitioner and other persons were removed from the site in question in the year 2006 pursuant to the directions contained in the order dated 05.05.2006 passed by the Supreme Court. A copy of the order dated 05.05.2006 has been annexed with the reply. Learned counsel further submits that in response to the order so passed by the Supreme Court of India, the then SHO, Sadar Bazar had filed a counter affidavit in which he admitted that all the squatters from the Main Sadar Bazar Market were removed on 18.05.2006. A copy of the counter affidavit also stands enclosed with the reply to the contempt petition. Ms.Khanna submits that if at all any contempt has been committed, it is by the petitioner who despite having been removed has attempted to resettle at an area which has been declared to be a "non-hawking/non-squatting" zone by the MCD and the MCD has not even been arrayed as a party in this proceeding.

7. Counsel further contends that the respondent has only acted on the basis of the communication received from NDMC including communications dated 24.08.2006 and 16.01.2017. Counsel further submits that by a communication dated 21.03.2017, information was sought from the MCD as to the genuineness of the claim of the petitioner herein; in reply to which, the North Delhi Municipal Corporation has reiterated that the area is a non-squatting/non-hawking zone. Counsel further submits that in this backdrop, it cannot be said that the respondent has wilfully disobeyed the order passed by the learned Single Judge, dated 13.04.2015.

8. In response to the stand of the respondent, Mr.Mishra, learned counsel for the petitioner, has strongly urged before us that there are repeated orders passed by the Supreme Court and the respondent cannot rely upon an isolated order. By

subsequent orders including the order dated 31.01.2013 [Gaiinda Ram & Ors. v. M.C.D. & Ors., W.P.(C) 1699/1987] and the final judgment dated 09.09.2013 [Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and others, (2014) 1 SCC 490], a blanket status quo order was passed by the Supreme Court and the petitioner would stand covered by the aforesaid order.

9. We have heard the learned counsels for the parties, considered their rival submissions and also examined the averments made in the petition and the counter affidavit as well as the documents annexed thereto.

10. The petitioner has alleged the violation of the order dated 13.04.2015, which reads as under: "The petitioners claim to be squatting on the various sites as indicated in the petitions. The learned counsel for the petitioners point out that in all these petitions the Zonal Vending Committee and/or the Appellate Authority, had passed orders directing that by virtue of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 status quo be maintained till 31.12.2014.

In the meanwhile, Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 has come into force and by virtue of Section 3(3) of the said Act, no squatters can be removed or relocated till the survey as contemplated under Section 3(1) of the said Act is completed. Accordingly, if the petitioners have been squatting on the sites as indicated in the petitions, then the protection of the said Act would be available to the petitioners in respect to their vending activities at their respective sites. The petitions are disposed of with the aforesaid observations. It would also be open for the petitioners to approach the Town Vending Committee as and when constituted."

(Emphasis Supplied)

11. Prima facie, a reading of this order would show that in view of the Act, 2014 having come into force, a batch of writ petitions was disposed of on 13.04.2015 by passing a short order. The order is general in nature and conditional inasmuch as it indicates that in case the petitioners have been squatting, the protection of the Act would be made available to them. In our view, the petition would raise a disputed question of fact as to whether the petitioner has been squatting at the site so mentioned, more particularly, in the light of the stand taken by the respondent that all street vendors from Main Sadar Bazar Market were removed on 18.05.2006 in compliance of the directions of the Supreme Court in the order dated 05.05.2006. This fact has also been mentioned in the counter affidavit filed before the Supreme Court.

12. A conjoint reading of the order of the Supreme Court dated 05.05.2006 and the stand taken in the counter affidavit dated 04.09.2006 would show that the petitioner was removed in case he was squatting in the area so mentioned. We also find that a specific query was raised by the respondent to the North Delhi Municipal Corporation on 21.03.2017 which reads as under: "To, The Deputy

Commissioner, NDMC, Sadar Paharganj Zone, Delhi Subject:- Request for providing information/details regarding Tehbazari/Allotment/Squatting zone in the area of Sadar Bazar main market, Delhi-06. Sir, It is submitted that one Sh Hari Ram S/o Sh Kunjal, R/o H.No.10-100, Lane-6, Motia Khan, Pahar Ganj, New Delhi has filed petition before Hon"ble High Court of Delhi, he claimed himself a illegible squatter and stated that he has been squatting at pavement opposite Shop No. 131-132, Main Sadar Bazar, Delhi for last about 33 years. As the allotment of site for squatting pertains to M.C.D., it may please be intimated as to whether the claim of the complainant is genuine or not. If it is genuine, the exact location/space/allotment of land for squatting be identified with intimation to the undersigned. This information is required urgently, as the area falls under Non Squatting zone.

Submitted Please Sd/-

SI Prakash

P.S. Sadar Bazar

Sd/-

SHO (Sadar Bazar)

Delhi "

13. A reading of this communication would show that the respondent had made a sincere effort to ascertain from the MCD as to whether the petitioner has been squatting at the pavement opposite Shop No.131-132, Main Sadar Bazar Market, Delhi, or not and in case he has been, the exact location/space/allotment of land be identified. In response to this communication, a reply dated 19.04.2017 was received from North Delhi Municipal Corporation which reads as under:- "Subject:- Request for providing information/details regarding Tehbazari/ Allotment/Squatting zone in the area of Sadar Bazar main market, Delhi-06.

Please refer to your letter No.821/R-SHO Sadar Bazar, Delhi dated 21.03.2017 on the subject cited above regarding Sh.Hari Ram s/o Sh.Kunjal, R/o H.No.10-100, Lane-6, Motia Khan, Pahar Ganj, New Delhi.

In this regard, it is informed that Main Sadar Bazar is a non-squatting/non-hawking zone. No squatting/hawking activities are allowed in non-squatting/non-hawking area as per the orders of Hon"ble Supreme Court. This office takes temporary encroachment removal action from time to time in this area alongwith local police to ensure that no re-encroachment takes place. This issues with prior approval of D.C./S.P. Zone dated 18-04-2017.

Sd/-

GA/GB/S.P.Zone"

(Emphasis Supplied)

14. As per the reply, Main Sadar Bazar Market is a "non-hawking/non-squatting" zone and no squatting/hawking activities are allowed in the area and removal actions are taken by North Delhi Municipal Corporation from time to time along with the local police, to ensure that there is no re-encroachment at the site.

15. Having regard to the reply filed and the documents annexed thereto, we find that the petitioner has been unable to establish a case to show that there is any wilful violation of the order dated 13.04.2015, as the respondent has stated on affidavit that the removal action was taken in the year 2006 pursuant to the directions of the Supreme Court in the order dated 05.05.2006. We also find that after his removal in 2006 and his resurfacing, if at all, was a violation of the order of the Supreme Court, as the Supreme Court had directed removal of all illegal squatters.

16. Further, even the order dated 31.01.2013 [Gainda Ram (Supra)] and the final judgment dated 09.09.2013 [Maharashtra Ekta Hawkers Union (Supra)] do not come to the aid of the petitioner herein. The status of no vending zones and the effect of Maharashtra Ekta Hawkers Union (Supra) has been considered by a coordinate bench of this Court in order dated 05.10.2016 in Hawkers Adhikar Suraksha Samiti v. Union of India and Ors., W.P. (C) 6130/2016 wherein it was directed that non-squatting zones prior to the Act shall continue, which is the case with the area in question. The relevant portion of the order reads as under: "4. ...It was alleged in the said writ petition that the Respondents were carrying out eviction drives and have been illegally removing the street vendors across the National Capital in complete violation of the mandatory provisions of the Act and the directions of the Supreme Court dated 09.09.2013 in Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai & Ors.; (2014) 1 SCC 490. It was contended that since no scheme has been in operation by virtue of the interim order dated 08.08.2016, the Respondents are not entitled to proceed with the so-called survey and resort to illegal and highhanded eviction of the existing hawkers/ street vendors.

...

27. So far as the submission of Sh.Neeraj Kishan Kaul, the learned ASG appearing for South Delhi Municipal Corporation that no street vending can be permitted in the non-vending zones is concerned, we have noticed that in the counter affidavit filed on behalf of NDMC in W.P.(C) No.8042/2016 it is stated that prior to enactment of Street Vendors (Protection of Livelihood and Regulations of Street Vending) Act, 2014, under the schemes formulated by MCD and NDMC, hawking and non-hawking areas were demarcated and the hawkers/squatters were located only in demarcated hawking zones in accordance with the priorities mentioned in the schemes. It is also stated that in accordance with the National Policy on Urban Street Vendors formulated by the Government of India in the year 2004, which MCD had agreed to implement in principle, Ward Vending Committees were constituted in all the 134 wards of MCD and that the said Committees were charged with the duties of identifying the sites, declaring

hawking and non-hawking zones in consultation with various stakeholders like Associations of Vendors/Traders, Resident Welfare Associations, Traffic Police, etc.

28. It is relevant to note that the Act of 2014 also provides for designation of vending zones and declaration of no-vending zones. However, though the Act has come into force on 01.05.2014, there are several lapses in proper implementation of its provisions and consequently, no-vending zones have not yet been declared in terms of the provisions of the Act of 2014. Therefore, Sh.Neeraj Kishal Kaul, the learned ASG submits that appropriate directions may be issued to protect no-vending zones from encroachments till the Government takes the necessary action in terms of the provisions of the Act of 2014.

29. Having regard to the fact that declaration of non-squatting zones and non-vending areas is not inconsistent with the provisions of the Act of 2014 which expressly prohibits carrying out vending activities by street vendors in no-vending zones, we consider it appropriate to direct as an interim measure that non-squatting zones declared under the schemes existing prior to enforcement of Act of 2014 shall continue to be non-squatting zones for the time being so as to balance the larger interest of the general public." (Emphasis Supplied)

17. Hence, we find no ground to initiate contempt proceedings against the respondent. The petition is without any merit and the same is, accordingly, dismissed. At this stage, Mr.Mishra submits that he would seek appropriate remedy as available to the petitioner, if so advised.