
(2003) 05 AHC CK 0225
In the Allahabad High Court
Case No : C.M.W.P. No. 8880 of 1993

Madan Gopal Gupta "Didwania" (D.) through L.R. and Another APPELLANT
Vs
District Magistrate and Others RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : (2003) 5 AWC 4341

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : C.K. Parekh, for the Appellant; Kailash Narain and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the Respondents to vacate the Petitioners premises/ dharamshala situate at House No. CK 30/1, Mohalla Gyanvapi, P.S. Chowk, district Varanasi.

2. Heard learned Counsel for the parties.

3. The Petitioner is the owner of the premises in Varanasi, which consists of a three-storeyed building. The Petitioner's grandfather, late Seth Shiv Dutt Rai, purchased a piece of land and in the year 1913-14 built the present three storeyed building to use as a sarai/dharamshala for Hindu pilgrims.

4. In paragraph 2 of the writ petition it is stated that the Petitioners are running the aforesaid sarai/ dharamshala known as Radha Krishna sarai/dharamshala for the shelter and accommodation of Hindu pilgrims who visit Varanasi and also for travellers. These pilgrims can stay in the rooms only for two days temporarily. Regulations were framed for the dharamshala in the year 1920 by the then Collector, copy of which is Annexure-1 to the writ petition. Inside the premises there is a temple.

5. It is alleged in paragraph 7 of the petition that police personnel are unlawfully

and without authority occupying the said dharamshala and are wrongly using the facilities like electricity, water, telephone, etc. free of cost and are damaging the building. It is alleged that they are creating unhygienic conditions and the dharamshala has become dirty. It is alleged in paragraph 8 that the police personnel entered the dharamshala by threatening the Petitioner No. 1 who is an old and ailing man. On 5.11.1990, the personnel of C.R.P.F. entered into the premises and occupied some of the rooms in the second floor. Thereafter the P.A.C. entered into it and occupied a few rooms. The Petitioners filed Writ Petition No. 5278 of 1991 in which an order was passed on 21.3.1991 by a Division Bench of this Court copy of which is Annexure-5 to the writ petition. By that order the Respondents were directed to vacate the premises or show cause within two weeks. This order was served on the S.S.P., Varanasi, who directed the police personnel to vacate the premises and they vacated it on 11.4.1991 and possession was given to the Petitioner. However, the Petitioner suffered loss due to unauthorized use of electricity, water and telephone. It is alleged in paragraph 12 of the writ petition that again on 8.12.1992 the C.R.P.F. and Civil Police came into premises and forcibly threatened the pilgrims and staff of the dharamshala. The Petitioner No. 1 sent urgent message to the S.S.P., Varanasi and the District Magistrate on 8.12.1992 about this illegal intrusion. The C.R.P.F. then vacated the premises but the P.A.C. again entered into the premises with a large number of police and occupied the entire building. It is alleged that the P.A.C. is still occupying the dharamshala rooms and are unauthorisedly using electricity, water and telephone connection. It is alleged in paragraph 17 of the petition that since 10.12.1992 the Petitioner had not been permitted to enter into his own premises. The Petitioner has to pay the telephone bills to avoid recovery and electricity is being utilized by the police personnel at the cost of the Petitioner who had to pay the same. It is alleged that on 15.12.1992 the P.A.C. turned out the staff of the Petitioner permitting only one of them to remain. Petitioner No. 1 is an old and ailing person and is being continuously harassed by the police. It is alleged in paragraph 20 of the writ petition that on 18.12.1992 the Chowki Incharge of Vishwanath, Chowk, Varanasi, informed the Petitioner that the premises will be vacated but that was not done and the Petitioner was not permitted to enter the premises. The Petitioner sent representations but to no avail.

6. It is alleged in paragraph 23 of the petition that on 27.12.1992 in the morning the police caused substantial damage to the building. The Petitioner was told to keep quiet otherwise he will be arrested in a false criminal case. True copy of the representation of the Petitioner in this connection is Annexure-9 to the petition. The Petitioner asked the Respondents to vacate the premises but nothing was done. Hence, this petition.

7. A counter-affidavit has been filed.

8. In paragraph 4 of the same it is stated that it was with the oral permission of the Manager, Sri Madan Gopal Gupta that the police temporarily occupied the

premises. It is alleged that the police paid the telephone bills and the dharamshala was maintained properly. It is denied that police misbehaved with the Petitioner. It is alleged that the police entered the premises in November, 1990, in view of the communal situation in the city which was placed under curfew and it was done for protection of the Gyanvapi Masjid and the Mandir which is nearby.

9. A rejoinder-affidavit has also been filed and we have perused the same. It is alleged that the premises is the private dharamshala of the Petitioner with temple. It is denied that any permission was orally granted by the Petitioner No. 1 to the police personnel. The police personnel forcibly entered into the premises and damaged the same. The Respondents never voluntarily vacated the premises but it was only done at the order of the High Court. However, they again occupied the premises. It is denied that the police paid any bills. It is alleged that the police personnel behaved very badly with the Petitioner and forcibly entered into the premises in November, 1990, on the pretext of security. The premise is 40 meters away from Gyanvapi mosque. In paragraph 10 of the same it is alleged that again the police force on 8.12.1992 without permission of the Petitioner entered into the premises and evicted all the staff and pilgrims and occupied the premises.

10. We are deeply distressed on reading the facts of this petition. The police are supposed to uphold the law, but in this case it appears that they themselves become lawbreakers. They forcibly entered the Petitioners' premises not once but several times without his permission and are still occupying the same. This country is governed by the rule of law and we cannot permit behaviour of this kind of the police in this country. There is no denial of the fact that the premises belonged to the Petitioner, and hence the police has no right to enter into the premises without his permission. We do not accept the version of the Respondents that any oral permission was granted to the police to occupy the premises.

11. We, therefore, allow this petition and issue a mandamus to the respondents to vacate the said premises forthwith and hand over peaceful and vacant possession of the same to the Petitioner in good condition forthwith.

12. We further direct the District Judge, Varanasi, to determine the damage which should be paid to the Petitioners by the Respondents by their high handed act by forcibly occupying the premises, damaging it and using the water, electricity and telephone. The District Judge shall determine the same after hearing the parties within four months from the date of production of a copy of this order before him, and the same will be paid to the Petitioner within a month thereafter with 12% interest per annum.