

(1993) 09 DEL CK 0023

In the Delhi High Court

Case No : Criminal Writ Petition No. 321 of 1993 and Criminal Miscellaneous Appeal No"s. 313, 332, 361, 363 and 452 of 1993

Manav Ratan and Bajrang Singh

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 07-09-1993

Acts Referred:

Citation : (1993) 52 DLT 455 : (1993) 27 DRJ 162

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Vipul Maheshwari, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner says he is a lawyer and a member of the Supreme Court Bar Association. He filed this petition styling as habeas corpus writ petition on his visiting card which he says he presented at the residence of the Chief Justice who in turn sent him to a Single Judge of this Court. The petitioner knocked the door of the learned Single Judge at 11.00 P.M. on 13 May 1993. On his visiting card the petitioner wrote as under:-

"MAYIT Please Your Lordship, The respected father of undersigned aged 82 and in coma (himself still Supreme Court Bar Member) his respected ailing mother aged 86, his sister-in-law (Member High Court Bar) and his sister (Member High Court Bar) and three small nephews trapped on second storey of demolished building (illegally demolished inspire of stay without any notice or warning) and not being rescued .So the undersigned has come for moving Habeas Corpus Writ before his respected father collapses without water, medicine, electricity, food and sewerage, sd/- 13/5/93.

(2) However, at the residence of the learned Single Judge he presented a petition written in hand. There are four respondents, namely, Delhi Administration, the Police Commissioner, the Municipal Commissioner, and the Station House Officer

of Subzi Mandi Police Station, Delhi, He prefixed this petition saying that he has been a member of the High Court Bar since 1970, his father a member of the Supreme Court Bar, his sister-in-law member of the High Court Bar and his sister a member of the Supreme Court as well as High Court Bars. He said High Court Bar had passed a unanimous resolution disapproving his illegal harassment which resolution he filed with this petition. He said his family had house No. 2506 and 2670 at Basti Punjabiyan, Subzimandi, Delhi, where he had his office- cum- residence, and that in spite of a certain stay order the said property was partly demolished on 3 May 1993 and some of his assets also stolen. To support that, the petitioner filed a letter dated 7 May 1993 written by him to the President of the Delhi Bar Association. Then the petitioner refers to the letter written by the President, Delhi Bar Association, to the Police Commissioner. The petitioner also filed a copy of the phonogram sent to the Prime Minister and the Presidents of the Supreme Court and High Court Bar Associations as well as to the Police Commissioner. The petitioner also filed certain photographs showing the properties as existing before the demolition operation on 3 May 1993. The main grievance of the petitioner was that on 13 May 1993 further demolition took place without any notice or warning and inmates were not allowed to come out. He said his father had been recently discharged from the hospital and his mother was also ailing. Both his father and mother, sister and sister-in-law with three small children were trapped in the house without water, food, medicine, electricity and sewerage. He also said his father was in coma and was passing stools in the bed and was likely to collapse at any time. The petitioner then said he would be filing a detailed writ petition later on but for the time being he said that stranded persons be rescued from the second floor of the house where they were trapped without any outlet. The learned Single Judge recorded that the petitioner stated that the staircase leading to the second floor of the house had been partly demolished and partly blocked with the result that the persons trapped therein could not be brought to the ground level from the second floor. The learned Single Judge directed the respondents to take steps to evacuate all persons on the second floor of House No. 2670, Basti Punjabiyan, Subzimandi, Delhi, to safety of the ground floor forthwith. The matter was then listed in court on the following day. The Bench dealing with the matter recorded the order of the learned Single Judge passed earlier and directed that if that order had not been implemented already, the same be implemented forthwith and to report compliance on 17 May 1993. The petitioner also filed an application (CrI.Misc. 313/93) praying for appointment of a Local Commissioner to visit the site. The court issued notice on this application. On 17 May 1993 this court directed that the members of the family of Mr. D.S. Dalal, father of the petitioner, who were staying in premises bearing No. 2670, 2505 and 2506 to have free ingress and egress thereto. Municipal Corporation of Delhi (M.C.D.) was directed to stop the demolition work for 24 hours and then to proceed, in any case, in accordance with law thereafter. This order was passed without any prejudice to any rights or contentions of either of the parties. On 20 May 1993 an application (CrI. Misc. 332/93) was presented to the court and the court recorded that father of the

petitioner had expired and fixed the application for 26 May 1993, the date already fixed. However on the same day another application (CrI.Misc. 334/93) was filed by the petitioner himself which was taken up at 2.00 P.M. on that day. In this application the petitioner said that certain ceremony was to be performed in connection with the death of his father. The court referred to its earlier orders and said that it was desirable that there would be no interference with the performance of the ceremony which had to be performed by the family of the petitioner, and the person and properties of his family should be protected till the next "purnima". On 27 May 1993 the court heard the arguments of the petitioner at length. He wished to file some additional documents during course of the day. He was permitted to do so, and the case was adjourned to 28 May 1993. It appears, however, that the matter was again taken up on 27 May 1993 when the additional affidavit filed by the petitioner was placed on record. Reply was also filed on behalf of the M.C.D. on the same day in the registry. When the matter was taken up on 28 May 1993 the Bench directed that the matter be listed before another Bench. That is how the matter has come before us. Mean while during summer vacation the petitioner filed yet another application (CrI.Misc. 383/93) on which the learned Vacation Judge ordered that order dated 17 May 1993 providing free ingress and egress to the premises in question and the order dated 20 May 1993 for protection of the petitioner and the property of the members of his family would continue till the next date which was 5 July 1993. On this date we recorded that petitioner wanted time to file amended writ petition and adjourned the matter to 15 July 1993. On this date, the petitioner again wanted more time to file an application seeking amendment of the writ petition and the matter stood adjourned to 1 September 1993. On this date the petitioner said that some writ matter was listed in the Supreme Court for 3 September 1993 for final disposal and that we should adjourn this matter again and petitioner would seek those reliefs in the present petition which were not to be granted by the Supreme Court. We declined his request. He addressed arguments for over 2-1/2 hours.

(3) M.C.D. in its reply denied altogether the allegations made by the petitioner. Mr. B.R.Verma, Executive Engineer, Civil Line Zone of the M.C.D., who swore the affidavit said that the petitioner had given incorrect and incomplete facts and attempted to mislead the court. He said the officers of the M.C.D. had acted in accordance with law and their action was bona fide and in public interest. Mr. Verma said that petitioner had filed this petition with the sole intention of making out a case and with an attempt to legalise his illegal actions which included encroachment on public property as well as misuse thereof. He said the petitioner was fully aware of the proposed demolition by the M.C.D. and made attempt to obstruct the public authorities in discharge of their statutory duties. In paras 5 and 6 of the reply the M.C.D. said as under :-

"5 That the premises in dispute consist of No.2505,2506 and 2670, Basti Punjabiyan, Subzi Mandi, Delhi. The premises 2670 was old building obtained from the Office of the Custodian. The owner thereof, the father of the petitioner

unauthorisedly raised illegal construction on the public land, i.e., the road in front of the premises which comprised of ground floor, first floor, mezzanine and second floor, and had put it to non permissible user. The petitioner and his relatives were fully aware of this. On 3.5.93, in accordance with law, after fully notifying the inmates, only one covered enclosure which had been raised on government land was removed. The way was fully left open for the inmates to move in and out. There were some workers who were present in the premises and who had moved to the back portion, i.e., the old building. There was no obstruction whatsoever to ingress or egress to the premises. Action was taken in the presence of police force. On 13.5.93, in accordance with law, the illegal mezzanine floor, first floor and second floor standing on public land was removed. The staircase of the premises is existing even on date, even though the bottom portion of the stair-case is on public land. The stair-case from the mezzanine floor to the upper floor is inside the old structure. The family of the petitioner was fully informed. They refused to come out but went to the back portion which was not touched in any manner. The passage to and from the building was clear. The petitioner was not even present in the premises. The younger brother of the petitioner, who is also a lawyer was fully informed that in case they wanted to shift the family members the authorities would give full assistance. However, instead of doing this, even he left the premises and did not return till the Mcd action was over.

THAT in respect of the premises 2505 and 2506 which are attached premises, facing of enclosure on Gf which was encroachment was removed on 3.5.93. On 13.5.93 the illegal encroachment of public land was further to be removed. The process was extremely slow and the removal was commenced by slowly removing the top-most encroachment i.e., the roof of the 5th floor illegally constructed on public land. It is respect fully submitted that the angle-irons in respect of the roof are existing even on date. Some doors opening towards the main road were removed. 4 Floors which have been illegally raised on government land are existing even on date. There was no obstruction whatsoever to the passage. "

(4) In his affidavit Mr. Verma also referred to an order of Mr. S.N. Dhingra, Additional District Judge, Delhi, in the case filed by father of the petitioner and which order was made on 5 March 1993. The court clearly said that the initial structure allotted to the father of the petitioner was only garage measuring 15" x 10" and an area of 20"x 10" in front of the garage and staircase, and what now existed apart from that was unauthorised and must be demolished. The learned Additional District Judge also observed that father of the petitioner had made large scale unauthorized construction not only on the ground floor but on all the floors and that the M.C.D. had an obligation to demolish all these unauthorised structures raised by him in the garb of repair or by misuse of judicial process. Mr. Verma also referred to other litigations as well and said that on 13 May 1993 itself father of the petitioner even filed a suit which was entrusted to Mr. S.K. Kaushik, Sub Judge 1st Class, Delhi, in respect

of property bearing No. 2669 and 2670. Mother of the petitioner also filed a contempt petition on 10 May 1993 against certain officers of the M.C.D. On this very basis any allegation of wrongful confinement, etc., was denied. Then Mr. Verma in the reply affidavit of M.C.D. in paras 9 and 10 said as under :-

"9. That compliance of the orders dated 13.5.93 passed by this Hon'ble Court was done immediately as soon as the same was received. The respondent Corporation and its officials have every respect for the orders of this Hon'ble Court and the process of law. Even though there was no obstruction to the passage, even malba near the passage was removed by 1 1.30 A.M. on 16.5.93 which was a Sunday. In fact in spite of obstruction by the relative of the petitioner, the father of the petitioner was removed to St. Stephen's Hospital with full medical assistance and aid provided by the authorities. Even on 15/5/93 fire service & medical assistance had been brought by police but petitioner's relatives refused all assistance.

10. That the officers of the Mcd neither prevented the ingress or egress nor obstructed the movement in any manner whatsoever, nor caused obstruction to either the water or electricity or the passage nor any illegal activity whatsoever in the nature of removal of goods, i.e., theft or decoity of any nature took place in the premises in the presence of the officials of the Corporation. On the contrary, the family members of the petitioner spurned every offer of assistance and the same was apparently to create a false case. "

(5) Lastly, Mr. Verma said that the petitioner and his relatives had taken recourse to multiplicity of litigation merely to cloud the real issue and to make out a false case against the M.C.D. Petitioner has not rebutted these averments made by M.C.D., and when pointed out this to him he again said that he wanted to amend the writ petition and was waiting for the Supreme Court to decide the matter in writ filed by his father which he said was now listed for 3 September 1993 for final disposal.

(6) After going through the record of the case we are of the opinion that the present petition was not filed bona fide. The petitioner just wanted to dramatise the whole situation by first going to the residence of the Chief Justice and then to a judge of this Court late in the night. He all through knew the action taken and contemplated by the M.C.D. for the demolition of unauthorised constructions made on the public land. There was no hindrance to his parents or any of his family members either of ingress or egress from the property in question. If they intentionally did not leave the premises it was only to divert the attention of the authorities and of the court as well to get some favorable orders so that the public authorities may not take any action qua the property which they were legally bound to do. We are unable to accept the contention of the petitioner that any obstruction was put by the respondents or any one of them to trap the parents of the petitioner or any of his relatives. During the pendency of this petition the father of the petitioner unfortunately expired, but not on account of any action of the respondents. He had already been shifted to the hospital.

During the course of arguments the petitioner took us through various documents. The petition which originally started with a visiting card now comprised 224 pages with a reply affidavit of the M.C.D. running into 6 pages. The documents filed consisted of citation and biography of the petitioner himself, his letters to the Bar Associations and resolutions of the Bar Associations, F.I. Rs., statements, photographs, and, of course, affidavits of his sister, brother, etc. We do not find any of these documents to be any relevance to the issues involved in the case. The arguments addressed by the petitioner were mostly irrelevant. He was projecting himself as a savior of humanity and also at the same time a much harassed man at the hands of the authorities. We have no doubt that the petitioner, by using his position as a lawyer and a member of the Supreme Court Bar Association, has tried to overawe the authorities by filing this petition. We will only say that when under law a duty is cast upon the authority to take any action it must do so and never should it deflect from its lawful course whatever may be the odds. It is the rule of law which prevails in this country. No one is above law. The petitioner must realise this.

(7) There is nothing on record, on which we can safely rely, to back up the allegation made by the petitioner. Version as given by the M.C.D. appears to us to be correct. We find no merit in this petition. It is dismissed with costs. Counsel fee Rs.2,200.00 .