
(1996) 09 BOM CK 0038

In the Bombay High Court

Case No : Criminal Writ Petition No. 1058 of 1995

Mohan Vithal Takire

APPELLANT

Vs

Satish Sahney and others

RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226

Citation : (1997) CriLJ 635

Hon'ble Judges : Vishnu Sahai, J;V.R. Datar, J

Bench : Division Bench

Advocate : U.N. Tripathi, for the Appellant; R.L. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—By means of this writ petition, preferred under Article 226 of the Constitution of India, the petitioner (the detenu) has impugned the detention order dated 19th September 1995, passed by respondent No. 1 detaining him under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (No. LV of 1981).

2. The prejudicial activities of the detenu necessitating the issuance of the detention order are contained in the grounds of detention dated 19th September 1995, which were served on the detenu on 20th September 1995.

The grounds in brief read thus :

The detenu in or about the year 1993, encroached upon a part of an open land (reserved forest land) bearing Survey Nos. 87/A and 239/1 at Mouja Akurli, Gautam Nagar, Poisar, Malad (East), Taluka Borivali, Bombay Suburban District belonging to Sanjay Gandhi Rashtriya Udyan, Borivali and from the said Government land sold out small plots and/or huts to needy persons after extracting from them amounts ranging from Rs. 5,000/- to Rs. 10,000/-. The persons who purchased the said plots erected unauthorized structures/huts at the instance of the detenu. In all about 75 to 80 huts were constructed.

Thereafter the detenu started collecting monthly rents from the occupants of the huts and thus created illegal tenancy. He did not issue any documents or receipts in respect of the plots sold for constructing the huts. The averment is that he and his associates were demanding further monies from the occupants under one pretext or other by threatening to cause them physical harm, by setting fire to their huts etc.

On 8-4-1995, two forest officials accompanied by Assistant Police Inspector, Kilje and some police personnel attached to Kandivali (East) Police Station and independent panch witnesses visited the said land bearing Survey Nos. 87/A and 239/1. They found that the detenu had no right or title over the said land. They also discovered that 75 to 80 unauthorized huts had been erected on the said land. The evidence of the range forest officer, Suresh Shivram Darade and of the land surveyor, Laxman Santaram Ghadigaonkar, was that the said land belonged to the Government of Maharashtra and was in the possession of the forest department since 2-9-1975.

In the grounds of detention it is also mentioned that on account of fear and terror generated by the detenu and his associates people were not openly prepared to come forward and only on the assurance that their names would be kept a secret gave statements.

In the grounds of detention in all there is a reference to six in camera statements viz. of witnesses A to F respectively.

Witness A is a resident of Apna Nagar, Kandivali (East). In his statement dated 20-4-1995, he stated that the detenu started selling huts to needy persons at exorbitant rates and he and his associates had created terror in the area. He further stated that in November 1993, he purchased a 10 feet x 15 feet hut from the detenu for Rs. 7,000/- on a monthly rent of Rs. 50/- but the said purchase was not backed up by any legal documents. He also stated that when he demanded agreement and receipts, the detenu initially gave false promises and ultimately in the first week of February 1995, when witness A came to know of the proposed demolition programme, he approached the detenu who abused him in offensive language. Thereafter the detenu and his associates assaulted him by means of wooden stick and threatened him that in case he asked for agreement and receipts once again he would not be allowed to stay in Gautam Nagar. He further stated that on account of threats of the detenu, he became apprehensive and consequently did not report the matter to the police.

Witness B is a resident of Gautam Nagar, Kandivali (East). In his statement dt. 23-4-1995, he stated that he had purchased an open plot of the size of 10 feet x 20 feet from the detenu for Rs. 7,000/- and thereafter had erected an hut of the dimensions of 10 feet x 10 feet. He further stated that in the last week of February 1995, while he was constructing the hut, the detenu came there and said in a threatening tone that as he was once again constructing a new house he should pay him Rs. 5,000/-. He then tried to convince the detenu that he had

already paid the money. That was of no avail and the detenu pushed and assaulted him and demolished his hut. While leaving he gave threats to his life. Consequently, he did not report the matter to the police.

Witness C is a resident of Apna Nagar, Kandivali (East), Bombay. In his statement dt. 26-4-1995, he stated that in 1993, he had purchased an open plot of land 10 feet x 10 feet from the detenu for Rs. 5,000/- on a monthly rent of Rs. 50/-. Thereafter he had constructed a hut thereon by spending his own money. He further stated that the detenu had promised to provide him water and electricity within few days. Some other residents of the locality also contacted the detenu for the same purpose but he gave them evasive replies. In the second week of March 1995, when the detenu and his associates were standing at Gautam Nagar Naka witness C asked the detenu about light and water. At this the detenu abused him and also kicked him mercilessly. Witness C shouted for help but on account of the fear psychosis created by the detenu none came forward to his rescue. Those who were around ran away. The detenu also gave threats that if any one raised voice he would be cut into pieces. The witness was scared and did not report the matter to police.

Witness D is a resident of Rahul Gandhi Chawal, Gatumam Nagar, Kandivali (East). In his statement dt. 5-5-1995, he stated that in the year 1994, he had purchased a hut of 10 feet x 10 feet from the detenu for Rs. 8000/- on a monthly rent of Rs. 50/-. The detenu had promised to give him the documents in this regard but did not do so. In the fourth week of March 1995, when witness D came to know of the demolition programme, he immediately contacted the detenu and asked for documents. The detenu got annoyed and started abusing and kicking him. Witness D shouted but because of terror of the detenu none came forward to his rescue. On the contrary the neighbouring hutment dwellers struck by fear closed their huts. The detenu also took out a knife and threatened to kill him in case he opened his mouth. On account of fear of the detenu witness D did not report the matter to the police.

Witness E is a resident of Gautam Nagar, Kandivali East. In her statement dt. 10-5-1995, she stated that in the year 1993, she purchased an open plot of 20 feet x 15 feet from the detenu for Rs. 6,000/- and erected a hut thereon out of her own expenses. She started living therein on a monthly rent of Rs. 60/-. She further stated that the detenu had promised to provide her electricity, water supply and also hand over the documents within a few days. However, when she contacted the detenu for all this, he asked her to increase the rent. She showed her inability to do the same. Thereupon the detenu gave her threats that in case she did not increase the rent, she should vacate the hut else he would kill her. So saying the detenu kicked her. She shouted for help but none came forward to her rescue. She was scared and did not report the matter to police.

Witness F is a resident of Damu Nagar, Kandivali (East). In her statement dated 4-6-1995, she stated that in the year 1993, she purchased an open plot of land of 15 feet x 15 feet from the detenu at Gautam Nagar for Rs. 10,000/-. She

erected a hut thereon out of her own expenses and started living therein on a monthly rent of Rs. 75/-. She also stated that the detenu had promised to provide her electricity and water supply within a couple of days. She further stated that when she asked him for documents, he promised that he would supply them shortly. She also stated that the detenu and his associates approached her and asked her to increase the rent to Rs. 100/-. When she expressed her inability the detenu threatened her that in case she did not pay Rs. 100/- from next month, her hut would be demolished. In the third week of May 1995, when the detenu and his associates saw her passing the detenu abused and pushed her. Thereafter she went to her house. After some time the detenu and his associates came there. They kicked the door of her house and asked her to pay the increased rent then and there else that night itself her hut would be burnt. She got scared and did not report the matter to police.

3. On the basis of the incriminating statements, mentioned in the preceding paragraph, the detaining authority, respondent No. 1, was subjectively satisfied that the detenu was a person of violent character, indulging in terrorizing and criminal activities and he and his associates were moving out with deadly weapons like bamboo sticks; knife, chopper and iron rod etc. and did not hesitate to use the same while committing serious and heinous offences. He was also subjectively satisfied that the detenu and his associates had unleashed a reign of terror in the localities of Rahul Gandhi Chawl, Shivaji Chowk in Gautam Nagar, Kandivali (East) and areas adjoining thereto falling in the jurisdiction of Kandivali (East) Police Station, Greater Bombay. He was further satisfied that for fear of retaliation none dared to lodge complaint against them.

After recording the said satisfaction, respondent No. 1, finally concluded that the detenu was a slumlord as defined in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (No. LV of 1981); his activities as a slumlord were causing or calculated to cause harm, danger and alarm and a feeling of insecurity among members of the general public in the areas mentioned above, that his activities as a slumlord were prejudicial to the maintenance of public order in the said areas, that he was likely to indulge in similar prejudicial activities in future; and therefore, it was imperative to detain him under the said Act in order to prevent him from acting in such a prejudicial manner in the future.

In the grounds of detention, respondent No. 1 also apprised the detenu of his right to make representation to the various authorities. Their names are mentioned in paragraphs 12 to 14 of the grounds of detention.

4. We have heard Mr. U. N. Tripathi for the petitioner and Mr. R. L. Patil, Additional Public Prosecutor, for the respondents.

Although in the petition Mr. U. N. Tripathi has taken number of grounds, he has assailed the impugned detention order only on four counts.

Mr. Tripathi firstly contended that although under Article 22(5) of the Constitution

of India respondent No. 1 apprised the detenu of his right to make a representation before the Advisory Board, he did not communicate to him his right to adduce evidence or to be represented by a friend of his before the Advisory Board as laid down in the decisions of the Apex Court in the cases reported in A.K. Roy and Others Vs. Union of India (UOI) and Others, and Harbans Lal Vs. M.L. Wadhawan and Others, , and as such the detention order was bad in law.

We have gone through the said decisions of the Apex Court and we regret that we cannot accede to Mr. Tripathi's contention that furnishing of the said information to the detenu was obligatory on the part of the detaining authority.

In A. K. Roy's case in paragraph 95 Chandrachud C.J., in his majority judgment observed :

"the embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person whose interests are adversely affected as a result of the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend."

In Harbans Lal's case, In paragraphs the Apex Court observed thus :

"The law laid down thus recognises the right in a detenu to lead evidence in rebuttal of the allegation against him before the Advisory Board. All that is necessary is that the detenu should keep the witnesses ready for examination at the appointed time. There is no obligation cast on the Advisory Board to summon them."

Neither in A. K. Roy's case nor in Harbans Lal's case has the Apex Court held either expressly or impliedly that the obligation on the part of the detaining authority to apprise the detenu of his right of making a representation before the Advisory Board would also include a corresponding obligation on the detaining authority to inform him that he had a right to adduce evidence or to be represented by a friend before the Advisory Board.

On the contrary Mr. R. L. Patil, Additional Public Prosecutor for the respondents, has placed before us a Division Bench decision of our Court in the case of Anthony alias Sandy John Nigero Vs. S. Ramamurthi, Commissioner of Police for Greater Bombay and others, , wherein the specific contention canvassed by Mr. Tripathi was repudiated by the Division Bench and the said Division Bench thus observed in paragraph 4 :

"Neither the Constitution nor the statute makes it mandatory to permit assistance of next friend to the detenu or adducing evidence in rebuttal by him. This right is spelt out from the decision of the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, . Supreme Court has indicated that if asked for by the detenu, those opportunities ought to be granted. No where we notice requirement of giving advance information to the

detenu, about those rights. It is submitted that right of representation can never be effectively exercised without those opportunities and hence failure to intimate those rights adversely affects the right of representation itself and on that count the order of detention gets vitiated. The submission cannot be accepted for its acceptance would amount to stretching the ratio of the Supreme Court decision and the width of the right to receive intimation about the right of representation too far."

We are in respectful agreement with the law laid down by the said Division Bench.

4A. We would like to emphasise that there is a distinction between a right of the detenu to make a representation to the Advisory Board which flows from Article 22(5) of the Constitution of India and the manner in which this right can be exercised. The manner in which the right can be exercised, in our judgment, would include the detenu's right when he appears before the Advisory Board to request the Advisory Board that he be permitted to be represented by a friend or that his witnesses who are present be examined by it. In our judgment there is no right of the detenu and a corresponding obligation on the detaining authority to apprise the detenu that in case he wants he could adduce evidence or take the services of a friend before the Advisory Board. In our view Mr. Tripathi has equated the manner in which the right is to be exercised by the detenu with the right itself. That is not so.

In our view there is no substance in the first contention of Mr. Tripathi and we, therefore, reject it.

5. There is another limb of the same submission of Mr. Tripathi and that is inasmuch as the detaining authority is under no statutory obligation to inform the detenu that he had a right to adduce evidence before the Advisory Board or to be represented by a friend before it, the procedure was violative of the mandate laid down by Article 21 of the Constitution of India. There can be no quarrel with Mr. Tripathi's submission that after the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , the expression "procedure established by law" has come to connote a procedure which is fair and reasonable. But we are not able to persuade ourselves to accept Mr. Tripathi's contention that simply because the procedure established by law does not contemplate of an obligation on the part of the detaining authority to furnish information to the detenu in terms of his right to adduce evidence or to be represented by a friend before the Advisory Board that procedure is violative of Article 21 of the Constitution of India. The procedure would have been violative of the mandate of Article 21 had there been no right of representation or may have fallen foul of it had there been a statutory embargo on the right of the detenu to be represented by a friend before the Advisory Board or to examine witnesses even when he had them ready before the Advisory Board. That is not so. Accordingly, we do not find any merit in the said contention of Mr. Tripathi and reject the same.

6. Mr. Tripathi next contended that in paragraph 8 of the grounds of detention the detaining authority has noted to the following effect :

"Your criminal record shows that you are a person of violent character, indulging in terrorizing and criminal activities. You and your associates are always moving about armed with deadly weapons such as bamboo stick, knife, chopper and iron rod etc. and do not hesitate to use the said weapons while committing various offences of serious and heinous nature."

He urged that there is no material to warrant such an inference on the part of the detaining authority. This ground has been pleaded as ground No. 6A in the petition and has been replied to in paragraph 9 of the return filed by Mr. R. D. Tyagi (present Commissioner of Police, Mumbai). In paragraph 9 of his return Mr. Tyagi has denied the correctness of the said ground and has averred that sufficient material was placed before the detaining authority, copies of which were served on the petitioner, to warrant such an inference. We have perused the averments contained in paragraph 9 of the return and the in-camera statements which are a part of the grounds of the detention which were served on the detenu and we are satisfied that in view of what has been averred therein there is no merit in this contention and hence we reject it.

7. We now take up the third contention canvassed by Mr. Tripathi viz., that the prejudicial activities of the petitioner were such that they could have been dealt with under the ordinary law of the land and his preventive detention was not necessary. This ground has been pleaded as ground No. 6 I. in the petition. In support of his submission Mr. Tripathi placed reliance on the decision of the Apex Court in *Sadhu Roy Vs. The State of West Bengal*, . This ground has been replied to in paragraph 17 of the return filed by Mr. R. D. Tyagi, the present Commissioner of Police, Mumbai. In the said paragraph Mr. Tyagi has averred that on account of the terror created by the detenu the concerned victims did not dare to lodge their complaints with the police and consequently their in-camera statements were recorded. In the said paragraph it has also been averred that on account of this fact it was impossible to deal with the detenu under the normal law of the land. If the dread of the detenu was such that the aggrieved persons dared not to lodge complaints against him and only on the condition of anonymity gave statements against him it follows as a logical corollary that they would not have dared to depose against him in Courts also. A perusal of the in-camera statements which have been extracted in paragraph 2 would show that the detenu had virtually unleashed a reign of terror. In such a situation if the detaining authority was subjectively satisfied that the ordinary law of the land was not sufficient to curb and put fetters on the prejudicial activities of the detenu, it was amply justified in clamping the detention order on him. It is to be borne in mind that the satisfaction of the detaining authority is subjective. We have perused that the authority cited by Mr. Tripathi but the question whether the detention order should be clamped in a certain case or not would depend upon the nature of the prejudicial activities peculiar to it and, in our view, the

nature of the prejudicial activities of the detenu amply justified the issuance of a detention order against him. Hence the third contention of Mr. Tripathi fails.

8. Mr. Tripathi finally contended that even assuming the material in the grounds of detention to be true they disclose a case of breach of law and order and not public order and hence the detention order against the detenu is unsustainable in law.

The distinction between public order and law and order was explained by Hidayatullah C.J. in the oft. quoted case of Arun Ghosh Vs. State of West Bengal, . In paragraphs 3 he observed thus :

"Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order It means therefore that whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

It is in keeping with the aforesaid norms laid down in AIR 1970 SC 1128 : 1990 Cri LJ 1136 (supra), that we have to examine whether a perusal of the grounds of detention indicates that the activities of the detenu violated public order or merely law and order. A perusal of some of the in-camera statements unmistakably show that the acts of the detenu resulted in breach of public order. For instance witness C in his statement dt. 26-4-1995, stated that in the second week of March 1995, when he and other residents asked the detenu in Gautam Nagar Naka as to when he would provide facilities promised by him, the detenu fisted and kicked him. When this witness shouted for help, none came forward to his rescue and persons assembled there ran away. The detenu threatened the people who had collected that if anyone raised voice he would be cut into pieces.

Witness D in his in-camera statement dt. 5-5-1995, stated that when he came to know about the proposed demolition programme of the hutment situated at Rahul Gandhi Nagar, he immediately contacted the detenu and asked him for documents pertaining to the hut. The detenu got annoyed and started fisting and kicking him. The witness shouted for help and on account of fear of the detenu none came forward to his rescue. On the contrary this witness stated that the neighbouring hutment dwellers, who were struck by terror, closed the doors of

the huts.

In our view a perusal of the in-camera statements of witnesses C and D do not leave an iota of doubt that the acts of the detenu constituted breach of public order and not law and order simpliciter. As observed by the Apex Court in Arun Ghosh Vs. State of West Bengal, even if the even tempo of the life of a specified locality is affected it would be a breach of public order. That the said statements show this is beyond dispute.

In this connection, we may also advert to Explanation to Section 2 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981 which reads : "For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health;"

A perusal of the said explanation would show that public order would be considered to have been breached if the activities of a person tend to cause feeling of insecurity among the general public or any section thereof. From the in-camera statements of witness C and D, it is crystal clear that on account of the activities of the detenu, people living in the neighbouring hutments were feeling insecure. Hence even from this stand-point it is a breach of public order.

9. Mr. Tripathi placed reliance on the decision of the Apex Court in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, . In the said case the Apex Court observed that in the case of stray and casual acts, breach of public order should not be inferred. The facts found in the said case, in our judgment, are different from those set out in the grounds of detention of the instant case. Here the acts of the petitioner were neither stray or casual. In a calculated manner for a long time he committed prejudicial activities which breached public order. Consequently, the said decision, in our view, has no application.

In our view there is no merit in the said contention of Mr. Tripathi and we accordingly reject it.

10. For the aforesaid reasons, we find this petition to be devoid of substance and dismiss the same. Rule issued earlier is discharged.

Issuance of certified copy is expedited.

11. Petition dismissed.