

(2021) 01 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1749 Of 2019

M/s Naveen And Brothers

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 21-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Citation : (2021) 01 CHH CK 0018

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Shakti Raj Sinha, Sunita Jain, HB Agrawal, Amit Tirkey, Gary Mukhopadhyay

Final Decision : Disposed Of

Judgement

Goutam Bhaduri, J

1. Heard.

2. The instant petition has been filed for the following reliefs:-

10.1 That this Honble court may kindly be pleased to direct the respondents to allow the petitioner to carry on his business/fabrication workshop

situated at Danganiya, Raipur (C.G.), in the interest of justice.

10.2 That his Hon'ble court may kindly be pleased to direct the respondents to not put any obstruction in carrying on petitioner's fabrication work shop,

in the larger interest of justice.

10.3 Any other relief (s) that this Hon'ble Court may deem fit to grant in the interest of Justice.

3. Learned counsel for the petitioner would submit that the petitioner was granted permission to operate a fabrication shop at Shanti Vihar Colony,

Danganiya, the objection having been made by few of the residents, the petitioner was served with the notice and off and the shop was being sealed which used to closure of business. He would further submit that the letter dated 26.12.1991 which is issued by the Municipal Corporation about the no objection and the letter dated 05.03.1987 issued by the Municipal Corporation, Raipur would show that the petitioner was granted permission to open a factory at Danganiya ward on his own land. Pursuant thereto the petitioner has opened his shop, therefore, virtually no nuisance was created and the petitioner was well within his legal right to run his shop which cannot be otherwise stopped. He would refer to para 9.6 of the petition and would submit that petitioner's registration was done subsequently on 24.01.2019 which is valid uptill 23.01.2024 for fabrication work on the plot of which the complaint has been made, whereas the Municipal Corporation has intervened in the matter which is offending, whereby the petitioner's right is being restricted to run his business for his livelihood. He would further submit that the like nature of shops are situated and spread all over the city in the residential area and the petitioner is being singally targeted, therefore, there cannot be pick & choose by the Municipal Corporation so as to close down the business of the petitioner.

4. Per contra, learned counsel for the respondents No.2 & 3 oppose the arguments and would submit that the Municipal Corporation has not specifically targeted a person but having received the complaint, the shop/factory of the petitioner was inspected and it was found that the noise pollution caused by the shop/factory was/is beyond the permissible sound limit in residential area and it falls within the ambit of nuisance.

Consequently, it being the residential area, the petitioner cannot be allowed to operate his factory in the said premises which causes nuisance by sound pollution in the residential area. He would further submit that in view of the direction issued by the State that like nature of pollution may not be there, the Municipal Corporation is ready to carryout the survey about the engineering and fabrication units which causes sound pollution and which are situated in the residential area as per the direction of the State dated 27.03.2019 & 25.02.2019, therefore, no prejudice can be said to have been done to petitioner by targeting him alone.

5. Learned counsel for the intervener refers to the document filed along with the

application and opposes the argument of the petitioner and would

submit that the area being a residential area, repeated complaints were made by all the residents which would be evident from Annexure I-1. He

would further submit that on a complaint made, the Chhattisgarh Environment Conservation Board had inspected the premises and found the sound

pollution which is caused by the fabrication and cutting of the irons comes beyond the permissible limits which causes noise pollution. Since it situates

within the residential area, the fabrication work in the complained place cannot be allowed to continue.

6. I have heard learned counsel for the parties and perused the documents.

7. The petitioner was initially granted permission to run a shop of fabrication at Shanti Vihar Colony, Danganiya. The Annexure P-2 is about the

license which was granted by the Municipal Corporation. According to the petitioner, it was renewed from time to time and is valid up till 23.01.2024.

The fabrication though was allowed initially but when it causes sound pollution beyond the permissible limit, the permission to run a shop cannot be

legalized under the veil of license and to the liberty to run its business as the freedom to run a business has to be within reasonable bands for larger

good.

8. The documents filed by the intervener would show that on a complaint made by the residents of the area, the inspection was carried out by the

Chhattisgarh Environment Conservation Board. After inspection according to Annexure I/12 the sound pollution was found to be beyond the

permissible limit which are otherwise allowed in the residential area. The panchnama is also enclosed. The perusal of the Panchnama would show that

the noise pollution was measured and the reading of the meter was 62.9 db (A), 64.0 db (A), 65.9 db (A), 70.2 db (A), 72.1 db (A) which according to

the Chhattisgarh Environment Conservation Board was beyond the permissible limit in the residential area. In the panchnama the representative of the

petitioner was also present, which bears the signature i.e. of Sushila. The report of the Chhattisgarh Environment Conservation Board opined that the

factory of the petitioner which is operated at the residential area, the sound emitted from the work is beyond the permissible limits.

9. The Supreme Court in the case of Forum, Prevention of Env'n. & Sound Pollution Vs. Union of India and another {2005 AIR SCW 3525} has ruled

that the disturbance produced in our environment by the undesirable sound of various kinds is called "" noise pollution"". It further held that anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours.Â Further the Supreme Court has held thus in para 86 which is reproduced hereinbelow:-

â??86. A noise disturbance, as defined by the ordinance, is any sound that is unpleasant, annoying, or loud; abnormal for the time or location; and prejudicial to health, comfort, property, or the conduct of business. Under the Ordinance, it is unlawful to create a noise disturbance anywhere during quiet hours,"" including multi- family buildings and townhouses. The ""nuisance provision"" prohibits some noise disturbances anywhere at any time.â??

(10) Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of the Court that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of person to life with human dignity. Which includes, all the aspects of life which go to make a person's life meaningful, complete and worth living. It held that the human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. The Court at para 100 has held thus:-

â??100. Noise was included in the definition of air pollutant in Air (Prevention and Control of Pollution) Act in 1987. Thus, the provisions of the Air Act, became applicable in respect of noise pollution, also.â??

11. Hence in view of the law laid down by the Supreme Court, it would be proper to hold that when a constitutional right is conferred to a particular individual then the constitutional remedies would be wide repertoire under Article 226 of the Constitution of India. It is obvious that because of urbanization or industrialization the noise pollution may in some area of a city/ town might be exceeding permissible limits prescribed under the rules, but it would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments, therefore, permissible limits which have been set forth by the Environment Board about the sound has to be strictly adhered to. There are large implications of the noise pollution which leads to ailment

including the emotional and behavior changes in the body.

(12) In order to control the pollution qua the sound pollution, the State Government has issued different circulars and letters from time to time. One of such direction issued is filed as Annexure I-13 dated 25.02.2019 whereby the government asked all the Municipal Corporation that in the Engineering and Fabrication Units since it causes sound pollution, they may not be allowed to operate in the residential area and permission may not be granted to operate. Subsequently, to such general direction particularly Annexure I-14 was issued on 27.03.2019 which reads as under:-

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Â 13. Considering the totality of the facts in the instant case, the Chhattisgarh Environment Conservation Board has categorically opined that the sound pollution emitted from the Engineering and Fabrication in respect of the shop which is situated at the residential area exceeds the permissible sound pollution limits. Consequently, the direction of the respondent Municipal Corporation to close down the fabrication unit in the residential area is

justified and legal. Accordingly, the direction of the respondent Municipal Corporation to close down the fabrication shop and to evict the petitioner from Shanti Vihar Colony, Danganiya is well merited.

14. Since the State Government has already issued the detailed direction by its letter dated 27.03.2019, the Municipal Corporation is directed to ensure that such activities are not carried out in the municipal limits where the residential area exists. This direction is issued in the background that the petitioner alone is not targeted and the direction of the State is about the entire State. High decibel noise can create inconvenience and leads to various problem. Therefore, the direction issued by the State shall be followed by the Municipal Corporation all over the State uniformly. A copy of this order be sent to all the Municipal Corporations so that the direction of the State dated 27.03.2019 is followed in its letter and spirit. If the noise pollution is found, the corrective measures should be taken.

15. Submission has been made by the petitioner that to shift the factory premises outside the residential area, some time may be granted. Accordingly, two months time is granted to the petitioner to shift the factory, however, in the meanwhile, the factory shall not be allowed to run in the premises wherein it situates as of now which may cause further nuisance. With the aforesaid observation, the writ petition stands disposed of.