
(1996) 01 MP CK 0065

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4309 of 1995

Prakash Davara and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-01-1996

Acts Referred:

Citation : AIR 1997 MP 39 : (1996) JLJ 750 : (1996) 41 MPLJ 1088

Hon'ble Judges : A.K. Mathur, Acting C.J.; S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : V.K. Tankha, for the Appellant; Anoop Choudhary, General, for the Respondent

Judgement

A.K. Mathur, Actg. C.J.

This is a public interest litigation by which the petitioners have prayed that with all the orders issued during Khula Manch on 17-12-1995, at Raipur, for arrest, registration of criminal cases, forfeiture of property and dissolution of Managing Committee of the Housing Societies either at the behest of respondent No. 6 or any other dignitaries is, per se, non est and void. It is also prayed that the respondents Nos. 2 to 4 be prohibited from taking any action against petitioner No. 1 or any other President of Co-operative Society in respect of forfeiture of properties.

Brief facts giving rise to this petition are that the petitioners are public spirited persons and interested in the well being of the citizens of India. It is alleged that M.P. Cooperative Societies Act, 1960 provides for better organisation and development of cooperative movement in the State of M.P. In 1994, the Government decided to arrange Co-operative Lok Adalats in the form of Khula Manch at various places in order to expedite the grievances relating to Co-operative Societies. This Khula Manch has been launched to provide quick and speedy justice to the aggrieved persons. It is alleged that the petitioner No. 2 Maheshchand Jain who is the Acting President of Krishna Sakha Griha Nirman

Sahkari Samiti, received a notice on 12-12-1995, whereby he was directed to remain present at the Khula Manch along with records. Petitioner No. 1 Prakash Davara, Ex-President of Geetanjali Co-operative Housing Society, did not receive any notice. He was not even contacted by any officer of the Co-operative Department. Petitioners 3 to 5 are members of various Co-operative Housing Societies. Khula Manch was organised at the Cultural Hall of Medical College, Raipur, on 17-12-1995, by some of the dignitaries.

The grievance of the petitioners is that despite directions given by this Court in case of Deodas Mohanta v. State of M. P. 1995 MPLJ 981 : (1995 AIHC 4267), that Khula Manch should be held on the basis of mutual consent and the participation of Ministers or Government Officers play an inspiring and mediatory role, the persons present on the dais, in their zeal to redress the grievances, delivered instant judgments and orders. These orders were directed to be complied with through the officers present at that time, namely the District Magistrate, Supdt. of Police, Joint Registrar, Co-operative Societies, Revenue Commissioner, D.I.G., Police etc. In fact the entire administrative apparatus was present at that time. It is alleged that respondent No. 6 issued orders for forfeiture of properties of various Presidents of the Cooperative Societies including petitioner No. 1 Prakash Davara, Sewakram Pandey, Sudhir Katiyar, A. K. Ansari, Sachchidanand Upasana, B.K. Agrawal etc. and directions were also issued to register criminal cases against these persons. This approach of the Khula Manch is sought to be challenged again before this Court. It is alleged that Shri Sewakram Pandey, President of Karmachari Griha Nirman Samiti, Rohanipuram, was arrested and sent to jail on 17-12-1995 from the Khula Manch.

Reply has been filed by the respondents and they have denied that any highhanded action was taken against any person. However, so far as Shri Sewakram Pandey is concerned, it is alleged that proper F.I.R, was registered against him and thereafter he was arrested on 18-12-1995, at 2 p.m. It is also pointed out that in fact Shri Pandey was not arrested on the spot, but he was only escorted for his own safety. This explanation given by learned Advocate General, is hardly satisfactory, because the cat is out of bag, as a photograph (Annexure P-5) has appeared in the Dainik Bhasker, dated 18-12-95, published from Raipur, which shows that Shri Pandey was escorted by the police personnel.

We have heard Shri Tankha and Shri Anoop Choudhary, learned Advocate General and perused the record.

So far as holding of Khula Manch like Lok Adalats for quick disposal of cooperative matters is concerned, the object is laudable that the persons who have been cheated by land sharks, should be brought to book. But in democracy in India, we have a rule of law according to which Executive, Legislature and Judiciary have a role to play. The Executive which is holding the Khula Manch, is entitled to redress the grievances of the persons affected, but the role of Judiciary is not given to the Executive. They cannot direct a person's arrest and then send him to jail. This kind of role is never entrusted to the Executive. If

they do it, they do it at their own risk. We do not want to go into the niceties of Khula Manch at Raipur, but suffice it to say that it does not inspire confidence which it was reposed by this Court in 1995 MPLJ 981: (1995 AIHC 4267, para 16) (supra). While disposing of the petition, it was observed :

"There is no reason to apprehend that Khula Manch to be organised in future are likely to violate any law. We have no doubt that the State Government and the respondents who are alerted to the contentions raised in these writ petitions would take all care to ensure that Khula Manch rests on the basis of mutuality and mutual consent and the participating Ministers or Government play a purely inspiring and mediatory role."

The parameter has already been fixed by this Court within which they can hold Khula Manch and should certainly bring to book any land sharks who have cheated poor people and have not provided them the houses or other benefits. We do not, in the least, encourage those land sharks and would appreciate that such people are brought to book expeditiously, but at the same time, it has to be kept in mind that the Executive which is holding Khula Manch, cannot take upon themselves the role of Judiciary and direct any person to be arrested from the Khula Manch leading to his humiliation and to the basic dignity of human being. This kind of approach cannot be countenanced.

As we have already mentioned above that Shri Pandey was arrested on 17-12-95 itself and he was taken away from that place in the presence of all the public, was humiliated and thereafter it was shown that he was arrested on 18-12-95. This kind of action should not be repeated and we would mince no words in stating that this kind of approach to Khula Manch is absolutely not warranted under law. Learned Advocate General tried to defend the action that the man was escorted from the Khula Manch and not arrested. This hardly satisfies us. The photograph (Annexure P-5), appearing in the Dainik Bhasker dated 18-12-1995 shows that the man was taken by the police escort. What; else is required by arrest except handcuffs? This is not palatable and will not be countenanced. The Authorities can proceed with the Khula Manch and certainly bring the delinquents and land sharks to book, but this must be done in accordance with law and not in the manner in which it has been done. We do not appreciate the manner of attempting to take the law in hands. Therefore, whenever Khula Manch is organised, the Authorities shall not take upon the role of a Judge upon themselves, but act in accordance with law. This message should go home in proper quarter, lest the lethal hand of this Court is taken out to strike such kind of illegal acts.

We dispose of the petition accordingly with the above observations.