

(2011) 03 MP CK 0075

In the Madhya Pradesh High Court

Case No : Contempt Petition No. 1047 of 2007

Satish Kumar Verma

APPELLANT

Vs

R.C. Sahni, Chief Secretary and others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Citation : (2011) 2 J LJ 323

Hon'ble Judges : Sushma Shrivastava, J; Smt, J; K.K. Lahoti, J

Bench : Full Bench

Judgement

1. We have heard the parties.

2. It is submitted by Shri Gulshan Bhamra, Collector, Jabalpur that as per programme of the Railway, the local administration is ready to provide help to the Railway for removal of the encroachment. The Superintendent of Police, Jabalpur Shri Santosh Kumar Singh submitted that the police are also ready to provide adequate help to the Railway for removal of the encroachment as per schedule. Shri Bhamra, Collector, Jabalpur submitted that as per policy of the State, some alternative place is to be provided by the Railway to the persons displaced from encroachment. It is further submitted by him that nearabout 1100 families will be displaced and if for a period of one week, an arrangement of ration, etc. is made to the aforesaid families,, it will be appropriate for the local administration to meet out the situation. It is also brought to our notice that as per policy of the State, an amount of Rs. 5,000/- for each family is to be provided for immediate help for food, shifting, etc. to such families.

3. Aforesaid prayer is opposed by the petitioner Satish Kumar Verma who submitted that the encroachers are not entitled for any alternative place for their residence. Apart from this, they are also not entitled for any compensation. He has placed reliance to the apex Court judgments in Alm ITR a H. Patel and Anr. v. Union of India and Ors., AIR 2000 SC 2017 and Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, , in support of his contention. He has also drawn our attention to an order passed

in M.C.C. No. 1587/07 dated 10.8.2007 by which encroachers were allowed time upto 30.9.2007, on filing an undertaking, to vacate the land under encroachment. Referring aforesaid, it was submitted by him that an order be passed against the authorities to remove the encroachment in compliance of the order passed by this Court in Writ Petition No. 3/2007 dated 12.3.2007.

4. Shri N.S. Ruprah, learned counsel appearing for respondents No. 4 to 7 submitted that for removal of the encroachment, the Railway may not be burdened as it will encourage the encroachment and the encroachers are not entitled for any kind of financial help from the Railway for the compliance of order dated 12.3.2007 in Writ Petition No. 3/2007.

5. Before proceeding further, it would be appropriate to refer to certain orders passed by this Court. On 2.2.2011, similar contention was raised by the local administration and on the aforesaid date, we passed an order which reads thus :

2.2.2011;

Petitioner present in person.

Shri R.D. Jain, learned Advocate General with Shri Kumaresh Pathak, Deputy A.G., for respondents No. 1 to 3.

Shri N.S. Ruprah, counsel for respondents No. 4 to 7.

Shri Gulshan Bamra, Collector, Jabalpur, Shri Santosh Kumar Singh, Superintendent of Police, Jabalpur, Shri P. Rajagopal Rao, Divisional Engineer (North), South East Central Railway, Kingsway, Nagpur and Shri Jagdish Prasad, Section Engineer, South East Central Railway, Howbagh, Jabalpur are present.

We have heard aforesaid persons.

On the last date of hearing a complaint was made by Shri Ruprah, that inspite of making efforts by Railway, Local Administration has not co-operated and the efforts made by the Railway remained in vain because of non-cooperation of Local Administration.

Today we have heard Shri Gulshan Bamra, Collector Jabalpur and Shri Santosh Kumar Singh, Superintendent of Police, Jabalpur. They have stated that after the order passed by this Court on 23.4.2007, the Local Administration has taken steps for compliance of order. On 16.6.2007, 53 encroachers, on 12.10.2007 - 55 encroachers and on 4.12.2010 - 70 encroachers, who were running commercial activities were removed from the encroached area. By this way 178 encroachers have been removed. So far as other encroachers, who are 1100 in number, have been identified and these persons are residing over the encroached area. It is also intimated that some of them constructed pacca houses and as per the information they are residing since so many years. The Local Administration has prepared a plan to rehabilitate these persons after their removal from the Railway land. For this purpose a land has been identified where these persons can be shifted and for shifting these persons the land is to be developed by

providing necessary amenities. Apart from this, temporary shelter with seven days ration are to be provided to these persons and for this purpose each person has to be paid nearabout Rs. 5,000/-. So far as providing necessary amenities at the new place a big amount is required, so that at the new place these persons can be shifted. A copy of the plan is handed over by Shri Gulshan Bamra to Shri N.S. Ruprah.

Shri Ruprah prays for two months time to seek instructions, but considering the long pendency of the matter, we allow only one month's time to the Railway to take a final decision. In this regard respondents No. 4 to 7 should file their response, in respect of plan prepared by the Local Administration, on the next date of hearing.

In view of aforesaid, we adjourn the hearing of this case for 9th of March, 2011.

On the aforesaid date, Railway shall respond to the aforesaid plan by way of an affidavit.

After hearing the Railway, further order shall be passed in this case.

On the next date of hearing, personal presence of the officers, who are present today, shall not be required.

Thereafter, the Railway filed an affidavit of Shri P. Rajagopal Rao and on 17.3.2011, this Court passed an order which reads thus :

17. 3.2011 :

Petitioner present in person.

Shri Kumaresh Pathak, Deputy A.G. for respondents 1 to 3.

Shri N.S. Ruprah, counsel for respondents No. 4 to 7.

An affidavit has been filed by P. Rajagopal Rao in compliance of the order passed by this Court stating that there is no provision for payment of any compensation to encroachers. It is further submitted that a date may be fixed for removal of encroachments. On the said date, the respondents/State authorities may be directed to provide necessary assistance to the officers of Railway for removal of the encroachments.

In view of the aforesaid, we direct that this case be listed for orders on 28.3.2011. On the aforesaid date, the authorities of both Railway and State shall remain present before this Court so that a date may be fixed for the compliance of order dated 12.3.2007 passed in Writ Petition No. 3/2007.

6. It is apparent that the Railway is not agreeing for providing some alternative site for the encroachers for habitation. As there is no statutory provision for providing some alternative site and apart from this, in order dated 12.3.2007, no such directions were issued, at present, we are not inclined to pass any order in this regard and the prayer of local administration for providing alternative site by

the Railway for habitation of the encroachers is rejected. So far as second contention of local administration that after displacement, displaced families may be provided Rs. 5,000/- each family for their immediate help for food, etc., is concerned, aforesaid contention appears to be reasonable and is having some substance.

7. As per record, we find that the encroachers are there since last several years and no steps were taken by the Railway to remove the encroachers. On a petition filed by the petitioner bearing No. 3/2007, an order was passed on 12.3.2007 and in compliance of the aforesaid order, there was a drive by the administration of the Railway to remove the encroachment, but it appears that there are nearabout 1100 families and it was not possible for the encroachers to immediately vacate the land and considering this aspect in MCC 1587/07 in continuation to the earlier order, the Court passed an order on 10.8.2007 which reads thus :

10.8.2007:

Heard Mr. R.L. Gupta, Advocate, for the applicant. Mr. N Ruprah, Advocate, for the respondent/Railway department and Mr. V. Awasthy, GA, for the respondents/State.

This is an application for extension of time filed on behalf of the members of the applicant association to comply with the order dated 23.4.2007 in M.C.C. No. 1094/2007 and M.C.C. No. 1191/2007 in which we had directed that the encroachers will vacate the land under the occupation within two months from the date of undertaking given by them. The date of undertaking was dated 26.4.2007 and the two months expired on 26.6.2007.

As a last chance, we grant time upto 30.9.2007 to the members of the applicant association to comply with our order dated 23.4.2007.

This order will obviously apply only to those members of the applicant association who have furnished the undertaking as directed in our order dated 23.4.2007.

The application stands disposed of.

8. It appears that inspite of this, the encroachment could not be removed. The local administration has shown its interest for removal of the encroachment as per programme furnished by the Railway, but has made a prayer before this Court that for immediate relief, some amount may be paid to the displaced persons, so that these persons may get some help for food, etc. and there may not be any law and order problem on the spot. Apart from this, displaced family may get some immediate relief for their shifting, etc. Though in this regard, there is no provision, on the contrary as per judgments cited by the petitioner, such persons cannot be provided any compensation, but for immediate relief to these persons, if reasonable amount is paid, it will meet out immediate expenses of shifting and also ration, etc. and will be in the ends of justice. Apart from this,

displaced persons may get immediate relief for ration, etc. In these circumstances, we find it appropriate to allow prayer of the local administration for providing Rs. 5,000/- to the each displaced family after removal of the encroachment or after leaving the encroached place by its own.

9. It is also brought to our notice that the Railway has already prepared a list of persons who are in encroachment of the railway property and as per information submitted by Shri Ruprah, there are 1100 families at present on the spot. Aforesaid position is admitted by the local administration. As encroachment is on the railway land and it is to be removed by the Railway with the help of local administration, it would be appropriate if the Railway is directed to make payment of aforesaid amount through the local administration.

10. In view of aforesaid, we direct thus;

(1) The Railway with the help of local administration shall remove the encroachment as per programme which is as under :

(i) Encroachment from Gwarighat to Hathital level crossing between 23.5.2011 to 26.5.2011.

(ii) Encroachment from Hathital level crossing gate No. 158 to narrow line level crossing gate No. 159 between 6.6.2011 to 10.6.2011.

(iii) Encroachment in Madan Mahal area and Howbagh Railway Colony between 20.6.2011 to 24.6.2011.

(2) The aforesaid encroachment shall be removed by the Railway and all the help shall be provided by the local administration and police to the railway administration.

(3) All the encroachers shall be intimated by the Railway in respect of their removal of encroachment before 15 days from the schedule in writing and in case any person is not found at the encroached area, then a notice shall be affixed at the conspicuous place of the encroached area. A due publicity shall be given by the Railway in local newspapers namely Dainik Bhasker, Daily Nai Dunia and Patrika in respect of schedule of removal of encroachment.

(4) The Railway shall provide fund to the local administration before 30th of April, 2011 for removal of 1100 families from the encroached place at the rate of Rs. 5,000/- per family after their displacement and if any family leaves the encroached place of its own, even then such amount shall be paid to such family. In this regard, the railway shall intimate in writing to the local administration before 30th April, 2011 that such fund is available with the Railway and aforesaid amount shall be disbursed immediately after displacement of the encroacheRs. Aforesaid amount shall be paid to the encroached family as per list prepared by the Railway immediately after removal of encroachment. The Railway and local administration shall finalise the aforesaid list on or before 30.4.2011, so that there may not be any controversy.

(5) It is directed that senior officer from the Railway not below the rank of Divisional Engineer (North), the Collector, Jabalpur and the Superintendent of Police, Jabalpur shall take care of the removal of entire encroachment and they shall remain in touch to meet out any law and order problem during the aforesaid period.

(6) After removal of the encroachment, the Railway shall ensure that no further encroachment is made on the aforesaid land and it shall be responsibility of the Railway to keep the aforesaid land encroachment free.

(7) It is made clear that payment of aforesaid amount shall be by way of an ex-gratia and shall not be treated as compensation in respect of the removal of the encroachment.

(8) A compliance report be submitted before this Court by the Railway in respect of removal of the encroachment in compliance of order dated 12.3.2007 passed in Writ Petition No. 3/07 on 27.6.2011.

C.c. as per rules.