
(2023) 10 RAJ CK 0088

In the Rajasthan High Court

Case No : Review Petition (Writ) No. 145 Of 2021

Shakeel Khan Khokhar

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 17-10-2023

Acts Referred:

Rajasthan Municipalities Act, 2009 — Section 244, 245

Citation : (2023) 10 RAJ CK 0088

Hon'ble Judges : Arun Bhansali, J; Manoj Kumar Garg, J

Bench : Division Bench

Advocate : S.D. Purohit, Ram Sukh Mali, Rajesh Panwar, Ayush Gehlot, Mudit Vaishnav

Final Decision : Partly Allowed

Judgement

1. This review petition has been filed by the petitioner seeking review of order dated 4.8.2021 passed by a Coordinate Bench of this Court, whereby, while deciding D.B. Writ Contempt No. 909/2019, D.B. Writ Contempt No.7/2020 and D.B. Civil Writ Petition No.881/2020, it was directed as under:-

"Manifestly, the Municipal Officials are under a legal obligation to ensure that public lands are saved from unauthorized encroachments.

By order dated 29.01.2020, this court had been apprised that CCTV cameras had been installed in the Ghantaghar area so as to monitor and keep a vigil against encroachments. However, during the course of arguments, this court was informed that there was no mechanism for round the clock monitoring of the feeds received from these CCTV cameras as the same are not connected directly to the Municipal Corporation's office. We would, therefore, suggest that the Commissioners of both the Municipal Corporations (North and South), Jodhpur would seek co-ordination and cooperation from the Commissioner of Police, Jodhpur for accessing the feeds of the CCTV cameras installed by the Police Department in the entire city so that encroachments can be monitored and kept

in check.

We also direct that both the Municipal Commissioners shall fix the responsibility of the designated Inspectors/officials of the respective municipal wards so that the encroachments by the shopkeepers etc. are kept in check. These officers shall forthwith report the encroachments noticed in their respective areas/wards and shall take immediate steps to remove the same and to initiate prosecution in accordance with Section 245 of the Municipalities Act. All encroachments by shopkeeper etc. shall be forthwith removed. If required, criminal cases shall be registered against the offenders and they shall be prosecuted as per law. The Commissioners shall also ensure that any official, who is found avoiding discharge of duties in this regard, would be subjected to suitable departmental action. We are told that some 250 criminal cases have been instituted for the offence under Section 244 of the Municipalities Act, but the trials are pending since long. We hope and trust that the investigation and trial of such cases will be expedited.

Learned counsel Mr. Anirudh Purohit submits that a dedicated helpline number may be prominently displayed in the Ghantaghar area for reporting encroachments. Mr. Rajesh Panwar assures that measures shall be taken to display such number immediately.

The Street Vending Plan has already been finalized by the Municipal Corporation, Jodhpur and has been approved by the State Government vide order dated 07.12.2020 and thus, effective compliance of this Court's order has been made. We hereby direct that in case any street vendor/hawker is desirous of applying for as lot in any of these vending zones, then he may do so within a dedicated time frame to be fixed by the Commissioners concerned of the respective Corporations.

With the above observations, the contempt petitions as well as the writ petition are disposed of.

No costs."

2. It appears that aggrieved against the order dated 4.8.2021 (supra), the petitioner approached the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No. 15599/2021, which came to be withdrawn with permission to file review petition before this Court.

3. The petitioners had approached this Court by filing SBCWP No. 881/2020 (Om Prakash Deora & Ors. v. State of Rajasthan & Ors.) inter alia seeking direction to the respondents to faithfully and expeditiously implement the provisions of Street Vendors (Protection of Livelihood & Regulation of Street Vending) Act, 2014 ('the Act of 2014') and Rules of 2016, made under the Act of 2014, and further sought a restraint against the respondents from interfering with the vending business of the street vendors of Jodhpur Town without declaring free vending zone, no vending zone and restrictive vending zone in accordance with

the provisions of the Act of 2014.

4. The said petition was ordered to be heard along with the two contempt petitions, which were filed seeking implementation of the order dated 5.10.2015 passed in D.B. Civil Writ Petition (PIL) No.2910/2008.

5. It is submitted that the Court while deciding the said contempt petitions as well as the writ petition, though dealt with the implementation of the order passed on 5.10.2015 in D.B. Civil Writ Petition (PIL) No.2910/2008, the issues raised by the petitioners in the writ petition were not considered and only a reference was made with regard to street vending plan having already been finalized by the Municipal Corporation, Jodhpur, and the same having been approved by the State on 7.12.2020.

6. Submissions have been made that as the various pleas raised in the writ petition filed by them have not been considered and the order dated 4.8.2021 has been passed giving emphasis on the contempt petitions only, the issues raised by the petitioners require consideration by this Court by recalling the order dated 4.8.2021 to the extent of disposal of the writ petition filed by the petitioners therein.

7. Learned counsel appearing for the Municipal Corporation made submissions that the order has been passed qua implementation of the order dated 5.10.2015 passed in D.B. Civil Writ Petition (PIL) No.2910/2008 and the submissions made by the petitioners though were considered by the Court, as the said aspect has not been reflected in the order dated 4.8.2021 passed by the Division Bench, only to the limited extent of revival of the writ petition filed by the petitioners, their prayer may be considered by the Court. The rest of the order does not call for any review.

8. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

9. S.B. Civil Writ Petition No. 880/2020 was filed by the petitioners seeking implementation of the Act of 2014 and the Rules of 2016. The same was a Single Judge matter and on account of apparent conflict in the plea raised by the petitioners in the contempt petitions and the relief sought by the petitioners in the said writ petition, the S.B. Writ Petition was ordered to be listed by the Division Bench, along with the contempt petitions.

10. A perusal of the order dated 4.8.2021 reveals that though contentions of counsel for the petitioners in the writ petition were noticed by the Court, however, the issues raised apparently have not been decided while passing the order dated 4.8.2021 and while issuing directions qua the contempt petitions, the writ petition also came to be disposed of.

11. In view of the above fact situation, the issues raised by the petitioners in the writ petition apparently remained undecided and, therefore, the review petition to the said extent deserves to be accepted.

12. Consequently, the review petition is partly allowed. The order dated 4.8.2021 passed in D.B. Writ Contempt No.909/2019, D.B. Writ Contempt No.7/2020 and D.B. Civil Writ Petition No.881/2020, is recalled only to the limited extent, whereby, the DBCWP No.881/2020 has also been disposed of, the DBCWP No.881/2020 is ordered to be revived, the same is restored to its original number.

13. Office is directed to list the writ petition appropriately and as the same originally was a Single Bench matter, list the same before appropriate Bench.

14. We make it clear that rest of the observations and directions made in the order dated 4.8.2021 have not been disturbed.