
(1991) 07 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.W.P. 357 of 1986

Vidya Sagar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 32, 39

Citation : (1992) 1 ShimLC 34

Hon'ble Judges : Devinder Gupta, J; D.P. Sood, J

Bench : Division Bench

Advocate : Kuldeep Singh, for the Appellant; M.L. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The petitioner in this Writ Petition, has sought for direction against the respondents for framing a scheme for allotment of shops and Khokhas in Beas Sutlej Link Colony Market to the widows and dependents of those workmen who died while in service and to the retrenched/unemployed workmen and after scheme is prepared to further direct the Respondents to make an order of allotment within a reasonable time on payment of reasonable rent and till an order of allotment is made in his favour, petitioner has prayed for protecting his possession in the Khokha, in question.

2. The averments made in the petition on the basis of which directions have been sought are that petitioner is about 37 years of age and is under-martir. His right leg is amputated due to which he suffers from 50% permanent disability. He was dependent upon his elder brother late Om Parkash who was working as Beldar in B.S.L. Project at Sundernagar. Said Om Parkash died in a fatal accident while on duty on 9-3-1981. After his death, petitioner per force had to look after and maintain widow and two daughters of his late brother. As per the custom prevalent in their community petitioner later on entered into marital ties with the widow of his brother. On compassionate grounds the petitioner was given employment by the 3rd respondent as work-charged Beldar from 22-4-1971 to

30-3-1984. The petitioner was ultimately discharged vide Annexure P-2 on completion of the components of Bias Project and handing over of those components by Respondent No. 2. It is a case of petitioner that he was not rehabilitated by the respondents. Persons similarly situated had approached this Court by filing C W.P. No. 87 of 1985 and on the basis of interim direction issued by this Court, respondents No 1 and 2 prepared a scheme for providing employment in 40 posts only. Since the petitioner was not provided any employment under the scheme, he preferred C.W.P. No. 1 of 1986 which was dismissed on 21-4-1986. It is also the case of the petitioner that during the period of his unemployment after 30-3-1984, in order to maintain himself and other members of his family, he had to set up a small business of selling cigarette/Beeris etc. by constructing a temporary shed (Khokha) measuring 5 feet x 4 feet in Khokha market within Beas Link Colony at Sundernagar. Since no scheme, rules and regulations for allotment of Khokha/shops situate within the colony market had been prepared, the persons running a Khokha and the shopkeepers were at the mercy of the project authorities. Like petitioner, there were various un-employed persons as well as widows and dependents of those workmen who had died while under the employment of B.S.L. Project, who had to construct such Khokhas to make their both ends meet. According to the Petitioner there were 130 shops and about 150 Khokhas in the colony. A fire broke out in the year 1974 and the project authorities constructed Pucca shops and allotted them on nominal rent. Khokhas were thereafter constructed by those persons to whom shops were not allotted. Most of such Khokhas have been constructed by the retrenched workers like the petitioner. Since there are no rules/regulations for allotment of shops/khokhas and there is no provision for giving preference to the widows and dependents of the deceased workmen and retrenched/unemployed workmen to rehabilitate them, petitioner has prayed for framing of a scheme for allotment of such Khokhas. It is the petitioner's case that one of the residential quarters had been allotted to him and he was sought to be evicted from that residential quarter as well as from the Khokha on the ground that the same is unauthorised and is an encroachment by the side of public road. On these basis the petitioner has sought direction by urging that the act of respondents in evicting the petitioner was arbitrary and violative of the provisions of constitution, since it is the State who has to secure to its citizens an adequate means of its livelihood and right of work and therefore, have prayed for framing of the scheme.

3. On 9-6-1986 on an application made by the petitioner this Court granted ad-interim relief directing that the petitioner shall not be evicted from residential quarter as well as from the Khokha in his possession till further orders. Respondents thereafter were called upon to file their reply. On 5-8-1986, reply was filed on the affidavit of Chief Engineer, Beas Sutlej Link Project, Sundernagar wherein it was stated that the petitioner was a work-charged employee of Beas Sutlej Link Project under the Bias Construction Board and was retrenched on 30-3-1984 in accordance with law and he had been paid all due compensation,

as admissible under the provisions of the Industrial Disputes Act. It was further stated that a large number of Khokhas had unauthorisedly been constructed on both sides of the main road in the colony by various people and some of them were not even the retrenched employees of the project. Respondents highlighted the manner in which unauthorised Mushroom growth of Khokhas had come up by stating that the number of such Khokhas is increasing day by day and besides giving bad look to the colony it was creating hinderance in the smooth running of traffic and was also a source of unhygienic condition in the township. The existence of the Khokhas by the side of road had posed danger and hinderance in smooth running of traffic, therefore, it was decided to remove these Khokhas by evicting the unauthorised occupants for which purpose proceedings for their eviction, including the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been initiated. It was stated that petitioner had no legal right to continue occupying the Khokha or to maintain the Writ Petition. In so far as shops within Beas Sutlej Link markets were concerned it was averred that there were two markets constructed by the project authorities and the shops were being allotted to shop-keepers in an open auction and thereafter proper lease deed is executed. Terms and conditions in the said deed govern the rights of the parties. As regards the residential accommodation, it was stated that the petitioner and other similarly situated persons were in unauthorised occupation thereof after they had been retrenched and since they were settled in life and having separate income, they had no right to continue staying. There was also no space in the project colony where the petitioner and other similarly situated persons could be accommodated by allowing them to construct Khokhas.

4. After having gone through the affidavits exchanged between the parties this Court on 21-8-1986 drew the attention of the Respondents to the observations made in paragraphs 53 to 57 of the decision of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and passed the following order:

...Having perused the affidavit-in-reply, the Court is not satisfied that the Respondents are truly alive to the different dimensions of the problem. The sweep of the right of life conferred by Article 21 is wide and far reaching and includes the right to livelihood. Besides, Articles 39(a) and 41 require the State to secure to the citizens an adequate means of livelihood and the right to work. Assuming, without granting, therefore, that the petitioner and persons similarly situate have encroached upon the public land by placing Khokhas and that they can be lawfully evicted in accordance with the procedure established by law, the second respondent, which is State, has to consider taking steps to provide alternative sites for rehabilitation of such persons simultaneously with their eviction, especially to those of them who have been the ex-employees of the B.C.B or their widows and dependents or physically handicapped or socially disadvantaged persons and who have no other source of income. If the profound rhetoric of socialism and the programme of eradication of property has to be

translated into practice and if the theory of equal protection of laws as enunciated in Article 14 has to take its rightful place in the struggle for equality, a scheme or programme for the rehabilitation of the persons so evicted has to be undertaken by the respondents. The Court wishes to draw the attention of the respondents, in this connection, to the observations made in paragraphs 53 to 57 of the decision of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, which may have to be read as applicable with suitable modifications in the present case. The concerned respondent may, therefore, consider the framing of a scheme for the rehabilitation of the petitioner and persons similarly situate simultaneously with their ouster and place the same on record of the case on or before October 13, 1986....

On the same day, ad-interim relief granted" earlier was vacated in so far as residential quarters were concerned. In view of the observations made by this Court, Supplementary affidavit was filed by respondents on the affidavit of Superintending Engineer, Beas Sutlej Link Project, Circle No. 3 BBMB, Sundernagar by urging that the petitioner and other persons similarly situated were employees of Beas Construction Board. Such of the Employees who were over and above Bhakra Beas Management Board for administration, operation and maintenance of the completed components of the Beas Project were retrenched by paying them all dues admissible under law. Petitioner and some other persons similarly situated and even persons who were not retrenched employees made unauthorised construction by raising Khokha on both sides of the main road in the colony which had created lot of hazard and it was ultimately decided to evict the petitioner and similarly situated persons. Respondent Board had been constituted only for the limited purpose of administration, maintenance and operation of the works entrusted to it by the Union of India and to regulate the supply of water and power from Bhakra and Beas Project to the parent States. In these circumstances only the residential quarters in the colony besides some land was essentially required for discharging its functions and it was decided to transfer the remaining surplus land to the State of Himachal Pradesh. Since no surplus land was available with the respondents it was not possible for the respondent-Board to frame any scheme for rehabilitation of the unauthorised occupants. This Court on 4-11-1986 took note of the averments made in the supplementary affidavit and passed the following order:

...The Court regrets to observe that the real thrust of the observations made in the interim order dated August 21, 1986 has not been appreciated in the proper perspective and that the stand adopted by the respondent-Board betrays a total lack of its legal and constitutional obligations and social commitments. Besides, the apprehension that the benefit of the scheme of rehabilitation may be claimed by approximately 30,000 workmen, who were retrenched by the Beas Construction Board, is wholly misconceived and misplaced and indicates that the observations have not been carefully read and their implications have not been correctly appreciated. The Court is also not satisfied that it is not within the powers, functions and duties of the Respondent-Board to frame the scheme. The

power which the respondent-Board admittedly has to administer, maintain and operate the works, includes the power to frame a scheme with a view to rehabilitating the persons who are to be evicted from the land stated to have been unauthorisedly encroached upon by them and which land is under the management of the Respondent-Board. The plea that there is no surplus land also seems to be wholly unjustified since the surplus land has still not been transferred to the State Government although with regard to the transfer thereof a decision is stated to have been taken. The land, which may be required for rehabilitating the persons sought to be evicted, can, therefore, still be retained and only the surplus land can be transferred to the state Government.

The learned Standing Counsel for the Central Government will communicate these observations to the Respondent-Board so as to provide it with an opportunity to review the decision in light thereof....

5. On 1-11-1987 Anr. Supplementary Affidavit was filed by the respondents wherein after giving various details respondents pointed out that it has now been possible to transfer the surplus land and buildings in the project colonies to the respective State Governments and it was not possible to agree for framing of any Scheme since no land was available at that time.

6. We have heard the learned Counsel for the parties and have also gone through the records. It has been contended by the learned Counsel for the petitioner that the petitioner has since been evicted from the residential quarter but he is still in occupation of the Khokha and keeping in view the facts and circumstances that he is making his both ends meet only from the income of the Khokha, therefore, respondents deserve to be called upon to frame a Scheme as prayed in the Writ Petition so that not only the petitioner but also the persons similarly situated and ultimately retrenched are rehabilitated. In support of his contention, learned Counsel for the petitioner has made an effort to bring into play the principles laid down by the Supreme Court in *Olga Tellis* case (supra). Having gone through the respective stands taken by the parties in their affidavits and in the supplementary affidavits, we are, afraid we cannot make any direction against the Respondents for framing of a scheme so as to regularise the unauthorised possession of the petitioner. In the case of *Olga Tellis* (supra) Y.V. Chandrachud, Chief Justice speaking for the Constitution Bench observed that the word life in Article 21 of the Constitution included livelihood but up-held the validity of Sub-section (1) of Section 313 and 314 of the Bombay Municipal Corporation Act, 1988. It was held that the power of the Commissioner without notice to obstructions as an encroachment on foot-paths could not be regarded as unreasonable, unfair and unjust. The learned Chief Justice, however, stated that the Section conferred discretionary powers, which, like all powers must be exercised reasonably and in conformity with the provisions of our constitution in the case of *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, the Supreme Court while considering the scope of aforementioned provisions in the Bombay Municipal Corporation held that the

provisions were in the nature of reasonable restriction in the interests of general public on the exercise of the right of Hawkers to carry on their trade or business. It was further held that no one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public. Public streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life. Indeed, that is what some of them have done in some parts of the pedestrians to walk on footpaths or even on the streets properly so-called.

7. The learned Counsel for the petitioner in view of the Judgment in Municipal Corporation of Greater Bombay Vs. Premnagar Zopadapatti Committee Society and another, urged that since the petitioner had no other means of livelihood nothing prevented the respondents in formulating a scheme since the apex Court had also provided a scheme to be formulated in like circumstances, In case of Zopadapatti Committee's case (supra) it was on the basis of a concession given by the Appellant-Corporation that some directions were issued by the apex Court. Any order or direction which is made by consent of the parties cannot be pressed into service as a precedent and judgment rendered on concession cannot have a binding force. In similar situation in case of Municipal Corporation of Delhi Vs. Gurnam Kaur, a question arose as to the precedential value of a direction earlier made by Supreme Court on a petition Under Article 32 of the Constitution based on consent of parties with the reservation that it should not be treated as a precedent. It was held in para 10 of the report as under:

10. It is axiomatic that when a direction or order is made by consent of parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision being as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice That being so, the direction made by this Court in Jamna Das's case could not be treated as a precedent....

Directions in similar circumstances for formulating a scheme for rehabilitating persons, like, petitioner and Ors. could not be issued. It was further observed in case of Gurnam Kaur (supra):

14. These cases undoubtedly raise a human problem and both the Delhi Development Authority as well as the Municipal Corporation of Delhi should seek to evolve an innovative plan to rehabilitate the unfortunate persons who by force of circumstances are forced to ply their trade by squatting in the open on the

pavements. At the same time, these pavements squatters create a serious problem to the civic administration as it creates congestion on the public streets and obstructs free flow of traffic...We feel that the Municipal Corporation authorities in consultation with the Delhi Development Authority should endeavour to find a solution on the lines as suggested in Bombay Hawkers' Union i.e. by creating Hawking and Non-Hawking Zones and shifting the pavement squatters to areas other than Non-Hawking Zones. The authorities in devising a scheme must endeavour to achieve a twin object, viz., to preserve and maintain the beauty and the grandeur of this great historic city of Delhi from an aesthetic point of view, by reducing congestion on the public streets and removing all encroachments which cause obstruction on the free flow of traffic, and rehabilitate those unfortunate persons who by force of circumstances, are made to ply their trade or business on pavements or public streets...

8. After having made these observations the Court allowed the appeal of Municipal Corporation, Delhi and did not ultimately grant any relief to the respondent, whose suit for grant of injunction had been dismissed.

9. Since the petitioner raised construction by making encroachment by the side of public road and started carrying on his business, no right can be said to have vested in petitioner in continue squatting by the side of a road thereby creating problem in smooth running of vehicular traffic and creating other problems as highlighted by the respondents in their reply. Respondents have taken up a stand that they had already transferred the surplus land to the State Government, it is not possible to issue any direction in the absence of State Government being party to the writ petition. Otherwise also, we do not consider it to be a fit case to issue such direction but we also feel that petitioner, in the facts and circumstances of the case cannot be singled out. We are told that no action has been taken against the other persons who are alleged to have unauthorisedly encroached upon similar spaces by the sides of the road for carrying on their business in the Khokha unauthorisedly constructed. Since we have held that no direction can be issued for protecting petitioner's illegal possession and no direction for framing a scheme can be issued, we dismiss this writ petition but with one direction that proceedings for ejectment, if any, against the petitioner may be continued but he (may not be dispossessed from the Khokha, in question and his Khokha may not be dismantled till the other persons similarly situated who are alleged to have also made an encroachment by the side of a road are also ejected and their Khokhas dismantled.