

(1987) 04 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9333 of 1987

Vijai Kumar Gupta and Others

APPELLANT

Vs

Zila Parishad, Shahjahanpur and Another

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Citation : AIR 1987 All 304 : (1987) 2 AWC 1339

Hon'ble Judges : Ravi S. Dhavan, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.—The three petitioners from the town of Jalalabad, in the district of Shahjahanpur are vendors on a public road, which runs in front of the Civil Hospital in that town. This is the main road of the town they say, and this is not in issue. They also contend that they are lawful occupants of the road, as they pay Teh-bezari to the Municipal Board, for vending on the "patri" of the public road. They apprehend closure of their business as the place from where they carry it on is being auctioned for ten shops by the Zila Parishad, Shahjahanpur.

2. The petitioners contend that their right to do business on the public road cannot be curtailed, and the shops to be constructed by the Zila Parishad on the boundary of the Civil Hospital, next to the Katra and the Tehsil Marg ought to be restrained.

3. On the two wrongs which are being precipitated,, the contention of the petitioners themselves, no writ can be issued to give redress to them. The first wrong is at the hands of the petitioners to vend on a public road, the other is by the Zila Parishad to initiate business, also on the public road by constructing shops. The issue is not even which of the three, between the petitioners", the

Zila Parishad and the Municipal Board has the right to do business on a public road.

4. None, under the law, has a right to carry on or intend to or cause, business on a public road. The Supreme Court has reiterated this proposition of law in more than one decision.

5. In the case of the Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj, , a matter from Uttar Pradesh, the Supreme Court declared the law on the concept of a public road and the pathways which run parallel to it and next to two drains on either side. It said :

"It is, therefore, reasonable to hold that the entire pathway between the two drains was dedicated to the public. It is a common feature of metalled roads in town that open spaces are left on either side of them. The fact that the entire pathway is not metalled cannot possibly detract from the totality of the dedication. The circumstances that the vacant spaces are on either side of the metalled road and between the two drains maintained by the Municipal Board lead(s) to an irresistible inference that the strips of vacant spaces form part of the public pathway. The fact that only a part of the pathway is metalled does not necessarily limit the width of the pathway, but it is evidence of user of the pathway by the public and its maintenance by the Municipality. We, therefore, hold that the suit site is part of the public pathway."

6. In this case, the Supreme Court further held that the Municipality cannot put up any structures on the public pathway which are not necessary for the maintenance or use of it as a pathway. The attempt of the Manglaur Municipality to put up structures for installing the statue of Mahatma Gandhi or for piyao or the use of the road as a highway, was negated by the Supreme Court.

7. In two recent decisions of the Supreme Court *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , and *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, , places dedicated for a public purpose were not to be encroached.

8. The Supreme Court in re : *Olga Tellis* (supra) held that:

"No person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground."

9. In the other matter, *Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others*, , the Supreme Court declared 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 city. They have made it impossible for the, pedestrians to walk on the footpaths or even on the streets properly so-called."

10. In view of the law as it stands, no right of the petitioners has been violated that they may be protected and given redress to do business on or off a public road. The right which the petitioners claim is non-existent under law, and no writ can be issued to protect an illegal claimer.

11. The wrong which the two local bodies, the Municipal Board and the Zila Parishad are alleged to have committed or to be attempting to commit can be assailed in an appropriate petition, which seeks the performance of statutory duties of local bodies. But the petitioners cannot mix the wrong they do with what the local bodies, aforesaid, are alleged to do. This is not a Court of inequitable pleas.

12. With these observations, the writ petition is dismissed, at the admission stage.