

Ahmedabad Municipal Corporation

Vs

Dilbagsingh Balwantsingh And Others

Civil Appeal No. 1117 of 1992

(S. R. Pandian, K. Jayachandra Reddy JJ)

24.03.1992

JUDGMENT

K. JAYACHANDRA REDDY, J.

1. Leave granted.

2. Ahmedabad Municipal Corporation ('Corporation' for short) is the appellant herein and the four respondents are small traders running their businesses in small shops. They claimed that their shops are 10 feet away from the public road. According to the appellant Corporation there was a mushroom growth of public street/footpath hawkers which affected the traffic and other public amenities and therefore the police/public authorities within the municipal corporation area were constrained to remove the obstructions created by such hawkers after giving them enough opportunity. The said action of the police/public authorities had been challenged by way of a number of petitions in the High Court of Gujarat. The High Court after hearing all the petitioners and following the judgments of this Court in *Bombay Hawkers' Union v. Bombay Municipal Corporation* [(1985) 3 SCC 528] and *Olga Tellis v. Bombay Municipal Corporation* [(1985) 3 SCC 545] directed the Corporation to evolve a scheme having regard to the overall local conditions in the area. Questioning the above said order and judgment of the High Court several special leave petitions were filed and this Court remitted the matter back to the High Court of Gujarat for consideration of the scheme in the light of certain observations made therein. The High Court by its order dated April 22, 1987 held that the scheme framed by the Corporation deserves to be accepted subject to certain modifications. Again some of the persons aggrieved by the said order of the High Court approached this Court and this Court permitted the hawkers and other similarly placed traders to place their difficulties before the High Court. The High Court reconsidered the scheme and by an order dated December 7, 1987 held that it is not necessary to further modify the scheme and ultimately the scheme was confirmed. The respondents who are alleged to have made encroachments and who are also covered by the scheme filed several suits and withdrew them after the High Court gave its final verdict. The respondents again filed a suit on October 1, 1988 in the City Civil Court, Ahmedabad for directions and injunction. The City Civil Court granted interim injunction. The appellant Corporation filed a reply to the notice of motion. The City Civil Court by its order dated September 18, 1989 vacated the interim injunction. The respondents thereupon filed an appeal in the High Court and also sought interim injunction. The High Court admitted the appeal and granted interim injunction restraining the Corporation from removing or pulling down the business premises of the respondents. Questioning the same the Corporation has filed the present appeal.

3. It was contended that on earlier occasions the High Court dismissed the appeals and that the

encroachment is causing nuisance and inconvenience to the public and the appellant Corporation is finding it extremely difficult to implement the scheme which has been considered and approved by the High Court in accordance with the directions given by this Court. Learned counsel for the respondents submitted that there is no objection to the implementation of the scheme. But so far as the respondents' shops are concerned, it was submitted that they do not in any way amount to encroachment and their locations do not cause any inconvenience or nuisance.

4. As already mentioned several associations of hawkers, traders and larri-gallawalas filed writ petitions and the Supreme Court directed the High Court to consider the difficulties and finally as stated above the High Court approved the scheme subject to some modifications. In a similar matter which was the subject matter of SLP (Civil) No. 5465 of 1989 - Baroda Municipal Corporation v. Sharmjivi Bathlary Association [1992 Supp (2) SCC 629] this Court by its order dated May 3, 1989 observed thus :

"We are of the view that it was an attempt to thwart the scheme by approaching the Civil Court. It is an abuse of process of the court and gives rise to a situation where contempt action should lie. We, however, do not propose to take such action, but consider it very appropriate in the interest of justice to direct dismissal of the suit itself. By this order of ours, the said suit being No. 1761 of 1989 in the Court of 6th Joint Civil Judge, Sr. Div., Vadodara, shall stand dismissed and all interlocutory orders made therein shall stand dismissed."

5. However, in the instant case notice was issued and this Court also directed the appellant Corporation to seek any other relief on the basis of the order of this Court in the above SLP (Civil) No. 5465 of 1989. By an order dated September 13, 1991 the SLP was adjourned to November 15, 1991 for enabling the Corporation to provide alternative suitable sites for the respondents according to the scheme. Thereafter the matter was adjourned several times at the request of the counsel. Meanwhile on February 4, 1992 a rejoinder was filed in which it is stated that the Corporation had offered to the respondents hawking licenses etc. under the scheme but the respondents are not accepting the same. It is also stated therein that the respondents were offered four alternative sites in Plot No. 174 of the Town Planning Scheme and that the same are suitable to carry on their businesses. On February 7, 1992 learned counsel appearing for the respondents stated before this Court that they will choose any one of the alternative sites now offered by the appellant Corporation and move to the offered place. The matter was again adjourned. The respondents once again have come forward with the same kind of grievance and it is also submitted that they are not encroaching upon the public road and some other shops similarly situated are not being shifted and that the sites offered by the Corporation are not suitable. We have heard both the parties at length and we are satisfied that the respondents have been trying their best to thwart the implementation of the scheme which was examined by this Court as well as the High Court on more than one occasion. Therefore we allow this appeal with costs, set aside the order of the High Court in Civil Application No. 2857 of 1989 in appeal from Order No. 393 of 1989 dated September 27, 1990 and the interim injunction granted by the High Court stands vacated. We confirm the order of the City Civil Court dated September 18, 1989 vacating the injunction. Consequently appeal from Order No. 393 of 1989 pending in the High Court stands dismissed.

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