
(2016) 4 RLW 2918 : (2016) 4 WLC 53
RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Civil Writ Petition No.3480 of 2014

Suo motu

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: June 1, 2016

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2016) 4 RLW 2918 : (2016) 4 WLC 53

Hon'ble Judges: Mr. M.N. Bhandari and Mr. J.K. Ranka, JJ.

Bench: Division Bench

Advocate: Mr. Sandeep Taneja, Amicus Curiae and Mr. Vimal Choudhary, Advocate, for the Applicants; Mr. J.M. Saxena, Additional Advocate General, Mr. A.K. Bhandari, Senior Advocate with Mr. A.S. Rathore, Mr. Mahendra Gaur, Mr. K.S. Rawat for Mrs. Naina Saraf, Mr. Yo

Final Decision: Disposed Off

Judgement

1. A news was flashed by the media on 24th March, 2014 showing planning of terrorist outfit Indian Mujahideen (for short "IM") for attack. The

Police had arrested six persons of the newly formed Rajasthan module of IM. The news was with the heading "Temples in Jaipur, Mall on hit list".

The Court found Police to be in slumber as no steps were taken for safety and security of the temples, out of which, one temple was visited by

Justice Raghuendra S. Rathore on the day of taking suo motu cognizance in public interest.

2. No safety was existing at Lord Ganesh Temple, Moti Doongari, Jaipur (for short "Lord Ganesh Temple"). Learned Judge found that other than

one Constable Ghanshyam, none was available, that too, he was not in the uniform and without arms. The Constable was asked to inform the

SHO, Police Station Moti Doongari to visit the site immediately. The Constable gave information to the SHO concerned but none visited the site

other than a PCR van. The suo motu cognizance was taken as no safety measures were found in a congested area and despite density of visitors. It

was found that several shops were existing on the road and pavement adding difficulty in making proper safety arrangements.

3. Many other issues were taken into consideration which includes the issue of parking, etc. The notices were given to various authorities which

includes the Commissioner of Police, Jaipur, Commissioner, Jaipur Development Authority (for short "the JDA") and other departments. A

direction was also given to the SHO, Police Station Moti Doongari, Jaipur and other officers to file an affidavit giving out details of arrangements in

regard to safety and security at Lord Ganesh Temple and also of Laxminarayan Temple, Birla Mandir at Moti Doongari. The Commissioner, JDA

was directed to remove encroachments made by the shopkeepers around the temple creating hurdle for traffic and endangering the security.

4. In pursuance of the direction of the Court, the DCP (East), Jaipur filed an affidavit giving proposal to control law and order situation and to take

measures for safety of the temples, named above. Another affidavit was filed by the DCP (Traffic) regarding proposal to control and to regulate

traffic in the area in question.

5. The Chief Executive Officer of Corporation was directed to remove encroachment as the area is falling under the jurisdiction of Municipal

Corporation, Jaipur. The Court restrained the Court of Magistrate concerned, having jurisdiction over the area in question or any other court for

that matter, to pass any interim order ex-parte or otherwise for any action taken for compliance of the order.

6. This Court, thereafter, issued various orders from time to time, which includes proposal to set up pavements on both sides of road and also to

prepare a blue-print of the road starting from JLN Marg opposite Takhteshahi Road and going northern side, reaching upto Sant Dadu Circle.

7. On 20th May, 2014, the Municipal Corporation, Jaipur submitted a proposal for establishment of a proper route for Lord Ganesh Temple as

well as Laxminarayan Temple (Birla Mandir). It was to make things easy for pilgrims and for safety of the area. A direction was also given to

earmark the place for parking for both the temples.

8. This Court further issued an interim order on 2nd July, 2014 and directed the Municipal Corporation, Jaipur to prepare a drawing of the road

leading to the temples from JLN Marg and ending at Sant Dadu Circle on Govind Marg for smooth traffic and visitors.

9. The directions issued by this Court from time to time were carried out, however, at some stage, dissatisfaction was shown by the Court and,

finally directions of this Court were carried out. It is not only that certain safety measures were taken but flow of traffic on the road starting from

JLN Marg passing through Lord Ganesh Temple and ending on the other side was stopped. The Municipal Corporation, Jaipur put sheds from

Sant Dadu Circle to Lord Ganesh Temple. The sheds were erected on both sides of the road. No vehicle was allowed to enter on the road

approaching temple from JLN Marg and even from other side other than with the permission of the police. If anybody is having house on the road,

they were allowed to enter into the area with due permission, however, no parking outside their houses was permitted.

10. The arrangements aforesaid were continued but gave rise to many issues, which were taken up by the residents of the area and others, which

includes, shopkeepers. It was in view of the direction of the Court to stop flow of traffic on the public road starting from JLN Marg leading to

Lord Ganesh Temple and from the other side also and for removing the shops. The parking of vehicles was not allowed. For VIPs, the Ganesh

Temple Trust had provided battery operated vehicles. During intervening period, number of applications were filed for impleadment, out of which,

few were allowed to intervene and others were impleaded as party. Other few applications were rejected with liberty to approach the Municipal

Corporation to provide proper place for weekly ""Hatwada"". The applications moved by residents of the area were allowed only to the extent of intervention.

11. During pendency of the writ, few more applications were filed by residents of the area for impleadment which were allowed vide order dated

10th December, 2015.

12. The writ petition was then kept for final hearing and even hearing was concluded. The order was pronounced but was not signed and, in the

meanwhile, one of the members of the Division Bench (Hon"ble Mr. Justice Raghuvendra S. Rathore) retired, thus the file was placed before the

Chief Justice of this Court. After going through the record, a direction was given by the Chief Justice for hearing of the case afresh and,

accordingly, the case was listed again for hearing.

13. Learned counsel appearing for the respondents and intervenors have raised serious objections against the directions given by the Court from

time to time. It is also against the discriminatory treatment by the Municipal Corporation in removing shops other than for putting CCTV cameras

and other measures for safety and security of the area which is not affecting their rights.

14. Learned counsel Mr. Vimal Choudhary submitted that traffic on the municipal road cannot be blocked permanently, however, while carrying

out directions of this Court, road leading to temple from JLN Marg and ending to other side has been blocked for traffic. The vehicles cannot enter

on the road without prior permission of the police officers, who have put a barrier on JLN Marg for entering the road leading to Ganesh Temple.

The residents of the area are severely affected as they are unable to freely enter on road going to their houses. At the same time, anyone visiting

them also needs to seek permission of the police officers though the Municipal Corporation has no authority to block free flow of the road. It is

further stated that various shops have been removed in a discriminatory manner. It is without taking into consideration that those shops were

existing for years together and otherwise shopkeepers were required to be rehabilitated by taking similar exercise as was taken for Govind Devji

Temple. Few shops were removed in the name of encroachment leaving others despite existing on Government land thus there exists discrimination

in the action of the Municipal Corporation.

15. It is further stated that sheds have been erected on both sides of the road starting from Sant Dadu Circle, Govind Marg to Lord Ganesh

Temple (Moti Doongari). The width of the road has been narrowed down almost to half affecting free flow of traffic. It is moreso when sheds are

not at all used on any day, which includes even Wednesday. The pilgrims are not coming in such a number where sheds may be required. The

Court ought not to have asked Municipal Corporation or any other authority to obstruct the road by putting sheds. The width of the road is to be

maintained as per the provisions of law. It cannot be reduced without modification in the master plan. No provision of law permits to create

obstruction on the road or to block it permanently, obstructing free flow of traffic. The Municipal Corporation has erected the sheds without even

proper survey as to how many pilgrims visit the temple in a day or even on Wednesday. In any case, road cannot be blocked or narrowed down

for it.

16. It is further submitted that residents of the area and others cannot be denied right of access to their houses or to seek permission for the access

on the public road. Their fundamental right of free movement has been obstructed. The High Court is not having authority to pass order affecting

constitutional right of a citizen or which goes against the provision of law. It can struck down the provision, if found to be in violation of the

constitutional provision but till any provision of law exists, the direction of the Court should not be contrary to it.

17. It is further submitted that the Court should not have passed interim orders, which are otherwise final in nature. In compliance of the interim

order, the Municipal Corporation and others have created obstructions even for access to the public road. It cannot be done in the name of safety

and security of the temples. The place is not congested other than on few occasions like ""Ganesh Chaturthi"" or some other similar occasion. The

traffic even flows smoothly on Wednesday also, except in the morning and evening hours which can very well be regulated by the police. The

Court could have passed appropriate orders for safety and security of the temples, if a threat was persisting by Indian Mujahideen but Municipal

Corporation should not have been asked to erect the sheds or to obstruct public road.

18. It is quite surprising that while the Apex Court has recognised right of hearing even of the encroacher, this Court has passed an order not to

entertain suit or any litigation by them or any one else. The right of hearing before the Court has been taken away by this Court by an interim order

for which it has no jurisdiction. The Court should have considered its jurisdiction while passing such an order. The right of a citizen to approach a

Court of Law cannot be taken away by any Court.

19. Learned counsel Mr. Vimal Choudhary raised serious objections about the orders passed by this Court from time to time. It is submitted that

only to favour the temple trust, directions have been given by the Court to remove shops existing for last 10 to 20 years. The names of the shops

and their owners have been given in the written arguments.

20. It is also brought to the notice of the Court that after removing certain shops in a discriminatory manner, a toilet has been constructed in front of

the temple. The construction of toilet is in ignorance of existing public toilet.

21. A serious objection about jurisdiction of this Court has been raised. A prayer is accordingly made to withdraw all the interim orders passed by

this Court or, alternatively, to pass final order now and, while doing so, care should be taken against discriminatory actions of Municipal

Corporation in removing shops and to maintain free flow of traffic.

22. Learned counsel submits that in the name of free flow of the traffic, shops were removed but, at the same time, public toilet has been

constructed at the same place thus act of the Municipal Corporation goes against their own plea about encroachment and obstruction in free flow

of the traffic.

23. Learned counsel Mr. Vimal Choudhary has further referred city survey document of Municipal Corporation, which shows that Lord Ganesh

Temple is recorded as Government property. It is shown to be ""Milkiyat Sarkar Gair Mandir Shri Lord Ganesh Ji"". The residence of the Pujari is

also recorded as ""Milkiyat Sarkar Binawar riyash Pujari Shri Lord Ganesh Ji Harinarayan vald Shivnarayan Brahmin"". In the ""Parcha"" also, it is

shown as ""Milkiyat Sarkar Shagird Mandir Shri Lord Ganesh Ji"". The measurement of the land of the temple has also been recorded in ""Ijara

Parcha"". The objections have been raised against existence of two shops, namely, ""Lord Ganesh Ji Mishthan Bhandar"" and ""Milan Mishthan

Bhandar"" built on the Government land by trust of the temple. The copies of the survey report and ""Ijara Parcha"" have been enclosed. It is even to

show that trust of the temple has also encroached the Government land. If the encroachment was to be removed, action should have been taken

against the temple trust also. The encroachment upon the Government land by the trust has not been removed.

24. It is also alleged that no document of other shops has been submitted, which are still existing and no action has been taken to remove it other

than removal of few shops in a discriminatory manner. The Municipal Corporation should have taken action without discrimination. Serious

allegation has been made against officers of the Municipal Corporation in carrying out the directions of this Court.

25. Learned counsel has further made a reference of Section 45 of Rajasthan Municipalities Act, 2009 (for short ""Act of 2009""), which provides

core functions of the municipality. Clause (f) of Sub-section 1 of the Act of 2009 provides for maintenance of public streets without obstructions

and projections. It is to be kept open for enjoyment of the public even if such spaces are vested in the municipality or not? They are under an

obligation to construct and maintain public streets, culverts, municipal boundary, etc., which includes even markets.

26. The Municipal Corporation, Jaipur has failed to follow the mandate of Section 45 of the Act of 2009 as instead of maintaining the public

streets, they have created obstruction and wasted huge amount in the name of development and security of the area with the erection of sheds on

both sides of the road. It has narrowed the width of street by 8 meters to 11 meters and, thereby, movement of traffic on the road has become

difficult and may be a cause for accident. Learned counsel placed on record certain photographs and documents to show existence of shops since

last 10 to 20 years. It is lastly prayed that if, at all, the shops were obstructing free flow of traffic, a direction for their rehabilitation and proper

establishment of shops should be given.

27. Learned Senior Advocate Mr. AK Bhandari has adopted the arguments raised by learned counsel Mr. Vimal Choudhary. He added that

without change in the master plan, width of the road cannot be reduced by any means, which includes by putting permanent sheds or barriers. The

road leading to Lord Ganesh Temple (Moti Doongari) has been obstructed from both sides for flow of traffic affecting the right of the residents to

move freely.

28. The issue about jurisdiction of the Court to pass interim order has also been raised. It is submitted that the Court should pass orders keeping in

mind the provision of law. It should not administer the Government or its bodies. It is under the order of the Court that Municipal Corporation was

left with no option but to obstruct the municipal road from free flow of traffic. Accordingly, a prayer is made to pass final order with a direction to

remove the obstruction on the road and, at the same time, to see that free flow of road from JLN Marg to the temple and going to the other side is

made free for traffic from both sides . It may be with just direction to the concerned officers to maintain and regulate the traffic properly and if,

occasionally, when ""Ganesh Chaturthi"" and other festivals are organised, to regulate or stop the traffic temporarily or in the manner required.

29. Learned Additional Advocate General Mr. J.M. Saxena submitted that this Court has to pass final order, though, by virtue of the interim

orders, directions have been carried by the Municipal Corporation and other Government agencies. All safety measures have been taken for the

area in question. The CCTV cameras have been installed apart from putting lights and even the sheds on both sides of the road. The Municipal

Corporation has incurred huge amount on it. If the interim orders are not maintained by this Court finding it to be in violation of the fundamental

rights of the citizen or provision of law, directions for safety and security of the area may be maintained. The Municipal Corporation and the

Government would carry out the directions, as are given finally.

30. Learned Amicus Curiae has also made submissions. It is submitted that this Court has passed interim orders for safety and security of the area.

The directions aforesaid may be maintained, however, if this Court finds that road should not have been obstructed, it may pass appropriate orders

for its free flow.

31. We have considered submissions made by various parties and scanned the matter carefully.

32. In the opening paras, we have made reference about suo motu cognizance by this Court for safety and security of Lord Ganesh Temple on a

news published about threat to the security of temple and malls. While taking suo motu cognizance, a concern was shown about safety of Lord

Ganesh Temple and nearby area. The appropriate safety measures were not found by learned Judge himself when he visited the temple in early

morning. The directions for safety and security of the temple were carried out by the police administration as well as Municipal Corporation.

33. It is noticed that suo motu cognizance has been taken for the safety and security of the Lord Ganesh Temple and Laxminarayan Temple (Birla

Mandir). Taking note of the reasons of suo motu cognizance in public interest, this Court would like to consider all the relevant aspects of the

matter in the legal framework.

34. Pursuant to the suo motu cognizance, the response was submitted by various parties by way of affidavits and compliance report. We find that

appropriate measures have been taken for safety and security of Lord Ganesh Temple but, while doing so, public road has been obstructed by

barricading and putting iron pillars. The sheds have been erected on both sides of the road starting from Sant Dadu Circle leading to Lord Ganesh

temple. We do not find any survey report to show density of pilgrims visiting the temple. The sheds have been erected on both sides of the road for

the benefit of pilgrims, however, none of the parties, which includes the Municipal Corporation, could show its use on any given day by the

pilgrims.

35. This Court asked the Amicus Curiae as well as learned Additional Advocate General Mr.JM Saxena about use of sheds. They fairly conceded

that sheds are hardly used by the pilgrims. It is also admitted that with erection of sheds, width of road has become narrower affecting free flow of

traffic. In view of above, this Court is required to consider as to whether sheds erected on the road should be allowed to stand or to be removed.

It is not only keeping in mind the facts given above but its use and even violation of the provision of the Municipal as well as JDA Act. The width of

the road is required to be maintained unless the master plan is changed or amended. In the background aforesaid, the action of the Municipal

Corporation to narrow down width of the road by placing permanent sheds on the sides of the road cannot be said to be legal. There is nothing on

record to show even a survey for it.

36. We further find that the road starting from JLN Marg and leading to Lord Ganesh temple and going to the other side has been obstructed from

both sides though other than Wednesday and festivals, flow of traffic remains normal and otherwise can be easily regulated. We do not find any

compelling circumstances and reasons to put permanent barricades on the public road so as to obstruct flow of traffic on it. It has resulted in

obstruction in free flow of not only those residing in the area but for the visitors, who may not intend to visit the temple but the residents. It is

admitted by all the learned counsel that road cannot be obstructed normally in the name of safety and security. The security needs to be

strengthened by proper mechanism, which can be not only by putting CCTV cameras but deploying sufficient number of police personnel as well

as personnel belonging to the intelligence wing.

37. The parking is another issue, which is required to be taken into consideration for securing safety and security of the area. At the same time, if

encroachment is made by any shopkeeper then to regulate it without any discrimination.

38. Learned counsel Mr. Vimal Choudhary raised an issue about status of temple trust, which is shown to be ""Mandir Sarkar"". It was orally

prayed for giving it under ""Devashtan Department"" instead of being controlled or managed by individual Pujari having no right on it. The

photographs of a portion of the temple had been reflected in the survey report, which shows facility of residence given to the Pujari but not the

ownership on it. It is submitted that huge amount has been earned by the temple trust and it has been used for personal purposes.

39. We have considered all those issues raised before us. The last issue is regarding status of the temple, which is not before us in a suo motu

petition. If anybody is aggrieved, he can take legal recourse separately as present writ petition relates to safety and security of the temple and,

while taking suo motu cognizance, it was restricted to Lord Ganesh and Laxminarayan temples. The court having noticed the news of threat to the

security of the temples, we are of the opinion that necessary direction should be given to the respondents. Hence, we direct as under :

(i) The Commissioner of Police, Jaipur is directed to take all measures for safety and security of Lord Ganesh Temple as well as Laxminaryan

temple (Birla Mandir). Sufficient police personnel be deputed for it apart from officials of intelligence from time to time.

(ii) The CCTV cameras installed pursuant to the directions of the Court would be maintained properly and be kept operational throughout.

(iii) The Municipal Corporation, Jaipur would remove the sheds placed on the road starting from Sant Dadu Circle/Dharam Singh Circle, Moti

Doongri Road upto Lord Ganesh temple (Moti Doongari) but, before doing it, they would come out with the plan for its use. It is looking to the

fact that huge amount has been incurred on it, thus should not be wasted. They would first come out with the proposal for its use either by putting it

at other temple areas where the visit of pilgrims is large, like, Lord Govind Dev Ji temple or elsewhere. It can be in the parks or on the side of the

service lane also not hampering the free flow of traffic. The Municipal Corporation would give suggestions for it within a period of one month from

the date of this order so that, after its acceptance, the work may be started to remove sheds properly from Sant Dadu Circle/Dharam Singh Circle

to Lord Ganesh Temple (Moti Doongri Road). While removing the sheds properly, the Municipal Corporation, Jaipur would also take care for

saving the lights and fixtures fitted therein so as to be used without it being wasted.

Proper planning for it be suggested to the Court within one

month and, on its approval, to replace it so that the amount incurred on it may not go in waste.

(iv) The Commissioner of Police, Jaipur and all other departments would remove all the obstructions, which includes, barricades and iron pillars for

free flow of traffic from JLN Marg to Lord Ganesh Temple (Moti Doongari) and other side. It is, however, made clear that on the days of festivals

and Wednesday, if they find that flow of four-wheelers and other vehicles may affect movement of pilgrims visiting the temple or its security, they

would be free to regulate it or stop it by taking temporary measures but without having permanent obstructions on the flow of traffic.

(v) The JDA, Municipal Corporation, Jaipur and the Police administration would come out with a plan for parking of vehicles without obstructing

the road as well as service lane.

(vi) They are further directed not to allow parking at the junction of JLN Marg nearby Takhteshahi Road where food stalls exist. No one should be

allowed to park the vehicles on the road other than in the parking area. If need be, food stalls be shifted/allocated to other nearby place different

than existing and, while doing so, it should not be near to the junction or the circle point of the road.

(vii) The road lights in the area of Lord Ganesh Temple and Laxminarayan temple (Birla Mandir) would be maintained properly by the concerned

authorities.

(viii) The encroachment on the Government land would be removed without discrimination. Any shop on the Government land in the area

concerned should not be allowed to continue and no discrimination should be made therein. The shops belonging to the trust or individual should

be measured without discrimination and it should be by one and the same yardstick. The aforesaid would apply to the existing shops also. The

Municipal Corporation, Jaipur would, however, be free to allocate a proper place to the shopkeepers for sale of ""Prasad"" on license after taking

proper care of free flow of traffic and also security. The offer of shop would be made first to those, who were existing for last several years. It is to

rehabilitate the shopkeepers without discrimination. Accordingly, Municipal Corporation would come out with rehabilitation plan and the placement

of shops within a month on license so as to maintain the area properly. After approval of rehabilitation package by this Court, they would be

permitted to allot shops for sale of ""Prasad"" on license in the earmarked areas only.

(ix) It is, however, made clear that if any shop exists on the Government land or encroachment exists and it has not yet been removed, measures

would be taken to first remove those shops as per the provisions of law and without discrimination with a report to this Court.

40. With the aforesaid directions, the suo motu writ petition stands disposed of.

41. Let this disposed of petition be listed on 14th July, 2016 to see compliance of the directions and further orders if any.