
**Kamlesh Gupta & ors, Shakuntala Devi Verma & ors, Jayanti Gupta & ors.,
Vs State of UP and others**

None

Court: Allahabad High Court

Date of Decision: July 20, 2009

Hon'ble Judges: Sunil Ambwani, J and Ran Vijai Singh, J

Final Decision: Dismissed

Judgement

Ran Vijai Singh, J.

Heard Shri Ramendra Asthana, learned counsel for the petitioners. Learned standing counsel appears for the respondents.

2. In pursuance to the directions given by this Court in Manju Singh vs. State of U.P. & Ors., 2007 (4) AWC 3733 (LB) in a public interest

matter, to provide parking space, enforcing zoning regulations, prevent water logging and to remove encroachments from public roads and public

places, the local bodies in the State including the Nagar Panchayat, Dataganj, Badaun have started special drive to remove the encroachments

from the public roads.

3. The Nagar Panchayat, Dataganj, District Badaun has given notices to all the petitioners, in these writ petitions, to remove their illegal and

unauthorised permanent constructions on the public road, the measurements of which have been given in the notices dated 1.7.2009 with the

number of the plot and other details. The notices refer to many such constructions on account of which the breadth of the road has been reduced

from 40" to 15" causing inconvenience to the people traffic jams and accidents. The petitioners were directed to remove their constructions within

a week of receipt of the notices failing which their constructions were to be demolished.

5. It is contended by Shri Ramendra Asthana, learned counsel for the petitioners that a proper show cause notice under Section 303 of the U.P.

Municipalities Act, 1916, has not been given to the petitioners. The petitioners have not been given an opportunity to show cause that their

constructions are legal and that they have neither encroached nor obstructed public roads. Shri Ramendra Asthana has relied upon an order

passed by us on 16.7.2009 in Writ Petition No. 35217 of 2009 Sudhir Kumar Gupta and anr. vs. State of UP and others, in which we passed an

order directing that if petitioners file their objections by producing sanctioned map (filed in that writ petition) to demonstrate that the constructions

have not been made on the public road, within a week, the Executive Officer, Nagar Panchayat, Dataganj will consider their objections before

demolishing the offending constructions.

6. It is not denied that notices in these cases were served upon the petitioner on 9th July, 2009, and that the Sub Divisional Magistrate has not

initiated the drive to demolish the constructions, so far.

7. The petitioners have not given replies to the Sub Divisional Magistrate nor have they given any reasons in the writ petitions as to why their

constructions should not be demolished. None of the petitioners have made any such averments, which may give them right to continue to occupy

public road. In Sudhir Kumar Gupta's case, one of the petitioners had annexed a sanctioned plan which had raised a doubt whether the

constructions were sanctioned on the private land or the public road. In these writ petitions the petitioners have not set up any right whatsoever,

nor denied the allegations in the notices, to occupy and to do business on the public road. By our judgment dated 16.7.2009, we did not propose

to pass any such general order that every unauthorised occupant shall be given one week's time to file their objections to be decided by the Sub

Divisional Magistrate, if he comes to the court.

8. Section 265 under the Chapter of "Public Safety" in the U.P. Municipalities Act, 1916. Sub section (2) of Section 265 provides:

(2) The Municipality shall have power to remove any obstruction referred to in sub section (1), and the expense of such removal shall be

recoverable from the offender in the manner provided by Chapter VI.

9. The obstruction of the public street is an offence punishable under Section 265 (1) (b) of the Act upon conviction to a fine which may extend to

Rs. 500/ and in a case of continuing breach to a fine which may extend Rs. 10/ for every day after the day of first conviction is proved to have

persisted in the commission of the offence. Section 302 of the Municipalities Act provides for fixation of a reasonable time for compliance. Where

no time is fixed by any section or rule or byelaw, the notice shall specify a reasonable time for doing the same and it shall rest with the court to

determine whether the time so specified was a reasonable time within the meaning of the section. Section 303 provides for the manner in which a

notice is to be given and Section 304 of the Act provides for the method of giving public notice.

10. In the present case seven day's time is given in the notice for removing obstructions from the public road. The petitioners have not availed the

opportunity by filing objections before the Sub Divisional Magistrate. They have also not offered any explanation to the Court.

11. The entire argument appears to be centered on the fact, that a show cause notice was not given to the petitioners and that the similar notices

have not been given in respect of the encroachment in other markets of the city.

12. We find that the petitioners had an opportunity to give a reply and to explain to the Sub Divisional Magistrate that they have not caused any

obstructions on the public road and that their constructions are valid and were raised after obtaining permission. There is no statutory requirement

in the act to provide an opportunity of hearing to the persons who have caused obstructions or have encroached upon the public passages. We,

therefore, do not find any good ground to interfere in the matter.

13. We have no reason to believe that before carrying out the demolition drive the respondent authorities will not give sufficient time to petitioners

to remove their goods from the shops constructed on the public road.

14. The writ petitions are dismissed.