

(2003) 10 AP CK 0013

Andhra Pradesh High Court

Case No: Writ Petition No's. 15652 and 21961 of 2002

Jubilee Hills Labour Welfare
Association and Others

APPELLANT

Vs

Municipal Corporation of
Hyderabad and Others

RESPONDENT

Date of Decision: Oct. 21, 2003

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 21
- Hyderabad Municipal Corporation Act, 1955 - Section 405

Citation: (2003) 6 ALD 790 : (2004) 1 ALT 321

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: S. Ramachandra Rao, for K.R. Prabhakar, for the Appellant; G. Jyothi Kiran, SC for Respondent Nos. 1 and 2 in WP No. 15652 and for Respondent No. 1 in WP No. 21961 of 2002 and Additional Advocate-General for Respondent No. 3 in WP No. 15652 and for Respondent Nos. 2 and 3 in WP No. 21961 of 2002, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The relief claimed in both the writ petitions is similar in nature. Hence, they are disposed of through a common order.

2. W.P. No. 15652 of 2002 is filed by Jubilee Hills Labour Welfare Association, Hyderabad, and its 33 Members. The petitioners contend that the Members, who are mostly from weaker sections, have been undertaking small business activities on the road margins of Road No. 1, Jubilee Hills, for the past 15 years and recently they were shifted by the Municipal Authorities to a place nearby Jubilee Hills Park. It is stated that they are doing their business availing the benefit under the Self

Employment Schemes sponsored by the Government through the agencies, such as, Setwin, Lidcap, etc. They complain that in the name of beautification of the city, widening of the roads, etc., they are sought to be evicted from the existing places of business. It is contended that they have been extended the electricity supply, telephone connections and are also being levied tax by the Municipal Corporation itself. It is urged that the State is under obligation to provide livelihood to the petitioners and any step taken by the respondents constitutes violation of the rights of the petitioners guaranteed under Article 21 of the Constitution of India. Ultimately, they seek a Writ of Mandamus declaring the action of the respondents in proposing to evict them from the existing places of business as illegal, arbitrary, and violative of the rights of the petitioners guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India, read with the Directive Principles of the State Policy contained therein. They seek the further relief of a direction to the respondents not to evict or otherwise interfere with the business of the petitioners or alternatively to accommodate them in proper places to enable them to do the business and eke out livelihood.

3. With almost similar allegations, except as regards the place of business, W.P.No. 21961 of 2002 is filed by 32 petitioners. These petitioners claim to have established small Units of business of various categories at Sri Krishnanagar, opposite to the Stadium.

4. In the counter-affidavits filed by the respondents in both the writ petitions, it is stated that the petitioners have occupied the road margins and pavements and established their Units of business, causing congestion to the traffic. It is stated that mere extension of electricity supply, or collection of tax does not confer any right on the petitioners. The respondents contend that road margins are not meant to be used as places of business. It is also stated that the roads, abutting which the petitioners have established their businesses, are earmarked for measures to relieve the congestion of traffic and on account of the illegal occupation of the same by the petitioners, such a work is hampered.

5. Sri S. Ramchander Rao, learned Senior Counsel for the petitioners, submits that having regard to the philosophy underlying the Constitution of India, it is the obligation of the State to ensure that its citizens are provided with adequate livelihood. He submits that the right to life guaranteed under Article 21 of the Constitution can become meaningful if only the citizens are provided with adequate livelihood. He submits that the rights so conferred on the citizens cannot be permitted to be waived. Relying on certain observations made by the Hon'ble Supreme Court in [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others](#), the learned senior Counsel submits that persons who are eking out livelihood by doing business on road margins and pavements cannot be thrown out arbitrarily. He further submits that if the respondents are of the view that it is not feasible to continue the petitioners at the respective places, they are under

obligation to formulate a Scheme to rehabilitate them. He has referred to various documents, such as, electricity bills, telephone bills, tax receipts, etc., to buttress his contention that the activities of the petitioners at the existing places did not cause any hardship or inconvenience to the public.

6. The learned Additional Advocate-General, appearing for the respondents, on the other hand, submits that roads and road margins are earmarked for convenience of the general public and any encroachment thereon would defeat the very purpose of providing such facilities. He submits that mere extension of electricity supply or levy of municipal tax on the squatters of road margins does not amount to acquiescence. Referring to various provisions of the Hyderabad Municipal Corporations Act, 1955 (for short "the Act"), he submits that such levy is without prejudice to the right of the Corporation to evict the unauthorized occupants of roads, road margins and pavements. The learned Addl. Advocate General has referred to the relevant judgments of the Hon"ble Supreme Court and submitted that the activity of doing business on the road margins or pavements was never recognized as a right to live under Article 21 of the Constitution of India.

7. The petitioners had established stalls, bunks, etc., on the road margins at two different places, viz., Jubilee Hills and Sri Krishna Nagar, and are doing different kinds of businesses therein. They do not claim any right of ownership in the pieces of land on which they have established such stalls or bunks. Their claim is that having not been provided with any employment, they have availed the benefit under the Self Employment Schemes and are doing business to eke out their livelihood. They state that they are not causing any inconvenience or hindrance to the commuters or pedestrians. Placing reliance upon various proceedings from different authorities, such as, electricity and telephone bills, tax receipts, etc., they submit that the legality of their activity has been acknowledged. The respondents, on the other hand, contend that the business activity of the petitioners is causing inconvenience to the public and congestion to the traffic, and as such, they are liable to be evicted.

8. In view of the arguments advanced by the learned Senior Counsel for the petitioners and the learned Additional Advocate General, the following questions arise for consideration:

(a) Whether the petitioners have any fundamental or legal right to do business on the road margins and pavements?

(b) Whether it is competent for the Municipal Corporation to evict the persons who have occupied roads, road margins or pavements, without issuing any notice? And

(c) Whether the Municipal Corporation is under obligation to provide alternative sites to the persons evicted from the road margins?

(a) Whether the petitioners have any fundamental or legal right to do business on the road margins and pavements?

9. The rights of the occupants of the road margins and pavements and the corresponding rights of the local authorities to evict them fell for an extensive consideration by a Constitution Bench of the Hon"ble Supreme Court in *Olga Tellis* case (supra). The scope and ambit of fundamental right guaranteed under Article 21 of the Constitution of India were explained in detail with reference to the previous pronouncements. Similarly, the nature of the action of the local authorities, particularly, its requirement to be reasonable and fair, was also explained. The learned Senior Counsel for the petitioners had made a specific reference to various paragraphs of the judgment in support of his contention that right to have a fair livelihood is an important facet of right to life guaranteed under Article 21 of the Constitution of India. After discussing the matter at length, the Hon"ble Supreme Court held that :

(a) No person has a right to encroach by erecting a structure or otherwise, on footpaths, pavements or any other places reserved or earmarked for public purposes, such as, garden, playground, etc.

(b) The provisions contained in the enactments for clearing such encroachments are not unreasonable; and

(c) Such of the slum dwellers who are given identity cards, living in the slums that were in existence for a long time of 20 years or more, shall be provided alternative sites, under the "Low Income Schemes Shelter Programmes", if the site under their occupation is required for any public purpose"

Certain other measures were also indicated, which are specific to the facts of the said case. It needs to be noted that main problem projected in the *Olga Tellis* case (supra) related to shelter, than business activity.

10. Another Constitution Bench of the Hon"ble Supreme Court dealt with the similar question, of course from a different angle, in *Sodan Singh-I v. New Delhi Municipal Committee* AIR 1989 SC 1988. The Supreme Court specifically dealt with the right of the hawkers who do business on roads and road margins. A distinction was maintained between the rights of slum dwellers, on one hand, and the hawkers, on the other, in the context of the fundamental rights guaranteed under the Constitution of India. While it was held that the right of a slum dweller attracts Article 21 of the Constitution, such a right is held to be not available to hawkers or businessmen. After making extensive reference to the observations of the Supreme Court in *Olga Tellis* case (supra), it was held as under:

"20. We do not find any merit in the argument founded on Article 21 of the Constitution. In our opinion Article 21 is not attracted in a case of trade or business either big or small. The right to carry on any trade or business and the concept of

life and personal liberty within Article 21 are too remote to be connected together. The case of [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others,](#) heavily relied upon on behalf of the petitioners, is clearly distinguishable. The petitioners in that case were very poor persons who had made pavements their homes existing in the midst of filth and squalor, which had to be seen to be believed.

Thereafter the Supreme Court observed as under:--

"23. We would, however, make it clear that the demand of the petitioners that the hawkers must be permitted on every road in the city cannot be allowed. If a road is not wide enough to conveniently manage the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say on Sundays when the rush considerably thins out. Hawking may also be justifiably prohibited near hospitals or where necessity of security measures so demands. There may still be other circumstances justifying refusal to permit any kind of business on a particular road. The demand on behalf of the petitioners that permission to squat on a particular place must be on a permanent basis also has to be rejected as circumstances are likely to change from time to time. But this does not mean that the licence has to be granted on the daily basis; that arrangement cannot be convenient to anybody, except in special circumstances."

The purport of all these judgments was once again explained by the Supreme Court in *Sodan Singh III v. NMDC*, (1998) 2 SCC 727.

11. In [N. Jagadeesan, etc. Vs. District Collector, North Arcot and Others,](#) the Supreme Court held that the action of the local authority in evicting the bunks and kiosks on the road margins cannot be said to be inconsistent with the law laid down by the Supreme Court in the earlier cases. The relevant portion reads as under:

"In our opinion, by seeking to remove the bunks and kiosks located within the hospital premises or within the premises of other medical institutions or their removal from the road margins of important and busy thoroughfares in the aforesaid three cities in Tamil Nadu, the respondents are not acting in any manner inconsistent with the propositions enunciated in the said judgment. We are not able to say that the reasons assigned are neither relevant nor germane nor is it possible to say that reasons given are only a make-believe."

12. From the judgments of the Hon^{ble} Supreme Court, it is evident that while the occupation of slum dwellers for a fairly long time on footpaths, pavements or road margins may attract Article 21 of the Constitution of India, subject to the limitation that such persons are liable to be evicted on provision of alternative shelters, the same is not the case with the persons who occupy road margins, pavements and footpaths for the purpose of doing business. At the most, the rights of such persons would attract Article 19(1)(g), which in turn, is subject to reasonable restrictions. If any steps are taken in the interest of general public or to ensure optimum use of the

roads, road margins and pavements, the limited right of the occupier of such places has to yield to the measures taken by the local authority. This question stands answered accordingly.

(b) Whether it is competent for the Municipal Corporation to evict the persons who have occupied roads, road margins or pavements, without issuing any notice?

13. The petitioners contend that the respondents cannot evict them without following the procedure prescribed by law. It is also contended that inasmuch as the Corporation had levied taxes, it has acquiesced in the rights of the petitioners to continue in possession of the places in question. In this context, reference needs to be made to certain provisions of the Act.

14. u/s 373 of the Act, all the public streets, pavements, stones and other materials thereof, vest in the Corporation and come under the control of the Commissioner. "Street" is defined under Sub-section 52 of Section 2 as to include ways, sub-ways, margins, etc.

15. Section 405 of the Act empowers the Commissioner to remove anything, which is erected, deposited or hawked or exposed for sale in any street in contravention of the Act, without issuance of any notice. The deviation from the normal procedure of issuance of notice appears to be on account of the fact that no individual has any right to occupy or squat on a road or its margins and pavements. The requirement of issuance of notice, be it under the statute or under the principles of natural justice, is for the purpose of adjudication of the claims or rights of the affected persons. Since no claim needs to be adjudicated as to the right of a person who squats on the street or its margins and pavements, the Commissioner is vested with the power to curb such unauthorized and illegal activities and clear the places without the necessity of issuing any notice.

16. So far as the levy of encroachment fee is concerned, the Act itself empowers such levy without prejudice to its right to evict such unauthorized occupants. Reference in this context may be made to Sub-section (3) of Section 220 of the Act.

17. One of the basic purposes of constituting a local authority, be it the Municipal Corporation, Municipality or Gram Panchayat, is to ensure that the public amenities are properly provided for and maintained. It is not only the right of the concerned local authority to clear unauthorized encroachments on the roads and road margins, but is also their duty to take steps in this regard. The right of the local authorities to take steps in the interest of proper utilization of the public amenities, ensuring proper security to the users of the roads and its margins and pavements, ensuring proper hygienic conditions in the locality, etc., was recognized by the Supreme Court in its various decisions in clear terms. The question as to whether the continued occupation of a road or road margin possess any threat to public safety, hygienity or causes congestion to the traffic has to be decided by the Corporation itself. The fact that certain individuals were permitted to use the road

margins at a time when such necessities were not felt does not confer any right in such persons. The opinion formed by the Corporation as to the feasibility or otherwise in permitting such use of road margins is not justiciable. Though such squatters or occupants of road margins and pavements are not entitled for any notice as such, they may be given a reasonable time to remove their articles before steps are taken by the Corporation to clear such illegal encroachments. The extent of time in this regard would depend on the nature of encroachment and the public need in demand. No hard and fast rule can be laid in this regard. Having regard to the Scheme of the Act and the pronouncements of the Hon"ble Supreme Court, it emerges that the Municipal Corporation has right to remove and clear illegal encroachments on the roads, road margins, pavements and footpaths, as provided for u/s 405 of the Act.

(c) Whether the Municipal Corporation is under obligation to provide alternative sites to the persons evicted from the road margins?

18. Now comes the question as to whether the Municipal Corporation is under obligation to provide alternative sites to the petitioners, in case they are required to be evicted from the road margins and pavements. A perusal of the judgments of the Supreme Court, particularly, those referred to in the previous paragraphs, discloses that Schemes were directed to be formulated for rehabilitation, viz., for the benefit of slum dwellers, who were found to have been continued in the place for two decades and more. This was obviously in view of the fact that the rights of such persons were felt to be protected under Article 21 of the Constitution of India. Such a facility, however, was not extended to those, who have undertaken or established businesses on road margins and pavements. In the Sodan Singh-I case (supra), the Supreme Court directed the New Delhi Municipal Corporation to identify the locations or localities where such hawking business can be permitted, that too, subject to certain restrictions. The relief for providing alternative sites to the affected hawkers was not granted. The Hyderabad Urban Development Authority had submitted a counter-affidavit stating that they have no open areas at its disposal for being made available to the petitioners.

19. Under these circumstances, this Court does not find that the Municipal Corporation is under obligation to provide alternative sites to the petitioners.

20. Apart from these aspects, the learned Additional Advocate-General, has also urged before this Court that the threat perceptions in the city, particularly, in the context of recent developments and forthcoming Afro-Asian Games, in which players from several countries would participate, are on the rise and that certain measures are required to be taken. He has also placed before this Court a communication, which discloses the likelihood of such unlawful structures, as raised by the petitioners being used by the extremists and the consequential threats.

21. As observed in the threshold, all the establishments of the petitioners in W.P. Nos. 15652 and 21961 of 2002 are just opposite to the Stadium. Apart from these aspects, this Court finds that the petitioners do not have any legal right to occupy the road margins and pavements. Hence, the writ petitions are dismissed. The respondents are, however, directed to give reasonable time to the petitioners to remove their articles before any structures raised by them are demolished or removed. No costs.