

**Durga Prasad and Others Vs. State of U.P. and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/475143](http://sooperkanoon.com/475143)

**Court :** Allahabad

**Decided On :** Feb-26-1999

**Reported in :** 1999(2)AWC1452

**Judge :** Ravi S. Dhavan and ;V.P. Goel, JJ.

**Appeal No. :** C.M.W.P. No. 8161 of 1999

**Appellant :** Durga Prasad and Others

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Ashfaq Ahmad

**Judgement :**

**Ravi S. Dhavan, J.**

1. The eight petitioners, M/s. Durga Prasad. Noor Mohammad, Wahid Ali, Guddu, Iqbal, Risalat, Khiyali and Yusuf, have filed the present petition seeking reliefs that the respondents be restrained from evicting them on the demolition drive to clear the Bhojipura Road--Pilibhit--Bareilly Road. Town Rithora, district Bareilly. The contention of the petitioners is that they remain on the roadside by necessity. The petitioner No. 1 runs a shop to repair tyre punctures of heavy vehicles, motor cars and trucks. The petitioner No. 2 has been running a scrap dealer's shop, a kabari.

The petitioner No. 3 has a general merchandise shop. The petitioner No. 4 has a cycle spare parts shop. The petitioner No. 5, also, has a general merchant shop. The petitioner No. 6 is, also, running a cycle spare parts shop. The petitioner No. 7, also, has a spare parts shop for motor cycles and scooters. The petitioner No. 8 is running a spare parts shop for tractors.

2. The law is very clear that no one has a right to occupy a public road. The road is meant for traffic and for no other purpose. No person has any right to any particular spot on a roadside of a public road or street. (*Bombay Hawkers' Union v. Bombay Municipal Corporation*, AIR 1985 SC 1206). In fact, the law has been settled to such an extent that in a very old case, the Supreme Court has held that nothing can come on the roadside, neither facilities as a 'piau' nor a library nor even a statue of Mahatma Gandhi (*Manglaur Municipality v. Mahadeoji*, AIR 1965 SC 1147). In this context, the Supreme Court has held that footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The Supreme Court has further held that the existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing (*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180).

3. In the circumstances, the petitioners have not made out any prima facie case for interference by the High Court.

4. The writ petition is accordingly dismissed.