

Ashok Tripathi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-08-1999

Reported in : 1999(2)AWC1612

Judge : Ravi S. Dhavan and ;A.K. Yog, JJ.

Appeal No. : C.M.W.P. No. 8349 of 1999

Appellant : Ashok Tripathi

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Shilendra Kumar Pandey, Adv.

Judgement :

Ravi S. Dhavan, J.

1. The petitioner. Ashok Tripathi, has filed the present writ petition seeking a direction by a writ of mandamus that the respondents, particularly, the Regional Transport Officer, Allahabad, the District Magistrate. Allahabad, the Senior Superintendent of Police Allahabad, and the Trade Tax Officer, Allahabad, be directed to stop the entry of overloaded trucks, buses, and three wheelers, etc. in the city of Allahabad and they also restrain the movement of such traffic on the roads and sub-lanes of the Allahabad city.

2. The Court has heard counsel for the petitioner at length.

3. The concern which the petitioner expresses may not be misplaced. In the writ petition, it is mentioned and it is submitted before the Court that overloaded trucks and diesel polluting three wheelers are creating death causing health hazards. It is further explained that the roads of the Allahabad city are not safe. This reckless traffic of commercial vehicle is polluting the city with toxic and injurious fuels and is otherwise making the public roads of Allahabad unsafe for the citizens and both the factors are injurious to the people of Allahabad.

4. What the petitioner contends may not be incorrect. But the petitioner must first address such complaints before the administration. It is the statutory obligation of the district administration or the municipal authorities to keep the city clear from congested commercial traffic and otherwise maintain the roads with public safety in mind. Counsel for the petitioner contends that the roads of Allahabad are getting congested because of unauthorised encroachments, and, further, due to the heavy traffic of commercial vehicles, life of the citizens of Allahabad is in danger.

5. But, the petitioner must also address his concern to the elected representatives of Allahabad, whether they are Members of Parliament, the Members of the Legislative Assembly or the Corporators, representing different sectors of Allahabad co-related with their constituencies. When the petitioner meets a situation that the administration does not pay heed to the petitioner or elected representative have no time for citizens like him to consider such grievances, then, in a stated case, the High Court will consider the petition of citizens like the petitioner.

6. In so far as making the road safe by removing unauthorised encroachments is concerned, let the petitioner be apprised that recently, the High Court passed an order that the roads are meant to be kept encroachment free and for the use of passage, and the only purpose for which they have been laid. The order of the High Court is being reproduced below :

'Hon'ble Ravi S. Dhavan, J

Hon'ble V. P. Goel, J.

(Delivered by Hon'ble Ravi

S. Dhavan, J.)

The eight petitioners. Messrs 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.

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 'piaou' 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 1980 SC 180. In the circumstances, the petitioners have not made out any prima facie case for interference by the

High Court.

The writ petition is accordingly dismissed.' Writ Petition No. 8161 of 1999. Durga Prasad and another v. State of U. P. and others.

7. A road without encroachments will ensure free flow of traffic. Encroachments have to be removed without fear or favour. This is the job of the administration and, thereafter, of the elected representatives. If they fail, then, a citizen may come to the High Court's writ jurisdiction so that the Court may endeavour to secure performance of public obligations by functionaries and public bodies in accordance with law. At present, the Court does not consider it appropriate that a writ ought to be issued on this petition as the petitioner must first address himself to the public authorities and the elected representatives. Should neither of them respond, then, the petitioner may approach the High Court.

8. With the aforesaid observations, this writ petition is consigned to the record.

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