

Bahadur Singh Vs. the Municipal Corporation of Delhi and ors.

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Court : Delhi

Decided On : May-26-1972

Reported in : AIR1974Delhi100; 9(1973)DLT198

Judge : Prakash Narain and; R.N. Aggarwal, JJ.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Sections 417, 417(3) and 461; [Constitution of India](#) - Articles 14, 19 and 19(6); [Delhi Development Act, 1957](#) - Sections 14

Appeal No. : Civil Writ Petn. No. 789 of 1969

Appellant : Bahadur Singh

Respondent : The Municipal Corporation of Delhi and ors.

Advocate for Pet/Ap. : S. Balakrishnan, Adv; B. Datta and;K.A. Devan. Advs.

Judgement :

ORDER

1. This writ petition has been filed by Rajasthan Golden Transport Company private Ltd., through its Managing Director, Shri Bahadur Singh, praying inter alia that (a) a writ of certiorari be issued quashing the proceedings taken against the petitioner and his firm under section 417 of Delhi Municipal Corporation Act pending in the courts of respondents Nos. 4 and 5, (b) a writ in the nature of mandamus be issued directing the respondents not to interfere in any manner with the lawful trade and activity of the petitioner in operating his transport company and for restraining the respondents from challenging the petitioner in future under Section 461 of the Delhi Municipal Corporation Act, (c) Section 417 of the Delhi Municipal Corporation Act be declared to be ultra virus of the constitution and be struck down as violative of the fundamental rights guaranteed in Articles 14 and 19(1)(f) of the [Constitution of India](#), and (d) pass any other order or orders as may be deemed fit and proper to meet the ends of justice.

2. The petitioner is a transport company and is carrying on the business of transporting goods by lorries to the various parts of India. The petitioner generally transports cloth bales, glass wares, heavy machinery pieces and other similar items. The petitioner has a transit shed at Delhi in the premises described as Mandir Bhaironji, Boulevard Road. The transit shed is used for the loading and unloading of goods, The goods which are to be delivered at delhi are unloaded at Delhi and are sometimes stored in the shed till the consignees take delivery of the goods besides the ;petitioner there are some other transport companies which have their transit sheds in the premises Mandir Bhaironji and they are also using the transit sheds for their transport business.

3. The case of the petitioner put briefly is that the respondents have in the Master Plan demarcated the premises described as Mandir Bhaironji, Boulevard Road, for a green belt and with that end in view the respondents had demolished several constructions of Mandir Bhaironji and asked the Mahant to grow a forest on that piece of land that the mahant filed a writ petition in the Supreme Court which is pending in

that court and that the Supreme Court had granted a stay order restraining the respondent from interfering in any manner with the properties of the temple that the respondents with a view to evict the petitioner and other tenants had started harassing them by challenging them in discriminately under Section 417/461 of the Delhi Municipal Corporation Act (hereinafter called the Act, that the act of the respondents in challenging the petitioner and other transport companies is mala fide and amounts to interfering with the trade carried on by the petitioner and other transport companies. The petitioner further pleading that the respondents are under the colour of enforcing the provisions of section 417 of the Act, attempting to tax the trade of transportation of goods and this action of the respondents is an abuse and misuse of the power. The petitioner submitted that section 417 of the Act is ultra virus of the Constitution and is liable to be struck down as being vocative of the petitioner's fundamental rights guaranteed under Articles 14 and 19(1)(f) of the constitution of India the petitioner pleaded that sub-section (3) of section 417 prescribing the scale of fees in respect of premises licensed under sub-section (1) is liable to be struck down as being vague and conferring arbitrary and uncanalised power in the corporation. The petitioner further pleaded that the challans instituted by the respondents against the petitioner and his company be quashed as invalid.

4. The respondent in their counter controverted the pleas of the petitioner. The respondents pleaded that the petitioner had erected buildings to be used as godowns without municipal sanction and he was further utilizing the godowns for storing goods without license from the Corporation and that the prosecution of the petitioner for violating the provisions of Section 417 of the Act is valid. The respondents pleaded that the petitioner is using the godowns for storing the goods and the storage of articles mentioned in Schedule 11, part II of the act without a license is punishable under section 461 of the Act. The respondents further pleaded that the petitioner had made constructions without municipal sanction and in contravention of the master plan or the zonal plan and the prosecution launched against the persons concerned for the unauthorized constructions and the storage of goods without license are legal. As regards the transport companies in other localities namely, Sadar Bazar mori gate etc., the respondents pleaded that those areas are commercial areas and the transport companies had been doing their business in those areas before the Master Plan came in to existence in 1962 and they hold license for the storage of goods. The respondents pleaded that the petitioner and the other transport companies are being prosecuted not for carrying on business as transporters but for storage of the goods without license. The respondents pleaded that some of the transport companies had applied for license but the licenses were refused as they could not be permitted to store goods in those areas but they continued to store goods in spite of their petitions for the grant of license had been rejected and therefore prosecutions had to be launched against them. The respondents pleaded that Sections 416 and 417 and Schedule 11 of the Act had been enacted for the security of health and property of the residents of the town and the said provisions are legal and constitutional.

5. The undisputed facts which emerge from the pleading of the parties are that the petitioner is a transport company and is carrying on the business of transporting goods between the various parts of India the petitioner has rented premises of Mandir Bhaironji at Boulevard Road, Delhi and is utilizing those premises in its business of transportation of goods. The goods are received and stored for carriage to places outside Delhi or goods are received from outside Delhi and are stored for delivery to the consignee in Delhi. The petitioner is dealing in the transportation of goods such as cloth bales glass-ware, heavy machinery pieces, paints, Chemicals etc., the respondents in their counter maintained that the petitioner also transported gas cylinders but this was denied by the petitioner in his rejoinder.

6. In order to appreciate the contentions raised at the Bar, it will be useful to set out the provisions of section 417 of the Act which read as:-

'417 (1) No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of license granted by the Commissioner in this behalf, namely:-

(a) any of the purpose specified in Part I of the eleventh Schedule;

(b) any purpose which is, in the opinion of the commissioner dangerous to life health or property or likely to create a nuisance;

(c) keeping horses cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce thereof; or

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