

Mange Ram and Others Vs. Uoi and Others

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Court : Delhi

Decided On : Feb-22-2012

Judge : The Honourable Actiing Chief Justice Mr. a.K.Sikri & Rajiv Sahai
Endlaw

Appeal No. : LPA 123 OF 2012

Appellant : Mange Ram and Others

Respondent : Uoi and Others

Judgement :

A.K. SIKRI, ACTING CHIEF JUSTICE

1. W.P.(C) No.5307/2010 filed by the appellants herein has been dismissed by the Learned Single Judge vide order dated 31st January, 2012 and questioning that order present Intra-Court Appeal has been filed.

2. The writ petition was filed to restrain the respondents, Railways, Government of NCT of Delhi, MCD and DDA from raising construction of a Foot Over Bridge (FOB) for crossing over the railway tracks near the residential colony of Harkesh Nagar, New Delhi. The appellants petitioners had sought such restraint contending, firstly that they were the owners in occupation of the land near the railway tracks where construction was proposed and were being dispossessed for the said construction and secondly on the ground that this Court in W.P.(C) No.3682/2006 earlier filed by the residents of the colony of Harkesh Nagar for

mandamus for construction of a FOB at the said site had been dismissed by this Court vide order dated 04.10.2006 in view of the plea then of the Railways that crossing over the railway tracks at the said site was not permitted; that the residents were crossing railway tracks from the said place by puncturing a boundary wall preventing access to the railway tracks and that there were two Over Head Crossings available at a distance of 1.5 Kms. to 2 Kms. from the said site and thus no direction could be given to the Railways for construction of FOB at the said site.

3. The learned Single Judge in the judgment impugned before us has held that if 'now' the Railways deemed it necessary in the interest of safety of the public residing in the neighbourhood of the railways tracks to construct a FOB at the said site, the said developmental activity in the larger public interest could not be interfered by the Court. As far as the claim of the appellants petitioners to ownership of the land is concerned, the learned Single Judge held that the documents relied upon by the appellants petitioners in this regard are photocopies of Power of Attorney, Affidavits, Agreement to Sell and Purchase and which do not trace the title to the land and cannot be considered as title documents; moreover, the said claim raises disputed questions of fact which the appellants petitioners will have to establish in a civil proceedings and could not be adjudicated in writ jurisdiction.

4. The counsel for the appellants petitioners, on 17.02.2012 when the appeal came up first before us, had contended that there was nothing to show any decision even of the respondent Railways for construction of a FOB at the said site. We had as such asked for the stand of the Railways.

5. Copy of the affidavit dated 12.01.2011 filed by the respondent Railways before the learned Single Judge has since been produced before us. In the said affidavit, it is stated that the shops of the appellants petitioners (for restraining demolition of which writ petition was filed) are within the boundary of railway land and the appellants petitioners are in unauthorized occupation and encroachment of railway land. It further affirms that a FOB at the said site was sanctioned on the demand of the local residents and people's representative and in the interest of the public at

large to provide a safe crossing over the railway tracks and since there had been several accidents in the past at the said site and to stop the persons so crossing over the railway tracks from the said site endangering their lives.

6. The counsel for the appellants petitioners with reference to the order dated 04.10.2006 in earlier W.P.(C) No.3682/2006 (supra) has contended that this Court had then, while declining to issue mandamus for construction of a FOB at the said site, also directed reconstruction of the boundary wall to prevent access to railway tracks from the said site and also directed appropriate action to be taken against those who punctured the boundary wall in future.

7. However, respondent Railways in the counter affidavit (supra) with respect to the aforesaid part of the order has stated that though the boundary wall was reconstructed but it was repeatedly punctured and the same did not prevent the residents from crossing over the railway tracks from the said point endangering their lives.

8. The counsel for the appellants petitioners has contended that in view of the stand of the Railways in the earlier writ petition, the Railways cannot in change thereof now decide to construct a FOB at the said site.

9. We are unable to agree. The stand of the Railways in the earlier writ petition was as per the then prevailing situation. However, if the experience of five years since then has shown that the railway tracks at the said place cannot be continuously manned/ supervised to prevent people from crossing over endangering their lives and in view thereof the Railways themselves have taken a decision to construct the FOB with financial assistance from the Local M.P. Fund (as pleaded in the counter affidavit), no error can be found in the said decision. Moreover, the decision not to construct or construct a FOB at a particular site is a purely administrative / executive decision and there is no bar to change thereof particularly when cogent reasons are found to exist therefor. Moreover, while this Court in the earlier writ petition was considering the matter from the aspect of whether the residents had a right to mandamus directing construction of a FOB, the perspective now is different.

10. The counsel for the appellants petitioners has next sought to find error with the present decision of the Railways for the reasons which existed then as well as now, of availability of two other Cross Over Points at a distance of 1.5 Kms. to 2 Kms. from the said site. He argues that when the Railways for the said reason then denied construction of a FOB at the said site, they cannot now be permitted to raise construction while the other two Cross Over Points are still available.

11. The matter has to be looked at from the perspective of a pedestrian with no means of transport. While it may be rationale and justified to tell a vehicle owner to drive an additional mile, a pedestrian specially going to and fro for work or for other daily chores cannot be compelled to spend that extra time. Moreover, it is well nigh impossible to man railway tracks at all points and experience of life has shown that in several aspects one has had to give in to an improper human behaviour (if not able to control the same) and to take steps to reduce the nuisance therefrom. What was suggested by this Court five years ago i.e. of construction of the boundary wall and of action against those puncturing the same again or insisting upon crossing over the railway tracks from the said point has been found to be unworkable and impractical and rightly so. We are unable to hold that the Courts are so shackled to be unable to take note of subsequent events and to modify / change their view in light thereof. Once it is found that the suggestions made / formula devised earlier has not borne fruit and the casualties continue to occur owing to there being no safe mode of crossing over the railway tracks from the said site, wisdom is in now not interfering with the construction of a safe mode of crossing over the railway tracks at the said point.

12. Though the counsel for the appellants petitioners has been unable to find any fault with the reasoning given by the learned Single Judge as far as to the claim of the appellants petitioners of ownership is concerned, he has contended that owing to the appellants petitioners having been in occupation of the said site for 10 to 15 years, they ought not to be evicted summarily and construction of the FOB should have been stayed till the appellants petitioners are evicted in accordance with and following the due process of law. Though at one time, the counsel for the appellants petitioners had faintly suggested that the appellants petitioners have acquired title to the land by adverse possession also but upon being reminded that

since the land belongs to the Government, even for adverse possession, the alleged occupation for 10 to 15 years is not sufficient, did not press the same further.

13. Though the Courts in certain scenarios have undoubtedly held that a person in settled possession can be dispossessed only in accordance with and by following the due process of law but the same is not found to be a hard and fast Rule. The appellants petitioners *prima facie* are in illegal encroachment of the land. They have, now at least since the filing of the writ petition nearly two years ago, known of the proposal to dispossess them from the said site for the purpose of the said development work and have since then continued in occupation of the land under protection of the interim order in the writ petition. The land as aforesaid is required for construction of a FOB in public interest / good. The Supreme Court in **Ramniklal N. Bhutta Vs. State of Maharashtra** AIR 1997 SC 1236 held that a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226. It is ultimately a matter of balancing the competing interest. In Modern Law Review, Vol. 44, 1981 Edition at Page 214, R.A. Buckley stated that "A plaintiff may still be deprived of an injunction in such a case on general equitable principles under which factors such as the public interest may, in an appropriate case, be relevant. The Supreme Court in **Mahadeo Savlaram Shelke v. Pune Municipal Corporation** (1995) 3 SCC 33 held that it is common experience that injunction normally is asked for and granted to prevent the public authorities from proceeding with execution of or implementing scheme of public utility; public interest is therefore one of the material relevant considerations in either in exercising or refusing to grant ad-interim injunction. In that case, public purpose of removing traffic congestion was sought to be served by widening the road and which purpose was held up owing to stays granted by the Courts. The Supreme Court held that the Courts should necessarily consider the effect on public purpose and should suitably mould the relief. The Supreme Court in **ONGC Ltd. Vs. Saw Pipes Ltd.** AIR 2003 SC 2629 also held that where loss is caused to the public,

there is no measure for determining the loss.

14. Reference may also be made to **Baitarani Gramiya Bank v. Pallab Kumar** (2004) 9 SCC 100 reiterating that when public interest competes with private interest, the private interest will have to give way to public interest. The Supreme Court in **Mardia Chemicals Ltd. v. UOI** AIR 2004 SC 2371 again held that wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purpose, individual rights may have to give way. Public interest has always been considered to be above private interest. Interest of an individual may to some extent be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country (see **Panchkuian Road Refugee Vyapar Sangh Vs. DMRC** MANU/DE/2353/2006). The Supreme Court in **Sooraram Pratap Reddy Vs. District Collector, Ranga Reddy District** (2008) 9 SCC 552 also held that the writ court exercising powers under Article 226 cannot substitute its own judgment for the judgment of the Government as to what constitutes public purpose. It was held that whatever furthers the general interest of the community as opposed to a particular interest of the individual must be regarded as a public purpose and the emphasis is unmistakably shifting from the individual to the community.

15. Moreover, we are exercising our jurisdiction in an appeal arising out of a proceeding under Article 226 of the Constitution of India and which is essentially a discretionary remedy. The Supreme Court in **S.P. Chengalvaraya Naidu Vs. Jagannath** AIR 1994 SC 853 has noted that the process of the Court is being abused and property grabbers, tax evaders and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. Again in **Ramniklal N. Bhutta Vs. State of Maharashtra** AIR 1997 SC 1236, it was held that whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their powers of granting stay / injunction. It was held that the power under Article 226 is discretionary and will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point; the Courts have to weigh the public interest vis--vis the private interest while exercising the powers under Article 226 and that there are many ways of affording appropriate

relief and redressing a wrong.

16. Seen in the aforesaid light, if it were to be held that notwithstanding the appellants being unable to even *prima facie* satisfy as to their title if any to the said land, the respondent Railways is required to resort to legal proceedings for their eviction, the direct result thereof would be to hold up construction of the FOB and which will result in the residents of the locality continuing to cross the railway tracks endangering their lives and suffering casualties. This Court cannot look at the interest of the appellants petitioners only disregarding the interest of the general public and other residents of the colony. Weighed in the said light, no case for restraining the respondents from forcibly dispossessing the appellants petitioners is also made out.

17. Before parting with the case, mention may also be made of the recent dicta of the Supreme Court in **SurajLamp and Industries Pvt. Ltd. Vs. State of Haryana** (2012) 1 SCC 656 laying down that transactions of Power of Attorney and Agreement to Sell do not vest any title in the property.

18. The counsel for the appellants petitioners during the hearing has also referred to **Olga Tellis and Ors. Vs. Bombay Municipal Corporation** AIR 1986 SC 180 and **SodanSingh v. New Delhi Municipal Committee** AIR 1989 SC 1988. However, in light of what has been observed above, the same are of no relevance.

19. We thus do not find any merit in this appeal which is accordingly dismissed.

20. At this stage, learned counsel for the appellants states that there has been a interim stay of dispossession of appellants / petitioners up till now and since they want to take a chance by approaching the Supreme Court, interim protection for some more time be given. Going by the aforesaid consideration alone, we grant one week time as prayed.

Dasti.

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