

Sh Kuldeep Singh Sahani & Ors vs Government Of Nct Of Delhi & Ors on 24 December, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9928/2021

SH KULDEEP SINGH SAHANI & ORS.

..... Petition

Through: Ms. Kajal Chandra, Ms. Prerna
Chopra, Ms. Divye Puri, Ms. Sak
Anand, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respond

Through: Mr. Naushad Ahmad Khan, ASC,
Civil, GNCTD alongwith Ms.
Manisha Chauhan, Mr. Zahid,
Advocate for GNCTD.
Ms. Monika Arora, CGSC.
Mr. Arjun Pant, Sr Standing Cou
with Ms Vidhi Gupta, Counsels f
DDA
Mr. Vivek Narayan Sharma, ASC ,
Mr.Sarthak Ghonkrokta, Mr. Tush
Kumar, Advs. for NDMC with Mr.
Dayanand, EI, NDMC.
Inspector Devender Kaushik with
Naveen Kumar, PS, Sarojini Naga

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 24.12.2021

1. For the reasons stated in the application, the same is allowed.

2. Application stands disposed of.

3. Issue notice. Mr. Naushad Ahmed Khan accepts notice on behalf of respondent Nos. 1 and 3, and Mr. Sharma accepts notice on behalf of respondent Nos.2. Let notice be issued to other respondents returnable on 17.01.2022.

4. This application has been moved by the petitioner with the grievance that there is utter non-compliance of the orders passed by us in these proceedings on 13.09.2021 and 08.10.2021 with

regard to removal and clearance of illegal encroachments in Sarojini Nagar Market. Along with the application, the petitioners have placed on record, several photographs showing the state of affairs as is existing in the said market, which also bring out the aspect of non-compliance of our orders. The petitioners have also placed on record a video recording, recorded on 19.12.2021 of the said market. The said video recording was also played in Court. The said video recording portrays a very scary picture of the state of affairs as it exists in the Sarojini Nagar market, and raises a grave alarm in our minds. It shows hundreds and thousands of people in the said market who are seen flowing like a river, having no control over their movement - by sheer force of pull and push. They are seen losing their balance and falling left, right and centre. The videograph also shows the existing encroachments on the pathways in the market. The videograph also show that the market is densely populated - both with hawkers and vendors, and with people visiting the market.

5. On 13.09.2021, we had directed respondent Nos. 2 and 3 i.e. the NDMC and SHO, PS Sarojini Nagar respectively to ensure that illegal encroachments in Sarojini Nagar Market are cleared and that it should be ensured that they do not return. We had also directed that, if necessary, the clearance should be done every day to ensure compliance. We had made the concerned Executive Engineer of respondent No.2 and the SHO, Police Station Sarojini Nagar, personally responsible to ensure compliance of our order.

6. On 08.10.2021, we had taken note of the fact that even under the master plan for Delhi, not more than 3-4 informal vendors may be permitted for every 10 shops in a market. Since there are 200 shops in the Sarojini Nagar Market, 60-80 vendors may be permitted. However, the photographs placed on record showed that the number of vendors far exceeded that limit. We had also directed the concerned Executive Engineer of the NDMC, Mr. M.L. Toppo to show cause as to why action should not be taken against him under the Contempt of Courts Act. Mr. Toppo has filed an affidavit to state that he is not the concerned officer. Mr. Dayanand has also filed an affidavit in response to the show cause notice. We had again directed the respondent authorities to comply with our order dated 13.09.2021. We also directed them to ensure that no goods are left at the site, and the goods should be removed and cleared at the end of the day everyday, which was also a requirement in terms of order passed by a Division Bench of this Court on 25.04.2017 in W.P.(C.) No. 11592/2016 and other connected petitions. We directed the Delhi Police to seize all such articles and goods which are found lying in Market area on a daily basis with the assistance of the officers of the NDMC.

7. Neither of our aforesaid orders has been complied with, either in letter or in spirit, as is evident from the photograph and the videograph placed on record. There has been a complete and blatant breach of our orders, and we have no reason to say that the same is not wilful. It is clear to us that the concerned officers of the Corporation and the Delhi Police have ample powers vested in them by the statute they are governed by, and they also have a backing of our orders. Despite that being the position, there is absolutely no improvement in the situation on the ground.

8. Mr. Sharma who appears for the NDMC states that the officers of the NDMC have been acting on a day to day basis, and status reports have also been placed on record to show the amount of work done by them. The proof of the pudding lies in its eating. The long and short of all the actions taken

by the authorities is that the situation on the ground has only gotten worse. COVID, or no COVID, the situation as it exists is completely unacceptable. The situation as is demonstrated from the videograph is that at any given moment, there could be a stampede leading to scores of deaths. Sarojini Nagar has already witnessed bomb blasts in the past. God forbid, if any incident of that kind occurs, we shudder to think the extent of loss of lives that could take place.

9. We, therefore, issue notice of contempt to Mr. Devender Kaushik, SHO, PS Sarojini Nagar who is present in Court and accepts notice. We also issue notice of contempt to Mr. Dayanand, Enforcement Inspector, NDMC in charge of the area. They shall show cause as to why contempt proceedings may not be initiated against him for non-compliance of our orders dated 13.09.2021 and 08.10.2021. Replies shall be filed by them within two weeks.

10. Looking to the prevalent COVID situation and the rising number of infections with the onset of a new COVID variant - Omicron, and the fact that the concerned authorities under the Disaster Management Act have also started taking steps to cut congregation of people, we direct the NDMC and the Delhi Police to forthwith work out a movement plan for the public at large that visits Sarojini Nagar Market. It has been suggested on their behalf that the entry and exit to the said market could be regulated, by having three separate entry points, and three separate exit points, and the entry into the market would be permitted only when it appears that the market is not full to its capacity in a controlled manner. It is pointed out by Mr. Naushad Ahmed Khan that the Sarojini Nagar market is bounded by a wall which is only 3 feet high and, therefore, it is difficult to prevent the people from jumping over the said wall to get into the market. It shall be the responsibility of the NDMC to ensure that proper and effective fencing is provided on the boundary wall, so that there is no pilferage and people are not able to cross over the boundary wall to get into the market by by-passing the entry and exit gates. The authorities should ensure that there is no overcrowding in the market to such an extent, that COVID protocols cannot be maintained .

11. We, once again direct the NDMC and the Delhi Police to ensure strict compliance of our orders dated 13.09.2021 and 08.10.2021. The photographs placed on record show that the hawkers and vendors have spread their goods and wares far beyond, and in excess of the area, that even licensed hawkers and vendors are permitted. Firstly, the authorities should ensure that only licensed hawkers and vendors are allowed in the market, and they too should not be permitted to occupy the area more than what is licensed. Secondly, they would also ensure that no shopkeeper encroaches on any area outside his or her shop. Status reports shall be filed by the NDMC, as well as the Delhi Police before the next date of hearing with photographs.

12. During the course of hearing, both Mr. Dayanand and Mr. Devender Kaushik have stated that the squatters whose goods are being seized, get the same released on the following day by paying a paltry fine in terms of Section 19(2) of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. In this way, they are able to perpetuate their illegal encroachment in violation of our orders. The purpose of permitting the street vendors - whose goods have been seized under Section 19(1) of the Act, to reclaim the goods after paying such fee as may be prescribed in the scheme, cannot be to perpetuate - not only an illegality, but also to breach the orders of this Court. Therefore, we direct that whatever goods are seized from hawkers and vendors and/ or shop owners,

who are found to be illegally hawking, vending or encroaching in Sarojini Nagar market, shall not be released to them without our orders. We also direct the Delhi Disaster Management Authority to make a visit to Sarojini Nagar market forthwith, and to make an assessment of the situation prevalent there in the light of the ongoing pandemic. This order shall be communicated to the DDMA by the SHO PS Sarojini Nagar for information and compliance.

13. List on 17.01.2022.

VIPIN SANGHI, J JASMEET SINGH, J DECEMBER 24, 2021 N. Khanna