

Jaipur Municipal Corporation vs C.L. Mishra on 27 October, 2005

Equivalent citations: AIRONLINE 2005 SC 801

Author: G.P. Mathur

Bench: R.C. Lahoti, G.P. Mathur, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 6588 of 2005

PETITIONER:

Jaipur Municipal Corporation

RESPONDENT:

C.L. Mishra

DATE OF JUDGMENT: 27/10/2005

BENCH:

CJI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T (Arising out of Special Leave Petition (Civil) No.17693 of 2004) G.P. Mathur, J.

Leave granted.

2. This appeal, by special leave, has been preferred against the order dated 28.5.2004 of High Court of Rajasthan by which the review petition filed by the appellant was dismissed.

3. It is necessary to mention some basic facts for the decision of the appeal. The respondent, C.L. Mishra, sent a letter to the Rajasthan High Court that a temple had been constructed on a land adjoining Bagla Mukhi Sadhana Kendra in Sector 3, Malviya Nagar, Jaipur, a place which was earmarked for a park and the construction had been made without prior approval of the competent authorities. The letter was treated as a public interest litigation and was registered as D.B. Civil Writ Petition No.6051 of 1997 at the Jaipur Bench of the High Court. Notices were issued to the Jaipur Municipal Corporation, Rajasthan Housing Board, Collector Jaipur, and two private persons namely Shyam Lal Gulani and Hargum Dass Motwani, who were alleged to have raised the unauthorized construction. These persons filed a joint reply asserting that the writ petitioner himself was an unauthorized occupant and he had forcibly taken possession of the temple where he was residing. They also submitted that a public temple exists on the disputed land for a long time and was shown to be land of temple in the maps and plans of Rajasthan Housing board and that of Jaipur Municipal Corporation. They denied that the temple had been constructed by encroaching upon land, which was earmarked for a park. The Rajasthan Housing Board filed a reply stating, inter alia, that there was a temple on the land alleged by the writ petitioner but no work of new construction was found.

On enquiry from the residents of the area it was found that the temple was being maintained by Puja Sindhi Panchayat, Sector 3. It was also stated that in the municipal map it was shown as a temple and the land had been earmarked for the same. The other plea taken by the Board was that after construction of the colony, the same had been handed over to Jaipur Municipal Corporation and if any unauthorized construction had been made, it was the responsibility of the Jaipur Municipal Corporation to remove the same. The Jaipur Municipal Corporation also filed a reply stating, inter alia, that on 9.11.1992 the charge of certain sectors in Malviya Nagar was handed over by Rajasthan Housing Board to the Jaipur Municipal Corporation. The Housing Board had not handed over the strip of land which remained vacant in the colony or in respect of which the title was in dispute and has kept all such lands in its own ownership. The Municipal Corporation thus denied any responsibility in the matter of removal of encroachment from the land.

4. After noticing the pleas and contentions raised by various parties, the High Court disposed of the writ petition by the order dated 8.5.2000 and the last two paragraphs thereof, which contain the operative portion of the order, are being reproduced below :-

"We would, therefore, dispose of this petition by directing that the Municipal Corporation, Jaipur shall be responsible for removal of encroachment from the land handed over to it for maintenance etc. by the Rajasthan Housing Board. We would also direct that completion of the formalities of completely handing over land to the Municipal Corporation by the Rajasthan Housing Board shall also be expedited. We are not making any observations on the factual situation and rival contentions about the existence or otherwise of the encroachment and the rights of the parties. When the Municipal Corporation takes action for removal of the encroachment it shall naturally, in compliance with the law, afford adequate opportunity to the persons known to be in possession of the encroached portions to be in their possession, before removing the encroachments. We expect the Municipal Corporation to discharge its functions expeditiously and if it finds that the public land has been encroached upon, it shall take action for removal irrespective of whether the encroachment is under the garb of temple or a place of worship. If need be, the Municipal Corporation shall also be entitled to take help from the local administration in order to see that the law and order is not disturbed during the removal of encroachment.

The private respondents shall maintain status quo as to the construction on the land and not put up any new construction on it for a period of six months from today during which the Municipal Corporation, Jaipur shall decide whether a prima facie case of encroachment is made out and if it is of the opinion that the public land has been encroached upon, it shall take action for its removal by issuing the notices in compliance with law, to the encroachers and shall dispose of the matter within a period of six month from today. If so requested, the Municipal Corporation shall also afford hearing to the Petitioner on the question as to whether a prima facie case of encroachment is made out."

5. The Commissioner of the Municipal Corporation, Jaipur, gave a report on 14.9.2000 to the effect that encroachment over the land had been made by Sindhi Panchayat. The matter was thereafter considered by a Committee for Regulations and Bye-Laws of Jaipur Municipal Corporation which gave a detailed report running into several pages on 15.2.2001. The Committee held that it was not a case of encroachment and the public temple had not been constructed on the land earmarked for any park. On the contrary, a garden had been developed in front of the temple by members of public. It was also observed in the report that if the temple was being maintained by Pujya Sindhi Panchayat, then it should be got registered under the Rajasthan Public Trust Act. A copy of this report has been filed as Annexure P-2 to the Special Leave Petition.

6. C.L. Mishra, thereafter, filed a contempt petition which was registered as D.B. Civil Contempt Petition No.3 of 2001 in D.B. Civil Writ Petition No.6051 of 1997. The contempt petition was heard on 24.7.2001 when the Division Bench passed an order observing that normally the satisfaction of the Commissioner as to whether there is an encroachment or not is final and such dispute is not to be referred to a Committee, but the said course was adopted in the present case. After making the aforesaid observation, the following order was passed :

"The learned counsel for contemnors seeks time to comply with the order in the light of the observations which are made today in this order.

We grant one month's time to comply with the order in its true letter and spirit.

List this case on 30.8.2001.

The Mayor and the Chief Executive Officer Municipal Corporation, Jaipur, need not remain present on further dates of hearing unless so directed."

7. The contempt petition was thereafter heard on 28.1.2002 when the following order was passed :

"The contempt petition dated 2.1.2001 is pending before this Court since 2.1.2001. The Respondent No.1 and 2 i.e. Shri Inderjit Khanna, Chief Secretary, Government of Rajasthan and Shri G.S. Sandhu, Secretary to the Government, Department of Urban Development Housing and Local Self Government, Government Secretariat, Jaipur had already been deleted from the array of non-petitioners by the Court on 14.5.2001. Respondent No.3 Smt. Nirmala Verma, the then Mayor, Municipal Corporation, Jaipur has already expired. The only respondent who remains is the Chief Executive Officer, Jaipur Municipal Corporation, Jaipur who too is said to have been transferred somewhere else. By the order dated 29.11.2001 eight weeks time from the date of receipt of the certified copy of the order was granted to carry out the earlier directions as were issued in the judgment and order dated 8.5.2000. It is submitted that this eight weeks period from the date of receipt of the certified copy of the Order is going to expire on

8.2.2002. In this background, Mr. Ashok Gaur, learned counsel for the petitioner seeks to withdraw this contempt petition with liberty to file the contempt petition afresh, if need be.

This contempt petition is accordingly dismissed as withdrawn with the liberty as aforesaid in accordance with law."

8. The Jaipur Municipal Corporation thereafter filed a review petition purporting to be under Article 226 of the Constitution read with High Court Rules for reviewing the order dated 24.7.2001 passed in D.B. Civil Contempt Petition No.3 of 2001, which was registered as D.B. Civil Review Petition No.7 of 2002. The review petition was barred by limitation and accordingly notice was issued by the order dated 4.2.2002 to the respondent (writ petitioner) to show cause why delay may not be condoned. After hearing counsel for the parties, delay was condoned and leave was granted to Municipal Corporation to file the review petition by the order dated 5.2.2002. The D.B. Civil Review Petition No.7 of 2002 was thereafter heard on 28.5.2004 and it was dismissed by the following order :

"Since contempt proceedings were initiated against contemnors in their individual capacity and Municipal Corporation Jaipur was not the party in the contempt proceedings, instant petition by the Municipal Corporation, Jaipur is not maintainable and it stands accordingly dismissed."

The present appeal has been filed challenging the above quoted order dated 28.5.2004.

9. We have heard learned counsel for the parties. It is important to note that while disposing of the main D.B. Civil Writ Petition No.6051 of 1997, the High Court did not record any positive finding on the question as to whether any encroachment has been made on public land. The High Court left it to the Jaipur Municipal Corporation to take a decision in that regard within six months and if it came to a finding that public land had been encroached upon, it was directed to take action for removal of the encroachment after issuing notice to the parties and in accordance with law. The Commissioner of the Municipal Corporation, Jaipur, gave a report on 14.9.2000 that there was encroachment over the land by Sindhi Panchayat. However, the Committee for Regulations and Bye-Laws of Jaipur Municipal Corporation re-considered the matter and after a detailed discussion held in its report dated 15.2.2001 that there was a public temple and the same had not been constructed over any park and there was no encroachment over public land. It was further held that a garden had been developed in front of the temple by the members of the public. It was thereafter that the writ petitioner, C.L. Mishra, filed D.B. Civil Contempt Petition No. 3 of 2001 wherein the High Court after making an observation that "normally the satisfaction of the Commissioner as to whether the occupation is an encroachment or not is final and matter is not referred to a Committee" passed an order granting one month's time to comply with the order in its true letter and spirit. It is important to note here that while deciding the main writ petition, the High Court had not recorded any finding that there had been encroachment over public land by the construction of a temple nor it gave any specific direction for its removal. On the contrary, the matter had been left to be decided by the Jaipur Municipal Corporation within six months and if the Corporation came to a finding that there was any encroachment, the same was to be removed. The important feature of the

case is that when the contempt petition came up for hearing on 28.1.2002, the counsel for the writ petitioner made a prayer to withdraw the contempt petition with liberty to file a fresh petition, if need be. The contempt petition was accordingly dismissed as withdrawn with liberty reserved to the writ petitioner to file a fresh petition. Normally, contempt is a matter between the Court and the alleged contemnor. The applicant who files the contempt petition does so only for the purpose of bringing it to the notice of the Court that the order passed by it has not been complied by it. However, in the present case, the counsel for the writ petitioner (petitioner in the contempt petition) made a prayer for withdrawing the contempt petition and the High Court passed a specific order on 28.1.2002 by which D.B. Civil Contempt Petition No.3 of 2001 was dismissed as withdrawn with liberty to file a fresh contempt petition. Once the contempt petition was dismissed as withdrawn, the earlier order passed in the said petition on 24.7.2001, wherein one month's time was given to comply with the order, ceased to be operative as all interim orders passed in a case ultimately get merged with the final order. The order dated 24.7.2001 cannot have any independent existence and cannot survive once the contempt petition itself was withdrawn and was dismissed. The Jaipur Municipal Corporation was ill-advised to file a review petition seeking review of the order dated 24.7.2001 when the main contempt petition itself had been dismissed on the prayer made by the writ petitioner (petitioner in the contempt petition). As such there is no occasion for review of the said order.

10. With the clarification as above, the appeal is disposed of.