

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Suo Moto

Versus

State of Rajasthan & Ors.

HON'BLE MR. JUSTICE SAMEER JAIN
Order

13/03/2024

1. The citizens of a State assume paramountcy when holding the State accountable for the substandard functioning of the public assets and machinery. There is no greater stakeholder, other than a citizen of the State, concerned with the plain sailing administration of the public infrastructure, put in place for their benefit. Therefore, as a citizen of the State and also, a Judicial Officer, it is rather agonizing to take note of the rampant encroachment on public infrastructure by certain mercenaries, primarily concerned with advancing their own financial interests, at the expense of the State infrastructure.

2. In essence, encroachment upon public ways and streets, including the most prominent free-ways in the city of Jaipur by street vendors, hawkers and kiosks, has presumably skipped the attention of the public bodies/administration, including the enforcement authority i.e. police, so much so, that the said encroachments have effectively made a mockery of the public infrastructure, leading to a multifold increase in traffic

congestions, hampering the daily life of the ordinary citizens. This Court cannot help but make an endeavour to ensure that the citizens do not lose confidence in the State machinery.

3. On previous occasions, taking note of the failing infrastructural promises across the State of Rajasthan, this Court in **Gulab Kothari vs. State of Rajasthan and Ors.** reported in **2017(1) CDR 355 (Raj.)**, had issued directions to the local authorities, such as the Jaipur Development Authority and the State Government to ensure that the Master Development Plan of the cities/towns, as prepared under the relevant statutes, was comprehensive and a self-explanatory document, which provides for the preservation, conservation and development of the public infrastructure. In furtherance of the said directions, consequential directives were also issued fastening responsibility on the local authorities and the State Government to immediately take steps to check on the encroachments and unauthorized constructions over the public ways and footpaths. This Court had also ordered for the instantaneous removal of the encroachments made on the footpaths and public ways by way of putting stairs, ramps, hoardings or fencing etc. The order passed in **Gulab Kothari (Supra)**, was directed to be complied with, in letter and spirit, which is evident from the fact that the said order was also immediately brought to the attention of the Chief Secretary-Government of Rajasthan, Principal Secretary-UDH and the Principal Secretary-Department of Local Self Body.

4. Even otherwise, through a plethora of judicial pronouncements, the Hon'ble Apex Court and also, various High Courts have linearly held that encroachments ought not to be allowed to perpetuate and if brought to the attention, should be removed with an immediate effect. However, what is painstaking, is the callous approach of the State machinery, which appears to have turned a blind eye and lent a deaf

ear to the rapid encroachments upon public ways across the State of Rajasthan, enabling graver consequences, such as increased traffic congestions and the consequent deterioration of the quality of life of the citizens of the State, protected by the ambit of the Article 21 of the Constitution of India. The presumable and *prima facie* hand-in-glove approach of the State machinery has permitted hawkers, kiosk users and street vendors to broaden their entrepreneurial scope and set-up businesses on the streets, which *per se*, is grossly illegal and against the goals of good governance, which the State seeks to achieve. This Court is not unsympathetic to the plight of the penurious vendors/hawkers. However, encroachment upon public ways, to advance one's own interests, at the cost of the State infrastructure set up for the use of the public at large, cannot be permitted.

5. The State authorities are expected to be vigilant in not allowing the encroachments to find a prolonged life on public land. Illegal extension of shops on footpaths, public streets and roads ought to be rectified with immediate effect. If the infrastructure set up for the public is grossly misused, where would the pedestrians walk? Rather, the encroachments not only strike at public nuisance, but also affect the beauty and heritage of the cities of Rajasthan, known for their rich history and self-sufficient infrastructure and mapwork.

6. Ordering the removal of encroachments in the interests of the general public, the Hon'ble Apex Court in **Bombay Hawkers Union and Ors. vs. Bombay Municipal Corporation and Ors.** reported in **AIR 1985 SC 1206**, **Olga Tellis and Ors. vs. Bombay Municipal Corporation and Ors.** reported in **AIR 1986 SC 180**, **Municipal Corporation of Delhi vs. Gurnam Kaur** reported in **AIR 1989 SC 38** and **Maharashtra Ekta Hawkers Union and Ors. vs. Municipal Corporation, Greater Mumbai and Ors.** reported in **AIR 2004 SC**

416, has time and again held that to remove the encroachments on public roads and footpaths is the obligation of the municipality and police departments of the State, as the first right of passage on public ways, is of the citizens and pedestrians, as opposed to mercenaries, who seek to advance their own financial interests by conducting business on said streets.

7. Whilst according paramountcy to the rights of the pedestrians and the public at large, the Hon'ble Apex Court has consistently held that shop-keepers, businesses, hawkers and VIPs have no fundamental right under Article 21 of the Constitution of India to carry on business as per their convenience at public ways/roads. The rights of hawkers, kiosk users and vendors are not absolute. In said regard, the Hon'ble Apex Court has also considered the provisions of Section 133 of Cr.P.C. and Section 283 of the IPC, which grant power to the State authorities to take appropriate action, if public nuisance is perpetuated on a public place.

8. In this comprehensive background, when the position of law on the subject of encroachments is rather clear, it is upsetting to take note of the news reflected in the daily newspaper, 'Rajasthan Patrika' on 12.03.2024, which is reproduced herein-under:-

**“फ्लैट में बने शोरूम... सार्वजनिक पार्किंग पर
अवैध कब्जा... नक्शे में सड़क, मौके से गायब”**

“खुर्रे- सीढ़ियां तोड़ीं, अस्थायी अतिक्रमण भी हटाए”

9. Vide said newspaper articles, it is reflected that in the territorial jurisdiction of this Court, there is a rampant rise in encroachments and developments over the public ways and footpaths, resulting into a consequent congestion of traffic. The pedestrian freeways and footpaths have in practicality been rendered of no-use, as they no longer serve the purpose of aiding public movement. Rather, such freeways and

footpaths are increasingly becoming the home to *thadiwalas*, kiosks and shopkeepers, who are making full use of the State infrastructure, with the aid of the enforcement authorities, who have turned a blind eye to the pressing issue of increasing encroachments.

10. As per the directions of the Court, the Commissioner of Police, Commissioner Municipal Corporation, DCP Traffic along with learned AAG Mr. Bhuvnesh Sharma have marked appearance for the State. Whereas, several members of the Bar, including Senior Counsel, Mr. R.N. Mathur with Mr. Shovit Jhajharia, Mr. R.A. Katta, Mr. Hanuman Choudhary, amongst others have also marked attendance to make submissions on the subject of encroachments and the consequent adverse impacts in the city. Learned members of the Bar, have in tandem, submitted that the pressing issue of encroachments has wide ramifications, insofar as even the High Court premises are not spared of it. Learned counsel averred that the directives issued by the Courts, on previous occasions, are buried in files by the State enforcement authorities and as a result, the public is suffering at large.

11. Whereas, Commissioner of Police, Mr. Biju George Joseph along with Commissioner of Municipal Corporation and the DCP have not disputed the pressing issue of encroachments in the city of Jaipur and also, the other districts of the State. Rather, said holders of Public Office have gone a step further and also admitted to the resultant multifold increase in traffic and blockage of free movement, as caused by the unchecked encroachments. However, at the same time, the noted Public Office holders have appraised the Court regarding the implementation of various drives for removing the encroachments from time to time, as and when they are brought to their notice. Though, the said claim was disputed by the members of the Bar at large. Regardless, the various Commissioners in tandem with the DCP, have assured the Court that

appropriate results shall be furnished before the Court and the encroachments shall be periodically and uniformly removed by the said authorities, if a period of 10 days is granted to the State machinery. They have assured the Court that substantial compliance of this Court's directives as issued earlier and also today, shall be effectuated at the earliest and the matter may be kept for further consideration after a period of 10 days.

12. In this foregoing background, for the reasons noted above, this Court is compelled to take *suo moto* cognizance of the matter under Article 226 of the Constitution of India read with Rule 385-Q of the Rajasthan High Court Rules, 1952. The matter is registered as a 'Public Interest Litigation'.

13. For providing assistance to the Court in the instant matter, Mr. Shovit Jhajharia, Advocate is appointed as *amicus curiae*. It is indubitably clarified that *suo moto* cognizance is taken for the removal of encroachments not only in the district of Jaipur, but across all the districts falling under the territorial jurisdiction of this Court.

14. Registrar (Judicial) is directed to supply a copy of this order to Advocate Mr. Shovit Jhajharia, for his ready perusal and reference.

15. In the meantime, the respondents noted above, are directed to put forward the action report qua the removal of illegal encroachments from the roads/public ways. The Principal Secretary-UDH to also file an appropriate affidavit before this Court qua the removal of encroachments in the other districts after considering the action-plan/report furnished by all the concerned Commissioners as referenced above.

16. At this juncture, it is also noted that in pursuance to the suggestion advanced by Mr. R.N. Mathur regarding taking the aid of the members of the Bar for the assistance of the police machinery for

removing the encroachments in a uniform manner, in sync with the procedure established by law, Mr. Prahlad Sharma, Chairman Bar Association has submitted before the Court a list of advocates area-wise, who may be well suited for the said task, to assist/aid as volunteers in public interest. The said list is also taken as a part of the record.

17. Accordingly, in light of the aforesaid, the Registrar(Judicial) is directed to register the aforesaid as PIL. The same be placed before the Hon'ble Chief Justice with a request for his kind consideration and formulation of an appropriate Bench.

(SAMEER JAIN),J

ANIL SHARMA/