

A.F.R.

Court No. - 68

(1) **Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 574 of 2020

Petitioner :- In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive

Respondent :- State of U.P.

Counsel for Petitioner :- Gaurav Kumar Gaur, Aditya Singh Parihar, Amitanshu Gour, Arvind Kumar Goswami, Jitendra Kumar, Katyayini, Rahul Sahai, Rishu Mishra, S.P.S.

Chauhan, Satyaveer Singh, Shailendra Garg, Sunita

Sharma, Swetashwa Agarwal, Uttar Kumar Goswami

Counsel for Respondent :- C.S.C., Dhiraj Singh, Hari Nath Tripathi, Purnendu Kumar Singh, Satyavrat Sahai, Sunil Dutt Kautilya

With

(2) **Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 1289 of 2019

Petitioner :- In Re Parking Problem In Civil Lines Prayagraj And Other Places

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Suo Motu, Anurag Khanna (Senior Adv.), Apul Misra, B.S. Pandey, Nipun Singh, Rahul Sahai, S.F.A. Naqvi, Apul Mishra

Counsel for Respondent :- C.S.C., Suresh C. Dwivedi

Hon'ble Siddhartha Varma, J.

Hon'ble Ajit Kumar, J.

Separate counter affidavits filed by Sri A.P. Paul, learned counsel appearing for the Prayagraj Development Authority and Sri Purnendu Kumar Singh, learned counsel appearing for the Union of India be kept on record.

As per our last order dated 01.10.2020, learned Additional Advocate General assisted by Ms. Akansha Sharma, Advocate produced before us, a list of eateries from whom undertaking to run their eateries as per the Covid-19 norms has been submitted

by the State Authorities. However, these undertakings appear to be only of the district of Prayagraj. The list of undertakings from eateries from all over the State may be produced before us by the next date fixed.

So far as the enforcement of our mandamus dated 23.09.2020 with regard to wearing of masks is concerned, learned Additional Advocate General informed us that full efforts were being made to get the people of the State of U.P. to wear masks. However, it has been brought to our notice from the various counsel present in the Court during the hearing of this PIL that 100 per cent masking is yet to take place. For this purpose, we direct the Authorities at the helm of affairs to take further action in the following manner :-

(i) All Heads of the Department in the whole State of U.P. should send reminders to their employees that they and their family members have to compulsorily wear masks. This should be done on a daily basis.

(ii) The State Police should itself wear masks religiously and also see that everyone in their vicinity wears the masks. Here it may be mentioned that the security personnel deputed outside the houses of various dignitaries have not been wearing their masks. They should wear their masks and also request people passing by them that they should also wear masks.

(iii) All shops even other than eateries shall ensure that the customers/ individuals who enter their premises shall wear their masks at all times. Needless to say that non-wearing of masks would invite penalty and prosecution.

(iv) The Advocate Commissioners appointed by this Court may continue to take photographs as have been taken by them in the past and the State Authority may take action on those photographs.

In our earlier order, we had suggested that the Medical College at Prayagraj should have separate gates for the Swaroop Rani Nehru Hospital which deals with the Covid and non-covid patients. We had also pointed out that there was one gate in the hospital which opened in the road which joined the Nawab Yusuf Road and the Mahatma Gandhi Road and ran along the Medical College. This gate, if it is opened, a further source of ingress and egress would be made available and non-covid patients would be able to go with confidence inside the hospital. A joint effort may be made by the Nagar Nigam, Prayagraj Development Authority, Moti Lal Nehru Medical College, Swaroop Rani Hospital and the State Authorities to see that an alternative gate is provided by the 19th of October, 2020. Here it may also be stated that the shops on the Nagar Nigam land which surround the SRN hospital be removed as they not only create hindrance to the ingress and egress of the ambulances etc but they also dirty the surroundings of the hospital.

So far as the standard of masks and sanitizers are concerned, the learned Additional Advocate General has informed that the masks which are being sold in the market and also being worn by people in general are as per the ICMR guidelines. However, with regard to the sanitizers, we find that further clarity is required. We are unable to understand as to whether along with the license to manufacture and sale of the sanitizer, any requirement is there to take licenses under the

Drugs and Cosmetic Act, 1940 and the Drugs and Cosmetic Rules, 1945. This aspect may be clarified by the State by the next date.

The issue of unauthorized encroachment on public land i.e. road side public land and other vacant public land has acquired importance in the wake of the wide-spread Covid-19 pandemic as these road side land encroachers have developed markets and are inviting large congregation of men and women which is in total violation of the Covid-19 guidelines. Besides this, cleaning of road side land, management of parking of the vehicles in commercial areas of the city alongwith rehabilitation of the road side vendors/ street vendors in duly identified vending zones are a few other tasks which have to be accomplished by the various local administrative authorities in these days of the pandemic.

Coming to the issue of removal of unauthorized encroachers from public land, we find that in the past both the development authorities and the municipal bodies have been shifting their burden upon each other citing various provisions of U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as 'Act, 1973') and the various Sections of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as 'Act, 1959').

We have heard Sri A.P. Paul, learned counsel appearing for the Prayagraj Development Authority, Sri S.D. Kautilya and Sri Vinay Sankalp, learned counsel appearing for Prayagraj Municipal Corporation and Sri Manish Goyal, learned Additional Advocate General assisted by Ms. Akansha Sharma and Sri A.K. Goyal, learned Standing Counsel for the State, at length.

Sri S.D. Kautilya, learned counsel for the Municipal

Corporation has taken us through the various provisions of the Act, 1973 viz. Sections 3, 14, 26 and 26A etc. and various Government orders and the directives issued by the Government as well as Government authorities for the purposes of removal of unauthorized encroachments in the city. He has argued that after insertion of Section 26A in the Act, 1973 vide U.P. Amendment Act No.3, 1997 primarily the power now vests with the development authority to remove unauthorized structures and encroachments from public land, road and road side land as well.

Sri A.P. Paul, learned counsel for the development authority, on the contrary, has argued that Sections 295 and 296 of the Act, 1959 have yet not been repealed and the Municipal corporation, therefore, cannot shirk from its duty of removal of unauthorized encroachments from the areas which have already been developed by the development authority and have been handed over to the Municipal Corporation for the purposes of collection of taxes and maintenance of drainage etc.

Sri Goyal, learned Additional Advocate General has argued that provisions of both the Acts have to be read in harmony with each other and the power vested under the Act, 1973 cannot be read in derogation of the powers vested with the Municipal Corporation under Sections 295 and 296 and a harmonious construction of the provisions will have to be made so that both the authorities shoulder their responsibilities in the larger public interest.

We have given our thoughtful consideration to the arguments advanced by the respective learned counsel for the parties and, *prima facie*, we find substance in the argument

advanced by the learned Additional Advocate General that even after insertion of Section 26A of the Act, 1973, the Municipal corporations can equally be asked to perform their respective duties under Sections 295 and 296 of the Act, 1959. So the question which now arises for our consideration is as to whether the powers are overlapping with each other or can they be read in harmony with each other so as to make them supplement each other.

Admittedly both the public authorities are to act and they have both to come to the aid of each other to remove unauthorized encroachers from public land and public places in the larger public interest.

Insofar as the Act, 1973 is concerned, it has come into force much after the Act, 1959. The Act, 1973 has been enacted with the sole object of ensuring urban development activities in the various cities of Uttar Pradesh as may be notified by the Government by approving zonal development plan and master plan to be framed for such purposes. Section 2(F) of the Act, 1973 defines development area as an area declared and notified to be such under Section 3. Section 4 provides for the constitution of a development authority as a body corporate and it may include in its territorial authority, any part or whole of the area of a city as defined under the Act, 1959. Section 8 provides for a master plan and a zonal development plan to be enforced in the development area with the approval of the State Government. The master plan and the zonal development plan can, of course, be amended from time to time with the prior approval of the State Government vide Section 13 of the Act, 1973. Section 14 provides for the development of land in development area and

further provides that if after an area is declared as "development area" under Section 3, no development activity shall be undertaken or would be continued to be carried out in such an area by any person or body including government department unless permission for such development is obtained in writing from the Vice-Chairman of Development Authority in accordance with the provisions of the Act. These sections further provide that development activities have to be in accordance with law with such plans as would be notified by the Development Authority with the approval of the State Government.

Section 15 provides that specific permission is to be obtained for such development activity. Section 25 provides with such provisions which authorise development authorities to carry out inspection of development activities to ensure that everything is being done as per the plan. Section 26 provides for penalties. Section 26A has now been inserted vide U.P. Amendment Act No.-3 of 1997. Section 26-A of the Act, 1971 is being reproduced hereunder in its entirety:-

“26-A. Encroachment or obstruction on public land- (1)

Whoever makes any encroachment on any land not being private property, whether such land belongs to or vests in the authority or not in a development area, except steps over drain in any public street, shall be punishable with simple imprisonment for a term which may extend to one year and with fine which may extend to twenty thousand rupees.

(2) Any offence punishable under Sub-section (1) shall be cognizable.

(3) Whoever by placing or depositing building material or any other thing whatsoever, or otherwise makes any obstruction in any street or land not being private property,

whether such street or land belongs to or vests in the Authority or not in a development area, except steps over drain in any public street, or placing of building material during such period as may be permitted on payment of stacking fees on a public street of public place, shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both.

(4) If there are grounds to believe that a person has made any encroachment or obstruction on a land in a development area which is not a private property the Authority or an officer authorised by it in this behalf may serve upon the person making encroachment or obstruction, a notice requiring him to show cause why he shall not be required to remove the encroachment or obstruction within such period not being less than fifteen days as may be specified in the notice, and after considering the cause, if any, shown by such person, may order removal of such encroachment or obstruction for reasons to be recorded in writing :

Provided that any encroachment made on public land by a person belonging to weaker section on or before the date of commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 shall not be removed until alternative land or accommodation is offered to rehabilitate him in such manner and on such terms and conditions as may be prescribed.

Explanation- For the purposes of this section, the expression

(1) 'a person belonging to weaker section' means a person -
(a) whose family on the date of commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 does not hold any immovable property in any city as defined in the Uttar Pradesh Municipal Corporation Act, 1959 or any Municipal Area defined in the Uttar Pradesh

Municipalities Act, 1916; and

(b) whose principal source of livelihood is manual labour, including the practice of any craft, either by himself or by the members of his family and includes a rickshaw-puller or scavenger, but does not include a person who has been assessed to income tax under the Income Tax Act, 1961 or trade tax under the Uttar Pradesh Trade Tax Act, 1948 or Sales Tax under the Central Sales Tax Act, 1956;

(2) 'family' in relation to a person belonging to weaker section, means the husband or wife, as the case may be, and unmarried minor children either or both of them.

(5) Notwithstanding anything contained in the forgoing provisions the Authority of the officer authorised by it in this behalf shall, in addition to the action taken as provided in this section, also have power to seize or attach any property found on the land referred to in this section or, as the case may be, attached to such land or permanently fastened to anything attached to such land.

(6) Where any property is seized or attached by an officer authorised by the Authority he shall immediately made a report of such seizure or attachment to the Authority.

(7) The Authority may make such orders as it thinks fit for the proper custody of the property seized or attached, pending the conclusion of confiscation proceedings, and if the property is subject to speedy and natural decay, or it is otherwise expedient so to do the Authority may order it to be sold or otherwise disposed of.

(8) Where any property is sold as aforesaid, the sale proceeds after deducting the expenses, if any, of such sale and other incidental expenses relating thereto, shall-

(a) where no order of confiscation is ultimately passed by the Authority, or

(b) where an order in appeal so requires, be paid to the owner

thereof or the person from whom it is seized or attached.

(9) Where any property is seized or attached under Sub-section (5), the Authority may order confiscation of such property.

(10) No order for confiscation of any property shall be made under Sub-section (9) unless the owner of such property or the person from whom it is seized or attached is given-

(a) a notice in writing, informing him of the grounds on which it is proposed to confiscate the property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(11) Any order of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby may be liable under the Act.

(12) Any person aggrieved by an order made under Sub-section (9) may within one month from the date of the communication to him of such order, appeal against it to the District Judge.

(13) On such appeal, the District Judge may, after giving, an opportunity to the appellant and the respondent of being heard, pass such order as he may think fit confirming, modifying or setting aside the order appealed against, and pending appeal, may stay the operation of such order on such terms, if any, as he thinks fit.”

(emphasis added)

From the provisions of Section 26(4) of the Act, 1973 it is explicit that power lies now with the development authority to ensure that no person makes any encroachment or creates any obstruction on a land in a development area unless it is a private property. What is very important to notice here is that as far as

the provisions contained under Sections 25 and 26 are concerned, they were related to the development activities which were carried out against the plans and against the sanctions made by the development authorities for the said purposes but since the area is notified as development area and no activity whatsoever can be carried out in violation of the master plan and zonal development plan, the Legislature in its wisdom rightly incorporated Section 26A to confer the authority with very wide powers to ensure that obstructions to development are not there and that no illegal activities are carried out in a development area. Taking the instance of Prayagraj, it is admitted to all the parties that Prayagraj Development Authority is carrying out development activity in the areas which have already stood notified by the State Government. The area has also been extended from time to time and as of now the entire city area is part and parcel of the development area notified under Section 3 and notification has not been withdrawn till date. So, therefore, whatever is contrary to the master plan and zonal development plan, as the case may be, can always be fixed by the development authority and appropriate action can be taken under Section 26A of the Act, 1973.

This is also clear from the various Government orders which have been issued from time to time by the State Government viz 3rd September, 1997; 26th September, 1997; 28th September, 1997 and 8th of December, 1997. All these Government orders which have been issued by the State Government are aimed at only with the removal of unauthorized encroachments from public land, be it a public road or a road side land or any other place defined as "public place".

Now coming to the provisions of Sections 295 and 296 of the Act, 1959, we find that the Municipal Corporation, prior to the coming into force of the Act, 1973, had full administrative power in respect of the municipal area notified under the Act, 1959. Section 295 restrains any person from erecting a wall, fence or any other structure of that kind whether fixed or movable, permanent or temporary upon any street, open channel drain, well or tank in any such street so as to form an obstruction, without prior permission of the Municipal Commissioner. The Municipal Corporation has been vested with the power to remove such unauthorized erections **without even notice**. Power also is there under Sections 297, 298 and 299 with regard to maintenance of street etc.

From a close scrutiny of the provisions as contained under Section 295 and 296, we find that these permanent or temporary unauthorized structures have been restrained from coming up in public streets and drains, well or tank. So also the Municipal Commissioner has been vested with the power to remove such obstructions.

Now reading these provisions of the Act, 1959 together with the provisions of Sections 14, 26A of the Act, 1973, we find that the powers are not overlapping. While development activities in the development areas have to be carried out like carving out main public road and public land and there is continuous process of inspection by the development authorities themselves in the development areas, the unauthorized encroachers are liable to be visited with action under Section 26A. But at the same time, the drainage, public street, maintenance of lanes and by-lanes in municipal areas, electricity poles and lighting etc. are such

activities which are within the domain of the municipal corporation and so they have been vested with the powers to ensure removal of such unauthorized encroachments also. In any development area if the municipal corporation has been working and the development activities have to be carried out as per the master plan and zonal development plan, then in our considered opinion both the development authorities as well as the municipal corporations have to act and aid each other to ensure that no public places, public roads or road side lands or public buildings are occupied by any person, be it by raising temporary or permanent structures or be it any violation of any development activity in an area notified under Section 3 of the Act, 1973 and in the municipal area notified under Section 3 of the Act, 1959.

Thus what is needed is the achievement of the objectives under both the Acts and thus there is a requirement of a harmonious construction of the two different sets of provisions under the two Acts of 1959 and 1973. We find the provisions to be supplemental to each other. Looking after the activities of removal of unauthorized encroachments and the powers of the development authorities under Section 26-A to Section 26-D are not in any way in derogation to the powers of the Municipal Corporations under Section 295 and 296 and vice versa. Both the authorities, therefore, are required to act in coordination with each. Primarily the duty of Development Authority is to ensure that no road or road side public land in the notified development area under the master plan and under the zonal development plan is encroached upon.

We accordingly direct the respondent Development Authority, Prayagraj to immediately proceed to remove all

unauthorized encroachments from public road and road side land and other public places in Prayagraj with immediate effect.

Submissions have been advanced at the Bar that removal of unauthorized structures be initiated in a phased manner. Prayagraj Development Authority thus is directed to remove unauthorized encroachment, to begin with, from the Nawab Yusuf Road. The Municipal Corporation and Police administration shall render all necessary help in the anti-encroachment drive and report shall be submitted on the next date. After the Prayagraj Development Authority completes the anti-encroachment drive the Nagar Nigam shall see that the Nawab Yusuf Road is properly levelled, the road side kerbs are cleaned and properly painted and also all the street lights are properly lit.

On the issue of rehabilitation of the road side vendors and street vendors, in our opinion, earlier we had directed the Vending Committee to finalize the pending matter of approval of already identified vending zones.

Sri S.D. Kautilya, learned counsel for the municipal corporation has submitted that a large number of vending zones have already been approved and the process of allotment was underway and further the process for identifying new vending zone was underway. He has assured the Court that rigorous exercise to accommodate every street vendor and road side vendor was being carried out by the Municipal Corporation and by the next date fixed the task would be completed.

Order on Public Interest Litigation No.1289 of 2019

In this Public Interest Litigation, we find that on 15.10.2019 a detailed mandamus was issued by this Court but we

find, and have also been informed by the Advocate Commissioners present in the Court, that parking as per the order dated 15.10.2019 has not been done. In this regard, the Nagar Nigam may positively see that the order dated 15.10.2019 is complied with by the next date fixed. The mandamus issued on 15.10.2019 is being represented here as under:-

"In view of whatever stated above, in addition to the directions already given, we deem it appropriate to further direct the respondents as follows:

(i) The parking zone identified opposite to Yatrik Hotel shall be made operational positively on or before 21st October, 2019.

(ii) Viability shall be examined by the respondents to provide parking on the third lane at S.P. Marg till having permanent parking zones as identified by the respondents.

(iii) The respondents shall consider the issue with regard to reduction of parking charges for parking the vehicles on Mahatma Gandhi Road and shall arrive at a definite decisions before next date of listing.

(iv) The respondents shall ensure complete maintenance of existing multilevel parking within a period of three days from today. The respondents shall take care of elevators, lighting system and shall make the entire area stray animals free.

(iv) The respondents shall put necessary highlighted marks to identify the parking space on the road concerned.

(v) The multi-storyed buildings and other buildings situated in the city of Prayagraj which are also having their own

sanctioned parking space shall make those functional positively and shall not utilize that for any other purpose except parking. If any building owner or occupier utilizes such parking space for any other purpose than the parking then it shall be open for the respondents to take appropriate penal measures including initiation of proceedings under Contempt of Courts Act, 1971 before this Court."

In the city of Prayagraj, we also find that no attention is being paid to the fused street light bulbs which we have found in almost every locality. We expect from the Nagar Nigam to replace all the fused street light bulbs in the city of Prayagraj by the next date fixed.

Put up this matter on 14.10.2020 at 02:00 PM.

We appreciate the work being done by the Advocate Commissioners in these days of pandemic. We, therefore, direct that the Advocate Commissioners be paid a minimum of Rs.500/- per report which they have submitted. This would be in consonance with the Circular dated 26.04.2016 issued by National Legal Services Authority wherein every counsel has to be paid a minimum of Rs.500/- per application which is filed.

Order Date :- 7.10.2020
Siddhant/ Atmesh

(Siddhartha Varma,J.)

(Ajit Kumar,J.)