

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (CRL.) No. 1052/2004 & CRL. M.A. No.6909/2004**
% Date of Decision : 07.05.2008

Kanwar Krishan Gupta Petitioner
Through: Sunil Goel & Mr. Sunil Bhartiya
Advocates

versus

Lt. Governor of Delhi & Ors. Respondents
Through: Ms. Rajdipa Behura for the
respondent nos. 1 to 3.
Mr. A.K. Pandey, for respondent no.6.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J. (Oral)

1. This writ petition under Article 226 read with Article 227 of the Constitution of India and Section 482 Cr.P.C. has been filed for issuance of appropriate directions to the respondent authorities, namely, the Commissioner of Police, the Sub Divisional Magistrate(SDM), Narela, Commissioner of Police, the Central Pollution Control Board (CPCB) and the Delhi Development Authority(DDA) to register criminal cases against respondent no.6 and its Directors; and

to take action against respondent No.6 M/s Khushi Ram Bihari Lal Ltd., and its employees who are claimed to be illegally running a factory on agricultural land, and to have unauthorisedly raised construction of buildings and causing environmental pollution which is stated to cause interference in the agricultural activity of the petitioner.

2. Petitioner claims to be the owner in possession of a chunk of land in village Zindpur, G.T. Karnal Road, Alipur, Delhi falling in Khasra No.30/11/1(4-14) and 30/20/2/2 (0-19) admeasuring 5 bighas 13 biswas and in Khasra No.29/16 admeasuring 1 bigha 17 biswas. The petitioner states that immediately adjoining his land, respondent No.6 has constructed a huge godown wherein it is undertaking the activities of sorting and grading of rice and thereafter packing the same. In this process it is using various machineries and equipments such as boilers, sorters etc. and has also installed electric generator sets. The petitioner claims that the said activities of respondent No.6 is causing nuisance and is hampering the agricultural activity of the petitioner, since polluting emissions of air and water are being released by the said factory into his land, which is rendering the petitioner's land in-fertile. It is claimed that air and water effluents from the said factory are poisoning the plants of the petitioner. The petitioner has made various complaints to the Commissioner of Police on 7.4.2004, 30.4.2004 and 30.7.2004 requiring him to take action but to no avail. It is stated that the police has been very prompt in taking action on the complaint of respondent No.6 against the petitioner, in

asmuch as, the police has filed a kalandara under Section 133 Cr.P.C. before the SDM, Narela who issued notice to the petitioner requiring the petitioner to fill the pit dug by the petitioner in his land adjoining the boundary wall of respondent No.6. The petitioner further submits that the SDM has also been put to notice of the nuisance being caused by respondent No.6, inasmuch as, in his reply filed before him by the petitioner on 19.7.2004 the activities of respondent No.6, by which the petitioner is aggrieved, had been highlighted. He submits that in spite of it being brought to the notice of SDM he has failed to take action under Section 133 Cr.P.C. against respondent No.6. It is also his grievance that the Central Pollution Control Board (CPCB) has also not taken any action with regard to the emissions being caused by the factory of respondent No.6 and the pollution caused to the air and water around the said factory. The petitioner further submits that Delhi Development Authority has filed its reply wherein it is submitted that the land on which respondent No.6 has constructed its godown/factory is agricultural land. He submits that respondent No.6 has not obtained any sanction for the construction and running of a godown/factory on the said land and in spite of that, the Delhi Development Authority has not taken any action under Section 29(2), 30, 31, 31A of the Delhi Development Act. So far as the CPCB is concerned, in response to the notice issued by this court, reply has been filed wherein it is stated that it is for the Delhi Pollution Control Committee to implement the provisions of Water (Prevention and Control of Pollution), Act, 1974(hereinafter referred to as the `Water

Act') and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act'). They are the concerned agency and should be impleaded as party/ respondents. Learned counsel for the petitioner submits that the CPCB has not just delegated their powers and functions to the Delhi Pollution Control Committee, but in fact they had abdicated their responsibilities. It is further argued that even if the Delhi Pollution Control Committee (DPCC) has been delegated the said functions, it is for the CPCB to supervise the actions of the DPCC and to ensure actions is taken by it on the complaint of the petitioner.

3. This Court had appointed the local commissioner vide order dated 9.5.2005 who was required to visit the premises of respondent No.6 and to report about the nature of activities going on in the said premises. The local commissioner has filed his report on record. The same has been relied upon by the petitioner and the respondents. From the report of the local commissioner, counsel for the petitioner has sought to draw the fact that respondent No.6 is not running merely a godown, but that a full-fledged factory is being run, since various machines for sorting, grading, packing and stitching are installed by respondent No.6 and there are boilers and three generator sets with combined capacity of 600KVA installed at the site. Counsel for the petitioner has also placed heavy reliance on the decision of the Supreme Court in **M.C. Mehta vs. Union of India & Ors.** II (2006) SLT 103. None has appeared for the CPCB or the DDA.

Mr. A.K.Panday, counsel for respondent No.6 had adopted the submissions made by Ms.Rajdipa Behura, who appears on behalf of respondent nos. 1 to 3.

4. Ms. Behura submits that the Court should not normally exercise its jurisdiction under Article 226 of the Constitution of India to issue a direction to the police to register a first information report(FIR) since the petitioner has various alternative remedies available to him, and the petitioner has not exhausted these remedies. It is argued that the petitioner can approach the Magistrate under Section 156(3) Cr.P.C. and the Magistrate can direct investigation and can also direct the registration of FIR by the police. Even if the Magistrate does not direct the registration of FIR, the petitioner can always make a private complaint. She has referred to various decisions of the Supreme Court in support of this argument of hers, namely, **Minu Kumari & Anr. vs. State of Bihar & Ors.** (2006) 4 SCC 359, **Gangadhar Janardan Mhatre v. State of Maharashtra & Ors.** JT 2004(8) SC 208, **Aleque Padamsee v. U.O.I.**, 2007(6) SCC 171 and **Sakiri Vasu V. State of U.P & Others**, 2008(2) SCC 409,

5. Ms. Behura also pointed out from the local commissioner's report that the entire process of sorting, grading and packing undertaken by respondent No.6 is highly mechanised and computerised. There was hardly any generation of smoke or husk found by the Local Commissioner and even the chimneys of the diesel generators are facing in the direction away from the land of the

petitioner and do not affect the petitioner. She also submits that the local commissioner while standing on the petitioner's land did not find any sign of any dust or air pollution. No soot can be seen emerging from the premises of respondent No.6. However, there is noise of cooling plant, the generators and the bag dust collector, which was felt while standing on the petitioner's agricultural land.

6. The petitioner alleges the commission of offence under Section 268, 269, 270, 278, 284, 285, 287 and 290 IPC by respondent no.6. Of these, the offences under Section 284 and 285 IPC are cognizable offences, whereas, the offence under other provisions are non-cognizable. So far as the non-cognizable offences are concerned, it is for the petitioner to make a complaint before the concerned Metropolitan Magistrate, and the respondent authorities, in any case, are not competent to act on the same on the asking of the petitioner. Section 284 and 285 IPC read as follow:

“284. Negligent conduct with respect to poisonous substance.-Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285.Negligent conduct with respect to fire or combustible matter.- Whoever does, with fire or any combustible matter, any act so rashly or negligently

as to endanger human life, or to be likely to cause hurt or injury to any other person,
or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,
shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

7. The complaints made by the petitioner do contain allegations that water and air pollution is being caused from the factory/godown of respondent No.6 which is adversely affecting the crop grown by him on his land. However, there is no material brought on record to suggest that there is any poisonous substance being released from the godown/factory of respondent No.6 or that poisonous substance is not being carefully handled by respondent no.6. Similarly, there are hardly any allegations with regard to use, handling or generation of combustible substance or its negligent handling by respondent no.6.

8. Keeping in view the decisions of the Supreme Court cited by the respondents, particularly in **Aleque Padamsee** (supra), I am not inclined to grant the prayer made by the petitioner to direct the registration of the FIR.

9. There is merit in the submission of the respondents that the petitioner should have impleaded the State Pollution Control Board i.e. DPCC since the investigation into the specific infractions of Water Act and Air Act fall within their domain. The CPCB is a statutory body

constituted under Section 3 of the Water Act. The functions of the CPCB are enumerated in Section 16 of the Water Act. It appears that the CPCB has been constituted to address policy issues for the purposes of controlling water and air pollution. The CPCB acts in a supervisory capacity and co-ordinates efforts to control pollution inter se between the various State Pollution Control Boards and State Governments, apart from laying down standards and rendering technical assistance and guidance to the State Pollution Control Boards. On the other hand the State Pollution Control Boards constituted under Section 4 of the Water Act discharge functions enumerated in Section 17 of the Water Act. One of the functions of the State Pollution Control Boards is to make, vary or revoke any order requiring any person to construct new systems for disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution. Similar is the position under the Air Act. It is for the State Pollution Control Boards to lay down the effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards of the sewage or sullage and to lay down, modify or annul effluent standards for the sewage and trade effluents. Under Section 21 of the Water Act, the State Pollution Control Boards are empowered to take, for the purposes of analysis, samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from any or over any place

into such stream or well. Section 24 of the Water Act prohibits persons from knowingly causing or permitting any poisonous, noxious or polluting matter determined in accordance with the standards that may be laid down by the State Boards to enter (whether directly or indirectly) into any stream or well or on land. Section 25(5) authorises the State Boards to serve a notice upon any person operating any industry, operation or process, without the consent of the State Board, imposing such conditions as it might have imposed on an application for its consent in respect of such establishment in the first place. There are similar provisions in the Air Act, prescribing similar functions and responsibilities of the CBCB as well as the State Pollution Control Boards.

10. The grievance of the petitioner is that despite the complaints made by him, no action has been taken either by the respondent authorities. It appears that the petitioner did send a complaint to the Delhi Pollution /control Committee dated 1.6.2004. A copy of the same is placed on record as Annexure P-7. It cannot be denied that the CPCB exercises supervisory control over the activities of the State Pollution Control Board i.e DPCC in the present case. The grievance of the petitioner can be remedied by requiring the CPCB to instruct the State Pollution Control Board to examine air and water emissions from the factory of respondent no.6 and to report with regards to the same. Once the requisite report is furnished, it shall be open to the petitioner, if he is able to make out a case under Sections

284 and 285 IPC, to approach the police for the purpose of registration of the FIR or to take such other remedial steps as may be advised. I, therefore, order accordingly. The aforesaid report with regard to the samples may be prepared within three months from the date the DPCC receives the communication from the CPCB and a copy of the same be made available to the petitioner as well as to respondent no.6. If the petitioner is required to bear any charges under the rules of the DPCC for its services, the petitioner shall pay the same in advance.

11. The petitioner shall also be entitled to initiate action under Section 133 Cr.P.C by laying relevant information before the concerned SDM and the SDM shall examine the information with regard to the nuisances claimed to have been caused by respondent no.6 on its own merits. In relation to the grievance made by the petitioner with regard to the communication on the part of the DDA against respondent no.6, I direct the DDA to examine the grievances made by the petitioner in the light of Sections 14, 29, 30 and 31 of the Delhi Development Act and take a decision thereon which shall be communicated in writing to the petitioner. The concerned statutory authorities, namely the CPCB, the State Pollution Control Board, the SDM and the DDA shall take their respective decisions on merits, and without in any way being influenced by any observation made by me in this order.

12. It is clarified that since no grievance has been made by the petitioner with regard to the violation of Delhi Land Reforms Act or

the DMC Act, in this petition. It shall be open to the petitioner to take such action before the said authorities as he may be advised. The petition is disposed of in the above terms, leaving the parties to bear their respective costs.

May 07, 2008
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VIPIN SANGHI, J.