

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No. 2680/2011**

Dhawandeep Residents Welfare Association (Regd.) Petitioner
Through Mr. Sunil Dalal, Advocate.

VERSUS

Union of India & Ors. Respondents
Through Mr. A.S. Chandhiok, ASG with
Mr. Jayendra, Advocate for UOI.
Mr. N. Waziri, Standing counsel with
Zeenat Masoodi & Shoaib Haider, Advs.
for Govt. of NCT of Delhi.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

31.05.2011

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SANJIV KHANNA, J.

The present public interest litigation writ petition has been filed by Dhawandeep Residents Welfare Association, representing residents of the Dhawandeep Building located at the Jantar Mantar Road, New Delhi. Their grievance is that the respondents, which includes New Delhi Municipal Council, Commissioner of Police, have miserably failed

to ensure that the residents of Dhawandee Building are not obstructed or prevented from using the road and allowed ingress and egress to and from their building. It is submitted that the respondents have failed to ensure cleanliness as processions and dharnas are held almost throughout the year and the streets get littered and there is stagnant water and constant sloganeering. It is submitted that some protesters even put up tents/temporary shelters. These protesters bathe, sleep, cook near the building for months together creating unhygienic conditions. Some photographs have been filed by the petitioners. The following reliefs are prayed for :-

- “a) Issue a Writ of Mandamus commanding the Respondents to permanently remove the protestors, their vehicles and tents from Jantar Mantar Road along with all their belongings;
- b) Issue a Writ of Mandamus commanding the Respondents to permanently ban holding dharnas/processions on Jantar Mantar Road along;
- c) Pass such further orders or directions as this Hon’ble Court may deem fit, appropriate and proper in the facts and circumstances of the present case.”

2. Learned counsel for the petitioner has relied upon ***Kerala Vyapari Vyavasayi Ekopana Samiti vs. State of Kerala and Ors., AIR 2004 KERALA 302***, in which it has been held as under:-

“5. The state of affairs as averred in the affidavit filed by the Government itself shows that Government is not able to implement it fully and fundamental rights of others are violated by the demonstrators. Apart from traffic jams, the demonstrators are creating huge loss to the public. Citizens right to move about freely and carrying on their profession etc. is obstructed. In view of the fact that roads are narrow and on gathering of even 50 peoples before Secretariat will stop the entire traffic, we are of the opinion that Government should prohibit conducting of demonstrations and processions on busy roads like M.G. Road from Palayam Junction to Thampanur, and other busy parts of the roads during working days. Imposition of ban on demonstrations and marches in certain parts of busy roads on working days in public interest to protect the fundamental rights of the majority of citizens is perfectly valid and only a reasonable restriction. Government is bound to implement the directions given by the Full Bench of this Court as approved by the Apex Court. Police shall not allow any procession or demonstration against the above directions and shall not permit such demonstrations on working days in busy parts of the roads like M.G. Road in Thiruvananthapuram causing traffic block. Petitioners in these cases have filed representations, marked as Ext. P-1 in the original petitions. Those representations shall be considered and disposed of as expeditiously as possible.

All these original petitions are disposed of accordingly.”

3. In this decision, an earlier decision of Full Bench of Kerala High Court in ***Peoples Council for Social Justice v. State of Kerala, 1997(2) Kerala LT 309***, has been quoted. It has been observed in this case that the right to assemble peacefully and the right to form an association or union and freedom of speech and expression are valuable fundamental

rights, but these rights should be exercised without causing injury or annoyance to others. Authorities have every right to impose reasonable restrictions as regards processions and street marches. Just as the participants of these processions and marches have right to use the highway but the same right is also vested in ordinary citizens and pedestrians who have equal right to pass and repass along with highway.

4. The Commissioner of Police has filed counter affidavit today in Court. In the counter affidavit, it is stated that demonstrations are permitted in the area subject to certain conditions. Reference is made to the decision of the Supreme Court in ***Destruction of Public and Private Properties vs. State of Andhara Pradesh and Ors.***(2009) 5 SCC 212.

5. It is stated that earlier demonstrations were permitted at Boat Club Lawns , but in late 1980s, there was a demonstration and the entire Rajpath, Rafi Marg and many other roads had to be closed for many days. Thus, as an administrative decision, it was decided that demonstrations would not be allowed at Boat Club and instead Jantar

Mantar was offered as a place for demonstrations and all political parties had agreed to the said decision. However, large demonstrations of more than 8000 people are permitted in Ramlila Maidan. It is further stated that Delhi Police ensures that the demonstrations at Parliament Street, start and end in an orderly fashion and demonstrations are escorted throughout by adequate police force, but at times demonstrators become unruly, riotous, mischievous or uncontrollable. There have been clashes between different processions demonstrating simultaneously and vying for attention. As per the compilation/data of Delhi Police beginning January, 2006 till 15th August, 2010, there were 5491 demonstrations, rallies and processions and 13118 dharnas/hunger strikes were held at Jantar Mantar with prior permission. Daily 10 groups demonstrate and protest at the site. Steps taken by the police to mobilize adequate resources and for controlling and ensuring orderly demonstrations have been highlighted and stated. It is stated that prior permission is required to be taken and permission is granted after assessing the situation along with intelligence inputs with the paramount objective of maintenance of public order, safety

and security of citizens and tranquility in the neighbourhood. Over the years, the security system has been streamlined. Steps are also taken to ensure smooth flow of traffic and maintenance of law and order.

6. In view of the facts, it is easy to visualize the task under taken by the Delhi Police in order to ensure that the demonstrators, who have the right to protest/demonstrate and voice their opinion within reasonable limits, do not disturb and violate the rights of third parties. This requires divergent and extensive arrangements for water, toilets, public lighting etc. The Delhi Police has expressed concern that some of the demonstrators have started using Jantar Mantar as their permanent address and are even using it as their correspondence address. It is pointed out that there have been instances when overnight protestors have suddenly blocked traffic and movement of people at Parliament Street, Tolstoy Marg etc.

7. The Supreme Court has issued detailed guidelines in the case of ***Destruction of Public and Private Properties*** (supra), which read:-

“12. To effectuate the modalities for preventive action and adding teeth to the enquiry/investigation, the following guidelines are to be observed:

As soon as there is a demonstration organised:

(I) The organiser shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

(II) All weapons, including knives, lathis and the like shall be prohibited;

(III) An undertaking is to be provided by the organisers to ensure a peaceful march with marshals at each relevant junction;

(IV) The police and the State Government shall ensure videography of such protests to the maximum extent possible;

(V) The person-in-charge to supervise the demonstration shall be SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;

(VI) In the event that demonstrations turn violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request such further information from the media and others on the incidents in question;

(VII) The police shall immediately inform the State Government with reports on the events, including damage, if any, caused by the police; and

(VIII) The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or the Supreme Court as the case may be for the Court in question to take suo motu action.”

8. During the course of hearing Mr. Waziri, learned Standing Counsel for the Government of NCT of Delhi has submitted that they are trying to locate a different place where processions/demonstrations by the protestors can be permitted but such identification will take some time and will require consensus. The respondents have a task of ensuring that the protestors and demonstrators are not denied their right to speak and express their point of view but at the same time the demonstrators cannot hold the public at ransom and must show concern and respect the rights of others. Balance has to be maintained to ensure that the rights of all parties are fully protected and not violated. This is a larger issue but the contentions raised and prayers made by the petitioners are limited to their own complex, where they are residing. In these circumstances, it is directed that it shall be the duty of the local authorities including NDMC to ensure that area/streets in the area are cleaned and any litter left behind is removed periodically every day. NDMC may also explore possibility of cleaning the streets at night or late in the evening or early

morning. Adequate toilet facilities should be provided. Strict compliance or regulation may be difficult because the protesters/demonstrators demonstrating can and do get unruly but every effort should be made to ensure that protestors/demonstrators use the toilets and least inconvenience is caused. For the purpose of convenience of the petitioner, the police and NDMC will furnish to the office bearers of the petitioner society, telephone numbers of two officers of Delhi Police and NDMC, who can be contacted in case there is any problem or obstruction. The directions given by the Supreme Court in ***Destruction of Public and Private Properties*** (supra) will be meticulously observed.

9. With the aforesaid directions, the present writ petition is disposed of.

SANJIV KHANNA, J.

CHIEF JUSTICE

**May 31, 2011
Kkb/NA**