

**COCN No. 52 of 2018 (O&M)
DECIDED ON: OCTOBER 16, 2019**

REHDI FADDI ROAZGAR SAMITI

.....PETITIONER

VERSUS

GAURI PRAKASH JOSHI AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Abhishek Arora, Advocate for
Mr. Gurpreet Singh Dhillon, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Advocate, for respondent No.2.

Mr. Lokesh Sinhal, Advocate, for respondent No.3.

AVNEESH JHINGAN, J (ORAL)

CWP No. 10165 of 2017 was filed by Rehdi Faddi Roazgar Samiti.

During the pendency of the writ petition a civil misc. application was filed, for restraining the respondents from taking coercive steps against the street vendors by removing them from the place of their business.

Learned counsel for respondent No.2 made a statement that instructions have been issued to all concerned in the Corporation to act in accordance with the stand already taken by the Corporation in the pending writ petition i.e. CWP No. 19495 of 2015. The stand was that none of the street vendors shall be uprooted, unless they park their vehicles/rehri for carrying on their business at a place which is a parking area or hinders traffic or pedestrian movement.

The application was disposed of in view of the stand taken by the counsel for the non-applicant.

Learned counsel for the petitioner has placed reliance upon the photographs annexed with the petition i.e. Annexures P-3 to P-5 to show that the street vendors are being uprooted from their place of business. He argues that the street vendors are being uprooted even if they are not carrying on their business in the parking area and are not hindering traffic or pedestrian movement.

Learned counsel for respondent No.2 vehemently opposes the submission made by the counsel for the petitioner. He, on instructions from Mr. Rajesh Jogpal, Commissioner, Municipal Corporation, Panchkula who is present in Court in compliance of order dated 10.12.2018, submits that the Corporation is not touching any of the street vendors who do not fall in the exception carved out in the stand taken. Rather, the street vendors are trying to venture into the area ear-marked for the school site and same now is secured by four walling and putting a gate.

He further submits that FIR No. 0181, Dated 14.12.2017 was registered at Police Station Sector 20, Panchkula. It is further contended that the members of the petitioner's association had crossed the earmarked area and jumped the fencing which was there to secure the site marked for school.

In the contempt petition, the onus is on the petitioner who alleges wilful disobedience of the order. The Supreme Court in ***Chhotu Ram Vs. Urvashi Gulati and Another, (2001) 7 SCC 530***, has held that contempt of court proceeding being quasi-criminal in nature, the burden to prove would be upon the person who made such an allegation. A person cannot be sentenced on

mere probability. Wilful disobedience and contumacious conduct is the basis on which a contemnor can be punished. Such a finding cannot be arrived at on conjectures and surmises, it must be arrived at on the materials brought on record by the parties.

In the present petition apart from the photographs, there is nothing on record to show that the stand taken by the Corporation is violated. Rather, from the photograph Annexure P-3, it is evident that some vegetable vendors are carrying on their business, there is nothing to show that they are being uprooted.

The stand of respondent No.2 that the site for school has been secured by four walling and by fixing a gate is fortified by the photograph Annexure P-4.

There is no positive evidence that any vendor apart from the exception as carved in stand of respondent has been removed. In such circumstances, no case is made out for wilful disobedience of order of this Court.

The contempt petition is dismissed.

Rule issued against the respondents stands discharged.

OCTOBER 16, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes