

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2839 OF 2021
AND
CIVIL REVISION APPLICATION NO.438 OF 2017

Hazra Khatoon, Through PoA Babu]
Gulam Rasool.] ... Applicant

Vs.

Union of India Through Secretary of]
Defence Ministry & Ors.] ... Respondents

...

Mr. Brijesh Upadhyay with Mr. Jash B. Vyas for the applicant.

Dr. G.R. Sharma, Special counsel with Mr. D.P. Singh, Mr. Gaurav Sharma and Mr. Gulab Yadav for respondent No.1 – Union of India.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 18TH NOVEMBER, 2021.

PRONOUNCED ON : 23RD NOVEMBER, 2021.

JUDGMENT:-

1. The present civil revision application is filed by the applicant being aggrieved by the order and judgment dated

AJN

03/08/2017 passed by the Principal Judge, City Civil Court for Greater Mumbai in Misc. Appeal No.89 of 2017, by which the appeal filed by the appellant is dismissed and the order passed by the Estate Officer, Sub-Area, Mumbai, on 07/06/2017 under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as “**the Public Premises Act**”) has been upheld.

2. Heard learned counsel Brijesh Upadhyay for the applicant and learned special counsel Mr. G.R. Sharma with Mr. D.P. Singh and Mr. Gaurav Sharma for the respondent-Union of India. With the assistance of the learned counsel, I have perused the record of the revision application, which include the proceedings before the Estate Officer.

3. The record and proceedings disclose that the Administration Commandant, Headquarters, Sub Area Colaba, Mumbai, initiated proceedings against the present applicant - Hazra Khatoon, a crockery and cutlery vendor located in Army Market, Colaba Mumbai (hereinafter referred to as “**the applicant**”). An application was filed by him to the effect that the applicant was issued an entry pass bearing No.4066, which was valid till 30/09/2014 and which ultimately expired on 30/09/2014 and it was not renewed by the competent authority, resultantly making her an unauthorized occupant, as her entry in the public premises is unlawful and without any authority of law

and she had no right to carry on any business activity in the said premises. Despite being aware that she had no right to stay and/or carry on the business activity in the premises of the Administration Commandant, she continued to do so, which was sought to be declared as illegal and unauthorized and it was prayed that she be declared as the trespasser on account of her illegal and unauthorized occupation. The application also stated that the public premises belonging to the Administration Commandant are sensitive military area and her unauthorized occupation is detrimental to the public interest at large as there are defence establishments and installations in addition to the residential premises of Army, Navy and Air Force, working for defence and unauthorised occupation may pose security threat. The eviction of the applicant was, therefore, sought under the provisions of the Public Premises Act.

4. The application dated 29/09/2015 was opposed by the occupant and it was sought to be submitted that the proceedings of her eviction are nothing, but a counterblast to the civil suit filed by her in the City Civil Court at Mumbai. The ground of discrimination was also submitted to the effect that the action is sought to be initiated solely against her whereas the other vendors are granted the vendor's pass and are carrying on their business activities. Though it was admitted that she was issued a vendor's pass and it was renewed from time to time, it is also admitted that it expired on 30/09/2014 and it was not renewed on

the pretext that there was a proposal for construction of new building for the market but the same did not materialize. The applicant/occupant was informed to vacate the public premises and, therefore, she filed a civil suit, which is pending at the time of initiation of proceedings and the proceedings were ultimately culminated on 19/12/2014 by the High Court. Issuance of show cause notice under the Public Premises Act dated 08/10/2015 is, therefore, clamped as illegal, arbitrary, highhanded and *mala fide*.

5. On consideration of the rival contentions in the backdrop of the fact that the applicant/occupant was the holder of the vendor's pass for entry into the Military Area, Colaba, Mumbai, for carrying out the business earlier in the form of a hair-cutting saloon and, subsequently, on demise of her husband, for carrying out the business of crockery and cutlery. It was not disputed that the public premises and/or premises along with the land appurtenant belongs to and owned by the Central Government i.e. the Ministry of Defence as the necessary extract from the Military Land Register is placed in support of their contention that the property in question is a public premises and/or premises under the provisions of the Public Premises Act. The continuation of entry pass in favour of the applicant till 30/09/2014 was admitted by the parties and it was also admitted that it was not renewed thereafter and it was on the basis of this vendor's pass, the occupant was entitled to enter the public

premises in question. On perusal of the documents, the Estate Officer, recorded that the applicant was neither the licensee nor the lessee of the said public premises and in other words, for want of valid pass, the entry in the public premises was rendered unauthorized and illegal. Recording that there was no permission from the Central Government for the alleged construction of the market as inclusive of public premises in question belongs to and/or owned by the Central Government, the Estate Officer records that the vendor has utterly failed to place any material on record to establish or prove the ownership of the alleged stall. It was recorded that the military area in which the public premises is located is sensitive area and being so, the unauthorized occupation of the applicant is not only proving detrimental to the public at large and as there was defence establishment and installations in addition to the residential premises, it also posing a security threat to the defence area.

6. In the backdrop of the aforesaid, the concerned authority refused to renew the vendor's pass. Conclusively, the Estate Officer, rendered the following findings:

“13. In the foregoings, I now deal with the relevant issues i.e. whether the Respondent, in the absence of valid Vendor Pass, could be considered in a unauthorised occupation of the said Public Premises/premises thereby her

eviction is warranted? In my considered view and in particular, considering the prevailing facts and circumstances of the case and the legal position as stated herein above, I hold that the very basis of entry of the Respondent to the said Public Premises belonging to and owned by the Central Government i.e. the Ministry of Defence has been the Vendor Pass, which admittedly expired as back as on 30th September 2014 and whereafter it was never renewed. Upon its expiry, the Respondent is in illegal and unauthorized occupation of the said Public Premises as the Respondent has no authority of law for want of Vendor Pass to enter the said Public Premises. Accordingly, I pass the following order:-

ORDER

1. The Application dated 29th September 2015 filed by the Applicants is allowed as no order to cost.

2. Consequently, the eviction of the Respondent from the said Public Premises.”

7. Being aggrieved by the said order, an appeal was preferred to the City Civil Court at Mumbai and numbered as Misc. Appeal No.89 of 2017. In the appeal, on hearing the appellant and the respondents and after referring to the admitted facts and also after the opportunity of hearing was afforded to the appellant before the impugned order was passed, the contention of the defendants to the exclusion of others, being 28 in number, was also duly considered. The appellate court recorded

that a vendor, in absence of a pass, has no vested right to carry on the business in the premises belonging to the defence authority. On the above allegation of being picked up singularly, the statements contained in the affidavit of Col. Suman Dutta, Administration Commandant in paragraph 2 is reproduced as under:

“13. I deny being baseless, vague and frivolous that any new market with Stalls was constructed wherein the Appellant was to be accommodated. I, however, deny being baseless, vague and frivolous that the Ministry of Defence or such other Competent Designated Officer by the Central Government has entered into any Agreement or arrangement for construction of alleged new market and thus, any correspondence in this regard ab-initio renders null and void for want of authority of law. I say that there was no legally registered, approved and/or recognized Old Army Market Vendor Association and thus, any suo moto action on the part of such an alleged Old Army Market Vendor Association was ab-initio illegal being without any Authority of Law. I deny being baseless, false and frivolous that the Army Competent Authority(ies) was/were ever paid any sum of Rs. 15,000/- by any Vendor Pass Holder. I say that at no point of time Old Army Market Vendor Association had any licence, approved and sanctioned construction plan(s) for market in Defence Area from any Competent Authority(ies). On the contrary, I say that the Appellant herein has herself placed on record a xerox copy of Cash Receipt of Rs. 15,000/-

having been given by her to one M/s Viral Prefab India (P) Ltd., Mumbai, though original was never placed on record who in no manner, is connected with the Defence Authority(ies) and thus, such a transaction does not bind the Defence Authorities, in any manner, whatsoever. I, however, say that the letter dated 29.01.1994 is not at all addressed to the Appellant herein and assuming, presuming but without conceding that even if such an arrangement was to take off, nothing of that sort materialized at any point of time for want of approval from Ministry of Defence due to security reasons. Needless to state here that no arguments were advanced by the Appellant herein on this aspects of letter dated 29.01.1994 before this Hon'ble Court yet because of reference of the said letter dated 29.01.1994 made by the Hon'ble High Court in its Order dated 16.08.2017, the Respondents are now compelled to expressly deal with the same in the present Affidavit-in-Reply, as stated hereinabove. I further say and submit that the Vendor Pass of the Appellant expired way back in 2014, which was not renewed nor any Vendor Pass was re-issued to her. I say that for want of Vendor Pass, the Entry of the Appellant in the said Public Premises became unlawful and without any authority of law. I further say and submit that neither Appellant is paying any Licence Fee nor any such compensation relating to the said Public Premises. I further say and submit that the said illegal and unauthorized occupation of the Respondent and / or carrying out of any business activities is causing security threat to the Military Area, which has residential Quarters, Offices and some Military

Installations. I deny being baseless and vague that any valid or subsisting Agreement exist, as alleged. I also say that as the situation has drastically changed with the passage of time in view of the prevailing situation in the Country on account of security threat. I say that even the so-called contemplated thought of new market did not materialize and/or take shape, at any period of time, as a result, nothing was done in that direction.”

8. Resultantly, recording that the impugned order does not warrant any interference, the appeal was dismissed on 03/08/2017.

9. Learned counsel for the applicant Mr. Upadhyay would urge and submit that the order is not sustainable as it poses tremendous hardship to the applicant and is also perverse since it fails to take into consideration, the material brought on record. The affidavit filed by Col. Suman Dutta on 05/04/2019 is subjected to heavy criticism by learned counsel by submitting that it is a false affidavit. Learned counsel would specifically emphasis on the fact that the other vendors are permitted to carry on their business activities and it is only the applicant who has been singled out amongst the 28 persons, who were granted entry passes. Learned counsel would submit that the applicant was paying rent for the shop and he has with him the receipts of payment of rent and, therefore, he could not have been evicted by resorting to the proceedings that have been adopted.

10. In support, learned counsel has placed reliance on the decision of the Apex Court in **Railway Board, Government of India v. M/s. Observer Publications (P) Ltd.** reported in **(1972) 2 SCC 266**, where it has been held that singling out or banning a weekly magazine is violative of Article 14 of the Constitution. He also relied on the judgment of the Apex Court in **Tata Engineering & Locomotive Co. Ltd. v. Jitendra Pd. Singh & Anr.** reported in **(2001) 10 SCC 530**, which deals with the aspect of discrimination.

11. Mr. Sharma, learned special counsel for the Union of India would submit that the Union of India has taken a decision to discontinue with the policy of allotment of shops within their premises in favour of civilians and, in the wake of the policy of the Government of India, Ministry of Defence, which directed that the shops shall be reserved for war widows of defence personnel killed while on duty/disabled soldier / ex-servicemen and spouses/widows of ex-servicemen subject to licence period of five years, a decision was taken not to grant entry passes to the shop holders, who were earlier permitted to enter into the premises belonging to them and run their business through their shops. Learned counsel would rely upon the affidavit filed by Col. Suman Dutta, Administration Commandant, where he has specifically made a statement to the effect that after the year 2014, no vendor's passes are issued by the defence authorities

keeping in view the security hazards. A specific statement is made to the effect that the defence authorities have been taking action against the unauthorized occupants from time to time and the record reveals that from the year 2013 onwards, some 20 persons named in the affidavit, have been evicted. The allegation of the applicant about discrimination is specifically denied and a specific statement is made that notices to other vendors for stopping their business activities from A-1 defence land are under consideration by the Estate Officer.

12. Learned counsel, in support of the policy regarding the reservation of regimental plot for allotment to the defence personnel, would submit that the the said policy is upheld by various courts including the Apex Court as well as the Punjab & Haryana High Court. As far as the issue of security is concerned, learned counsel has placed reliance on the decision of the Apex Court dated 26/02/2014 in the case of **Ex-Armymen's Protection Services Pvt. Ltd. v. Union of India & Ors. in Civil Appeal No.2876 of 2014**, where Their Lordships, after placing reliance on the decision of the Privy Council, have held that those who are responsible for the national security must be the sole judges of what the national security requires and it would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public.

13. To appreciate the submission of the applicant to the effect that the impugned order suffers from material irregularities, on perusal of the documents placed on record, it can be seen that the applicant was allotted a kiosk on depositing an amount of Rs.15,000/- in the defence area. This, however, does not create any right to continue with the said kiosk as for operating the said kiosk, an entry pass was issued. Along with the applicant, 27 other persons were also allotted similar kiosks and the applicant, who continued the entry pass allotted in the name of her husband, on his death, carried on the activity of sale of crockery and cutlery from the said kiosk. The said permission was granted by the Station Headquarter. In the wake of the policy decision not to permit running of the kiosks in their premises, proceedings were initiated against the applicant and by recording that after the year 2014, no civilian is permitted to operate any shop in the premises of the respondent, the eviction order has been passed. The affidavit filed by the Administration Commandant makes a categorical statement to the effect that after the year 2014, no vendor's passes are issued by the defence authorities keeping in view the security hazards. Contradicting the said affidavit, the applicant has filed an affidavit on record on 18/04/2019, wherein it is admitted by the applicant that after the year 2014, no vendor's passes have been issued by the defence authorities though she denies that the authorities have been taking action against the unauthorized occupants from time to time. By referring to the names, which have been set out in the

affidavit filed by the Administration Commandant, it is stated that the names of the 20 persons stated in the affidavit are those persons, who have their shops in another market, which is located around 1.5 kilometers away and, therefore, the said statement is misleading. A specific statement in the affidavit is that her shop is located in the Army Market Shopping Complex, where there are 34 shops and a list is annexed at Ex-A to the said affidavit, out of which, certain shops are referred to as closed on account of either the demise of the occupiers or for some other reason, but it is reiterated that 27 shops in the Army Market are carrying on business. She has claimed for a sympathetic approach to be adopted since she is a widow and the said shop is her only source of livelihood. It is further denied that no action has been taken against 27 shop owners in the premises and the discrimination is pressed into service.

14. The applicant has not placed on record any material to show that the 27 shop owners are running their shops after the year 2014, when particularly it is admitted by her that after the year 2014, no vendor's passes have been issued by the defence authorities. The vendor's passes/entry passes permitted the civilians to gain entry into the area of the respondents where they were permitted to run small kiosks. The list, which is appended by the applicant along with her affidavit at Ex-A, of 34 traders is itself dated 21/06/2013 and, it in no way, contradict the statement made by the respondents in the affidavit dated

05/04/2019 to the effect that after the year 2014, no vendor's passes have been issued by the defence authorities. No doubt, one may have sympathy towards the applicant being a widow and the action of the respondents taking away her source of livelihood, but when the respondents have stated on affidavit that security reasons persuaded them to take such a harsh decision to oust the civilians from their premises, the observations of the House of Lords in case of **Council of Civil Service Union & Ors. v. Minister for the Civil Service** reported in **(1985) AC 374**, require a reproduction of page 402 of the Law Reports, which reads thus:

“... The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any even the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on ground of national security. ...”

15. The Apex Court in **Ex-Armymen's Protection Services Pvt. Ltd.'s case (supra)** has observed as under:

“What is in the interest of national security is

not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. To quote Lord Hoffman in Secretary of State for the Home Department v. Rehman [2003] 1 AC 153:

“... in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive.”

In paragraph 17, the observations are relevant and reads thus:

17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.”

16. In the wake of the aforesaid position of law, when the respondents have come up with a specific case that they are not inclined to continue with the vendors' passes not only of the applicant, but also of the other vendors, in absence of any positive material brought on record to the effect that the other vendors are permitted to carry on their activities, though learned counsel for the applicant has repeatedly argued before me that he is ready to produce such material, I am not inclined to accept the said submission. The affidavit of the respondents was filed on 05/04/2019 and it was also rebutted by the applicant by filing a vague affidavit on 18/04/2019. Now no new material can be allowed to be brought on record. While hearing for the interim relief, this court on 27/09/2017, has relied upon the decision of the Apex Court in **Ex-Armymen's Protection Services Pvt. Ltd. (supra)** and refused ad-interim relief, which necessarily convey that from 27/09/2017, the applicant is not running any shop in the said premises and stand evicted.

17. The argument of discrimination and singling out does not, in fact, deserve any consideration, since before alleging discrimination, it is incumbent upon the applicant to demonstrate the aspect of discrimination and whether she has been singled out as against other kiosk owners. True it is, that it is not permissible for the State to discriminate between persons who are similarly situated as, such an action would be hit by Article

14 of the Constitution, which prohibits such discriminatory treatment. However, in absence of any evidence to establish that the applicant has been singled out, I need not deal with the aspect of discrimination and the decisions relied upon by learned counsel for the applicant are not of any help to the applicant. Learned counsel for the applicant repeatedly argued before me that he is desirous of filing an affidavit for bringing out perjury as an incorrect statement is made in the affidavit filed on behalf of the Union of India. I am not inclined to grant time to file any affidavit as this is merely an attempt to buy time as the applicant has already responded to the affidavit of the Union of India by filing affidavit dated 18/04/2019.

18. In the aforesaid circumstances, being unable to demonstrate any perversity in the impugned order passed by the City Civil Court at Mumbai, which upheld the order of the Estate Officer, directing eviction of the applicant from the public premises, the civil revision application does not warrant any consideration and is dismissed. No order as to costs.

[SMT. BHARATI DANGRE, J.]