



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

% *Reserved on : 16.02.2024*
Pronounced on : 27.05.2024

+ **W.P.(CRL) 3407/2023 AND CRL.M.A. 31588/2023**

KAMLESH JAIN

..... Petitioner

Through: Petitioner in person.

Versus

COMMISSIONER OF POLICE & ORS.

..... Respondents

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus and with Insp. Dara Singh and SI Anil Kumar, PS Pandav Nagar.
Mr. Pawan Reley, Mr. Akshay Lodhi, Mr. Gaurav Kumar and Ms. Simran Singh, Advocates for R-3.
Mr. Sanjeev Sabharwal, Standing Counsel for MCD with Ms. Shweta Singh, Advocate.
Ms. Manika Tripathy, Standing Counsel for DDA with Mr. Uday Singh, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition under Article 226 of the Constitution of India has



been filed by the petitioner seeking the following reliefs:

“(i) issue writ/ order/ directions in the nature of mandamus or any other appropriate writ issuance of writ/order/directions in the nature of mandamus or any other appropriate writ directing Respondents and further restrain Respondent. No.3 to stop using high sound music through loudspeaker/ amplifier/ sound box at her food joint/ eatery running under the name and style of 'BOOKS & BEANS'. And/ Or;

(ii) Pass such other or further orders as this Hon'ble Court may deem fit in the interest of justice.”

2. In brief the facts of the case are that one Food Eatery in the name and style of “Books and Beans” is causing trouble and discomfort by playing loud music in their cafe since morning till midnight. The same is being run by Rohit and his sister Diana. The cafe is registered with appropriate authorities and is located at one end of the market and the vacant space is being used by Cafe owner as a seating area by putting chairs and tables. On 13.05.2023, the patrolling staff found that the cafe owner has kept the tables and chairs in open and hence, legal action was taken against them by registering a Case FIR No. 204/2023 U/s 283 IPC, PS Pandav Nagar.

3. Subsequently, on 02.12.2023 a joint encroachment removal program in association with MCD consisting of Licensing Inspector Pankaj Kumar, Yashbir Singh and other officials was initiated against the cafe and twenty chairs and seven tables which were found placed outside in the open area were seized by MCD. The owner and staff members of the cafe were again given directions not to place the chairs and tables in open.

4. On 06.12.2023, three photographs were placed on record along with the status report in this Court, which showed that respondent no.3 had placed green grass carpet on an area excess to the rented premises and on



said area, they had also placed 8-10 tables and numerous chairs. On queries from the concerned SHO, who was present in Court, he stated that though on joint raid with MCD, tables and chairs placed on the excess area were seized, however, the green grass carpet laid on the excess area was not seized. Since the area occupied by the respondent no. 3 for running the cafe was public land and was encroached upon by them, therefore, notice was issued to DDA and MCD and they were impleaded as respondent no. 5 & 6 respectively.

5. It is submitted by learned ASC that the respondent no. 3 has occupied an area around more than 200 Sq. Feet and had placed tables and chairs on the said area which is being used as extension to their present actually tenanted business premise. It is further submitted by the learned ASC that respondent no. 3 by encroaching upon the government land has illegally enriched himself at the expense of the State, therefore, he should be made to pay user charges at the prevailing market rate for the period for which the said land was in his possession.

6. During the course of arguments, learned Standing Counsel for DDA informed the Court that the land encroached by respondent no. 3 belongs to DDA and respondent no. 3 has no right over it and is using this piece of land without any authority.

7. In the backdrop of all this, Status Report was called from Station House officer, P.S Pandav Nagar who filed his report that regular and continuous patrolling is now being carried out by Beat staff near “Books and Bean Cafe”, G9, Pankaj Tower, Mayur Vihar Phase-1 in order to prevent them from blaring up loud music after the permissible hours and



encroaching upon government land by installing tables and chairs.

8. In view of the above, statement of Inspector Dara Singh, PS Pandav Nagar dated 16.02.2024 has been taken on record which reads as follows:

“Statement of Inspector Dara Singh, SHO, Police Station Pandav Nagar.

On S.A.

I am the SHO of Police Station Pandav Nagar. I have gone through the grievance of the petitioner specifically in regard to the loud music which according to the petitioner is being played by respondent no. 3, Book and Beans restaurant. I state that the regular patrolling is being conducted in the said area and no loud music is found to be played in the area after 10 P.M. as per the directions of the Hon'ble Supreme Court. I will make sure that no loud music is played by respondent no. 3 or any other restaurants in the said area beyond 10 P.M.

I shall remain bound by my statement.”

9. In the instant case, accused-respondent no. 3 had placed green grass carpet as well as furniture like tables and chairs on an area which they were using as extension to their rented premises despite knowing that the said land is DDA land and not within their tenancy. Respondent no.3 by using this area without the permission of concerned authority i.e., DDA has been using the said public land for his own personal gains to illegally enrich himself at the expense of the State, i.e., DDA in the present case and public at large.

10. Encroachment on public places specially footpath, roads etc by putting hoardings, stalls, furniture pieces such as tables and chairs, has become so rampant that it forces public persons to walk on the roads



because of such encroachments which leaves the user of roads and footpaths in a life threatening situation by exposing them to vehicles plying on road thereby endangering their lives.

11. In *Jamia Arabia Nizamia Welfare Education vs. DDA (W.P (Crl.) 638/2024, Order dated 20.02.2024)*, this Hon'ble Court has categorically observed that encroachment is one of the worst forms of civil wrong as it is like committing a 'dacoity' in which the landowning agency itself loses its land and the public at large loses a valuable asset.

12. On my query from Ld. Standing Counsels appearing on behalf of the MCD and DDA as to whether on the area encroached by the accused-respondent No. 3, any penalty can be imposed on them as penal or user charges for any misuse of the land. Ld. Standing Counsels categorically submitted that there is no such provision for recovery of any user charges or penalty for usage of encroached land/area at the current market price.

13. However, in the instant case, no doubt the Court can impose penalty on respondent no, 3 but looking at his young age and undertaking that he would not repeat his act in future, he is being let off with a warning.

14. The land owning authorities i.e., DDA and MCD are directed to devise a mechanism or frame rules so as to levy charges on the encroacher for illegal encroachment on public land. In case of encroachment, the encroacher shall be made liable to the extent of illegal encroachment done by him by the concerned land owning authorities. There should be a clear perception through careful quantification of the charges to be recovered from the encroacher that shall be for the benefit of public at large. For ascertaining the charges to be recovered from the encroacher, the land



owning authorities shall take into consideration various factors such as the area of encroached land, period for which the encroached land was illegally used by the encroacher for his own personal gains, the market price or circle rate of the encroached area or as the case may be.

15. However, as far as the present case is concerned SHO of P.S Pandav Nagar shall remain bound by his statement dated 16.02.2024 and ensure that no loud music is played by Books and Beans Cafe or any other restaurants in the said area beyond 10 P.M. Respondent No. 3 shall not encroach upon public land so as to run his cafe and in case it's done then SHO/ authorised authority i.e., DDA should take immediate action.

16. The present petition along with pending application stands disposed of in the above terms.

17. A copy of this order be sent to the Chairman, DDA and the Commissioner, MCD for compliance.

RAJNISH BHATNAGAR, J

MAY 27, 2024/ib