

KOSHY JACOB

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 55 of 2013)

NOVEMBER 28, 2017

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[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

*Prevention of Damage to Public Property Act, 1984 – Writ petition seeking direction for implementation of guidelines issued by this Court in *Destruction of Public and Private Properties case – Grievance of petitioner was that large number of strikes/agitations result in destruction of public property and also violation of fundamental right of the people for which suitable remedy is not available to the aggrieved victims – Committee appointed by the Supreme Court recommended statutory amendments for making those sponsoring such agitations accountable and punishable under the criminal law – However, inspite of such recommendations, no legislation or speedy mechanism has been put in place so far – In reply affidavit by Union of India, it was submitted that the process has been initiated for amendment of the Prevention of Damage to Public Property Act – In view of the stand taken by Union of India, it is expected that the law proposed will be brought into force within reasonable time to address all concerned issues – Writ petition accordingly disposed of.*

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**Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh and Others (2009) 5 SCC 212 : [2009] 6 SCR 439 – referred to.*

Case Law Reference

[2009] 6 SCR 439

referred to

Para 2

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 55 of 2013.

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Under Article 32 of the Constitution of India.

K.K. Venugopal, AG, Shiv Mangal Sharma, D. K. Thakur, AAGs, Wills Mathew, Adolf Mathew, Ms. Usha Nandini. V, Biju P. Raman, Ms. Binu Tamta, Ms. Madhvi Diwan, Rohit Bhatt, B. V. Balramdas,

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- A B. Krishna Prasad, Ms. Nandini Sen, Chanchal Kumar Ganguli, Mishra Saurabh, Ankit Kr. Lal, Shibashish Misra, Ms. Sylona Mohapatra, M. Yogesh Kanna, Ms. Sujatha Bagadhi, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Ms. Simran Ject (For M/s. Arputham Aruna And Co.), Dr. Monika Gusain, Manpreet Kaur Bhalla, Ms. Geeta Singh, S. Udaya Kumar Sagar, Mrityunjal Singh, G. M. Kawaosa, M. Shoeb Alam, Nishe Rajen Shonker, Ms. Anu K. Joy, Reegan S. Bee, Ms. Rachana Srivastava, Prateek Dwivedi, Ms. Monika, Sukrit R. Kapoor, Pragyan Pradip Sharma, Nilesh Y. Ukey, P. V. Yogeswaran, Vivek R. Mohanty, Milind Kumar, V. N. Raghupathy, Parikshit P. Angadi, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Puja Singh, Ms. Shodhika Sharma, Ms. Seema Sharma, Varinder Kumar Sharma, Ms. K. Enatoli Sema, Edward Behlo, Amit Kumar Singh, K. Luikang Michael, Z. H. Isaac Haiding, Nishant R. Katneshwarkar, Ms. Deepa M. Kulkarni, Ms. Abha R. Sharma, D. S. Pamar, Ms. Sujeeta Srivastava, Debojit Borkakati, Shuvodeep Roy, Gopal Singh, Rituraj Biswas, Abid Ali Beeran P, Ms. Pragati Neekhra, Avijit Bhattacharjee, Ms. Asha Gopalan Nair, Balaji Srinivasan, Sunil Fernandes, Advs. for the appearing parties.

The following Order of the Court was delivered:

O R D E R

- E 1. We have heard learned counsel for the parties.
- E 2. This petition, filed under Article 32 of the Constitution of India, seeks direction for implementation of guidelines issued by this Court in Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh and Others, (2009) 5 SCC 212.
- F 3. According to the averments in the petition, the petitioner is an advocate. He was forced to spend more than 12 hours on road to reach his home after being discharged from hospital after surgery on 23rd May, 2012, on account of an on-going agitation. According to the petitioner, large number of strikes/agitations have taken place resulting in destruction of public property and also resulting in violation of fundamental right of
- G the people for which suitable remedy is not available to the aggrieved victims.
- H 4. Committees appointed by this Court in the above case recommended statutory amendments for making those sponsoring such agitations accountable and punishable under the criminal law and also

requiring preventive and remedial actions such as videography of all the activities and award for damages. In spite of such recommendations, no legislation or speedy mechanism has been put in place so far which appears to be the reason for this petition.

5. In pursuance of notice issued by this Court in this matter, affidavits have been filed by different States as well as by Union of India. In the affidavit filed by the Union of India, it is submitted that the process has been initiated for amendment of the Prevention of Damage to Public Property Act, 1984 in consultation with the Ministry of Law and Justice. A draft has been prepared and published on the website seeking comments of the public and other stake-holders. Union of India has also sent a letter dated 6th May, 2013 to all the States and Union Territories advising the action to be taken as soon as there is a demonstration. The guidelines are as follows:

“(i) If the officer in charge of a police station or other law enforcing agency is of the opinion that any direct action, either declared or undeclared has the potential of causing destruction or damage to public property, he shall avail himself of the services of video operators. For this purpose each police station shall be empowered to maintain a panel of local video operators who could be made available at short notices.

(ii) The police officer who have responsibility to act on the information that a direct action is immediate and if he has reason to apprehend that such direct action has the potential of causing destruction of public property, he shall immediately avail himself of the services of the video-grapher to accompany him or any other police officer deputed by him to the site or any other place wherfrom video shooting can conveniently be arranged concentrating on the person/persons indulging in any acts of violence or other acts causing destruction of damage to any property.

(iii) No sooner than the direct action subsides, the police officer concerned shall authenticate the video by producing the videographer before the Sub divisional or Executive Magistrate to entrust such CD/material to the custody of the police officer or any other person to be produced in court at the appropriate stage or as and when called for.

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- A (iv) The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest.
(v) All weapons, including knives, lathis and the like shall be prohibited.
- B (vi) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction.
(vii) The police and State Government shall ensure videography of such protests to the maximum extent possible.
- C (viii) The person in charge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district.
- D (ix) 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.
(x) The Police shall immediately inform the State Government with reports on the events, including damage, if any caused.
- E (xi) 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 reports in the High Court or Supreme Court as the case may be for the Court in question to take suo motu action."
- F 6. Mr. K.K. Venugopal, learned Attorney General for India, has submitted that in spite of the guidelines, situations have been created wherein peaceful agitation turns into violent, causing loss of lives and destruction of public property. At times, central forces are deployed to aid the law and order machinery. He fairly states that there is undoubtedly need for preventive and remedial measures to be adopted to deal with such situations. A mechanism is necessary to fix accountability of any failure to take preventive steps as well as to provide for punishing the guilty and compensation to the victim.
- G 7. In Destruction of Public and Private Properties, In Re (Supra), this Court took suo motu proceedings to remedy the large scale destruction
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of public and private property in agitations, *bandhs*, *hartals* and the like. The reports of the committee appointed by this Court recommended prosecution of those involved in damage to the public property, including the leaders and office-bearers of the organisations which call for such action. Recommendation includes collection of evidence by using electronic means such as videography and to compensate the victims. Taking into account the said reports, this Court, in absence of a legislation on the subject, issued guidelines to the effect that this Court or the High Court may take *suo motu* action, set up a machinery to investigate and to award compensation. An assessor could be appointed by the High Court or by this Court, to assess the claim of the people. The guidelines, *inter alia*, are as follows:

“6. The recommendations of the Justice Thomas Committee have been made on the basis of the following conclusions after taking into consideration the materials.

In respect of (I)

7. “According to this Committee the prosecution should be required to prove, first that public property has been damaged in a direct action called by an organisation and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which the accused also participated, the court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to that effect.”

In respect of (ii)

8. “Next we considered how far the leaders of the organisations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organisations. Destruction of public property has become so rampant during such direct actions called by organisations. In almost all such cases the top leaders of such organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass

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A root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.

B Of course, it is normally difficult to prove abetment of the offence with the help of direct evidence. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organisation which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time, no innocent person, in spite of his being a leader of the organisation shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocent leaders."

C In respect of (iii)

D 9. "After considering various aspects to this question we decided to recommend that prosecution should be required to prove (I) that those accused were the leaders or office-bearers of the organisation which called out for the direct actions and (ii) that public property has been damaged in or during or in the aftermath of such direct actions. At that stage of trial it should be open to the court to draw a presumption against such persons who are arraigned in the case that they have abetted the commission of offence. However, the accused in such case shall not be liable to conviction if he proves that (I) he was in no way connected with the action called by his political party or that (ii) he has taken all reasonable measures to prevent causing damage to public property in the direct action called by his organisation."

E F 8. It was observed that this Court could not issue a direction to make law which matter had to be left to the concerned authorities and guidelines were to operate till relevant law was framed.

G 9. Since no law has been framed even though 8 years have passed after the matter was dealt with by this Court in the aforesaid judgment, H the petitioner has approached this court, as noted earlier.

10. In view of the stand in the counter affidavit and the statement of learned Attorney General, we do hope that the law now proposed by the Union of India is brought into force within a reasonable time to address all concerned issues. Learned Attorney General has very fairly stated that the law may provide for speedy mechanism for criminal liability, action for administrative failures as well as remedies to the victims. A suggestion has been made that one or more district/additional district Judges can be appointed by the State Government in consultation with the High Court to deal with such issue either on whole-time basis or on part-time basis, as the situation may require. In such cases cadre strength of the judicial officers may require suitable temporary or permanent increase. This suggestion can be considered in the course of making the proposed law.

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11. As far as the individual claim of the petitioner is concerned, the organisers of the agitation are not before this Court. The petitioner is at liberty to take his remedy at appropriate forum in accordance with law.

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The writ petition is accordingly disposed of.

Devika Gujral

Writ Petition disposed of.