
(1970) 05 DEL CK 0038

In the Delhi High Court

Case No : Civil Revision Appeal No. 74D of 1966

Baluev Raj

APPELLANT

Vs

Tub Delhi Development Authority and Others

RESPONDENT

Date of Decision : 22-05-1970

Acts Referred:

Citation : (1971) 7 DLT 4 : (1971) RLR 84

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.N. Chopra, Keshav Dayal and T.C.B.M. Lal, for the Appellant;

Judgement

B.C. Misra, J.

(1) This judgment will dispose of six civil revisions (Civil Revisions Nos. 74 to 79 D of 1966) which can be conveniently disposed of together. The revisions are directed against the common appellate order of the Senior Subordinate Judge, Delhi, dated 31st January, 1963 by which the learned Judge reversed the order of the trial Court dated 16th July, 1965 and finally rejected the application of the plaintiffs in the suit for grant of temporary injunction. However, on admission of the revision, stay of eviction was granted by this court on 8th February, 1966.

(2) The material facts of the case giving rise to the dispute briefly stated are that firstly one suit was instituted by seven plaintiffs but later on the suit was split up in several suits and the original suit was continued by Om Parkash and other suits which have given rise to the revisions were instituted by Baldev Raj, Hardev Singh, Amrit Lal, Safari Lal Gurbachan Singh and Darga Parshad, respectively petitioners in Civil Revision, Nos. 74-D of 1966, 75-D of 1966, 76-D of 1966, 77-D of 1966, 78-D of 1966 and 79-D of 1966. The suits were for the relief that a permanent injunction be issued restraining the defendants, namely, Delhi Development, Authority, Estate Officer and the Delhi Municipal Corporation from either evicting the plaintiffs or demolishing the premises without observing the procedure prescribed by law, in particular the procedure prescribed by the Public

Premises (Eviction of Unauthorised Occupants) Act, 1958. The material allegations made in the plaint were that there was a large piece of land known as old Qabristan Gurdwara Road Delhi and that on various pieces of the said land the plaintiffs set up small trades and business of various types on different dates from 1949 to 1959 and that at different times the plaintiffs had received notices from the Estate Officer and the Delhi Development Authority u/s 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 calling upon them to pay damages and that the plaintiffs had taken up the objection that the piece of land in their possession was not public premises within the meaning of Public Premises (Eviction of Unauthorised Occupants) Act, 1958 and that the Estate Officer had not decided the objections of the plaintiffs that the defendants had no authority under the law to interfere with occupation and possession of the plaintiffs and that the plaintiffs could not be dispossessed except under the authority of law. The plaintiffs further alleged that the defendants were threatening and attempting to carry out evictions of the plaintiffs from the said land illegally, without jurisdiction and with show of force and so the defendants were restrained from dispossessing them without recourse to the procedure prescribed by law.

(3) The suit was contested on behalf of the defendant in which they took the plea, inter alia that the land in suit was Nazul land and the Union of India was a necessary party and that the plaintiffs had no cause of action, that the orders of the Estate Officer were final and they further stated that the land in dispute was named as Qabristan; .:. Gurdwara Road, but it was not a Muslim graveyard and it was not a Wakf but was a public premises as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 and the jurisdiction of the civil Court was barred by section 10 of the aforesaid Act. The Municipal Corporation also filed a reply in which they decided the material allegations of the plaintiffs and raised certain other pleas with which we are at present not concerned.

(4) The trial Court passed an order granting an interim injunction as prayed for in the plaint after holding that the plaintiffs had a prima facie case. On appeal, the learned Senior Subordinate judge came to a different conclusion and held that the plaintiffs did not have a prima facie case or title or interest in the property in dispute and he allowed the appeal and setting aside the impugned order, dismissed the application for injunction as mentioned above.

(5) The plaintiff-petitioners have come up in revision and the learned counsel for the petitioners has informed me at the bar that the afore-said graveyard, which is the property in dispute had been notified as wakf property u/s 5(2) of the wakf Act 29 of 1954 and that the Union of India had filed civil suit No 431 of 1966 challenging the correctness of the said declaration which suit has been pending in this Court. It is further alleged that the said suit was instituted on 27th August, 1966 and the Delhi Development Authority itself made an application on 1st May, 1968 in the suit giving rise to this revision that the same be stayed pending decision of the aforesaid suit for declaration. The learned counsel has

further submitted that the lower appellate Court has acted with material irregularity in exercising its jurisdiction, its finding that the petitioners did not have any prima facie case is based on an erroneous view of law as well as of the facts and circumstances of the case.

(6) In my opinion, the submission of the learned counsel for the plaintiffs is correct. The phrase "prima facie case" has received considerable attention in judicial authorities. It is not a term of art and in plain language signifies that at first impression the plaintiff has a triable case. The privy Council observed in *Walker Jones*, that it meant a substantial question to be investigated and if a bona fide contention had been raised between the parties which required a trial, the same would constitute a prima facie case unless it be barred by law or the allegations made in the plaint do not entitle the party to the relief claimed. It is obvious that an initial stage, at the time of grant of injunction, the Court is not required to consider the claim of the plaintiff closely or to arrive at a conclusion that the plaintiff was likely to succeed, but it has only to see whether the plaintiff has succeeded in bona fide raising a substantial question which needs to be investigated by the Court at the trial and if under these circumstances the status quo ante is to be preserved, the temporary injunction will be subject to the discretion of the Court and other principles and factors governing its grant, ordinarily. I am of the view that prima facie case is not to be confused with prima facie title which has to be established on evidence and it only means a substantial question raised bona fide which at first sight needs investigation and decision.

(7) In the instant case the plaintiff had been in peaceable and exclusive possession of the land in dispute for some years prior to the institution of the suit which in some cases dated back to 1949. Assuming that they had no title to the same and their occupation was unauthorised, still under the law of the land, they had a right to the effect that they must not be dispossessed except through due process of a valid law. Our country is governed by the Constitution and Article 31(1) of the same says that no person shall be deprived of his property except by the authority of law. This fundamental right is a command of the Constitution to the State not to proceed against its citizens except in accordance with procedure prescribed by law and the obligation of the State to obey it gives rise to corresponding right in favor of the subjects which protects their peaceful possession and enjoyment of a property in dispute until action is taken against them according to law. The words "his property" occurring in article 31(1) are not confined to legal rights of ownership but they yield to a liberal construction to protect a right to continue unmolested in possession or occupation of property of any kind unless the law intervenes to interrupt it. Again, under the ordinary civil law, even a trespasser (once he has settled himself on the property and is not in the process of committing trespass) cannot be thrown out except in due course of law and section 6 of the Specific Relief Act which corresponds to section 9 of the old Specific Relief Act, is an illustration of the fact that a trespasser is entitled to protect his possession except against a true owner and a true owner must also

initiate legal proceedings for the purpose and cannot throw him out by show of sheer force except under special circumstance where the law gives him a right of private defense or self help.

(8) The Supreme Court has occasion to consider the problem in *Bishan Das v. State of Punjab*, where their lordships considered and approved their previous authority *Wazir Chand v. State of Himachal Pradesh* and the Court held that the State or its executive officers cannot interfere with the rights of others, unless they can point to some specific rule of law which authorises their acts. The Court further expressed its displeasure at the action of the Government in taking the law into their hands and dispossessing the petitioner by the display of force which exhibited a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from the Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property and depriving a person of the possession of property without reference to any law or legal authority was considered to be discriminatory and autocratic. In a recent judgment reported as *Mohan Lal and others v. State of Punjab*, his lordship Mr Justice Hegde, speaking for the Supreme Court, observed that even unauthorised occupants were entitled to the protection of the law to the extent that they could not be dispossessed except in due course of law.

(9) There is, however, another aspect of the matter. The Public Premises Act has been struck down by the Supreme Court in *Northern India Caterers Limited v. State of Punjab*, as well as by this court in Civil Reference No. 1 of 1968 decided on 29th June, 1965 (which has been noticed in A.I . R. 1908 Del 194 as contravening the fundamental rights guaranteed by the Constitution. The Act, after its amendment made in section 10 has also been held to be void by two judgments of this court delivered by Shankar, J. and Parkash Narain J. The position, Therefore, is that on this day the said Act is invalid and. no steps can be taken by the defendants under the same and it has not been brought to my notice if there is any other provision of law under which the defendants can proceed against the plaintiffs in a summary manner without recourse to Court of Law. The counsel for the defendants urged that the plaintiff had not challenged the validity of the aforesaid statute in the suit. That is correct and the counsel for the plaintiff has undertaken to amend the plaint suitably but it is not possible to ignore the fact that the aforesaid Act has been declared un-constitutional.

(10) Apart from the constitutional validity of the aforesaid Act, there is one more problem to be faced. The Public Premises (Eviction of Unauthorised Occupants) Act No. 32 of 1958 applies only to public premises as defined in clause (b) of Section 2 of the Act as is evident from its title and preamble. The Estate Officer under the said Act will, Therefore, not have the jurisdiction to proceed under the Act if the Act were ultra vires or the premises in dispute were not public premises belonging to the Government and other authorities mentioned in the

Act. The same, Therefore, constitutes a foundation for the action by the Estate Officer. The determination of questions of title to the land in dispute by the Estate Officer is not covered by the Act and at all events, bids decision will only be tentative and the finality mentioned in section 10 of the Act does not attach to any such decisions on the disputed questions of title and the jurisdiction of the civil court to investigate and determine the title to the land in dispute has not been taken away by the said Act. What the Estate Officer has to determine is the unauthorised occupation by the persons sought to be evicted in respect of the public premises which are admitted or established to be so and if there be a bona fide dispute about their being such premises, the orders of the Estate Officer will not be binding on the parties or the civil court. It has been urged by the learned counsel for the respondents that the construction, I am placing upon the said provisions of the statute is likely to lead to an abuse, as every unauthorised occupant will attempt to oust the jurisdiction of the Estate Officer by falsely urging that the premises in dispute were not public premises. I am not impressed by this submission of the learned counsel for the defendants.

(11) Mere denial by the occupant of the nature or the premises does not oust the jurisdiction of the Estate Officer and it would be his duty to arrive at a tentative decision and continue the proceedings but bids determination of the title to the land will not be final and the same will be open to challenge and scrutiny in civil court and, Therefore, the jurisdiction of the civil court remains intact and it will be open to the said Court to give a decree on the basis of the title to the alleged public premises and thereby hold that the order passed by the Estate Officer would be without jurisdiction, void and ineffective. In the case in hand, the plaintiffs claim that the land in dispute is Wakf property and as mentioned above, the same is alleged to have been declared as Wakf property u/s 5(2) of the Muslim Wakf Act and the dispute with regard to the same is pending between the Union of India and Wakf Board for decision in this court. Under the circumstances, it could, without proof not be assumed that the land in dispute, belonged to Government or otherwise constituted public premises and it appears that the contention of the plaintiffs is bona fide serious and triable and they undoubtedly have a prima facie case. Consequently, the finding of the lower Appellate court is not correct and I have to reverse the same. Once it be held that the plaintiffs have a prima facie case, they are entitled to an interim injunction, as the balance of convenience lies in maintaining the status quo ante and the possession of the plaintiffs intact during the pendency of the suit. Further, there is no doubt that eviction of the plaintiffs from their small places of business, which they have set up will uproot them and cause irreparable loss and injury.

(12) Therefore, I hold that the order of the lower Appellate Court suffers from a material irregularity in exercise of its jurisdiction and I set aside the same and grant the plaintiffs an injunction restraining the defendants from dispossessing the plaintiffs from the lands in dispute till the final decision of the suit. Should the defendants desire to take action against the plaintiffs during the pendency of

the suit in accordance with some valid law, or on establishment of the existence of public premises, they will have the liberty to apply to the trial court for variation of the injunction and permission to proceed and the Court would bear the application on merits and decide it according to law. The interim injunction granted by me leaves the field open for any action against the plaintiffs for recovery of damages for use and occupation of the land in dispute which the defendants may or may not take according to a valid law. Accordingly all these revisions are allowed, hut with no order as to costs. The parties are directed through their counsel to appear in the trial court on 14-7-70 for further proceedings in the suit.