

(1975) 03 DEL CK 0009
In the Delhi High Court
Case No : Civil Writ No. 550 of 1974

Indraj and Others

APPELLANT

Vs

The Collector, Delhi and Others

RESPONDENT

Date of Decision : 31-03-1975

Acts Referred:

Citation : AIR 1975 Delhi 153

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : R.K. Chopra, for the Appellant; P.N. Tiwari, for the Respondent

Judgement

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners, who claim to have been in possession of the land in dispute for over 20 years as tenants under the Delhi Development Authority and its predecessor-in-office, the Delhi Improvement Trust, assail the proceedings taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereinafter referred to as "the Act", against the petitioners as indeed the order made in it by the Estate Officer, direction the eviction of the petitioners and of the Additional District Judge upholding the said order in appeal.

2. The proceedings and the impugned orders are assailed on the grounds that the notice issued to the petitioners u/s 4(1) of the Act of show cause why the petitioners be not evicted does of conform to the statutory requirements of Section 4(1) of the Act and the petitioners were denied a reasonable opportunity of being heard in that the Estate Officer declined to make the aid of his process available to the petitioner for the production of Official records and certain public servants to establish the petitioner's contention that they had been in occupation of the land in dispute as tenants under the then Delhi improvement Trust.

3. It appears to me after hearing learned counsel for the parties that while both the grounds on which the proceedings are assailed are well founded. the

petitioners are nevertheless not entitled, in the peculiar circumstances of this case, to any relief.

4. Section 4(1) of the Act provides that a notice under that provision requiring the respondent to show cause why he should not be evicted should be for a date which is not earlier than 10 days from the date of its issue. The notices in the present case are admittedly undated and parties are agreed before me that there is no indication from the file as to when they were issued although the record shows that the direction for their issue was made on July 12, 1972. It is, however, a common case of the parties that these were received by the petitioners on September 16, 1972 and, Therefore, in the ordinary course of events may have been issued a couple of days earlier. It could not, Therefore, be said that the notices were issued not less than 10 days before the date on which the matter was scheduled to come up for hearing. The notices, Therefore, were obviously not in conformity with the statutory requirement.

5. As for the other ground it was not disputed before me that the Petitioners had set up before the Estate Officer a case that they were not in unauthorised occupation of the land in dispute because they were in possession of it since over 20 years as tenants and had been paying rent to the appropriate authorities. The petitioners sought process of the Estate Officer to summon the records of the relevant authorities but the same was declined with the observation that the petitioners should make their own arrangements to produce public servants concerned with the relevant records. Obviously, the petitioners were not in a position to compel the public servants to appear before any authority much less with official records and such a course would have been possible only with the assistance of the process of the Estate Officer, who had been amply authorised in that behalf. The refusal, Therefore, of the Estate Officer to summon the records and the official concerned clearly amounted to a denial of a reasonable opportunity of being heard and could not possibly be defended on behalf of the respondents.

6. Even the petitioners would not be entitled to the relief sought by them. The non compliance of the provisions of Section 4(1) of the Act would not vitiate the proceedings because the provisions of Section 4 do not appear to me to be mandatory but are only directory in nature intended to ensure that a person proposed to be evicted has a reasonable notice of the date of hearing and sufficient time to file his reply to it. This purpose was more than satisfied because the notices were received by the petitioners on September 16, 1972, but the proceedings remained pending until November 19, 1973, when the final order was made by the Estate Officer. The petitioners, Therefore, had sufficient time, even though less than 10 days time initially, to submit such objections as they may have or to Produce such material as they may like to in support of their contention that they were not liable to be evicted. The fact that the petitioners made no grievance of this to the Estate Officer further establishes the fact that the petitioners had no real grievance that notice was too short for the petitioners

to submit a reply. What is more, the petitioners really had no Possible cause to show and could not have even set up the plea that they had been in authorised occupation of the land in dispute. This is so because it was admitted that prior to the initiation of the proceedings, the petitioners had filed a civil action against the authorities seeking a perpetual injunction restraining the authorities from dispossessing the petitioners otherwise than in accordance with law on the plea that the petitioners have been in occupation of the land in dispute since over 20 years as tenants. The trial Court dispelled the -plea of the petitioners that they were tenants and held that they were unauthorised occupants. It however held, that even an unauthorised occupant had a limited right not to be disturbed except in accordance with law and, Therefore, on that plea granted the relief sought by the petitioners and decreed the suit of the petitioners restraining the authorities from interfering with the petitioners' possession except in accordance with law. The petitioners being party to the aforesaid suit the finding of the trial Court that the petitioners had been in unauthorised occupation of the land was binding on the petitioners and would operate as res judicata in the proceedings under the Act so as to disentitle the petitioners to set up such a plea. The contention raised on behalf of the petitioners before the Additional District Judge, as indeed before this Court, that such a decree would not operate as res judicata because by the decree the petitioners' suit had succeeded and the petitioners, Therefore, could not have filed an appeal against it is, however, unsustainable and was rightly dispelled by the learned Additional District Judge. The petitioners had sought relief from the Civil Court on the basis that the petitioners were in respect of the land in dispute. The decision of the question whether the petitioners were tenants or were in unauthorised occupation was, Therefore, necessary for the relief which the petitioners sought. That being so, it could not be said that the refusal by the Civil Court to grant them the relief on the basis that they were authorised occupants either as tenants or otherwise would not disentitle the petitioners to assail the decree to that extent and that being so. the decree would certainly operate as res judicata. The principle of the decision in the case of Mohamad Mir v. Ghulam Moh-uddin, Air 1954 J & K 32 which was invoked by the petitioners before this Court, as indeed before the learned Additional District Judge, was, Therefore, of no avail to the petitioners. In the face of the aforesaid decree the petitioners were, Therefore not entitled to set up a plea that they were in authorised occupation of the land and that being so, any relief to the petitioners in the present case on the basis of the two grounds urged above would amount to granting a futile writ because, if the proceedings are quashed, the fresh Proceedings would only be an exercise in futility so far as the petitioners are concerned because, being bound by the aforesaid decree, they cannot be heard to say that they were not unauthorised occupants and if they are unauthorised occupants, they are liable to be evicted.

7. In the result, the petition fails and is hereby dismissed but in the circumstances without costs.

8. Petition dismissed.