
(1997) 05 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5623 of 1996 and Revision No. 528 of 1997

Kantichand Sharma

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 28-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (1997) 1 WLN 631

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—As questions of law fall for consideration In both these petitions are identical, they were heard analogously and are proposed to be disposed of by a common order.

Back Ground Facts

2. A few relevant facts leading to these proceedings may be noted at the out set. A" writ petition was filed by Kanti Chand Sharma (for short KC) against the Municipal Corporation Jaipur (for short MC) and others on November 18, 1996 with the averments that a plot owned and possessed by him is situated at Ambabadi Jaipur. He has been residing and carrying on business over the said plot after making construction for more than 34 years. The land in question has been surrounded by barbed wire fencing and water and electricity connection were installed over it. The open space of the said land has been covered by long and big trees. The MC issued licence in the name of KC for carrying his business. Till November 2, 1996 the said constructions were in existence but thereafter the MC smashed it and the belongings of KC were thrown in Amanishah Nalas and thereby KC was put to a loss of about 6 lacs. Certified copies of judgment and decree dated October 25, 1996 have also been annexed with the writ petition showing that a compromise decree was passed by the Court of Additional Civil

Judge (Junior Division) No. 4 Jaipur City, in the Lok Adalat whereby the MC was restrained from demolishing the constructions on the suit land and from making interference in the peaceful enjoyment and use of the suit land without adopting the due course of law and without affording sufficient opportunity of hearing to KC. It was also being averred in the writ petition that KC after became terrified from the threatening of Shri Mohan Lal Gupta, the Mayor of M.C., wrote an application for allotment of a portion of the land of an area of 100 sq. yards and wrote whatever Shri Mohan Lal Gupta desired to write. The MC after smashing the constructions rendered KC as a homeless orphan without adopting the due course of law, which according to Supreme Court was filing of a suit for declaration and eviction by the persons or authorities who claim the ownership and title over the said land. Summary proceedings u/s 203 of the Rajasthan Municipalities Act, 1959 (for short Act 1959) ought not have been adopted by the MC. It has therefore, been prayed that MC be directed not to interfere in the peaceful enjoyment of the land in question and if it claims any title in respect of the said land it be directed to file a civil suit for establishing the same.

3. On January 20, 1997, KC initiated execution proceedings in respect of decree dated October 25, 1996, in the Court of Additional Civil Judge (Junior Division) No. 4 Jaipur City against MC and others. Alongwith the execution petition an application under Order 39 Rule 1 read with Section 151 CPC was also filed. The learned executing Court treated the said application u/s 151 CPC and directed both the parties to maintain status quo with respect of land in question during the pendency of the execution petition, vide order dated Feb. 27, 1997. Against this order that the action for filing the revision has been resorted to by the MC.

4. The MC submitted reply to the writ petition stating therein that KC was guilty of suppressing the material facts. After affording opportunity of showing cause he was dispossessed from the land in question on November 2, 1996 and thereafter on Jan. 27, 1997 the said land was put to auction. KC having intentionally concealed this fact that he was unsuccessful in seeking interim order against the Jaipur Development Authority, is not entitled for any relief in the writ petition.

Rival Contentions

5. Mr. G.L. Pareek, learned Counsel with all the vehemence at his command canvassed that KC has been in continuous possession over the land in question for a period of more than 35 years and he has a bonafide claim about his right to remain in occupation over the said land. This bonafide claim raises questions involving applicability and interpretation of various laws and documents as well as investigation into disputed questions of fact involving recording of evidence. Such matters could not be satisfactorily adjudicated in summary proceedings u/s 203 of the Act 1959 and can be more properly considered in regular proceedings in the appropriate forum. A reliance was placed on State of Rajasthan v. Smt. Padmavati Devi RLW 1995 (1) SC 117 Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, Raja Fateh Singh v. State of Raj. 1986 RLR

966 State of Jammu and Kashmir and Others Vs. Haji Wali Mohammed and Others, , State of Haryana v. Ram Kishan 1988 (3) SCC 416, Hari Singh and Others Vs. The Military Estate Officer and Another, , Railway Board, Government of India Vs. Observer Publication (P) Ltd., Ameerunnisa Begum v. Mehboob Begum 1953 SCR 404 Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, Olga Tellis v. Bombay M. Corporation 1985 Suppl. (2) SCR 51.

6. Mr. Prakash Chand Jain, learned Counsel for the MC, on the other hand vigorously contended that writ petition deserves to be dismissed at the threshold. There are material contradictions in the writ petition. KC was dispossessed with his consent and he himself admits in the writ petition having executed such document. As KC availed alternative remedy no relief can be granted under Article 226 of the Constitution of India. Reliance was placed on Gopi Lal Teli Vs. The State of Rajasthan and Others, Union of India Vs. Smt. Darshna Devi, M/s. Anamallai Club Vs. Government of Tamil Nadu and others, . Banshi Ram v. DDA 1995 (1) CCC 671 Mahadev v. Poona M.C. 1995 (1) SCC 352 (SC) Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, Neyveli Lignite Corporation Ltd. and Others Vs. K.S. Naravana Iyer, .

Broad Principles

7. The principles deducible from the cases cited at the bar may be summarised as under:

(i) If bonafide claim, raises questions involving applicability and interpretation of various laws and documents as well as disputed questions of fact involving recording of evidence, such claim can be more properly considered in regular proceedings in the appropriate forum and not in summary proceedings.

(ii) Where Government is a lessor it cannot enforce the right of re-entry upon forfeiture under the lease deed by adopting a summary procedure Lessee not being an "unauthorised occupant" of a public premises recourse to Public Premises (Eviction of unauthorized Occupants) act cannot be taken for summary eviction of lessee. Where such a breach is found lessor must adopt due process of law by filing civil suit to enforce its right of re-entry.

(iii) The ordinary rule which regulates all procedure, is that persons who are likely to be effected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of such each situation.

(iv) Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his own hands and to dispossess a person in actual possession without having recourse to a Court.

(v) No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the

public places.

(Emphasis supplied)

8. I have carefully scanned the judgment and decree dated October 25, 1996 whereby the MC was restrained from erasing the construction made over the land in dispute and from making interference in the peaceful enjoyment and use of it without affording sufficient opportunity of hearing and without adopting due course of law. After filing of the writ petition KC instituted proceedings in respect of the decree dated October 25, 1996 (Annexure 5). The writ petition raises disputed questions of fact involving recording of evidence. The alternative remedy has already been availed by KC by initiating execution proceedings in respect of the land in question therefore he is not entitled to any relief in the writ petition. The fact that KC was ousted from the land in question with his consent can not be appreciated being disputed questions of fact. Though KC in so many words averred in the "writ petition that after became terrified from the threatening of Shri Mohan Lai Gupta, he wrote an application for allotment of a portion of land of an area of 100 sq. yds. but this fact has been denied by M.C. in the reply. Even counter affidavit of Shri Mohan Lal Gupta was not filed. Under these circumstances it is not necessary for me to enter into the controversy in detail. Suffice it to say that writ petition has no legs to stand.

Can an Interim Order be Passed u/s 151 CPC in an Execution Proceedings?

9. This takes me to the order dated Feb. 27, 1997 passed by the learned Additional Civil Judge (Junior Division) No. 4, Jaipur City, whereby the parties were directed to maintain status quo in respect of land in question during the pendency of execution petition.

10. Assailing the order of the learned executing Court Mr. P.C. Jain, learned Counsel urged that the application u/s 151 CPC was not maintainable in execution proceedings. Once KC has lost his cause in the application for injunction in as much as the appeal and the revision petition filed by him has already been dismissed and thereafter in the writ petition filed by him no interim order was issued by this Court. KC therefore has abused the process of the court. He defrauded the Court in suppressing the material facts and got the impugned order in his favour.

11. A cursory look at the impugned order demonstrates that it was passed in the presence of the counsel for MC after considering the argument that KC was validly dispossessed after service of notice effected upon him. KC before the executing Court asserted that he did not receive any notice and he moved application for summoning of the documents from the office of the MC. The executing court was of the view that execution petition raises questions involving interpretation of law as well as disputed facts requiring detailed inquiry, therefore it passed an interim order under its inherent powers directing the parties to maintain status quo in respect of property in question.

12. This is for the executing Court to examine as to whether the compromise decree for injunction passed in Lok Adalat was obeyed or not? But when decree holder says that decree for an injunction has not been obeyed, the provisions contained in Order 21 Rule 32(5) are attracted which provide thus:

Where a decree for the specific performance of a contract or for an injunction has not been obeyed the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor and upon the act being done the expenses incurred may be ascertain in such manner as the Court may direct and may be recovered as if they were included in the decree.

13. The objections with regard to abuse of process of law and suppression of material facts by KC may be raised before the executing Court. The impugned order has been passed under the inherent powers and I see no jurisdictional error in the said order as dispute questions of fact are involved in the execution petition which can not be answered straight away on the basis of allegations and counter allegations of the parties. If the order is allowed to stand it would not occasion failure of justice.

14. In the result, having regard to the view that I have taken, the writ petition and the revision both are dismissed. The record of the executing Court be remitted forthwith. Looking to the facts and circumstances of the case the learned executing Court is directed to adjudicate upon the execution petition within two months from the date of receipt of this order. The parties are directed to appear before the executing Court on May 31, 1997 for seeking further instructions. Costs easy.