

(2007) 05 DEL CK 0190

In the Delhi High Court

Case No : LPA No. 676 of 2004 and WP (C) No. 7237 of 2003

Karan Singh Tanwar

APPELLANT

Vs

The Estate Officer and Others
 Ram Kishan Vs Union of
India (UOI) and Others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 11

Land Acquisition Act, 1894 — Section 16

Limitation Act, 1963 — Section 5

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 6, 9

Citation : (2007) 98 DRJ 414 : (2008) 1 ILR Delhi 270

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : V.P. Singh and Digvijay Rai, in LPA No. 676/2004 and Arunabh Chaudhary and D.N. Ray, in WPC No. 7237/200, for the Appellant; Jyoti Singh and Ankur Chibber, in LPA No. 676/2004 and Jyoti Singh and Ankur Chibber, Sanjay Poddar, for LAC, H.S. Phoolka Mahipal Singh and Siddhartha Shankar Ray, in WP(C) No. 7237/2003-Ch. Karan Singh Tanwar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The appeal and the writ petition herein involve similar facts and issues and, Therefore, we propose to dispose

of the appeal and writ petition by this common judgment and order.

2. The appeal (LPA No. 676/2004) is directed against the judgment and order passed by the learned Single Judge on 9th July, 2004 dismissing

the writ petition filed by the appellant. The said writ petition was filed challenging the order of the Estate Officer dated 30th August, 2002 and also

the order of the Appellate Authority dated 17th April, 2004 passed against the appellant under the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 (hereinafter referred to as the Act) in respect of the land measuring 4 bighas and 16 bids was situated in Village Naraina,

Ring Road, New Delhi. Land situated in the said village measuring about 43 bighas 8 bids was acquired on 11.2.1976 under notification dated

24.10.1961.

3. Contending that the appellant is the tenant and in occupation of the aforesaid 4 bighas and 16 bids of land, he filed a suit in the year 1985 in

respect of the aforesaid land. It was contended, inter alia, that the said land is abadi land and not falling in the Cantonment area and, Therefore,

could not have been acquired under the aforesaid notification. It was further submitted that the said land was accordingly left out from the

acquisition proceeding. In the aforesaid suit, the appellant claimed for a decree of permanent injunction against the Ministry of defense from taking

over possession of the said land from the appellant.

4. The Ministry of defense initially contested the aforesaid suit by filing a written statement contending, inter alia, that the suit property was acquired

and possession of the same was also handed over. Subsequently, however, the Ministry of defense failed to appear in the suit and an ex parte

decree and injunction was passed on 16th January, 1998 restraining the Ministry of defense and others in the suit from dispossessing the appellant

from the suit property. Later on, Ministry of defense filed an application in the suit for setting aside the said ex parte decree. The ex parte decree

was set aside under order dated 14th July, 2000 but the said order was reversed by the High Court in revision and the decree passed by the trial

court was affirmed under order dated 23rd July, 2001. Against the said order a SLP was also filed by the Ministry of defense, which was

dismissed. Therefore, according to the appellant the aforesaid decree passed by the trial court granting a decree of permanent injunction against the

Ministry of defense from taking over possession of the property became final and binding on all the parties. It is also the stand of the appellant that

the land in question was abadi land and not the land of the Cantonment Board and, Therefore, no proceeding under the Act could have been

initiated in respect of the aforesaid land and no order/direction could have been issued to dispossess the appellant inasmuch as the land occupied

by the appellant did not vest with the State Government or with the Ministry of

defense.

5. The aforesaid issues were raised before the Estate Officer, who, however, did not accept the aforesaid contentions and directed for eviction of

the appellant from the land bearing khasra No. 2030/964 and 2031/964 also referred to as CB-131 (CB-50D). The appellant preferred an appeal

against the aforesaid order passed by the Estate Officer u/s 4 of the Act. The Additional District Judge, who acted as Appellate Authority under

the provisions of Section 9 of the Act, found no merit in the appeal and the same was also dismissed.

6. Being aggrieved, the writ petition being WP(C) No. 6142/2004 was filed before the learned Single Judge. Almost similar contentions as made

before us were also made, which did not find favor with the learned Single Judge. He dismissed the writ petition as against which the present

appeal was filed, which we have taken up for consideration along with WP(C) No. 7237/2003, which is filed by Ram Kishan, who has intervened

in this matter.

7. WP(C) No. 7237/2003 has been filed praying, inter alia, for issue of a writ of mandamus directing respondents 1 to 4 in the petition to place on

record actions taken against respondent No. 6, who is the appellant in LPA No. 676/2004, and other encroachers of defense land forming khasra

No. 2030/964 and 2031/964 at Village Naraina, Delhi.

8. We have heard the learned Counsel appearing for the parties extensively. It was submitted before us by Mr. V.P. Singh, Sr. Advocate

appearing for the appellant that possession of the aforesaid 4 bighas and 16 bids was never taken from land owners as the same was abadi

land and was with the civilians. It was submitted that as possession of the land in question was not handed over to the army authorities, the land did

not vest with the Government and, Therefore, the said land cannot be termed to be public premises. Thus it was submitted that no proceeding

could have been initiated under the provisions of the Act.

9. The next submission was that the initiation of proceedings under the provisions of the Act is barred by the principles of res judicata in view of the

decree passed by the Civil Court in title suit No. 643/1995, which ultimately was fought up to the Supreme Court when the decree passed in favor

of the appellant was affirmed and became final binding on the parties. The

aforesaid judgment passed by the Civil Court in respect of the land having attained finality, could not have been upset by filing a proceeding under the Act. It was also submitted that the principles of res judicata would apply with equal force to an ex parte proceeding also.

10. The aforesaid submissions were, however, refuted by the counsel appearing for the respondents by relying on various documents on record.

He has also brought to our notice the decisions rendered by this Court and also by the Civil Court.

11. In view of the aforesaid submissions made before us, we have looked into the records and heard all the counsel appearing for the parties at length. We have also called for and perused the original records of the Land Acquisition Officer and of the State Government.

12. The land which is involved in the present appeal and the writ petition is the land measuring 4 bighas and 16 bids was situated in khasra No.

2030/964 and 2031/964. A notification was issued on 24th October, 1961 u/s 4 of the Land Acquisition Act wherein the aforesaid khasras have

been mentioned. The aforesaid land was acquired finally under award No. 19/1975-77 for planned development of Delhi. In the award, the said

khasra Nos. 2030/964 and 2031/964 have been mentioned against Serial number 93-94. Name of the claimant and the basis of the claim under

the said award are given at Serial number 66. However, Mr. Tanwar, the appellant herein, filed a suit, being Suit No. 643/1995, for permanent

injunction in the court of Civil Judge, Tis Hazari Courts, Delhi. In the said suit the appellant stated and contended that the said property of 4 bighas

and 16 bids was in the name of Lal Singh since 1968 and the appellant is a tenant in respect of the said land. In the suit the appellant sought

for permanent injunction restraining the defendants from dispossessing him from the suit land. Although written statement was filed by the Ministry

of defense in which the claim of the appellant was denied, yet, at later stages, the Ministry of defense failed to appear, consequent upon which the

suit was proceeded ex parte and an ex parte decree came to be passed in the said suit on 16th January, 1998. However, the application filed by

the Ministry of defense under Order IX, Rule 13 of the CPC was allowed by the Civil Judge, Tis Hazari Courts, Delhi. The order of the Civil

Judge was set aside in Civil Revision (CR No. 784/2000) by the Delhi High Court

allowing the petition on the ground that in the application filed under Order IX, Rule 13 of the CPC there was delay of 669 days for which no application u/s 5 of the Limitation Act was filed praying for condensation of delay in filing the aforesaid appeal. The Ministry of defense thereafter filed a SLP against the said order dated 23rd July, 2001 passed in CR No. 784/2000. The Special Leave Petition, registered as SLP (CC 1565/2002), was dismissed. Despite the dismissal of the Special Leave Petition, the respondents proceeded to initiate a proceeding against the appellant under the provisions of the Act. In the meantime, few encroachers approached this Court by filing a writ petition challenging the action of the respondents initiated under the Act. On consideration of the records of the said cases, we find that khasra Nos. 2030/964 and 2031/964 were also mentioned. The said writ petitions were registered as WP(C) Nos. 3709/2002, 3776/2002, 3777/2002, 3778/2002, 3779/2002 and 3780/2002. A Division Bench of this Court dismissed the aforesaid writ petitions by order dated 5th February, 2003. In the said decision it was held that the unauthorised occupants are not persons who had any title over the land when possession was taken over. It was also held that none of the land owners, who had interest in the land and had even realised amount of compensation, had challenged the acquisition proceedings.

13. On going through the records, the Division Bench held that handing over and taking over of possession was witnessed by officials of the Land Acquisition Collector, Army authorities and others evidencing the fact of taking over possession on 15.12.1977 and, Therefore, there was inter se handing and taking over of possession under the provisions of the Land Acquisition Act, which had the effect of absolutely vesting the property in the Government free from all encumbrances and the predecessors of the writ petitioners in the said cases had no right, title or interest in the said land. Having held thus, conclusions were recorded that the land absolutely vested in the State and the writ petitioners had no right, title or interest in the land. The writ petitions were accordingly dismissed. Yet, few other encroachers approached the Division Bench again by filing another writ petition against the respondents under the provisions of the Act, which was registered as WP(C) No. 4851/2002. In the said case also the area of

dispute included the property at khasra No. 2030/964 and khasra No. 2031/964. The Court relying on the judgment dated 5th February, 2003

passed in WP(C) Nos. 3709/2002, 3776/2002, 3777/2002, 3778/2002, 3779/2002 and 3780/2002 dismissed the aforesaid writ petition also.

14. The Estate Officer, before whom a proceeding was initiated in respect of the appellant herein, rejected the contention of the appellant that the

land has not been vested with the Government. The Estate Officer held that the appellant herein is an unauthorised occupant of the public premises.

The said judgment also took notice of the judgment passed in CWP No. 4851/2002. The Estate Officer has further relied upon the order of the

Sub Divisional Magistrate dated 17th August, 2000, wherein he had certified that the land pertaining to khasra No. 2030/964 and khasra No.

2031/964 has been acquired and that possession stood transferred to the Government department. It was further stated that the shareholder in the

land has been compensated. Consequently, the Estate Officer held that the appellant is an encroacher of the Government land. Some time ago one

of the interveners in this appeal filed a public interest litigation before the High Court, which was registered as WP(C) No. 7237/2003. By filing the

aforesaid writ petition, the interveners brought it to the notice of the court that the appellant is illegally possessing and keeping the land covered by

khasra No. 2030/964 and khasra No. 2031/964, which is defense land.

15. On the other hand, the appellant herein being aggrieved by the order passed by the Estate Officer filed an appeal u/s 9 of the Act before the

Additional District Judge, Delhi, which was registered as PPA No. 1/2004. The Additional District Judge, after hearing, dismissed the said appeal

by order dated 17th April, 2004 affirming the conclusions of the Estate Officer that the appellant is an unauthorised occupant. Being aggrieved, the

appellant filed the aforesaid writ petition, which was considered and dismissed under the impugned judgment and order, which is under challenge in

this appeal.

16. The learned Single Judge while rendering the aforesaid decision came to a specific conclusion that there is no dispute about the fact that the

land was acquired and an award was passed and the only dispute was whether the possession of the land was or was not taken. It was also held

by the learned Single Judge that in view of the judgments passed by the Division

Bench in WP(C) No. 3709/2002 and in all other similar petitions

to the effect that on 15th December, 1977, possession was taken over, it cannot be said that the possession of the land was not taken over. The

contention of the counsel appearing for the appellant that there is lack of jurisdiction on the part of the Estate Officer to initiate and proceed with

the matter was also rejected. It was also held that the effect of decree dated 16th January, 1998 would mean that the respondents would not be

able to take possession from the appellant except by due process of law and, Therefore, there was no bar in initiating a proceeding. It was also

held by the learned Single Judge that the appellant had taken a contradictory plea inasmuch as before the Estate Officer and in the writ petition, the

appellant claimed himself to be the owner whereas in the suit filed by him, he had described himself as a tenant of the property at a monthly rent of

Rs. 350/-.

17. We have carefully perused the notification issued u/s 4 of the Land Acquisition Act. A careful perusal of the said report would indicate that the

said land was a part of and included in the said notification issued u/s 4. The possession report which is also available on record indicates that

physical possession of the land measuring 587 bighas and 6 bids was of Village Naraina acquired under notification issued u/s 4 and under award

No. 19/1975-77 was taken over which included the aforesaid 4 bighas and 16 bids was of land.

18. Counsel appearing for the appellant, however, relied upon paragraph 2 of the said possession report wherein khasra No. 2030/964 and

khasra No. 2031/964 measuring 4 bighas and 16 bids was are shown to be deleted. There is an endorsement that possession of the said land

bearing khasra No. 2030/964 and khasra No. 2031/964 which is built up were not taken over and handed over, but the next sentence therein is

relevant for our purpose, which stated that the possession would be taken over with the help of demolition squad later on.

19. Counsel appearing for the respondent - Land Acquisition Officer has placed before us the original records, which contains a document dated

15th December, 1977. The said document clearly indicates that under the order of the Land Acquisition Collector possession of khasra No.

2030/964 and khasra No. 2031/964 acquired under award No. 19/1975-76,

which was found empty, was taken over and handed over to Nayab Tehsildar.

20. Counsel appearing for the appellant sought to raise a dispute with regard to the aforesaid document contending, inter alia, that the said report appears to be photocopy and not the original records. We are, however, unable to accept the said contention because although one of them may be a photocopy, the original also exists in the said file and, Therefore, the issue raised in respect of validity of the said document is only to be rejected, which we hereby do.

21. Possession of the aforesaid land having been taken over by the civil authorities, the same was also handed over to the Army authorities. The very fact that the suit was instituted against the military authorities by the appellant indicates that the land actually belongs to the Army authorities.

Otherwise there was no reason to array Ministry of defense as a defendant in the aforesaid suit in respect of the land in question. Interestingly, in

the said suit the appellant described himself only as a tenant, but now with the passage of time the appellant has become wiser and now before the

Estate Officer and in the writ petition also the appellant described himself as owner of the land. The records indicate that owner of the aforesaid

land was Lal Singh and not the appellant. The said Lal Singh was not made a party in the aforesaid suit, which was filed by the appellant. Land

Acquisition Officer was also not made a party. Therefore, it was not possible for the Land Acquisition Officer to prove and establish before the

trial court that the aforesaid land was acquired and already vested with the Government and was public land when the aforesaid suit was filed. In

that view of the matter, Land Acquisition Collector and the owner of the land having not been made parties in the aforesaid suit, there cannot be a

plea of res judicata raised in the present proceeding by the appellant. Besides, as held by the learned Single Judge the aforesaid suit was only a suit

for permanent injunction and not for declaration of the right, title and interest. The present proceeding initiated under the Act is for a declaration

that the land in question is a public premises and consequential relief is eviction of the unauthorised occupants from the land under due process of

law. When the ex parte decree was passed against the appellant, it was a decree of permanent injunction restraining the defendant-Ministry of

defense from dispossessing the appellant without following the due process of law, which is implicit in the decree.

22. In *Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others*, , the Supreme Court has stated that for operation

of the provisions of Section 11 of the CPC and for being *res judicata*, decision must be rendered on matters directly and substantially in issue and,

Therefore, if decision matter collaterally and substantially in issue in previous proceeding, the same would not ordinary operate as *res judicata* in

subsequent proceedings where the matter is directly and substantially in issue. In *Rameshwar Dayal Vs. Banda (Dead)* through his Lrs. and

Another, . In the said case it was held that a subsequent suit on title to the property would not be barred by the principles of *res judicata* despite

the fact that the earlier suit was for eviction of tenant and respondent sub-tenant, which was decreed by Small Cause Court without even

incidentally determining question of title of respondent. The Supreme Court went on to hold that to operate as *res judicata* the first finding must be

on an issue which has been directly and substantially in issue in the former suit and if the finding is given incidentally while determining another issue,

which was directly and substantially in issue, such finding cannot be said to be a issue which was directly and substantially in issue in the former suit.

In the suit filed by the appellant neither there was no declaration of the right or title nor the same was sought for and, Therefore, a decree passed

granting only a permanent injunction cannot operate as *res judicata* in respect of the claim and relief sought for under the provisions of the Act.

23. The appellant being a tenant, as stated in the suit filed by him, cannot raise any objection in respect of the notification which is issued by the

State Government under Sections 4 and 6 of the Land Acquisition Act and also against the award passed, as was held by the Supreme Court in

Navneet Ram Batra Vs. State of Uttar Pradesh and Others, The Land Acquisition Act clearly envisages that the tenant only has a right of

apportionment of the compensation and no other right. We may also refer to the decision of this Court in *Nagin Chand Godha Vs. Union of India*

(UOI) and Others, . In paragraph 5 of the said judgment, it is stated by this Court that vesting is complete once *panchnama* is drawn, which means

that symbolic possession is taken. Section 16 of the Land Acquisition Act clearly stipulates that on taking possession of the land by the State

authorities, the land absolutely vests with the Government, free from all encumbrances. We are also of the opinion that vesting of land on the government by operation of law cannot be set at naught and the Government cannot be divested of the land by a decision obtained and rendered in absence of the State Government and without making them a party in the suit. The records clearly indicate that rights of the land owners for khasra No. 2030/964 and khasra No. 2031/964 indicates that Lal Singh was one of the land owners.

24. Moreover, the Division Bench of this Court considered the pleas of some of the unauthorised occupants in the land covered by the similar

notification u/s 4 and same award No. 19/1975-77, which also included specifically khasra No. 2030/964 and khasra No. 2031/964. In

paragraphs 7 and 8 of the said judgment (CWP 3709/2002 disposed of on 5th February, 2003), reference is made to the same paragraph 2 of the

possession report on which the appellant herein also relies upon. This Court referred to the subsequent possession report dated 15th December,

1977 and accepted the position that possession of the said land covered by khasra No. 2030/964 and khasra No. 2031/964 measuring 2 bighas

and 16 bids was also taken over by the Collector on 15th December, 1977 and on the same date it was handed over to the Army authorities.

The said findings are binding and final. The appellant could not have claimed himself as owner of the land, for even before us it is an admitted

position that the land in question belonged to Lal Singh. Therefore, the appellant suppressed material facts in this proceeding and also in the earlier

proceeding under the Act. Suppression of such material facts at every stage by the appellant reflects on his conduct and the writ petition and the

appeal could only be rejected only on the said ground of conduct. In this connection, we may refer to the decision of the Supreme Court in The

Chancellor and Another Vs. Dr Bijayananda Kar and Others, wherein the Supreme Court has held that when there is suppression of material facts,

court would be justified in dismissing the writ petition. The aforesaid judgment was also followed by a Division Bench of this Court in Satish

Khosla v. Eli Lilly Ranbaxy Ltd. and Anr. reported in 1998 (I) AD (Del) 929. The Division Bench in the aforesaid judgment dated 5th February,

2003 also held that handing over and taking over possession is witnessed by officials of Collector, Land Acquisition, Army authorities and others,

evidencing the fact of having taken over possession on the spot on 15th December, 1977. It was held that such document filed under the

provisions of the Land Acquisition Act has the effect of absolutely vesting the property in Government, free from all encumbrances.

25. Considering the facts and circumstances of the case, we find no reason to interfere with the findings recorded by the Estate Officer, the

appellate authority as also by the learned Single Judge. We also respectfully agree with the findings recorded by the learned Division Bench of this

Court in its judgment dated 5th February, 2003 passed in CWP No. 3709/2002. There is no merit in this appeal, which is dismissed.

Consequently WP(C) No. 7237/2003 also stands disposed of in terms of the aforesaid order.