
(2005) 04 KL CK 0006

In the High Court Of Kerala

Case No : W.A. No. 1796 of 2004 and W.P. (C) No. 28270 of 2004

M. Far Hotels Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Companies Act, 1956 — Section 394(2)
Constitution of India, 1950 — Article 162, 19, 226, 3, 300A
Criminal Procedure Code, 1973 (CrPC) — Section 165, 51, 96, 98

Citation : (2005) 2 KLT 988

Hon'ble Judges : K.S. Radhakrishnan, Acting C.J.; S. Siri Jagan, J

Bench : Division Bench

Advocate : L. Nageswara Rao, K.P. Dandapani and E.M. Sadrul Anam, for the Appellant; S.V.S. Iyer John Varghese, Asst. Solicitor General, Public Prosecutor Rao, K. Ramkumar, Pirappancode V. Sreedharan Nair and S. Ajayakumar, for the Respondent

Judgement

K.S. Radhakrishnan, Ag. C.J.

1. Possession is nine points of the law is a precept. Every claimant must succeed by strength of his own title not be weakness of his antagonists. Rightful owner cannot use force to put the person in possession out, but appeal to law; lest it may encourage lawlessness in the society.

2. Writ petitioners are aggrieved by an order G.O.(P) No. 302/2004/RD dated 25.9.2004 issued by the Government of Kerala directing the District Collector to repossess from the writ petitioners the Kovalam Palace and the land appurtenant thereto measuring 4.13.30 hectares in Vizhinjam Village. The order was served on the first petitioner at 6.45. p.m. on 25.9.2004 (Saturday) directing the petitioner to deliver possession by 10 a.m. on (Monday) 27th September, 2004. Petitioners then filed W.P.(C) No. 28270 of 2004 on 27.9.2004 itself and highlighted the urgency of the matter before the Hon"ble Chief Justice and got the matter posted on 28.9.2004. On a request made by the State the matter was

posted at 1.45 p.m. Learned Single Judge ordered that the takeover of the Kovalam Hotel Complex covered by Ext.P13 would be subject to the result of the Writ Petition. Aggrieved by the interim order passed by the learned Single Judge W.A.No. 1796 of 2004 was filed by the petitioners. In the Writ Appeal, a Bench of this Court ordered status quo and restrained the third respondent from taking possession of the remaining buildings and the premises until further orders.

3. Petitioners are aggrieved by the manner in which the land and the buildings are sought to be repossessed by the State of Kerala and Revenue Officers with the help of the police. Petitioners submitted that the executive action taken by the State and its officers by extra judicial methods is destructive of the basic principles of the rule of law. Petitioners pray that they shall be put back in possession of the properties forcibly taken possession of by the State through its machinery. We may deal with those contentions of the petitioners in detail in the later part of the judgment after dealing with the essential facts.

4. India Tourism Development Corporation (I.T.D.C.) was set up as a wholly owned Government of India Company in the year 1966 for the development and promotion of tourism in India. It is functioning under the aegis of Union of India. I.T.D.C. had identified various tourist places in the country of which one was at Kovalam, which it wanted to develop as a major international tourist destination. I.T.D.C, through Union of India made a request to the State of Kerala to acquire some land for the construction of a five star hotel and related tourist facilities for the purpose. State Government responded to the proposal and agreed to hand over the Kovalam Palace and adjoining land for that purpose. Kovalam Palace and the adjoining land originally belonged to the Travancore Royal Family, which were on 2.5.1964, as per L.A.C.No. 207 of 1964 the Kovalam Palace acquired by the State of Kerala, after paying land acquisition compensation of Rs. 5,26,431/-. For a few years the K.T.D.C. had operated a hotel in the acquired palace. Pursuant to the proposal made by the I.T.D.C. a series of deliberations and correspondence ensued between the I.T.D.C. and the State Government. Later the first respondent vide its letter dated 26.3.1970 conveyed sanction of the President of India for payment of Rs. 9,50,534.39 to the State Government upon the transfer of palace property and the land along the beach at Kovalam. Request was made to the State Government to transfer the ownership of the property. Later the State of Kerala responded to the request made by the Government of India. Government of Kerala vide Order G.O.(MS) No. 242/70/PD dated 18th July, 1970 had accorded sanction to hand over possession of the Kovalam Palace and the adjacent property, measuring 43 acres acquired for the Kovalam Project, to the Department of Tourism, Government of India pending finalization of the terms and conditions of transfer. Government of Kerala then through K.T.D.C. transferred the Kovalam Palace and properties to the Department of Tourism, Government of India vide its letter dated 23rd October, 1970, which we may extract below for easy reference.

"I am to inform Government that the Kovalam Palace Hotel which was under the

control of the Kerala Tourism Development Corporation have been handed over to Shri B.N. Raman, Additional Director General of Tourism on behalf of the Department of Tourism, Government of India on 23.10.1970, pending finalization of the terms and conditions of the transfer as ordered in the Government orders cited. Hotels, Restaurant etc. have also been handed over as running concerns restaurant work under the authority which took them over pending final decision. A list of articles handed over is being prepared."

Government of India wanted additional properties also for the execution of the large scale Kovalam Integrated Development Project. Remaining 21 acres of land was also similarly acquired by the State of Kerala for I.T.D.C. for which adequate compensation was received by the State of Kerala. Several parcels of land were later acquired by the State Government for the Union of India and the I.T.D.C. for setting up a hotel of international standards at Kovalam and adequate consideration was paid over by Union of India. Properties acquired by State of Kerala for the purpose of the hotel project undertaken by the I.T.D.C. on receipt of valuable consideration constitutes 64.5 acres of property in all which takes in the palace as well as the land appurtenant thereto. Union of India and I.T.D.C. have taken the specific stand that they have acquired absolute, clear and marketable right over those properties.

5. I.T.D.C. made further investments in the land acquired and had been running a hotel in the palace as well as in the various buildings constructed subsequently. Later Union of India took a policy decision to disinvest certain public sector undertakings one of which was the I.T.D.C. Hotel at Kovalam. Pursuant to that policy decision, I.T.D.C. was directed by the Union of India to make arrangements for the privatization of I.T.D.C. hotels and properties at Kovalam amongst others. As per the methodology adopted by the Government of India, inter alia, in the case of Kovalam Ashok Beach Resort for the transfer of the property, the Government of India, Ministry of Law, Justice and Company Affairs, Department of Company Affairs, New Delhi granted sanction for a Scheme of arrangement by which the Hotels marked for disinvestments were sold to separate Shell Companies. In respect of Kovalam Ashok Beach Resort and other divested hotel properties, approval and sanction was duly accorded by the Ministry of Law, Justice & Company Affairs, New Delhi on account of a demerger scheme vide order dated 31.5.2005, by which the Kovalam Ashok Beach Resort was transferred to M/s. Kovalam Hotel Private Ltd. The disinvestment/restructuring of I.T.D.C. hotels include either (a) handing over the hotel properties to established hotel chains for operating on a long-term structured contract on lease-cum-management basis or (b) sale of properties as separate entities. In January 2002, the Government of India, I.T.D.C. issued and published "Expression of Interest - Third Tranche" offering for sale of the nine hotels properties as separate entities. Item No. 1 property therein was Kovalam Ashok Beach Resort at Kovalam in Kerala State, an Elite Hotel having 196 rooms in a land area of approximately 64.50 acres. The pre-qualification criteria prescribed that entities submitting an Expression of Interest in respect of the item No. 1

property shall have a minimum combined net worth of Rs. 150 million. Twenty nine persons responded to the Expression of Interest including the first petitioner who offered Rs. 43,68,76,000/-. The first petitioner's offer was highest, which was accepted by the Government of India and it was decided to transfer the ownership and possession to the petitioners. Accordingly the Government of India granted sanction and approved a Demerger Scheme by order dt. 31.5.2002 by which Kovalam Ashok Beach Resort was transferred to Kovalam Hotels (Pvt.) Ltd. Relevant portion of the order dt. 31.5.2002 reads as follows:

"That all the property, rights and powers of India Tourism Development Corporation Limited as mentioned in Article 3 of the Scheme and in the Schedule hereto be transferred, without further act or deed to Kovalam Hotels Private Limited, the Transferee Company herein and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to and vest in the Kovalam Hotels Private Limited Transferee Company for all the estate and interest of India Tourism Development Corporation Limited therein but subject, nevertheless to all changes and mortgage affecting the same.

...

Annexure F. Property Title and Related Issues Description of the land.

The Hotel is located at Thiruvananthapuram-695 527, Kerala on a plot of and measuring approximately 25.78.40 hectares of free hold land bounded on the North by Vellar Panchayat area, on the south by Panchayat Road to Hawa Beach, on the East by K.T.D.C. Samudra Hotel and on the West by the Sea".

Share purchase agreements A and B were accepted by the President of India, the first petitioner and the Kovalam Hotels Private Limited. The above mentioned documents would indicate that consequent to share purchase agreements the entire business of the Kovalam Ashok Beach Resort including all buildings, structures and other appurtenances stood transferred and vested with the petitioners. Petitioners became the absolute owners in possession of the entire 64.5 acres (25.78.40 hectares) and the buildings therein of which the State of Kerala claims title in respect of 4.13.30 hectares of land which takes in Kovalam Palace and the lands appurtenant thereto. Petitioners claim that they are bona fide purchasers in possession of 25.78.40 hectares of land from the Union of India, I.T.D.C. in a global tender and they made it to suit the convenience of the tourists, both domestic and international. Petitioners are running the hotel project after investing considerable amount of money. International tourists come and stay in the hotel. In addition to the palace, the disputed property has another 28 buildings, wherein, the staff dining hall, kitchen for the staff, water storage area, offices for accountant, administrator, store purchase, hotel reservation service, engineering office, etc. are housed. Those infrastructural facilities are highly necessary for the functioning of the hotel.

6. Petitioners, as we have already stated, received notice Ext.P13 dated 25.9.2004 from the District Collector, Trivandrum to vacate and deliver

possession of 4.13.30 hectares of land before 10 a.m. on 27.9.2004 to the Tahsildar, Neyyattinkara, which referred to Government Order dated 25.9. 2004. The operative portion of the order reads as follows:

"Property was also actually handed over to Additional Director General of Tourism, Government of India by the Managing Director, Kerala Tourism Development Corporation, Thiruvananthapuram on 23.10.1970. But the terms and conditions of transfer has not yet been finalised by the Government of Kerala and the Government of India. Ever since the said date the property has been in the permissive possession of the Government of India with the result that the title of the property remains with the Government of Kerala and the possession was with Government of India. The property in question is now in the possession of the M. Far Hotels Private Ltd. consequent on the privatization of the Hotel by the Government of India during July 2002."

Government Order states that Government constituted a Committee to enquire into the status of the Kovalam Palace (Halcyon Castle) and the adjoining property and the Committee after elaborately studying the issues submitted a report to the Government and based on the report the Government has decided to repossess the Kovalam Palace and the land appurtenant thereto measuring 4.13.30 hectares and direction was given to the District Collector to take possession of the property.

7. Senior counsel appearing for the writ petitioners, Sri. L.Nargeswara Rao submitted that the action of the State Government and others in taking forcible possession of the Kovalam Hotel premises is illegal, mala fide and due to extraneous reasons. Counsel submitted that by a high handed action State of Kerala and its officials took forcible possession of the Kovalam Palace and the petitioners are entitled to be put back in possession. Counsel submitted that petitioners and predecessor in interest are in continuous possession of the property in question for over 30 years and the hotel is being run in the premises and also in the palace. Counsel submitted that even assuming that the State Government have got title to the Kovalam Palace and the adjoining land, State Government have no power to take forcible possession of the property. Recovery of possession of the land and building if at all to be effected, the same can be done only through a procedure known to law. Counsel submitted that no person shall be deprived of his property save by authority of law. Counsel submitted that without any authority of law the District Collector and other Revenue Officers along with a large contingent of policemen trespassed into the property and took possession of few buildings by scaring away the Indian and foreign tourists who were occupying the premises and such a high handed action is to be strongly deprecated. Counsel also submitted that the State should have acted fairly and as a model litigant, instead they took law into their hands and violated all principles of natural justice and acted as a dictator. Counsel further submitted that petitioners are bona fide purchaser of the property for value in a global tender and the State Government is not justified in taking steps to dispossess

them by force.

8. Sri. P.P.Rao, senior counsel who appeared for the State submitted that the State has never attempted to take forcible possession from the petitioners. Counsel submitted that though possession was handed over to I.T.D.C., the title continues with the State and therefore State has got the legal right to repossess the property from the present occupier. Counsel submitted that by transfer of possession neither the Union of India nor I.T.D.C. would acquire any title to the property and if at all petitioners purchased the Hotel project from I.T.D.C. through disinvestment scheme, even then, they cannot have better title than I.T.D.C. or Government of India. Senior counsel also submitted that this Court cannot determine the title of the property in question and the same could be done only by a Civil Court. Counsel referred to some letters sent by petitioners and submitted that the petitioners sought time for surrendering remaining portion of the premises which the State has granted. Counsel therefore submitted that State has acted fairly. Senior counsel for the I.T.D.C. Sri. S.V.S. Iyer as well as the Assistant Solicitor General, Sri. John Varghese, argued in line with the counter affidavit filed by them. Sri. K. Ramkumar, who appeared for the Kovalam Kottaram Samrakshana Vimochana Samithy, submitted that the Writ Petition is not maintainable and he fully supported the stand of the State Government. Sri. Pirappancode V. Sreedharan Nair, who appeared for some of the additional respondents, and Sri. S. Ajayakumar, who appeared for the State President of Bharathiya Janatha Yuvamorcha, also supported the action of the State in taking possession of the property from the writ petitioners.

9. First petitioner, as evident from the facts of this case, has got possession of 64.5 acres of land which included Kovalam Palace and the appurtenant land from the Union of India and I.T.D.C. through a legal process known to law. Necessary agreements were executed between the first petitioner, Government of India and the I.T.D.C. as part of the disinvestment scheme. Prior to the transfer of the Hotel pursuant to the policy of disinvestment of the Government of India, I.T.D.C. was in possession and in occupation of 64.5 acres (25.78.40 hectares) from the year 1970 to 2002. The property was transferred to the petitioners in July 2002 after completing all formalities. It has been specifically stated in the counter affidavit filed by the I.T.D.C. that transfer of property including Kovalam Palace was for valuable consideration, though title remains with the State of Kerala. Counter affidavit further states that a conjoint reading of letter dated 26.3.1970 and 18.7.1970 would show that the State Government has surrendered all its rights in the Palace and its adjoining property to the I.T.D.C. for mutually agreed adequate consideration. Further it is also stated that Ext.R2(a) to (d) would show that the 43 acres of land was transferred to second respondent for valid consideration and that respondent had acquired absolute, clear and marketable title over the property. Even if it is assumed that the terms and conditions are not finalised, yet as part performance of the contract, the I.T.D.C. had made improvements in the property, and constructed additional buildings and also established a beach resort at Kovalam. Further, I.T.D.C. had

acquired absolute, clear and marketable right over those properties which were acquired pursuant to the agreement with the State Government. Union of India has filed a counter affidavit denying the statement that Government of India/I.T.D.C. had only permissive possession of the palace and allied lands. It was stated that the 2nd respondent began operating the property as a resort from the year 1972 onwards. Further, it was pointed out in the counter affidavit that State Government had surrendered all its rights in the Palace and its adjacent property to the Government of India and I.T.D.C. for adequate consideration. Union of India have also stated in the counter affidavit that State Government ought to have acted in accordance with the relevant Laws instead of trespassing into the property transferred to the writ petitioners and that the legally vested right ought not to have been illegally divested.

10. We are, in this case, concerned only with the legality of the Government order G.O. (P) No. 302/2004/RD dated 25.9.2004 and the notice issued by the District Collector for repossessing the property from the writ petitioner. Undisputedly the first petitioner is in permissive possession even according to the State Government. Union of India and I.T.D.C. have categorically stated that the State Government has divested all its right, title and interest over the property to Union of India and I.T.D.C. The State of Kerala in their counter affidavit stated that the Government order has been issued in exercise of its executive power under Article 162 of the Constitution of India. They have no case that the State has taken resort to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or through any other law. It is trite law that State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property and such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 300A of the Constitution of India states that no person shall be deprived of his property save by authority of law. Article 162 of the Constitution does not permit the State to deprive of a person of his property through executive orders. State executive is not authorised to deprive a person of his property without reference to any law or legal authority. The Apex Court, in *Wazir Chand Vs. The State of Himachal Pradesh*, , while dealing with the question as to whether seizure of property not sanctioned by Sections 51, 96, 98 and 165 of the Code of Criminal Procedure infringes fundamental rights under Articles 19 and 31 of the Constitution, noticed that the procedure adopted in that case was in utter violation of the provisions of law and could not be defended on the basis of any legal authority. Apex Court in *Bishan Das and Ors. v. The State of Punjab and Ors.* 1961 (2) SCR 69 held that the executive action taken to dispossess the petitioners therein was destructive of the basic principle of the rule of law. Contention was raised before the Apex Court that petitioners therein were deprived of property by the State and its officers in pursuance of executive orders without authority of law and they have been denied equal protection of the laws and their fundamental right to hold property has been violated in a most arbitrary manner which is destructive of the basic principles of the rule of law

guaranteed by the Constitution. Ultimately Apex Court opined as follows:

"In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonable be expected from a 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."

In *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, Apex Court held that executive order under Article 162, for seizure of any property without any authority of law, violates Article 300A of the Constitution. Court held that under Article 300A no person shall be deprived of his property, save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. In *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , Apex Court held that possession of a lessee, even after the expiry or its earlier termination, is juridical possession and forcible dispossession is prohibited, a lessee cannot be disposed otherwise than in due course of law. See *Dwarka Prasad Agarwal (D) by Lrs. and Another Vs. Ramesh Chandra Agarwala and Others*, .

11. We have no hesitation in this case to hold that the State Government has acted arbitrarily and without authority of law. The executive action taken by the State to repossess the palace premises from the petitioners and the procedure followed to achieve this objective are destructive of the basic principle of rule of law Government, in exercise of the executive power, obtained assistance of police and Revenue Officers took forceful possession of a portion of the property. Senior counsel appearing for State submitted that no physical force was exerted and that there was voluntary surrender of possession. Presence of large contingent of police force, with Revenue Officers and pressure groups in the hotel premises, which the counsel for State of Kerala did not deny, is sufficient to establish that possession was forcibly taken. The tenor of the language of the G.O. dated 25.9.2004 and the notice dated 25.09.2004 goes a long way in proving that the intention of the Government was to take forcible possession of the properties in question, and the presence of a posse of policemen fortifies such conclusion. The Hotel, which was earlier run by the I.T.D.C, in which foreign tourists and domestic tourists stay has got an international reputation and a prudent management would not get things out of proportion which would tarnish their own reputation. The entry of the Revenue Officers and the police force and local people into the hotel premises, which is in the exclusive possession and control of the petitioners, in our view was unauthorised. No permission was obtained from the petitioners before they entered the hotel premises. Conduct of the State Government and their officers was arbitrary, autocratic and deprives the petitioners of the possession of their property without reference to any law or

legal authority. The action of the Government in taking law into their hands for dispossessing the petitioners is a perfidious, insensible and obdurate act not befitting of a civilised form of Government.

12. We remind the State Government that they shall not be carried away by pressure groups who exert pressure on Government to obtain decisions compatible with their interests to violate rule of law and rights of others. A group of people styling themselves as Palace Liberation Organisation had attempted to forcefully enter the property. Petitioners had to file W.P.(C) No. 30225/01 and obtain police protection to protect their life and property. Responsible and elected form of Government can only act in accordance with the Constitution and the laws of our country. Pressure groups and vested interest may voice their concern in a democracy. Political parties and other public men would bring into focus various issues either for public or personal interest. Pressures from various quarters at times push the executive out of track and the executive tends to adopt various measures which are undemocratic and unknown to law. Democratically elected civilised form of Government should withstand such pressures to act in accordance with law, so that life and property of the citizen would be safe, and the legal rights of the citizen are not violated.

13. We have no hesitation to say that the Government was carried away by the pressure exerted from various quarters to undo even according to the Government, "permissive possession" of the petitioners. The first petitioner admittedly is not a trespasser, but came into possession through a process known to law, by participating in a global tender, in which the petitioners made highest offer, which was accepted. Union of India and I.T.D.C. in their counter affidavits have stated that they had parted with the palace and the appurtenant properties to the first petitioner through a process known to law as part of a policy of disinvestment. Under our jurisprudence, even an unauthorised occupant can be evicted only in a manner authorised by law, which is essence of rule of law.

14. Senior counsel appearing for the writ petitioners fairly submitted that this Court under Article 226 of the Constitution need not examine the question as to whether the 1st petitioner has got title over the property in question since that is to be resolved by a Civil Court. We are in this case primarily concerned with the question as to whether the petitioners are in legal possession of the property. We have no hesitation to say that they are in legal possession of the property and they can be dispossessed only through a process known to law and not through executive fiat. State Government in our view have showed tremendous haste to dispossess the petitioners. Possession was with the Union of India and the I.T.D.C. for over three decades and the hotel was being conducted in the Kovalam Palace for over several years without any complaint from any quarters. Haste shown by the State Government to dispossess the petitioners, on a Monday in our view was undemocratic, that too even without serving a show cause notice and not following the principles of natural justice.

15. The Government Order Ext. P13 dated 25.9.2004 therefore cannot stand in the eye of law, so also the notice issued by the District Collector pursuant to the Government order. Those orders are accordingly quashed and there will be a direction to the State 11 of Kerala and its Revenue Officials to put the petitioner back in possession of the items of properties taken possession from them forthwith. Writ Appeal and Writ Petition are accordingly allowed with cost of Rs. 10,000/- to be paid to the first petitioner by the State Government. This judgment, however, would not stand in the way of the State of Kerala to proceed through known process of law, in respect of which we express no opinion.