

(2000) 12 DEL CK 0073

In the Delhi High Court

Case No : CCP 444 of 2000 in CWP 3520 of 1992

Madan Lal Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2001) 2 AD 430 : (2001) 89 DLT 491

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Jagmohan Sadharwal, Mr. S.C. Nigam, for the Appellant; Jayant Bhushan, Mr. Raman Duggal, for the Respondent

Final Decision : Dismissed

Judgement

ARUN KUMAR, J.—The petitioner claims to be a displaced person who migrated to India on partition of the country. After coming to Delhi he unauthorisedly occupied government land on Mirdard Road, Minto Road, New Delhi. Unauthorised occupation which started with a small piece of land was admittedly gradually extended to cover an area of 831 sq. yds. The petitioner submits that he was doing business in fire wood and coal on the said piece of land. According to the case of the petitioner as per the Gadgil Assurance he is entitled to allotment of 200 sq.yds. of land at an alternate site for purposes of his business. The petitioner was sought to be evicted from the land in his possession because according to the respondents he is not covered within the Gadgil Assurance and, Therefore, is not entitled to any alternative piece of land. An order was passed in this behalf by the Estate Officer under the Public premises (Eviction of Unauthorised Occupants) Act, 1972. The petitioner has challenged the same by way of the main writ petition. The petitioner sought interim relief in the writ petition with respect to possession of the land occupied by him and orders dated 1st October, 1992 and 12th May, 1994 were passed. The petitioner alleges violation of these orders which read as under:

" 1.10.92

Present: Mr. S.C.Nigam for the petitioner

C.W.3530/92:

Notice to show cause as to why rule nisi be not issued, returnable on 14 December 1992. It is stated that in a similar matter (CW 3430/92) another Bench of this Court has also issued similar notice.

C.M.6554/92:

Notice for 14 December 1992. Meanwhile, there will be stay of proceedings before the Estate Officer dusty as well.

C.M.6554-A/92:

Allowed subject to all just exceptions."

"12.5.94 Present: Mr. S.C. Nigam for the petitioner.

Ms. M.M.Chopra, for the respondent.

Counter has been filed, rejoinder is yet to be filed. Vide order dated 1.10.1992, proceedings before the Estate Officer have been stayed. The petitioner is enjoying possession of the premises in question. It is clarified that by Order dated 1.10.1992 has stayed his dispossession from the premises but recovery, if any, to which the petitioner may be liable on account of his being in occupation of the premises has not been stayed. The respondents are at liberty to make the recoveries.

dusty to respondent's counsel.

Renotify on 26.8.1994".

2. However, in an application filed by the respondent for modification of the aforesaid orders, on the ground that petitioner was occupying public paths etc., these orders were modified by another order dated 25th May, 2000. Since this order has bearing on the present contempt petition, we would like to reproduce the same:

"25.5.2000

Present : Mr. S.C. Nigam for the petitioner.

Ms. Gita Mittal with Ms. Sangeeta Chandra for the applicant.

C.M.13703/99 in C.W.3530/1992.

Heard in part.

For the present, we direct the Competent Authority of MCD/L&DO to inspect the premises in question. After inspection, if it is found that the petitioner is occupying public path/road/foot-path the obstruction shall be removed. Order dated 1st October, 1992 and May 12, 1994 shall stand modified to the extent

indicated above.

List the matter on 4th August, 2000.

A copy of the order be given dusty to the learned counsel for the applicant."

3. In pursuance of the said order, officers of the Municipal Corporation of Delhi and Land and Development Office inspected the site and thereafter the obstructions at site were removed with police assistance. It is not disputed that the petitioner still continues to occupy space of about 200 sq.yds. at the site in question. The petitioner is aggrieved of the action on the part of the respondents in clearing the obstructions on public path/road and right of way. The petitioner, however, disputes this. According to him there was no public path or right of way and the action was wholly illegal and vocative of the order dated 25th May, 2000 and the respondents are liable for action under the Contempt of Courts Act.

4. We have heard the learned counsel for the parties. The Municipal Corporation of Delhi is not a party to the writ petition. However since it was associated with the impugned action, it has been made a party to this contempt petition. In the affidavit filed on behalf of the MCD it has been stated that at site encroachment by the petitioner was shown by the Engineering Officer of the Land and Development Office. A zonal plan of the area was also handed over to the officers of the MCD. Measurements from the central line of existing Mirdard Road was also taken to assess as to how much portion of encroached land comes in the right of way. After the joint inspection the obstructions/encroachments which were found in the right of way were removed in an action taken from 7th August, 2000 to 9th August, 2000. In the present petition we are only concerned as to whether there is a willful/intentional/deliberate violation of the orders of this court on the part of the alleged contemnors. In the reply affidavit, it has been stated:

"8. I say that pursuant to the aforesaid order dated 25.5.2000 passed in the aforesaid Writ petition the Deponent was advised that the said order dated 25.5.2000 contemplated the joint inspection with the official of L&DO/MCD and thereupon if any obstructions is found on the road/footpath/right of way then the same was to be removed. The Deponent accordingly inspected the premises/ areas in question with the officials of the L&DO and thereafter the obstructions were removed with the Police Assistance in accordance with law and in discharge of its official duties in good faith and in compliance of the Hon''ble Court order/ directions.

9. I say that aforesaid action of removal of the obstructions/encroachments was conducted by the Deponent in discharge of his official duties/functions in good faith and in compliance of this Hon''ble Court orders.

10. I say that neither the petitioner has alleged any mala fide nor the allegations/ averment made in the petition constitute any mala fide on the part of Deponent nor the Deponent has any ill will or mala fide or any ill intention of any sort

against the petitioner or any other person whatsoever. The Deponent has acted in compliance of the Hon''ble Court orders and in discharge of its official duties in good faith and with good intention."

5. The learned counsel for the applicant argued that the respondents have coined a new phrase - right of way. There is no right of way in the zonal plan of the area. In our view this argument is totally misdirected. What is required to be seen is whether the impugned action amounts to contempt of court. In our view the respondents have successfully shown their bona fide intentions. They have shown that the officers acted in good faith and executed the orders of this court the way they bona fide understood it. The petitioner is a rank trespasser having occupied government land and having added on it further from time to time by occupying further government land - a fact which he does not dispute. The only case of the petitioner, put at its highest, is that he is entitled to alternative site of 200 sq. yds. or a plot of the size of 200 sq. yards at the existing site. The petitioner even today, i.e., after the impugned action, continues to occupy at least this much of area forming part of government land. In the facts and circumstances of the case, in our view no case for action for contempt of court arises. The respondents have acted bona fide and in good faith in the discharge of their duties. Assuming for the sake of arguments that the respondents have gone beyond what they were required to do under the orders of this court, it is not a case for action for contempt of court.

6. So far as the question of return of goods of the petitioner which were removed from site on account of impugned action is concerned, the petitioner is free to pursue his remedies in accordance with law and this order need not come in his way. Accordingly, this petition is dismissed.