

(1985) 01 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Single Appeal No. 565 of 1973

Mangi Lal

APPELLANT

Vs

Mewar Textile Mills Staff Consumers Co-operative Society Ltd.
and Others

RESPONDENT

Date of Decision : 23-01-1985

Acts Referred:

Constitution of India, 1950 — Article 38, 39
Contract Act, 1872 — Section 70

Citation : (1985) 2 WLN 336

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—This an Ex-soldier's tell tale of turmoil and suffering and pitiable plight of victim of injustice in Courts of justice, on account of denial even of the compensation of the canteen which was taken possession by the State and given to third parties.

2. The facts as involved and the controversy relates back to the scheme of re-settlement of military ex-servicemen under which he was granted a piece of land on premium of Rs. 60/- per year in the compound of Collector, Bhilwara in December, 1955.

3. It would not be worthwhile to mention in detail the entire facts as they are contained in the judgment of the first appellate court and mostly they are not in dispute. The controversy has been further shortened by the frank and fair concession of Mr. Hukam Chand Jain, learned counsel for the appellant that he would not like to press for getting any damages or compensation for deprivation from the right of lease and user of the canteen, nor he would now claim that the canteen should be given to his client again on the basis of any permanent lease.

4. All that he claims is that whatever amount has been spent by the ex-soldier Mangilal on the construction of this canteen should at least be paid to him when the canteen had been taken away by the Government without payment of its

price or cost and he has not been even allowed to remove the structure.

5. In this respect Mr. Jain pointed out the observations of the trial court in the concluding para of the judgment which read as under:

bl fu.kZ; dks lekIr djus ls iwoZ eS ;g dg nsuk pkgwaxk fd oknh ,d HkwriwoZ ISfud gS rFkk mldh dSUVhu ds :i es 4500@& :- dh IEifRr jkT; ljdkj ds ikl jg xbZ gS A ;g lgh gS fd oknh U;k;ky; dh lgk;rk ls IEifRr izkIr ugh dj ldrk ijUrq jkT; ljdkj }kjk oknh dh bl IEifRr dks j[kuk mfpr izrhr ugh gksrk A ekStwnk ;qx es tcfd ljdkj ltk ds okLrs ugh gS cfYd ukxfjdk ds dh Isok ds okLrs gS rks ,slh fLFkfr es ;g mfpr gksxk fd vxj jkT; ljdkj oknh dks mldh IEifRr ij eqvkots ds :i es mldh dher fnykus dk izcU/k djs ;k ml ij lgkuqHkwfriwoZd xkSj dj mls dSfUVu dk BsdK nsos A bl ckjs es oknh pkgs rks ISfud dY;k.k vf/kdkjh;ks ;k nwljs ISfud vf/kdkjh;ks ds ekjQr jkT; ljdkj ls izkFkZuk dj ldrk gS A

6. Mr. H.N. Calla, Government Advocate, has appeared to oppose this appeal on behalf of the respondents in this Court.

7. It would be noticed that according to the undisputed facts the plaintiff was a Hawaldar in Mewar Infantry from where he was discharged and this allotment of land was made on account of the resettlement scheme of the Government of India. It is significant that vide Ex. 44 the Executive Engineer PWD (B&R) Bhilwara allotted this land site and called upon the plaintiff to construct the Canteen. The plaintiff constructed a "pucca", restaurant through Pyarelal Contractor PW 4 in 1955 and paid Rs. 4501/- in full and final settlement vide receipt Ex. 23.

8. Shri P. L. Sukhwal, the Collector Bhilwara, conducted opening ceremony on 7-1-1956. While the Collector, Bhilwara vide Ex. 46 wrote to the Public Prosecutor on 16-12-1955 that a draft agreement may be prepared for execution by the plaintiff for running the restaurant, it was resisted by the Public Prosecutor who suggested that only three months' permission be given to run the restaurant.

9. In this process the agreement could not be executed and the question of lease did not materialise by agreement. However, rent has been paid up to 1961 vide Exh. 3, 5, 7, 8, 9 & 10

10. It is obvious that the State functionaries took undue advantage of their status and deprived the plaintiff from proper execution of a lease-deed even after he has invested about 5000/- rupees in the year 1955-56.

11. It is also clear from the facts and circumstances of the case that no assessment was done by the PWD for the cost of the canteen.

12. It would not be proper for me now to enter into controversy whether the plaintiff was forcibly dispossessed without terminating the contract to run the canteen and whether there was lease of the plot because the findings of the lower courts are against the plaintiff and it is neither necessary nor proper to

enter into that controversy now in view of the frank and fair concession made by Mr. H.C. Jain, Advocate for the plaintiff.

13. The crucial question which remains for consideration is whether after making observations extracted above the trial court was competent to grant compensation to the plaintiff rather than leaving it to the sweet will, desire, caprice etc. of the respondents to grant or not to grant compensation. Obviously, the State functionaries never exhibited humanitarian aspect of "social justice" of granting compensation after observations of the Court but treated as dead letter on a waste paper of no consequence. This is the homage which was paid to the Social Justice enshrined in the Constitution by depriving an ex-soldier of Social Justice V.R. Krishna Iyer, J., in *Social Justice v. State of Madhya Pradesh* has condemned it and it may be reproduced for refreshing the memories and showing and enlightening the objects of social justice enshrined in the Constitution in the Preamble, Directive Principles and fundamental Rights. It is as under:

Justice, Social Justice is in jeopardy and strongly the danger comes from the robes. What, then, are the strategies needed to fulfil the Indian trust? Jettison the rule of law or justify the objectives of Part IV that is the dilemmatic question:

History itself is a tension between heritage and heresy, which law in its groping way seeks to mediate. When Lincoln proposed that slaveholders be compensated for freeing their slaves he was thinking as he characteristically did, as a lawyer. Although Franklin Roosevelt's legal training was far less likely to show in his thinking, the New Deal owed so much to the lawyers about him that the measures were at least as remarkable for their grounding in precedent as for their innovations; despite the accelerated pace and the creative novelty of combination, they owed part of their tonic effect to the shock of recognition.

The accommodation between stability and change is representative of the ultimate task of the law the resolution of the ambiguities; and entailed of human aspirations: personal security and moral responsibility, knowledge and privacy, triumph and fraternity. For this you need the dynamics of judicial technique and philosophy.

14. He then quoted Fraund, prophetic and pragmatic words "Much of law is designed to avoid the necessity for the judge to reach what Holmes called his "can't help", his ultimate conviction or value".

15. Justice Iyer was concerned with the court's inability to do social justice and observed as under:

The straws in the wind suggest that the credibility of the court and the credentials of Parliament need a new boost in the eyes of a tired people; and the time has come for the legislature to realise their "avidya" and the judges to awaken to their new "dharma", abandoning mutual mudslinging. In a federal polity with protected minorities and guarantee of equality, tune and temper of democracy depends, in important part, on a judiciary which acts as sentinel on

the *qui vive* but does not efficiously intermeddle in metaheuristic matters. But that abstention must come from inner compulsion rather than by imposition of constitutional blinkers. For if the Constitution is saved from the court, the era begun with unchecked absolute parliamentary power may and with the extremists demand to save the country from the Constitution. And, another danger; the illusion that a constitution can by itself take a nation to the promised land is bound to boomerang.

16. He then in his classical words deplored the Courts and Judiciaries of Passion of Legality and absence of Passion to the Morality in the following memorable words:

It is anti-social for the judiciary to do transcendental meditation on words, forms and precedents, with abseesion for legality and without passion for morality, with legislative texts and without concern for those whom the Constitution careses. It is criminal for lawyers who enjoy a monopoly from the people to serve them, to legomachic, not humanistic bhajans, to swear by Maxwell and bury the Mahatma. It is equally criminal for the ministers and legislators to wrangle over procedures and ignore law making to wipe the tears and instead, hunt for judicial scapegoats hiding the lack of guits to resist the powerful lobbies which have a stake in the status quo and against Article 38 and 39.

17. Justice Iyer's Clarion call and warning that the Judges should not cultivate five Star Hotel culture, but articulate principles of social justice having concern for the poor, down trodden, underdug, unprivileged, have nots of society is well amplified in the following words:

Five-star hotel culture has contaminated the court halls where the poor are priced out and Judges and lawyers sacrifice the social philosophy of economic justice and human rights for the masses at the later of lucobrated legality and onerous constitutionality. The machine of law is mindless of man and this is what may aptly be called the fine art of ministration of injustice with "arti" and priest crafit in temples of justice. The Gitanjali rebukes us:

Leave this chanting and singing and telling of beads.

Whom don?t thou worship in this lonely dark corner of temple with doors, shut?
He is there where the tiller is tilling the hard ground and where the path-maker is breaking stones...

Put off they holy mantle and even like him come down on the dusty soil !

18. Reminding the above memorable words of Kavi Ravindra Nath Tagore in Geetanjali, Justice Iyer exhorted the Judiciary to rise to the occasion and quoted Harold Laski who highlighted the central role of the judiciary which, in turn, underscores the pivotal importance of the perspective of the personnel who fill the office, in the following words:

The importance of the judiciary in political construction". Henry Sidgwick has

written, "it rather profound than prominent.?"

16. While concluding Iyer gave the following:

Social Justice is deliberately hidden from its explosive consumers defeating but dubious win above welfare legislation and furious debate about constitutional constructions. What is half-hidden is the definition of Social Justice as the reversal of the process of the many millions born to starve and destined to die in chill penury with justice blind and none, none so poor, as to shed a tear for them. Today, not tomorrow is their cry. Philosophers have interpreted the world. Our duty is to change it. The Janitors of Justice must see the writing on the wall and not trust the sleeping centuries to suppress "hour power,

19. Inspired from the above great lively ideals and objects of social justice the Apex Court has further reiterated in the following decisions:

(1) Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s,

The plea of limitation based on this Section is one which the court always look upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a justice claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizen.

(2) State of West Bengal Vs. B.K. Mondal and Sons,

What Section 70 prevents to unjust enrichment and it applies as much to individuals as to corporations and Government. The Government cannot be considered to be in the position of a minor for the purpose of Section 70.

(3) Union of India (UOI) Vs. J.K. Gas Plant,

20. Now in view of the above guidelines provided by the Apex Judges the Apex Court, I have to consider whether the deprivation of an Ex-soldier from his bread not to talk of butter by taking away the canteen is inactionable part, whether even withholding the payment of price of the canteen construction can be supported by the Courts even when the poor ex-soldier has dared to come to court for relief. As has been discussed in the above case, the poor is priced out of judicial process on account of non-availability of funds, resources but even when one has come he has been again priced out again by judicial process of denial of decree even for the cost of the canteen construction.

21. In my considered opinion apart from the specific pledge of the Preamble and the directive principles of the Constitution to do justice social, political economical we have got Section 70 under the Indian Contract Act which even framed by the Britishers protected unlawful enrichment and provided compensation by way of refund of the same. Section 70 reads as under:

70. Obligation of person enjoyment benefit of non-gratuitous act Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof the latter is bound to make or to restore, the thing so done or delivered.

22. Accepting the finding of the trial court, it is to be kept in view that the poor ex-soldier who was first removed from service and deprived of his bread by a scheme of resettlement was given canteen but again he was thrown from pole to pillar and pillar to pole and even that was taken away after he had spent Rs. 4501/- in the year 1955-56. What a poor homage to "socialism" enshrined in the Preamble. A soldier who stakes his life for every inch of his mother-land's territory, is being deprived of every inch of land allotted for cabin, after removal due to merger, and then even the Canteen constructed by him is taken away without paying a single pie. This is nothing but civilised plunder of State functionaries, and an outrageous violation, clear contravention and flagrant disregard of social justice.

23. I am of opinion the u/s 70. of the Indian Contract Act since the State has unlawfully and illegally enriched itself of the canteen construction value of which is Rs. 4500/-at least, the plaintiff is entitled to get this amount at least though it would be a very poor consolation for him and deprivation of the canteen in the circumstances when he was removed from the military service was adding insult to injury. The learned Government Advocate cannot go so far to be equitable to allow compensation of Rs. 20,000/-in view of the fall in the money value from 1955 to 1985, yet Mr. Calla very fairly and frankly submitted that this Court may grant damages so far as the actual amount spent by the Ex-soldier plaintiff on construction of the canteen is concerned which is Rs. 4500/-. I am persuaded to give compensation in this era of Social justice. All that can be done is to grant a decree for Rs. 4500/-against the respondents Nos. 2 and 3, the Public Works Department and the State of Rajasthan with interest at rate of nine per cent from the date of the suit till the date of realisation.

24. Consequently, the appeal is partially accepted as indicated above and the suit is decreed to the limited extent of Rs. 4500/-with interest @ 9% from the date of suit till the date of realisation against the State of Rajasthan and the Public Works Department respondent Nos. 3 and 2 respectively.

25. The plaintiff appellant would get costs throughout from these respondents. The suit would stand dismissed against the other defendants, namely, Mewar Textiles Mills Staff Consumers Cooperative Society Bhilwara and Radheyshyam and there would be no order as to costs so far as they are concerned.