
(2000) 07 DEL CK 0030

In the Delhi High Court

Case No : C.W. No. 5117 of 1997, CW. No. 5152, 5154 to 5166 of 1997

Nandram and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2000) 7 AD 1164 : (2000) 87 DLT 234 : (2000) 56 DRJ 662 : (2001) 1 RCR(Civil) 163

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. B.J. Nayar and Mr. Pramod Ahuja, for the Appellant; Mr. Rajiv Nayar, Senior Adv and Mr. Valmiki Mehta, for the Respondent

Judgement

Dr. M.K. Sharma, J.—As all these writ petitions involve similar questions of law and fact, I propose to dispose of all the 15 writ petitions by this common judgment and order.

2. These writ petitions arise out of the common judgment and order passed by the Additional District Judge, Delhi on 15.11.97 dismissing the appeals filed by the petitioners as against the order dated 4.4.1997 passed by the Estate Officer holding that the premises in question are public premises and that the petitioners are in Unauthorized occupation of the said public premises and that they are liable to be evicted from the aforesaid public premises.

3. In order to appreciate the contentions of the counsel appearing for the parties, it is necessary to set out the background facts leading to the passing of the aforesaid order by the Estate Officer. The Chief Commissioner of Delhi by notification issued under the Land Acquisition Act acquired about 150 acres of land situated towards the south of Najafgarh Road, Village Basai Darapur for the purpose of resettlement of displaced persons from West Pakistan. The said land was acquired on 23.2.1952. With the issuance of the aforesaid notification acquiring the land by the Chief Commissioner of Delhi, the land vested absolutely in the then provincial Government of Delhi free from all encumbrances. Prior to

the aforesaid acquisition there were brick kilns on the said land. On 17.10.1956, the above said acquired land was placed at the disposal of the Rehabilitation Housing Corporation, which was a company sponsored by the Central Government with 80% shares for the development of a colony named as Kirti Nagar for displaced persons.

The Rehabilitation Housing Corporation took possession of the said land and started the development work in accordance with the scheme approved for the purpose. In accordance with the said scheme and after development of the land, various plots for construction of residential buildings were carved out and the said land was allotted to displaced persons. A plot No. A-32 measuring 650 sq. yds. was also carved out, out of the said land and the same was allotted by the Rehabilitation Housing Corporation to one Sh. Kulnath Singh. In the meantime, the respondent No.3 requested the Rehabilitation Housing Corporation for transfer of the aforesaid plot in his name. The said request was considered by the Corporation and it was agreed to by the said corporation in their letter dated 27.7.56 on the same terms and conditions of sale on which the plot was originally allotted to Sh. Kulnath Singh. However, the land under plot No. A-32 Kirti Nagar was reserved for a school/public utility and, Therefore, the respondent No. 3, Sh. G. Sarin was allotted another plot No. E-51/52, Kirti Nagar measuring 650 sq. yds. vide letter of the Corporation dated 13.2.1957 at the same rate and on the same terms and conditions of sale, on which it was originally allotted. In the allotment letter issued to said Sh. G. Sarin, respondent No.3 herein, it was stipulated that possession of the said plot would be handed over to him after removal of the squatters. The Corporation, however, failed to hand over possession of the said plot to the respondent No.3 and, Therefore, the respondent No. 3 neither could pay the balance amount nor could get the sale deed/lease deed executed in his name. Respondent No.3 was intimated by the Corporation by their letter dated 3.2.1965 that the question of eviction of squatters had been referred to the police to proceed against them as criminal trespassers and result was awaited. He was also informed by another letter dated 7.11.1966 that necessary action was being taken against the squatters for their removal from the aforesaid plot and that further development in the matter would be communicated to him in due course of time. Ultimately, Sh. G. Sarin deposited a total amount of Rs. 5,924.09 up to 30.4.1968 against the demand, notice of Rehabilitation Housing Corporation dated 18.3.1968.

It further transpires from the record that in 1966 the Corporation filed a suit for possession of the aforesaid plot and recovery of damages for use and occupation as against 17 alleged Unauthorized occupants, who were occupying the said plot since 1.11.1956 whereas Sh. G. Sarin was added as the 18th defendant. The present petitioner were added as defendants 1 to 17. The said suit was listed before Smt. Aruna Suresh, Sub Judge, 1st Class, Delhi. In the said suit the corporation sought for a decree for possession by removal of Unauthorized constructions on the aforesaid plot. The aforesaid suit was dismissed on 9.12.1976 by an order passed by Smt. Aruna Suresh, Sub-Judge, Delhi on the

ground that the legal heirs of some of the defendants, who died during the pendency of the suit, were not brought on record of the court within the stipulated period of time and that, Therefore, the suit stood abated in toto.

4. Near about the same time, the Rehabilitation Housing Corporation was wound up and went into voluntary liquidation by resolution passed in its Annual General Meeting held on 12.7.1968. The said winding up petition was disposed of by the High Court of Delhi by its order dated 2.1.1973 wherein the suit filed by the Corporation was noticed and it was observed therein that the said suit was still pending. By the aforesaid order passed by the High Court of Delhi, the resolution passed at the Extraordinary meeting of the company/corporation dated 24.8.1972 transferring the rights and liabilities of the corporation to the Central Govt. was approved with the observation that the same would not in any manner affect the defense of the persons said to be in possession of the property in civil suit. It was observed that the Central Govt. would take over the entire assets and liabilities of the corporation in terms of the said resolution.

5. A Regular First Appeal was filed on 11.7.1977 in the Delhi High Court by the Rehabilitation Housing Corporation against the order dated 9.2.1976. However, by an order dated 25.8.1992 the said appeal was dismissed for non-prosecution on the ground that service of notices on some respondents were yet to be effected and, Therefore, there was no justification for allowing further time to the counsel for the appellant for summoning the respondents. Accordingly the said appeal was dismissed for non-prosecution.

6. A writ petition was also filed in this court by the respondent No. 3 herein, the allottee of the plot in question arraying Union of India and Delhi Development Authority as respondents. The respondent No. 3 herein, Sh.G. Sarin in the said writ petition sought for issuance of a writ directing the respondent No.1 to proceed forthwith under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the "Act") against the squatters/land grabbers in possession of plot No.E-51/52, Kirti Nagar and hand over possession to him after securing their eviction with an alternative prayer to issue a writ direction or order of like nature, directing respondent No.1 to allot and give possession of an alternative similar plot in comparable locality in lieu of the above mentioned plot on the same terms and conditions.

7. In the said proceedings, an affidavit was filed on behalf of the Ministry of Home Affairs (Rehabilitation Division) contending, inter alia, that proceedings under the "Act" in order to evict the Unauthorized occupants from the aforesaid plot of land had been initiated. In that view of the matter, this court disposed of the writ petition with a direction that the said proceedings be completed within a period of one year from the date of the order i.e. 27.4.1995.

8. A proceeding was initiated under the "Act" and the Estate Officer passed a final order on the said proceeding on 14.3.1996. The petitioners herein went on appeal before the Additional District Judge, Delhi against the order of the Estate

Officer dated 14.3.1996. The said appeals were disposed of by the Additional District Judge on 14.10.1996 holding that the matters need re-adjudication by the Estate Officer after giving adequate and proper notice of hearing to all the parties and the orders of eviction were set aside and the matters were remanded back to the Estate Officer for re-adjudication in accordance with law. In the said order, the Additional District Judge further held that the Estate Officer shall hear Sh. G. Sarin, the intervenor, before passing fresh orders in the matter. After remand, fresh notices were issued to the petitioners herein u/s 4 of the 'Act' on 7.11.1996 to show cause and appear in person before the Estate Officer on 2.12.1996. The Estate Officer received documents, heard the parties and thereafter passed order on 4.4.1997 holding that the premises in question are public premises within the meaning of the aforesaid Act and that the petitioners are in Unauthorized occupation of the said plots of land and accordingly they were directed to be evicted.

9. Being aggrieved by the aforesaid order passed, appeals were filed before the Additional District Judge, who upon hearing the parties passed the impugned common judgment and order. Hence, the present writ petitions.

10. Mr. B.J. Nayar, appearing for the petitioners, raised several issues during the course of his arguments, which are summarised hereunder :-

1. That the aforesaid property in question, namely E-51/52, Kirti Nagar is not public premises within the meaning of the words "public premises" as defined under the provisions of the Act and that the same is a private property and respondent No.3 being the allottee of the aforesaid plot of land, the provision of the said Act could not have been made applicable and the entire proceedings are vitiated.

2. That the notice issued u/s 4(i) of the "Act" was illegal, for it did not comply with the pre-conditions as laid down u/s 4(i) of the "Act". According to the petitioners a preliminary enquiry was to be made by the Estate Officer and only on completion of the said enquiry and on proper satisfaction, notice of the nature of Section 4(i) could have been issued to the petitioners.

3. That the proceeding initiated under the "Act" was barred by the principle of res judicata as civil proceeding for a similar relief by way of a civil suit was dismissed by the court of the Sub-Judge, Delhi on 9.12.1976 and the Regular First Appeal as against the said judgment and order was also dismissed by the High Court of Delhi for non-prosecution.

4. That the petitioners are in lawful authorised occupation as owners, for they have acquired right over the said plot of land by way of adverse possession since different times prior to 1.11.1956.

5. That the proceedings were barred under the law of limitation as the aforesaid proceedings were initiated after expiry of the prescribed period of limitation.

11. Similar contentions were also raised before the Estate Officer as also before

the Additional District Judge on appeal and the said contentions were found by both the authorities as without any merit. I have perused both the orders carefully and minutely and find there from that both the orders contain detailed reasons.

12. Be that as it may, I have considered the contentions of the learned counsel appearing for the parties and proceed to give my decision thereon as stated herein.

I. WHETHER THE PROPERTY IS A PUBLIC PROPERTY :-

The parties are not at issue on the fact that the provisions of the "Act" are applicable to a particular property only when the said property in question is a public premises. The expression "public premises" is also defined under the provisions of the "Act". The piece of land involved in the present petition forms part of the larger parcel of land comprising about 150 acres of land, which admittedly was acquired by the Chief commissioner of Delhi under the provisions of Land Acquisition Act. With the aforesaid acquisition of land including the present plot in question on 23.2.1952, the said land vested absolutely with the then provincial Government of Delhi free from all encumbrances on the date the notice of acquisition was served or was published u/s 5 of the said Act. The said notification acquiring the land was also published in the Gazette and, Therefore, all the formalities were complied with and the land vested with the then provincial Government of Delhi. It is established from the records that an allotment letter was issued to respondent No. 3, Sh. G. Sarin in respect of the said land pursuant to which a certain amount was also deposited by said Sh. G. Sarin. However, possession of the land could not be delivered to him nor any deed could be executed in his favor transferring the title of the property in question in his favour. As neither possession was given nor any sale deed or lease deed was executed in his favor transferring the title in favor of respondent No.3, the land in question did not cease to be the property of the Central Government and it continued to be its owner and, Therefore, is public premises within the meaning of Section 2(e) of the said Act till such time the possession and title of the land was delivered and transferred by the Government. The land in question, Therefore, continues to belong to the Central Government and is a public premises and, Therefore, the aforesaid contention of the counsel appearing for the petitioner that the land in question is not a public premises and the provisions of the Public Premises (Eviction of Unauthorized Occupants), Act 1971 are not applicable, is found to be without any basis.

II. WHETHER ANY PRELIMINARY ENQUIRY WAS NECESSARY BEFORE ISSUANCE OF NOTICE u/s 4(1) OF THE "ACT" :-

Learned counsel appearing for the petitioner submitted that before issuance of a notice u/s 4(1) of the "Act", the Estate Officer was required to be satisfied that the land was a public premises and that the persons occupying it were occupying the same as Unauthorized occupants and when the Estate Officer is satisfied with

the aforesaid two pre-conditions through a preliminary enquiry/investigation, then only he could exercise the jurisdiction to issue a notice u/s 4(1) of the "Act".

In view of the aforesaid submission of the learned counsel appearing for the petitioners, it would be necessary to examine what is the nature of enquiry, if any, to be conducted u/s 4 of the "Act". The said provision lays down the procedure and the manner in which a notice is to be issued to show cause. It is provided u/s 4(1) of the "Act" that if the Estate Officer is of the opinion that any person is in Unauthorized occupation of any public premises and that he should be evicted, a notice shall issued in writing calling upon all persons concerned show cause why an order of eviction should not be made.

Under sub-Section (2) of the said Section 4 it is provided that the notice would specify the ground on which the order of eviction is proposed to be made and require all persons concerned, who are or may be in occupation, or claim interest in, the public premises, to show cause, if any, against the proposed order on a date to be fixed by the Estate Officer. The expression "Unauthorized occupation" is defined u/s 2(g) of the "Act" as follows:-

"Unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

13. Under the Rule making power in the Act, Rules have been framed and the said rules prescribe the form of notice and the said form is a statutory form. Neither Section 4(1) of the "Act" nor the form prescribes that the Estate Officer has to conduct a preliminary enquiry prior to issuance of such a notice as envisaged under the said section. Section 4 of the Act read with Rule 5, lay down the conditions to be satisfied for issuance of notice and also the form of the notice. According to the said provisions, the owner of the land has to give information to the Estate Officer that such and such person is in occupation of the premises and on the basis of such information furnished, the Estate Officer has to form his opinion. In the case in hand it is proved and established that such informations were furnished to the Estate Officer and on the basis thereof and on being satisfied, notices were issued to the petitioners u/s 4(1) of the Act.

14. It was held in the case of M/s. Safari Airways Vs. The Estate Officer & Ors. reported in 1983 (1) Del 363 that before issuing notice under sec. 4(1) the Estate Officer has to form a tentative opinion and that the said opinion is to be only an estimation and not a decision. It was specifically laid down in the said case that the Estate Officer while issuing a notice u/s 4(1) of the "Act" does not arrive at a definite conclusion because he has no scope at that stage to hear the affected parties. It was further held that after issuance of the notice u/s 4 and receipt thereof the occupant could show that the opinion of the Estate Officer is

wrong and on such contention, an enquiry would follow upon which a definite decision is reached. I respectfully agree with the aforesaid decision of this court and I hold that the ratio of the aforesaid decision fully applies to the cases in hand. The Estate Officer herein also arrived at such tentative opinion. The aforesaid contention of the counsel for the petitioner, Therefore, is also without any merit.

III. WHETHER THE PROCEEDINGS INITIATED UNDER THE "ACT" ARE BARRED BY THE PRINCIPLE OF *res judicata* :-

The principle of *res judicata* would be applicable only when issues in question are similar in nature and between the same parties and such issues are heard and decided on merits. The civil suit which was filed by the corporation, the predecessor-in-interest of the Central Government, was dismissed on the ground of abatement in toto by the Sub-Judge. Even the Regular First Appeal as against the said judgment and order was also dismissed for non-prosecution. As is apparent from the contents of the order passed by the Sub-Judge and this court in the RFA, none of the said decision could be said to have been passed on merit.

Reference may also be made to the decision of the Supreme Court in *Sheodan Singh Vs. Smt. Daryao Kunwar*, wherein it was held by the Supreme Court that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. It was further held that where the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or misguide of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for the ground of improper valuation or for failure to pay additional Court-fee on a plaint which was undervalued or or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be *res judicata* in a subsequent suit. The principles laid down in the said decision of the Supreme Court are squarely applicable to the facts and circumstances of the present cases and are sufficient to hold that the contention of the counsel appearing for the petitioners on the aforesaid count, has no legs to stand.

At this stage, it would be appropriate to consider the submission that the provisions of Order 22 Rule 9 CPC are applicable to the facts of the present cases. Under the said provisions where a suit is dismissed on the ground of abatement, no fresh suit on the same cause of action could be brought and the remedy is to get the said abatement set aside, if possible in accordance with the provisions prescribed. In my considered opinion the said provisions have no application to the present cases, which were initiated and concluded under the provisions of the Act of 1971. The said provisions of CPC bar a fresh suit and not a proceeding initiated under the "Act" of 1971. The said "Act" is a special Act

and a self-contained statute. A specific provision has been enacted in the said "Act" providing for applicability of only some of the specified provisions of the Code of Civil Procedure, which could be said to have been incorporated in the Act of 1971.

In this connection, reference may be made to the decision of the Supreme Court in *New India Assurance Co. Ltd. Vs. R. Srinivasan*, . The said case was a case under the Consumer Protection Act, which is also a special Act and in the context thereof it was held by the Supreme Court that the powers which are available to a civil court under the CPC have also been made available to the District Forum in respect of such matters which are enumerated in sub-section(4) of Section 13 only and that the provisions of Order 9 of CPC have not been made applicable to the proceedings under the Consumer Protection Act and, Therefore, the CPC could be applied to the proceedings under the Consumer Protection Act only to a limited extent. It was further held that if the Legislature itself did not apply the rule of prohibition contained in Order 9 Rule 9 (1), it would be difficult for the courts to extend that provision to the proceedings under the Act.

In my considered opinion, the ratio of the aforesaid decision is squarely applicable to the facts and circumstances of the present case as in the present case also the provisions of Order 22 of the CPC have not been made applicable to the proceedings under the "Act" of 1971. Under the Act of 1971 also, such of the provisions of the CPC have been specifically made applicable to a proceeding before the Estate Officer which are specifically enumerated in Section 8 of the Act of 1971 and the provision of Order 22 is not one of those provisions which is made applicable. The decision of the Supreme Court, Therefore, applies in full force. I am also bound by the ratio of the Supreme Court decision. This contention is also without any merit and Therefore, rejected.

IV. WHETHER THE PETITIONERS HAVE ACQUIRED RIGHT TO THE PROPERTY IN QUESTION BY WAY OF ADVERSE POSSESSION AND WHETHER THE PROCEEDINGS WERE BARRED BY LAW OF LIMITATION :-

Counsel appearing for the petitioners submitted that admittedly notices were issued by the Central Government to the petitioners in the year 1956 and even if knowledge of possession of the land of the respondent No.1 by the petitioners is computed from such date then also the petitioners would be entitled to exercise the right by way of adverse possession in respect of the said property, for on the date when the proceedings under the Act of 1971 were initiated, 30 years, which is the period of limitation, have already expired. Thus, it was submitted that the petitioners having acquired right to the land in question by adverse possession, they cannot be evicted.

It transpires from the record that there are different set of persons named as Unauthorized occupants/squatters in the notices issued by the Collector, Delhi in the year 1956-1957 and that too on some portion of land in E-Block, Kirti Nagar and not on specific plot No.E-51/52. Both the courts below have also recorded

the finding that Unauthorized occupants have neither proved any linkage/relationship nor produced any document to prove their continued step by step occupation in the said plot. In that view of the matter and the same being conclusions and findings of fact, the contention of acquisition of right by way of adverse possession has no merit. Besides, even if it is presumed and held that such Unauthorized occupation came to the notice of the Rehabilitation Housing Corporation at least on 1.11.1956 when such notice was issued to some of the petitioners and if the computation is made from the said date, it cannot be said that the petitioners have acquired any right in the property in question by way of adverse possession, for a civil proceeding was initiated in the court of Civil Judge with a relief for ordering eviction of the occupants, in 1966.

Besides, the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is a special Act and it has provided for a period of limitation wherever it is necessary and Therefore, the provisions of the Limitation Act as such cannot be made applicable to such a special Act. In this connection, reference may be made to the decision of the Supreme Court in T.K. Lakshmana Iyer and Others Vs. State of Madras and Others, and the decision in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . Reference may also be made to decision of the Madhya Pradesh High Court in the case of L.S. Nair Vs. Hindustan Steel Ltd., Bhilai and Others, . In the said Division Bench decision of the Madhya Pradesh High Court delivered by the Chief Justice, G.P. Singh (as his Lordship then was), it was held that the Estate Officer is not a court and, Therefore, the Limitation Act does not apply to a proceeding before him. It was further held that as Limitation Act does not apply and jurisdiction of Civil Court is entirely barred in matters governed by 1971 Act, there is no period of limitation for recovery of damages for Unauthorized use and occupation of Govt. Company's quarter by its employee. I respectfully agree with the aforesaid decision of the Madhya Pradesh High Court and hold that to the proceeding under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the provisions of the Limitation Act shall not apply.

15. The Estate Officer as also the Additional District Judge have given cogent reasons for arriving at their conclusions that the land in question is public premises and that the petitioners are in Unauthorized occupation of the same. The Additional District Judge after perusal of the records has held that the proceedings were initiated as against the petitioners under the provisions of the "Act" of 1971 in accordance with law and that there was no infirmity in conducting the said proceedings and the order passed by the Estate Officer was valid and legal. The said conclusions have become conclusions of facts and this court exercising extraordinary jurisdiction under Article 226 shall not be ordinarily inclined to interfere with such conclusions of facts.

16. I have myself perused the records and on appreciation thereof have recorded my findings on the issues raised before me. On an overall view of the entire facts and circumstances of the case, I am satisfied that neither the Estate Officer nor

the Additional District Judge has committed any error in passing their orders. On perusal of the records, I find no infirmity in the impugned orders and, Therefore, I hold that all the writ petitions do not have merit and they are accordingly dismissed but without any cost.