
(2000) 11 DEL CK 0022
In the Delhi High Court
Case No : L.P.A. 365 of 2000

Nandram and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-11-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 12

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2

Citation : (2000) 11 DEL CK 0022

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : B.J. Nayyar, Adv, Rajinder, for Respondent-1 and Valmiki Mehta, for Respondent-3, for the appearing parties; R.D. Aggarwal and Rajinder, for Respondent-1 and Valmiki Mehta, for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, C.J.—This appeal is directed against judgment dated 21st July, 2000 passed by learned Single Judge dismissing a batch of 15 writ petitions, which involved similar points of dispute as to whether petitioners were unauthorized occupants of public premises, in terms of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short the "Act"). In each of the writ petitions challenge was to the common judgment and order dated 15th November 1997 passed by the Additional District Judge, Delhi dismissing, the appeals filed by The writ petitioners. The appeals related to order dated 4th April 1997 passed by the Estate Officer holding that the premises in respect of which proceedings had been initiated under the Act were public premises and the notices in each case were in unauthorized occupation of the said public premises and were liable to be evicted.

2. Factual position relevant for adjudication of the points in dispute are as follows:-

The Chief Commissioner of Delhi by notification issued under the Land Acquisition

Act, 1894 (in short the "L.A. 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 (in short the "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 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 Corporation to one Sh. Kulnath Singh. In the Meantime, Sh. G. Sarin (Respondent No. 3) requested the 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 corporation in their letter dated 27.7.56 on the same terms and conditions of sale 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, 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, 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 Sh. G. Sarin and, Therefore, he could not pay the balance amount, and could not get the sale deed/lease deed executed in his name. He was intimated by the Corporation by 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 Corporation dated 18.3.1968. In 1966 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 writ petitioners were added as defendants 1 to 17. In the said suit 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 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, Therefore, the suit stood abated in toto. Near about the same time, the Corporation was wound up pursuant to orders of this Court by 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. Resolution passed at the Extraordinary meeting of the 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. regular First Appeal was filed on 11.7.1977 in this Court by the Corporation against the order dated 9.2.1976 of learned Sub-Judge. However, by 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, there was no justification for allowing further time for summoning the respondents. A writ petition was filed in this Court by Sh. G. Sarin respondent No. 3 arraying Union of India and Delhi Development Authority as respondents. In the said writ petition, prayer was for issuance of a writ directing the respondents to proceed forthwith under 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 respondents 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. 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, writ petition was disposed of 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. When proceeding was initiated under the Act and the Estate Officer passed a final order on 14th March, 1996, writ petitioners filled appeals before the Additional District Judge, Delhi against the said order. Appeals were disposed of by the Additional District Judge, Delhi on 14.10.1996 holding that fresh adjudication was necessary and for that purpose adequate and proper notice of hearing was to be given to the parties. Pursuant to the said order of remand, fresh notices were issued and the parties were heard. On consideration of the materials on record, Estate Officer held that writ petitioners were in Unauthorized occupation of the concerned plots of land and were to be evicted. Appeals before the Additional District Judge, Delhi did not bring any relief and thereafter the writ petitions were filed.

3. Four questions were formulated by the learned Single Judge. They are as follows:

(a) Whether the property is a public premises?

(b) whether any preliminary enquiry was necessary before issuance of notice u/s 4(1) of the Act?

(c) whether the proceedings initiated under the Act are barred by principle of res judicata?

(d) 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?

On consideration of the materials on record, it was held by learned Single Judge, that the issues were to be answered against the writ petitioners. He held that neither the Estate Officer nor the Additional District Judge, Delhi has committed any error in passing the orders. The findings recorded by learned Single Judge are assailed in this appeal. It was submitted that the conclusions arrived at by learned Single Judge, in respect of the four issues, were erroneous and contrary to law. Reliance has been placed on several decisions to substantiate the stand.

Learned counsel for the respondents, on the other hand, submitted that highly disputed factual questions are involved and learned Single Judge has rightly dismissed the writ petitions.

4. According to us, it would suffice to deal with the first the fourth issues, as were dealt with by the learned Single Judge and it would be unnecessary to go into other issues.

The first issue relates to the question as to whether the property could be termed as public premises to attract application of the Act. The Act was enacted to provide for a speedy and summary eviction of Unauthorized occupants from public premises. "Public premises" have been defined in Section 2(e) of the Act as follows: "Public premises" means-

(1) any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of-

(i) any company(s) defined in Section 3 of the Companies Act, 1956 (1 to 1956), in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company,

(ii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,

- (iii) Any University established or incorporated by any Central Act,
- (iv) Any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),
- (v) Any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),
- (vi) The Bhakra Management Board constituted u/s 79 of the Punjab Reorganisation Act, 1966 (31 of 1966) and that Board as and when renamed as the Bhakra-Beas Management Board under Sub-section(6) of Section 80 of that Act,
- (vii) Any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory,
- (viii) Any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924), and

(3) in relation to the National Capital Territory of Delhi-

- (i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area Committed,
- (ii) Any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and
- (iii) Any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory,"

5. A significant expression used in the provisions is "belonging to". In Stround's Judicial dictionary the word "belonging" has been defined as follows:

"property "belonging" to a person, has two general meanings, (1) ownership, (2) the absolute right of user"

By way of illustration, it has been stated that a road may be said with perfect propriety to belong to a man who has the right to use it as of right, although the soil does not belong to him. In Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, Apex Court held that though the expression "belonging" no doubt is capable of denoting an absolute title, it is nevertheless not confined to connoting that sense. That word could signify even possession of an interest less than that of full ownership. Scheme of the Act is that it confers on the Estate Officer power to issue notice to person, who are in Unauthorized occupation of any public premises to show cause, why an order of eviction should not be made. "Unauthorized occupation" under the Act, as defined in Section 12(g) 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.

6. As the factual position delineated above goes to show that the piece of land involved in the dispute forms part of large parcel of land comprising about 150 acres of land, which was acquired by the then Chief Commissioner of Delhi under the provisions of the L.A. Act. The acquired land vested absolutely with the then Provincial Government of Delhi free from all encumbrances on the date of the notice of the acquisition, which was published u/s 5 of the L.A. Act. The notification was duly published in the official gazette and Therefore the land vested with the then Provincial Government of Delhi. Though pursuant to an allotment order, money has been deposited by respondent No. 3, Sh. G. Sarin, possession could not be delivered to him and no deed could be executed in his favor transferring the title of the property in question in his favour. The land did not cease to be property of the Central Government in the absence of delivery of possession and/or execution of the sale-deed. It, Therefore, continued to be the property of the Central Government and was Therefore public-premises within the meaning of Section 2(e) of the Act. That being the position, the Act was clearly applicable to the property in question.

7. The residual question, which as indicated above will be sufficient for disposal of the appeal, is whether the appellants/writ petitioners have acquired right to the property in question by way of adverse possession and whether the proceedings were barred by law of limitation. Stand of the appellants is that adverse possession for a period of 30 years was sufficient to vest rights and they have had in fact acquired that right. In order to constitute adverse possession there must be actual possession of a person claiming as a right by himself or by person deriving title from him to prove title to the land by adverse possession. It is not sufficient to show that some acts of possession have been done. The possession acquired must be adequate in continuity, in publicity and in existence to show that it is adverse to the owner. In other words the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation. The possession required must be *ne vi nec clam nec precario*. Possession does not become adverse when the intention to hold adversely is wanting. Permissive possession and hostile animus operate in conceptually different fields. Adverse possession designates a possession in opposition to the true title and real owner and implies that it commenced in wrong and is maintained against right. (See *Alexander v. Polk*, 39 Miss. 755. It is possession inconsistent with and in denial of the right of the landlord to the premises. See *Hoses v. Lovegmve*, (1952) 1 TLR 1324. A person taking the plea of adverse possession must allege and prove the date when his possession become adverse so that the starting point of limitation against the party against whom such plea is claimed can be calculated. As long possession does not mean adverse possession, a mere allegation that the party was in uninterrupted possession for more than 12 years or that the party claiming it has acquired absolute title are vague allegations from which plea of adverse possession cannot be founded (see *S.M. Karim Vs. Mst. Bibi Sakina*,). Obviously

a person, who claims acquisition of title by adverse possession, has to establish it.

8. Learned Single Judge has recorded the following factual findings, as regards the plea of adverse possession:

"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 1956-57 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 computations 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."

9. The factual conclusion can be summarized as follows: (a) different set of persons were named as unauthorized occupants/squatters in the notices issued by the Collector in 1956-57, (b) notices were in respect of some portion of land and not on specific plot involved in the dispute, (c) unauthorized occupants have neither proved any linkage/relationship nor produced any document to prove continued step by step occupation (d) a civil proceedings was initiated for eviction in 1966 for eviction. In view of aforesaid factual position it was held that plead of adverse possession was not established. These conclusions are essentially factual and Therefore learned Single Judge was right in holding that those questions cannot be adjudicated in writ petitions. We are in agreement with the view expressed by learned Single Judge. As we have upheld the conclusions of learned Single Judge in both essential disputes, this appeal is without merit and is dismissed.