
(2015) 02 DEL CK 0116

In the Delhi High Court

Case No : Writ Petition (C) 1509/2011 and CM Nos. 13539/2011, 3139/2014, 8767/2014 and 8768/2014

SBI Staff Residents Welfare Society

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 21, 226, 227, 32
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, 9

Citation : (2015) 5 AD 497 : (2015) 218 DLT 565

Hon'ble Judges : Siddharth Mridul, J.

Bench : Single Bench

Advocate : Mohit Chaudhary, Damini Chawla, Anubha Surana and Imran Ali, for the Appellant; Shobhana Takiar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—This order will dispose of the threshold objection raised by the Respondent no. 2 (The State Bank of India) on the maintainability of the present writ petition. The petitioner herein seeks the following reliefs:

- a) Issue an appropriate writ directing the Respondent No. 2 to release the retirement benefits amounting to over one crore two lakh sixty five thousand eight hundred and eighty eight with interest to the Petitioner society.
- b) Issue appropriate writ, order or direction in the nature of writ certiorari or mandamus or any other writ directing the Respondent No. 1and2 to allot the flats In respect of names of the petitioners occupying/entitled to the flats out of 132 flats in issue.
- c) Issue writ, order or direction directing the lease deed dated 27.11.1986 between respondent no. 1and2 to be null and void.
- d) Allow the petitioner to amend the petition if necessary to bring out other

prayers and reliefs if necessary.

e) Issue any other order/direction that this court may deem fit.

2. The facts necessary for the disposal of the present objection are enunciated in the succeeding paragraphs.

3. In 1971, Respondent no. 1 (DDA) launched a scheme for low income group housing under which, persons with income less than Rs. 7200 per month were to be allotted flats at various places in Delhi. After the introduction of the said scheme, various government agencies approached the DDA for purchase of flats for allotment to its employees. Subsequently, the Respondent no. 2 (State Bank of India) purchased 132 flats at Lawrence Road, Delhi-110035 under the said scheme.

4. It is the case of the Petitioner, that instead of adhering with the terms laid down by the DDA to allot flats on ownership basis to economically weaker sections of the society, the Respondent No. 2 converted the subject flats into staff society and started issuing leave and license agreements with its employees. Whereas the Respondent No. 2 denied the contention of the Petitioner society that the subject flats were allotted on ownership basis to the lower income group employees. It was stated that the members of the petitioner society entered into the possession of the subject flats on allotment by Respondent No. 2 to its employees on leave and license basis.

5. On 27 November 1986, conveyance deed and perpetual deed were prepared between DDA and SBI.

6. Thereafter, a letter dated 01.09.1989 was issued by the Commissioner (Housing), DDA to the Joint Secretary, PMO communicating the decision to regularize the allotment of the subject flats in favour of individual employees who were in possession of these flats.

7. In October-November 1989 on retirement from service, the members of the petitioner society received eviction orders from The State Bank Estate Officer under the Public Premise Act, 1971. An appeal impugning the said order was filed under Section 9 of the Public Premises Act, 1971 before the Court of the Learned District judge. On 02.03.1991, the Learned District Judge remanded the case back to the Estate Officer for reconsideration, as adequate opportunity of being heard was not granted to the petitioner society. Vide the order dated 04.01.1993, the Estate Officer held that the employees are unauthorized occupants in their respective flats and ordered vacation of the subject flats within 15 days of receipt of the order.

8. On 08.10.1990, the DDA wrote a letter to the Manager (Estate), SBI wherein it stated that the Vice Chairman, DDA had taken a decision of not executing the conveyance deed in favour of individual employees.

9. Three writ petitions being CW. 2227/1992, CW. 779/1993 and CW. 1151/1993

were filed before this court by the employees impugning the order of the Estate Officer. The aforesaid writ petitions were later withdrawn. Mr. Vikas Singh, the learned Senior Counsel appearing for the Respondent No. 2 stated that he was able to get certified copies of only two of the three writ petitions, i.e., CW. 779/1993 and CW. 1151/1993.

10. The Director (Housing) DDA, wrote a letter dated 09.02.2007 to the Central Government stating that, the subject flats were allotted in bulk to the Respondent No. 2 which were constructed and earmarked for economically weaker sections of society. It was further stated that these flats would be allotted in the name of individual employees on ownership basis as per the eligibility at the time of issuance of scheme. It was made clear that the subject flats allotted in bulk to the SBI were meant for further allotment to their employees on cash down or on hire-purchase basis and were not to be used as staff quarters. Subsequently, on 02.07.2007, the Central Government wrote a letter to The State Bank of India wherein it communicated the letter dated 09.02.2007 of the DDA and directed the SBI to take necessary action accordingly.

11. On 06.10.2008 the petitioner made representation to the Secretary (Banking) M.O.F., New Delhi seeking ownership of the subject flats and release of their retirement benefits. On 10.05.2010, the petitioner also made representation to the Respondent No. 2 for releasing the retirement benefits.

12. Thereafter Mediation proceedings took place between the DDA, the SBI and its Employees. On 16.12.2010, these proceedings were terminated as no settlement could be arrived at. Status quo prevails till date.

13. It is averred by the petitioner in the present Writ petition that, the retirement benefits of 54 members of the petitioner-society amounting to approximately Rs. 1,52,65,888/-, excluding interest are retained by the Respondent No. 2. In reply of the same, the Respondent No. 2 states that it is willing to release the retirement benefits on vacation of the said flats by the Petitioners.

14. The preliminary objection raised by Mr. Vikas Singh, the learned senior counsel appearing for the Respondent No. 2, is that the present writ petition is not maintainable as earlier writ petitions being CW 779/1993 and CW 1151/1993, which were filed by the petitioners were withdrawn on 23.08.1993 without seeking leave or liberty to file a fresh petition. It was further contended that the relief sought in the present Writ petition is identical to the reliefs sought in CW 1151/1993 and CW 779/1193. It was urged that the present writ petition is liable to be dismissed on this ground alone. The reliefs sought in the aforesaid petitions are reproduced below:

"CW. 779/1993

PRAYER

(i) Issue appropriate writ or direction directing the Respondent NO. 1 State Bank of India, to produce the records related to allotment of 132 flats in issue,

(ii) Issue appropriate writ, order or direction in the nature of writ of certiorari or mandamus or any other writ directing the Respondent Nos. 1 to 3 to make the petitioners herein as the owners of flats in issue,

(iii) Issue appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 1 to 3 to allot the flats in respect of names of the petitioners occupying/entitled to the flats out of these 132 flats in issue;

(iv) Issue writ, order or direction directing that the lease deed dated 27.11.1986 between the Respondent No. 1 to 3 and the Respondent No. 4 to be null and void;

(v) Direct the Respondent No. 1 to 3 to refund the excess amount over and above the cost of the flat paid by them to Respondent No. 1 to 3 alongwith interest;

(vi) Grant cost to the petitioners all through; and

(vii) To pass such other orders as deemed fit and proper in the facts and circumstances of the case."

"CW. 1151/1993:

PRAYER

(i) issue appropriate writ or direction holding the provisions of Section 3 of Public Premises Act is ultra vires and bad in law.

(ii) Issue appropriate writ or direction directing the Respondent No. 1 State Bank of India, to produce the records related to allotment of 132 flats in issue.

(iii) Issue appropriate writ, order or direction in the nature of writ of certiorari or mandamus or any other writ directing the Respondent Nos. 1 to 3 to make the petitioners herein as the owners of flats in issue.

(iv) Issue appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 1 to 3 to allot the flats in respect of names of the petitioners occupying/entitled to the flats out of these 132 flats in issue.

(v) Issue writ, order or direction directing that the lease deed dated 27.11.1986 between the Respondent No. 1 to 3 and the Respondent No. 4 to be null and void.

(vi) Direct the Respondent No. 1 to 3 to refund the excess amount over and above the cost of the flat paid by them to Respondent No. 1 to 3 along with interest.

(vii) grant cost to the petitioners all through; and

(viii) to pass such other orders as are deemed fit and proper in the facts and circumstances of the case."

15. The aforesaid writ petitions were dismissed as withdrawn by way of order dated 23.08.1993. The said orders are reproduced herein below:

"23.08.93

Present: Mr. Raj Birbal, Senior Advocate with Mr. Arun Aggarwal for the petitioners.

Mr. Arun Jaitley, Senior Advocate with Mr. R.P. Kapur for respondents 1 to 3.

Mr. Neeraj Kaul for respondent No. 4.

C.M. 5955 and 1151/93

After some arguments, learned counsel for the petitioners wants to withdraw the petition. Dismissed as withdrawn.

Sd/-

Sunanda Bhandare, J.

Sd/-

Arun Kumar, J.

23rd August, 1993

pu"

"23.08.93

Present: Mr. Raj Birbal, Senior Advocate with Mr. Arun Aggarwal for the petitioners.

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C.M. 779 and 1331/93

After some arguments, learned counsel for the petitioners wants to withdraw the petition. Dismissed as withdrawn.

Sd/-

Sunanda Bhandare, J.

Sd/-

Arun Kumar, J.

23rd August, 1993

pu"

16. In support of his argument, Mr. Vikas Singh, learned Senior Counsel appearing for the Respondent No. 2 placed reliance on the decision of the Supreme Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, . The relevant portion of the decision is as

reproduced below:

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same sub-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open."

17. Reliance was also placed on the decision of the Supreme Court in *M/s. Upadhyay and Co. Vs. State of U.P. and Others*, . The relevant paragraph of the judgment is extracted below:

"13. The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution (*Sarguja Transport Service v. STAT*). The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned, he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as

a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned Chief Justice then was) are to be quoted here: (SCC p. 12, para 9)

"We are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission."

18. In *Bakshi Dev Raj and Another Vs. Sudhir Kumar*, also, the Supreme Court held as under:

"36. A similar question was considered by this Court in *Sarguja Transport Service v. STAT*. In this decision it was held that where a petitioner withdraws a petition filed by him in the High Court under Articles 226/227 without permission to institute a fresh petition, remedy under Articles 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article though other remedies like suit or writ petition before this Court under Article 32 would remain open to him.

37. It was further held in *Sarguja Transport Service* case that the principle underlying Rule 1 of Order 23 CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also. The main contention urged by the learned counsel for the petitioner in that case was that the High Court was in error in rejecting the writ petition on the ground that the petitioner had withdrawn the earlier writ petition in which he had questioned the order passed by the Tribunal on 04.10.1985 without the permission of the High Court to file a fresh petition. It was urged by the learned counsel that since the High Court had not decided the earlier petition on merits but had only permitted the petitioner to withdraw the petition, the withdrawal of the said earlier petition could not have been treated as a bar to the subsequent writ petition. While considering the said question, this Court considered sub-rule (3) of Rule 1 of Order 23 CPC and its applicability to writ petitions filed under Articles 226/227 and held as under: (*Sarguja Transport Service Case*, SCC P. 12, Para 9).

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open."

19. Mr. Mohit Chaudhary, the learned Counsel appearing on behalf of the Petitioner urged that a fresh cause of action has arisen on account of the letter dated 9.02.2007, written by the Director (Housing), DDA to the Central Government stating that the bulk allotment of the subject flats was made to the SBI subject to further allotment in the name of individual employees on ownership basis as per the eligibility criteria at the time of issuance of the scheme.

20. In support of his argument, Mr. Mohit Chaudhary, learned counsel had drawn the attention of this court to decision of the Supreme Court in Sarva Shramik Sanghatan Mumbai vs. Maharashtra and Ors. reported at AIR 2009 SC 946. The relevant portion is extracted below:-

"11. We have carefully examined the decision of the Sarguja Transport Service case (supra). In the said decision it is mentioned in paragraph 8 as follows:

"It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw the writ petition without seeking

permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition.

12. In paragraph 9 of the said decision, it is also mentioned as follows:

"But we are of the view that the principle underlying R. 1 of O. XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics.

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15. On the subject of precedents Lord Halsbury, L.C., said in *Quinn V. Leathern*, 1901 AC 495:

"Now before discussing the case of *Allen V. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to flow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

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19. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in *Sarguja Transport case* (supra) cannot be treated as a Euclid's formula.

20. In the present case, we are satisfied that the application for withdrawal of the first petition under Section 25-O(1) was made bona fide because the respondent-company had received a letter from the Deputy Labour Commissioner on 05.04.2007 calling for a meeting of the parties so that an effort could be made for an amicable settlement. In fact, the respondent-company could have waited for the expiry of 60 days from the date of filing of its application under Section 25-O(1), on the expiry of which the application would have deemed to have been allowed under Section 25-O(3). The fact that it did

not do so and instead applied for withdrawal of its application under Section 25-O(1), shows its bona fide. The respondent-company was trying for an amicable settlement, and this was clearly bona fide, and it was not a case of bench hunting when it found that an adverse order was likely to be passed against it. Hence, Sarguja Transport case (supra) is clearly distinguishable, and will only apply where the first petition was withdrawn in order to do bench hunting or for some other mala fide purpose.

21. It was also urged by the counsel for the petitioner that the petitioners in the present petition are not the same petitioners who instituted the earlier writ petitions being CW 779/1993 and CW 1151/1993. It is clarified that the aforementioned petitions were filed by some of the employees only, and not all the members of the petitioner society were the petitioners therein.

22. I have heard the rival submissions put forward by the counsel for the parties and considered the decisions relied upon by them.

23. There can be no dispute with regard to the ratio laid down by the Apex Court in Sarguja Transport (Supra) and subsequent decisions laying down the same principle. However, in the present case, subsequent to the withdrawal of the earlier writ petitions, mediation proceedings began between the DDA, the SBI and its Employees from 26.07.2007 which terminated in failure on 16.12.2010. Further, it is observed that a fresh cause of action has arisen by the letter dated 09.02.2007, written by the Director (Housing), DDA to the Central Government stating that the bulk allotment of the subject flats was made to the SBI subject to further allotment in the name of individual employees on ownership basis as per the eligibility criteria at the time of issuance of the scheme.

24. In light of the decision of the Supreme Court in State of Haryana and Others Vs. M.P. Mohla, , the present writ petition is maintainable on account of subsequent cause of action which has arisen vide the said letter dated 09.02.2007. The relevant portion of the decision is reproduced below:

"23. It is also trite that if a subsequent cause of action has arisen in the matter of implementation of a judgment a fresh writ petition may be filed, as a fresh cause of action has arisen."

25. Further, it was rightly pointed out by Mr. Mohit Chaudhary, learned counsel appearing on behalf of the Petitioner society, that the present writ petition is maintainable as the petitioners herein are not the same petitioners who instituted the earlier writ petitions being CW 779/1993 and CW 1151/1993. A perusal of the record reveals that the aforementioned writ petitions were filed by some of the employees only and not all the members of the petitioner society were the petitioners in the earlier writ petitions.

26. In view of the aforesaid discussion, there is no bar in law to entertain the present writ petition and adjudicate the same on merits. The objection raised by the Respondent No. 2 on the issue of maintainability of the present writ petition

is devoid of any merit and is accordingly rejected.

27. List the writ petition for disposal on 26.02.2015.