

(2011) 05 DEL CK 0087

In the Delhi High Court

Case No : C.M. No. 9439 of 2009 in Writ Petition (C) No. 332/93

Shri Ishwar Dass

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 151

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 7, 7(2)

Citation : (2011) 05 DEL CK 0087

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Keshav Dayal and Gagan Mathur, for the Appellant; Ashwini Bhardwaj, for the Respondent

Judgement

Kailash Gambhir, J.—By this application filed under Order XXII Rule 10 r/w Section 151 of the Code of Civil Procedure, 1908 the applicant Narender Kumar seeks his substitution in place of the deceased Petitioner Ishwar Dass in view of the fact that the original Petitioner had transferred the property in question i.e Fuel Depot, Behind Alexandra Chummery No. 3, Near Gole Post office, New Delhi in favour of the applicant.

2. In support of the present application, Mr. Keshav Dayal, learned Senior Advocate appearing for the applicant submits that the applicant is entitled to be substituted in place of the deceased Petitioner based on the sale documents which were executed by him in favour of the applicant, details of which have been given in para 3 of the application. Mr. Dayal has placed reliance on the judgment of this Court in Kuldeep Singh Suri Vs. Surinder Singh Kalra, . Counsel also submits that the allegations made by the applicant in the present application have not been refuted by the Respondent and therefore the applicant deserves to be substituted in place of the deceased Petitioner. Counsel also states that the Petitioner had approached this Court at the stage when the proceedings were still pending before the learned Estate Officer and therefore this Court after

substituting the name of the applicant needs to remand this matter. Counsel also states that in fact the deceased Petitioner had paid the entire amount of arrears and no rent is due and therefore, the proceedings initiated by the Respondent against the Petitioner were ex-facie illegal.

3. Opposing the present application, Mr. Ashwani Bhardwaj learned Counsel appearing for the Respondent submits that the Petitioner himself was an unauthorized occupant on the Government land and the proceedings for eviction and for recovery of damages under Sections 4 and 7 of the Public Premises Act were initiated against him. Counsel further submits that the sole case of the Petitioner was that he was entitled to rehabilitation under the Gadgil Assurance. Counsel further submits that the case of the Respondent before the Estate Officer as well as before this Court is that the Gadgil Assurance is not extended to commercial premises. Counsel further submits that this issue is no more res integra as the Hon'ble Division Bench of this Court in the case of Madan Lal Jain v. Union of India and Anr. CWP No. 3530/1992 decided on 11.07.2002 and in other cases has already taken a view that the Gadgil Assurance is not extended to business or commercial premises. Counsel further submits that once the deceased Petitioner himself was not entitled for rehabilitation under the Gadgil Assurance, the present applicant who claims to be the purchaser of the site in question cannot have a better claim.

4. I have heard learned Counsel for the parties.

5. Before dealing with the application under consideration, it would be apt to set out the brief background of facts which led the deceased Petitioner to file the present petition invoking jurisdiction of this Court under Article 226 of the Constitution of India. As per the case set up by the deceased Petitioner, he along with his father and other members of his family had migrated to India from West Pakistan during the partition of the country in the year 1947. Being a displaced person the Petitioner had occupied the public land near CPWD Enquiry Office at Mahadev Road, New Delhi. It was also the case of the Petitioner that for earning his livelihood he started running a fuel depot in the name and style of M/s Mohra Mal Lekh Raj at Mahadev Road, New Delhi and thereafter he shifted to a place near Gole Post Office, New Delhi on a plot of land measuring 124 sq. yards. It was also the case of the Petitioner that under the Gadgil Assurance dated 29.9.1951, he was entitled for an alternative site being a displaced person. It was also the case of the Petitioner that the Petitioner had been paying tehbazari tax to the NDMC for the said premises under his occupation. It was further the case of the Petitioner that the proceedings u/s 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act were initiated against him. The said Petitioner had appeared before the Estate Officer and explained that he was not an unauthorized occupant being a displaced person from West Pakistan and was entitled for an alternative allotment under the Gadgil Assurance and as per the Petitioner, the proceedings under the Public Premises Act were withdrawn against him. It was also the case of the Petitioner that again fresh proceedings were

initiated against him u/s 4 and 7 of the Public Premises Act and a preliminary objection was raised by the Petitioner before the learned Estate Officer that he was covered under the Gadgil Assurance and therefore the provisions of Public Premises Act could not be invoked against him. The said preliminary objection raised by the Petitioner was rejected by the learned Estate Officer vide order dated 28th February, 1992 and feeling aggrieved with the said order the said Petitioner had filed the petition in hand.

6. The learned Estate Officer in the impugned order took a view that the squatters using the public land for commercial purposes are not entitled to any alternative site under the Gadgil Assurance. This writ petition was taken up by this Court on 19.1.93 when the show cause notice was directed on the Respondents. Rule D.B. in this petition was directed by this Court vide order dated 1.2.94 and this petition was directed to be taken up for hearing along with W.P.(C) No. 3430/92. Now, during the pendency of the present petition, the applicant Mr. Narender Kumar has moved the present application under Order XXII Rule 10 CPC to seek substitution of his name in place of the deceased Petitioner Mr. Ishwar Dass. In the present application, the applicant has stated that he came to know from the relatives of the Petitioner that he expired long back in the year 1994 and he was not aware of his demise till the end of June, 2009. The applicant has further stated that during his lifetime the deceased Petitioner had executed series of documents in his favour so as to transfer the said land in question in his favour. The nature of documents alleged to be executed by the deceased in favour of the applicant have been detailed in para 3 of the application. Without commenting on the authenticity and the effect of execution of such documents, it would suffice to say that admittedly the deceased was in unauthorized occupation of a Government land being a squatter. The sole basis of the claim of the deceased Petitioner before the learned Estate Officer was that he was entitled to allotment of an alternative site under the Gadgil Assurance. The said plea of the deceased Petitioner was negated by the learned Estate Officer vide order dated 28.02.1992 and which order was challenged by him before this Court in the present petition. In a connected writ petition bearing W.P. (C) No. 3430/92 titled Randhir Kumar Sharma and Ors. v. Union of India decided on 18.03.2009, the Division Bench of this Court after placing reliance on the earlier decision of the Division Bench of this Court in Madan Lal Jain v. Union of India and Anr. (supra) reiterated the view that the Gadgil Assurance covers only residential squatters and not commercial squatters, that too in relation whereto an encroachment has been made by poor persons. It would be appropriate to reproduce the relevant para of the same as under:

7. It is observed that the Division Bench of this Court decided the very issue raised by the Petitioners in the present writ petitions. The Division Bench held that the Gadgil Assurance would not curtail the jurisdiction of the Estate Officer who is a statutory authority under the said Act, as the statutory power can be curtailed or abridged or taken away only by reason of the provisions of statute and not otherwise. Further, it came to a conclusion that a bare perusal of the

office memorandum dated 31st January 1969 referred to in the judgment of Madan Lal Jain (Supra) clearly shows that the "Gadgil Assurance covers only residential areas in relation where to an encroachment had been made by poor persons.

8. We cannot but agree with the decision of the Division Bench in re: Madan Lal Jain (Supra). Thus, the submission of the Petitioners that their unauthorized occupation for the purpose of carrying out their business was covered by the Gadgil Assurance is without any merit. In the circumstances, we are of the opinion that in a case of this nature this Court having regard to the larger public interest, would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India. The writ petitions are, therefore, dismissed without any order, however, as to costs.

7. Since the connected writ petition (W.P.(C) 3430/92) was dismissed by the learned Division Bench of this Court vide order dated 18.3.2009 and somehow the present petition got detached from the said petition therefore, the present petition remained pending. Since the issue is no more res integra, therefore this Court cannot take any other view but to reiterate the view taken by the Hon''ble Division Bench of this Court in Randhir Kumar Sharma and Ors. v. Union Of India (Supra).

8. As per the said legal position once the deceased Petitioner himself was not entitled to allotment of an alternative site, therefore, the applicant who has claimed himself to be a successor in interest based on some transfer documents cannot have a better claim. Even otherwise the deceased Petitioner being a squatter himself had no right to transfer the Government land in favour of the applicant.

9. In the light of the aforesaid, there is no merit in the present application, the same is accordingly dismissed.

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Since vide aforesaid order the application filed by the applicant under Order XXII Rule 10 CPC is dismissed and in view of the fact that the Petitioner is stated to have expired in the year 1994, therefore, the present petition does not survive any more being abated and also because of the decision of the Hon''ble Division Bench of this Court in Madan Lal Jain's case (supra).

In the light of the aforesaid, the present petition is accordingly disposed of.