

(1976) 12 DEL CK 0011

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 209 of 1976

Tirlok Chand

APPELLANT

Vs

The Estate Officer and Another

RESPONDENT

Date of Decision : 17-12-1976

Acts Referred:

Citation : (1977) ILR Delhi 511 : (1977) RLR 120

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : Rajender Dutt, R.B. Datar and S.K. Agarwal, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Article 227 of the Constitution of India raises a question whether an owner of a property, which has been acquired, could be treated as an unauthorised occupant for the purpose of Public Premises (Eviction of unauthorised Occupants) Act, 1971 (for short, the Public Premises Act) even though only a symbolic possession was taken in the course of acquisition proceedings and he continued to be in actual physical possession of the property.

(2) This is how the question arose. Land in dispute, including the structure that apparently stands on a part of it, admittedly owned by the petitioner and another, was acquired by a notification of January 31, 1957 under the provisions of the Land Acquisition Act, 1894 (for short, the Acquisition Act). An award was made on February 23, 1961 by the Land Acquisition Collector u/s 11 of the Acquisition Act. Thereafter on March 12, 1964 symbolic possession of the property was taken and delivered to the Municipal Corporation of Delhi u/s 16 of the Acquisition Act. It is a common case of the parties that the property was in the actual physical possession of the owners when symbolic possession of it was taken in the presence of the owners. This is also clear from the report of the land acquisition authorities in which the taking over and handing over of symbolic possession is recorded. It, however, appears that either the petitioner and the

other co-owners never surrendered actual physical possession or, having done it, occupied it again. Be that as it may, proceedings were taken, to evict the owners under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 (for, short, the 1958 Act), but proved abortive as the 1958 Act was struck down. The proceedings were revived after the Public Premises Act replaced the 1958 Act. Pursuant to these proceedings the Estate Officer of the Municipal Corporation of Delhi directed the eviction of the petitioner and of recovery of damages by two separate orders on the ground that, on the acquisition of the property in dispute, the petitioner became an unauthorised occupant within the meaning of Section 2(g) of the Public Premises Act. The orders were upheld in appeal by the Additional District Judge, Delhi by his order of April 14, 1976. The petitioner seeks to challenge the order of the Additional District Judge.

(3) A number of grounds were raised in the petition but at the hearing the attack to the validity of the impugned order was confined to the contention that the petitioner could not be treated as an unauthorised occupant for the purpose of the Public Premises Act and be dealt with accordingly in that the petitioner had been in actual physical possession of the property in dispute since before its acquisition.

(4) On behalf of the Corporation the impugned order and the proceedings leading to it were sought to be justified on the ground that on the symbolic possession of the property being taken by the Land Acquisition authorities the property stood vested in the Government u/s 16 of the Land Acquisition Act with the consequential divesting of the owners of all right in or title to it. It was further urged that irrespective of whether the petitioner occupied it after the symbolic possession or continued to be in the actual physical possession notwithstanding the symbolic possession the petitioner would be deemed to be in unauthorised occupation of the property in view of the provision of section 2(g) of the Public Premises Act and was, Therefore, liable to be dealt with, both in the matter of eviction and recovery of damages, in accordance with the provisions of the Act.

(5) After hearing learned counsel for the parties it appears to me that the contention of the Corporation must prevail. Section 5 of the Public Premises Act authorises the eviction of unauthorised occupants. Section 7 of the Public Premises Act authorises a requisition to such occupants to pay arrears of rent or damages in respect of their occupation of the public premises. The expression "public premises" is defined by section 2(e) of the Act and means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government. The expression "unauthorised occupation" used in section 5 of the Public Premises Act is defined in section 2(g) of the Act to mean "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". Two conditions must, Therefore, be satisfied before a person could be proceeded against under the Act. In the first instance, the premises in relation to which the proceedings are sought to be taken must be a "public premises" and secondly the person sought to be dealt with must be in unauthorised occupation of it.

(6) The first question that must, Therefore, be determined is if the property in dispute became a public premises and, if so, the point of time when this happened. It is well settled that when possession of a property, which is being acquired under the Land Acquisition Act, is taken after the Collector has made an award u/s 11 of the Land Acquisition Act by virtue of. power vested in Section 16 of the said Act the vesting and the corresponding divesting takes place. .Section 16 provides that "when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances" . This leaves no manner of doubt that when possession of the property is taken the property vests in the Government and the owner is, Therefore, divested of all right in or title to the property. Symbolic possession had admittedly been taken of the property in dispute which had the effect of vesting the property absolutely in the Government with the corresponding divesting of the owner of all interests in or title to it. The contention raised on behalf of the petitioner that symbolic possession was incapable of causing a vesting and corresponding divesting is unsustainable. A symbolic or formal delivery of possession, as understood in law, has the effect of dispossessing the judgment debtor from his right, title or interest in the property even though it does not dispossess the person in actual possession in his own right if he is not liable to be evicted under the decree or in pursuance of the auction sale. A symbolical or formal delivery of the possession against the judgment debtor is giving of actual possession of the property in the eye of law and has the effect of dispossessing him although as a matter of fact he may have succeeded in resuming possession as before shortly after the dispossession. This is how the Supreme Court looked at the nature of possession which was capable of causing the vesting and divesting u/s 16 of the Land Acquisition Act in the context of the provisions of Order 21 Rule 96 of the CPC in the case of Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, As has been pointed out above the property in dispute was never in the possession of any one other than the owners, who are admittedly bound by the acquisition proceedings which have since become final and have not been challenged by the petitioner in any proceedings. Symbolic possession of the property was, Therefore," sufficient to vest the property in the Government and to divest the petitioner of all right in or title to the said property. The result is that when symbolic possession was taken on March 12, 1964 it had become a property which belonged to the Government and was in consequence a public premises within the meaning of section 2(e) of the Public Premises Act.

(7) The question that then arises is as to whether the second condition is satisfied, namely, whether the petitioner could be said to be an unauthorised

occupant in relation to the property with affect from the date of take over of the possession. A person would be in unauthorised occupation of a public premises in terms of section 2(g) of the Public Premises Act if he is in occupation of it "without authority for such occupation". In terms of the aforesaid provision the continuance in occupation by any person of the public premises after the authority under which he occupied it has been determined also renders his occupation unauthorised. The petitioner would be in unauthorised occupation in terms of both the two parts of the provision of section 2(g). The moment the property became public premises on March 12, 1964 the occupation of the petitioner of the premises became without the authority for such occupation. The petitioner was admittedly in occupation by virtue of being its owner and on the divesting of all right in or title to the property he ceased to have the authority to occupy the premises. It is true that the first part of the provision of clause (g) of section 2 is not very happily worded when it uses the expression "occupation by any person". It may perhaps give the impression as if this must be a fresh occupation after the property, became public premises. But that does not appear to be the intention of the Legislature. It need not be a fresh occupation after the property became a public premises. It would also include within its mischief an occupation by the owner since before the property became public premises where the title in which the property was occupied ceased to exist. In any event, the latter part of the provision leaves no manner of doubt that, where occupation was initially authorised, the continuance of it after the premises became a public premises or after the authority under which it was occupied was withdrawn, determined or ceased to exist would render the possession unauthorised. Either way, the petitioner, who had been in occupation as the owner, became an unauthorised occupant on being divested of his right in or title to the property on the symbolic possession being taken on March 12, 1964. The petitioner could not claim any right even to the possession after acquisition was complete because he was bound by the acquisition proceedings. The petitioner was in possession by virtue of being the owner. The right to possession followed the title to the property. Once he was divested of the title and symbolic possession was taken he had no right to continue in possession. Certain observations in the case of Rajkumar Devindra Singh and Another Vs. The State of Punjab and Others, on which reliance was placed on behalf of the petitioner do not appear to be of any assistance to the petitioner. In that case on the demise of late Maharaja Bhupinder Singh his eldest son Maharaja Yadvinder Singh succeeded to the gadi of the erstwhile State of Patiala. Maharaja Bhupinder Singh along with his sons, including the appellant before the Supreme Court, constituted Joint Hindu family. The appellants Along with other sons of Maharaja Bhupinder Singh had interest by virtue of his being coparceners in all the properties of Maharaja Bhupender Singh. The appellants, along with other brothers, were in occupation of property known as "Colonel Mistry's House", Moti Bagh Palace, Patiala, in their own right as the sons of Maharaja Bhupinder Singh. It was an ancestral property in the hands of Maharaja Bhupinder Singh and they were residing as members of the family in the said property. In 1958 Maharaja Yadvinder Singh sold Moti Bagh

Palace to the Punjab Government and delivered actual possession of certain portion and agreed to deliver possession of the rest subsequently. The attempt of the Punjab Government to evict the appellants under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was resisted on the ground that the appellants were in possession of property in their independent title as coparceners or in any event with a right of residence in the property and could not, Therefore, be dealt with under the Act on the ground that they were in unauthorised occupation of any public premises. "The contention that failed in the High Court was upheld by the Supreme Court on the ground that in terms of section 3(a) of that Act a person must have entered into possession of a public premises before he could be deemed to be in unauthorised occupation and if the appellants were in possession before the date of sale of the property to the Government it could not be said that the appellants entered into possession of any public premises, for, at the time when they were in occupation of the property it was not a public premises. The decision turned on the language of section 3(a) of the Punjab Act which provides that "where he has whether before or after the commencement of the Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant" . The phraseology of the corresponding provision in the Public Premises Act, with which we are concerned, is different. What made a person's occupation unauthorised under the Punjab Act was the entry into possession and not mere occupation as envisaged by section 2(g) of the public Premises Act. Besides, the appellants before the Supreme Court were not party to the sale which had the effect of vesting and divesting and " could not, Therefore, be treated as unauthorised occupants.

(8) In the result, the petition fails and is hereby dismissed but, in the circumstances, without costs.