
(1997) 07 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal NO. 3005 of 1979

Union of India and Others

APPELLANT

Vs

Parkash Chand Etc

RESPONDENT

Date of Decision : 07-07-1997

Acts Referred:

General Clauses Act, 1897 — Section 24

Citation : (2000) 2 RCR(Civil) 253

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Arun Nehra, Union of India, with Munish Bhardwaj, for the Appellant; S.C. Khunger, with Mr. Vinod Khunger and Mr. Viney Mittal, with Mr. Raman Walia, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This is Defendants" second appeal directed against the judgment and decree of the Courts below whereby suit of the Plaintiffs (Respondents herein) has been decreed.

2. Plaintiffs had filed a suit for declaration that the order of resumption of the land comprised in bungalow No. 65, bearing GLR Survey No. 290 situated in Ambala Cantt measuring 4.42 acres referred to in letter No. 701/252/L/L&C/71 dated 28-9-1973 issued by the Joint Director. Military Lands and Cantonments, for and on behalf of Union Of India is illegal, void, malafide, arbitrary, unconstitutional and without jurisdiction and as such ineffective qua the rights of the Plaintiffs. Plaintiffs had also sought a decree for permanent injunction restraining the Defendants from dispossessing them. On contest, trial Court passed a decree for declaration in favour of the Plaintiffs and in consequence thereof, resumption order was held to be illegal, void and ineffective and not binding upon the Plaintiffs. Defendants were also restrained from dispossessing the Plaintiffs from the property in dispute except in due course of law. However, the learned District Judge while maintaining the judgment and decree of the trial

Court, observed that the judgment would not be stand in the way of the Defendants in initiating proceedings for resumption of disputed land after compliance of the statutory formalities. The Courts below on the basis of the judgment of the Division Bench of this Court in *The Union of India and other v. Mrs. Hardarshan Sahi*, (1976) 78 P.L.R. 723, have quashed the resumption order primarily on the ground that a notice was required to be served before the property in dispute had been ordered to be resumed. The Courts held that since notice was not served and opportunity of hearing was not given to the Respondents, resumption order dated 28.09.1973 suffers from legal infirmity.

3. In this second appeal against the judgment of the Courts below, it has been contended by Mr. Arun Nehra, Learned Counsel for Defendants, that the very terms of the grant clearly show that the grant is resumable at any time by the Government without assigning any reason and that, therefore, there is no right in the grantee to claim or insist upon any right or his being heard before power to resume is exercised by the Central Government. Counsel contended that the judgment in *Mrs. Hardarshan Sahi's* case relied upon by the Courts below has no application to the facts of the present case. Against this counsel for the Respondents has urged that even if the terms of the grant do not provide for notice, notice is a must as the principles of natural justice demand that a person must be heard before any order adverse to him is passed, particularly when civil rights of a person are in issue. He also urged that the order resuming the property is illegal inasmuch as it has no sanction of the statutory law. In this regard, he has cited judgment in *Durga Dass Sud and Another Vs. Union of India (UOI) and Others*,

4. It is not in dispute that the Plaintiffs are in possession of the property in dispute on what are known as "old grant" terms. The terms are contained in Order No. 179 dated 12.09.1836 issued by the Governor General of India in council and have been produced on record. By this order, the Governor General of India in Council was pleased to rescind various orders in force in regard to the premises or buildings situated within the limits or military cantonments, and to substitute them for Regulations contained in the order and the Regulations were to have effect from the date of their promulgation at the different stations of the Bengal Army. Regulation -6 contained in the said order is relevant and it reads as under:

6. Condition

No ground will be granted except on the following

of

conditions, which are to be subscribed by every

occupancy

Grantee, as well as by those to whom his grant may

subsequently be transferred:

1st

The Government to retain the Power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.

Resumption of land.

2nd

The ground, being in every case the property of land belongs

Government, cannot be sold by the grantee, but to Govt.

houses or other property thereon situated may be Land be sold

transferred by one military or medical officer to by Grantee.

another without restriction, except in the case houses bet-

reliefs, when if required the terms of sale or ween milit-

transfer are to be adjusted by Committee of ary officers.

Arbitration.

3rd

If the ground has been built upon, the buildings are Arbitration

not to be disposed of to any person, of whatever in case of

description, who does not belong to the army, until transfer on

the consent of the officer Commanding the station

Relief

shall have been previously Transfer of house to be obtained

this his hand civilian

4th

When it is proposed, with the consent of General

Transfer

Officer, to transfer possession to a native, should

of

the value of the house, building or property to be

native

so transferred exceed Rs. 5,000/- the sale must not

be affected, until the sanction of Government shall have been

obtained through His Excellency the Commander-in-Chief

It is clear from a reading of the Regulation that the grantee acquires no interest in or right to the property so given to him in the grant except to remain in occupation at the pleasure of the grantor. The grantor retains power of resumption at any time on giving one months's time and paying the value of such buildings as may have been erected The grant in question gives only a right to use the property in a particular way, the legal possession remaining with the grantor. It would, therefore, be seen that but for the permission grantee's possession would be unlawful. The Division Bench of the Delhi High Court in *Raj Singh Vs. The Union of India and Others*, , while considering Order No. 179 of 1836 has held that a grantee being a mere "occupier" of the land, a licensee whose licence under the grant and law, was revocable at pleasure of the licensor, cannot be said to have any legal possession over the land as against possession against all others and therefore, he cannot claim legal protection against the owner. In regard to the nature of the Regulations and the application of CPC or the Specific Relief Act, it has been held that "the regulations contained in Order No. 179 of 1836 regarding the grant of lands situated in Cantonment areas are provisions of a statutory nature which were continued by the Government of India Act from 1859 to 1935 on the principle embodied in Section 24 of the General Clauses Act, 1897. They must thus be deemed to be continued in force in view of Art 272(1) of the Constitution Whatever the nature of the Regulation it is a self-contained provision prescribing the procedure as to the grant and resumption of the land and hence recourse to the CPC or the Specific Relief Act in that behalf is neither contemplated nor necessary. The Regulation does not contemplate the intervention of any judicial or quasi-judicial authority between the Government and the grantee and the total absence of any interest or right in

or to the demised land estops the grantee, who is a mere licensee from saying that the Government could not have resumed possession of the land and the house thereon without proper proceedings for the same. Another Division Bench of the Delhi High Court in *Shital Parshad Jain Vs. Union of India and others*, reiterated that the order of the Governor General in Council No. 179 dated 12.09.1836 is a statutory force and is existing law in force. On reading of the Order, the Division Bench held that the Regulations have been issued or promulgated in exercise of the legislative authority vested in the Governor General of India in Council. The Division Bench further held that "the Regulation deals with as to how applications are made for unoccupied ground for the purpose of being enclosed, built upon or in any way appropriated to private purposes such ground being within the limits of a military cantonment. In what form the application is to be made and how such applications are to be proceeded are provided in the said Regulations. What is further provided in the Regulations are the conditions of occupancy. It makes a provision in respect of resumption of land and also a provision is made with regard to award of compensation in respect of the superstructure. If the compensation is disputed, the question is to be referred to a Committee of Arbitration. The decision of the Committee of Arbitration was to be conclusive unless it is reversed by the Government. The reading of the whole order would go to show that the Regulations have been issued in exercise of the law making power. Earlier orders were issued which have been rescinded to be substituted by Regulation which was an accepted form of legislation." The Division Bench dissented from the Single Bench decision of the Himachal Pradesh High Court in *Durga Dass Sud's Case* (supra), taking a view that the Governor General's Order No. 179 dated 12.09.1836 is purely an executive order without any statutory sanction behind it and the action of the Military Estate Officer in resuming the land, has no sanction of the statutory law. For the reasons recorded by the Division Bench of the Delhi High Court, I am also unable to agree with the view taken in *Durga Dass Sud's case*. Counsel for the Respondents has cited some judgments for the proposition that principles of natural justice will apply in all cases where the order in question has got civil consequences, i.e. the order which adversely affects the rights of an aggrieved party. There is no dispute with this proposition of law, but in the instant case, the terms and conditions of the grant show that a bare licence to occupy the property was granted in favour of the Respondent and was revocable by giving one month's notice. Notice to quit served on the Respondents is strictly in terms of the Regulations and no fault can be found with the notice. More so, possession of the Respondents being that of a licensee, they are not entitled to retain possession against the grantor who can take possession of the property and would not be driven to the Court of law as the mere physical possession of the Respondents confers no right on them. No fault can also be found with the offer of the Government to pay a sum of Rs. 17224/-. In case the Respondents are aggrieved of the quantum of compensation, it is always open to them to make a grievance in this regard before the Authority concerned who in law is bound to decide the same. In *Hardarshan Sahi's case* (supra), necessity of notice before

the grant was resumed, was felt because only a portion of the land forming subject matter of the grant was being resumed. In fact the Division Bench held that in case the entire plot forming the subject matter of the grant was to be resumed, things would be different in that event as there would be no cause to be shown by the grantee against resumption in view of the absolute right of the grantor to resume the grant. In the present case, the entire plot forming the subject matter of the grant is being resumed, and so, no notice was required to be served on the Respondents before resuming the property.

5. Consequently, this appeal is allowed and the judgment and decree of the Courts below set aside and in consequence thereof, suit of the Plaintiffs shall stand dismissed with no order as to costs.