
(1989) 03 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Petition No. 901 of 1990

Union of India

APPELLANT

Vs

Golam Nabi Azad and Others

RESPONDENT

Date of Decision : 27-03-1989

Acts Referred:

Citation : (1989) 03 DEL CK 0073

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Rajiv Nayar and K.C. Mittal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) (ORAL) (Rule D.B.).--The challenge in this writ petition is to an order dated 7th March 1990, the effect of which is that the respondent No. 1 has been permitted to stay in the premises which had originally been allotted to him by the Government up to 20th April 1990.

(2) Briefly stated the facts are that the respondent No. 1 was a member of Lok Sabha and he had been allotted 1 Rajaji Marg, New Delhi. He was also a member of the Council of Ministers in 1982 and, according to respondent No. 1, he was allotted category VIII house because of his long standing in the parliament and also in view of the fact that he had been appointed a member of Council of Ministers.

(3) The 8th Lok Sabha, of which respondent No. 1 was a member, was dissolved on 27th November 1989. It is a common ground that under the Rules of allotment, the respondent No. 1 was entitled, as of right, to retain the premises in question for a period of one month thereafter. This period expired on 27th December 1989.

(4) It appears that respondent No. 1 did not vacate the premises. A notice appears to have been sent to him by the Estate Officer in response to which the

respondent No. 1 wrote a letter dated 9th February 1990 to the Deputy Director, Directorate of Estates. It was mentioned therein that respondent No. 1 had been discharged from a hospital in Bombay where he was being treated for a physical ailment and it was mentioned that respondent No. 1 was to be under continued medical treatment at home for at least 3 to 5 weeks more. A request was made to the effect that he should be allowed to retain the said accommodation for the time being till he was fully recovered from the ailment.

(5) The Estate Officer passed an order dated 14th February 1990. A representative of respondent No. 1 appeared before the Estate Officer and a reply was filed. After hearing the parties and seeing the reply, the Estate Officer concluded that respondent No. 1 had become unauthorised occupant of the accommodation in question and he was directed to vacate the premises within 15 days of the publication of the said order.

(6) The respondent No. 1 then filed an appeal u/s 9(1) of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, hereinafter referred to as the said Act. In (his appeal the facts which were enumerated in the petitioner's letter dated 9th February, 1990, were reiterated and it was stated that respondent No.1 was entitled for extension of Time on medical grounds. It was also mentioned that he had who studying in school and that he had no two children are in Delhi. Lastly it was submitted that other accommodation .. the impugned order had been passed without application of mind to the contents of letter dated 9th February 1990.

(7) The appeal came up for hearing before the Additional District Judge on 23rd February 1990 Notice to show cause was issued to the petitioner herein and in the meantime interim orders were passed staying the eviction of the respondent No. 1 from the dispute premises. On 7th March 1990, a representative of the department did appear before the Additional District judge. A statement was made by the counsel for respondent no.1 to the effect that the appeal may be dismissed as withdrawn but an undertaking was given by the learned counsel to the effect that respondent No. 1 would vacate the premises in dispute by 20th April 1990. Thereupon the Additional District Judge passed the following order :-

"IN view of the statement of the counsel for appellant, the appeal is dismissed as withdrawn. However, the appellant is given time to vacate the premises in dispute by 20-4-90. If he fails to do so, he will be responsible for all consequences of going back on his undertaking and will be liable to be thrown out by force. A copy of order be sent to the respdt. Appeal file be consigned."

(8) In this writ petition under Article 226 of the Constitution of India the challenge is to the passing of the aforesaid order whereby respondent No. 1 has been permitted to stay in the premises in question till 20th April 1990. The contention of the learned counsel for the petitioner is that the appellate authority had no Jurisdiction to grant stay, even after recording an undertaking, once the appeal which is filed is withdrawn. It is further submitted that while passing

interim orders the. appellate authority should exercise its discretion Judicially and grant interim orders only for appropriate cases. it is submitted, there is no merit in the petition and there is no serious challenge to the cancellation of the allotment then it would not be, ordinarily, a fit case for the appellate authority to grant any interim relief. In short, the submission of the learned counsel is, that it is not for the Court to extend the license and it is only for the allotting authority, to see whether further permission to stay should be granted or not.

(9) The question which is involved in this case really pertains to the powers and duties of the appellate authority u/s 9 of the Act. Section 9 reads as follows -

"APPEALS-(1)An appeal shall lie from every order of the estate officer made in respect of any public premises u/s 5 or Section 5-B or Section 5-C or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years" standing as the district judge may designate in this behalf. (2) An appeal under sub-section (1) shall be preferred,- (a) in the case of an appeal from an order u/s 5, within 12 days from the date of publication of the order under sub-section (1) of that section; (b) in the case of an appeal from an order u/s 5-B or Section 7, within twelve days from the date on which the order is communicated to the appellant; and (c) in the case of an appeal from an order u/s 5-C, within twelve days from the date of such order : Provided that the appellate officer may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made u/s 5-B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal. (4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible. (5) The costs of any appeal under this section shall be in the discretion of the appellate officer. (6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district."

(10) After a show cause notice u/s 4 is issued, the Estate Officer may pass an order u/s 5 ordering the eviction of any unauthorised occupant. An appeal against the said order can be filed u/s 9(1) of the Act. Sub-section (1) of Section 9 specifically provides that the appellate officer, to whom appeal shall lie, shall be the district judge. Accordingly to the learned counsel for the petitioner,

the District Judge is a persona designata. In our opinion this may not be entirely correct. The Supreme Court in *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*, was concerned with a question as to whether the appellate authority under the Essential Commodities Act was a judicial authority or not which was amenable to the revisional jurisdiction of the High Court. The Supreme Court held that as the appellate authority has to be a pre-existing judicial authority, Therefore, such an authority cannot be regarded as a persona designata but must be regarded as a judicial authority. Following this decision, the Madhya Pradesh High Court in *Ayodhya Prasad Vs. Union of India (UOI) and Another*, came to the conclusion that the appellate authority u/s 9 was a judicial authority. Apart from these decisions we find that Section 9(1) itself provides that the appellate authority has to be the district judge of the district. Therefore, when the district judge hears an appeal u/s 9, he has all the Mappings of a Court and he can exercise all powers which any judicial officer can exercise, provided the exercise of such powers is not in violation of the law.

(11) When an appeal is filed u/s 9, the same has to be disposed of as expeditiously as possible, as provided by Sub-Section (4) of Section 9. The detailed procedure of hearing the appeal is mentioned in Rule 9 of the P. P. Rules, which we need not advert to at this stage. We would like to notice here that under Sub-section (3) of Section 9, during the pendency of the appeal, the appellate officer has power to stay the enforcement of an order of the Estate Officer for such period and on such condition as he deems fit.

(12) When an appeal is filed u/s 9, Rule 9(2) provides that after calling for and perusing the record of proceedings before the Estate Officer, the appellate officer shall appoint time and place of hearing of the appeal and shall give notice thereof to the Estate Officer against whom the appeal is preferred and also issued notice to the other authorities mentioned in that rule. It would appear to us to be proper exercise of the judicial discretion if the appellate authority considers whether there is any merit in the appeal even at the stage of preliminary hearing. After perusing the record and the proceedings of the Estate Officer and the appeal which is filed, the appellate authority may come to the conclusion that there is no arguable or substantial point in the appeal; and would when then be justified in dismissing the appeal in liming. Even if the appeal is so dismissed, this can, in our opinion, be only done by passing a speaking order and not by a cryptic order. Reasons have to be given as to why the appeal which is filed, is being dismissed. In such a case it may not be exercise of sound judicial discretion if time to vacate is granted by invoking Sub-section (3) of Section 9 of the Act, On the other hand, if the appeal needs further more detailed consideration, a notice should be issued to the Estate Officer and the other authorities mentioned in Rule 9(2). At that time the appellate authority will have to apply its judicial mined to the question is to whether the stay of enforcement of the order of the Estate Officer should be granted or not. It will not be proper for this Court to lay down detailed guidelines indicating: as to when power u/s 9(3) should be exercised or not. We would, however, like to observe that like any

other appellate authority, the district judge has to apply its judicial mind in order to decide whether stay of eviction should be granted or not and if it is to be granted, then what other terms are to be imposed on the appellant. For example, if there is a serious challenge to the cancellation of the allotment or the contention is that the premises in question are not public premises or the Estate Officer had no jurisdiction to pass the order or that there is any other illegality in the order passed by the Estate Officer and the appellate authority comes to the conclusion that there is some substance or merit in the contention, then it would be unfair and improper exercise of jurisdiction if interim orders are not granted staying eviction of the appellant. Where, however, such ingredients are absent and the appellant is unable to show or satisfy the appellate authority that it has any right to retain possession of the premises in question then the appellate authority, ordinarily, ought not to grant stay of eviction by way of largess. The order which is passed under Sub-section (3) of Section 9 is a judicial order and must be able to stand judicial scrutiny. Merely because an appeal against an order of Estate Officer is passed, would not, automatically, entitle the appellant to the grant of interim relief. As we have already noticed, the appellate authority will have to judge the facts of each case and then give his reasons for granting or declining interim relief.

(13) Learned counsel for the petitioner has brought to our notice the fact that the Act has been enacted with a view to provide speedy machinery for the eviction of persons of unauthorised occupation of public premises. Speedy relief is the endeavor of all the litigants whether before Court or any other Tribunal or Authorities, but there should not be such rashness in the exercise of its jurisdiction which will have the effect of doing injustice to either party. Just as interim relief should be granted where the facts so warrant, it should not be granted where at least a prima facie case on merits has not been made out. If the appellant is not entitled to stay in the premises which are in his occupation, and his license has been validly terminated, there would be little justification for permitting him to retain the premises thereafter. It must be realised that his continued occupation of the premises results in another person being deprived of the same who has a better claim to the premises at that point of time.

(14) Coming to the facts of the present case we find that the respondent No. 1 had in his representation to the petitioner as well as in the appeal filed by him, stated that he required the premises for 3 to 5 weeks for medical reasons. Even if the appellate authority was inclined to use its discretion u/s 9(3), there would be little justification in granting the respondent No. 1 time more than 5 weeks after 9th February 1990. In the present case, however, we find that the Additional District Judge recorded the undertaking on behalf of respondent No. 1 and allowed him to continue to stay till 20th April 1990. We have noted that, even if there was no consent, there was certainly no opposition to this order being passed. If the petitioner had raised the contention before the Adjudicator that no further time at all should be allowed, to respondent No. 1, then we would have been inclined to interfere in this case but as no objection appears to have been

taken to the recording of the undertaking and the granting of the time up to 20th April 1990, we do not deem it fit or proper or judicious to disturb that part of the order of the Additional District Judge whereby respondent No. 1 has been allowed to retain possession till 20th April 1990. Before concluding we would like to notice the contention of Mr. Nayyer that after disposing of the case, the appellate authority has no jurisdiction to grant further time. It is true that once a case is disposed of, even a court may become functus officio nevertheless in exceptional or rare case, where an interim order has been passed during the pendency of the appeal, the appellate authority, may, while dismissing the appeal, stay the operation of its final order for a limited period of time. This should be done only in very hard and exceptional cases. In view of the aforementioned reasons, we dispose of this writ petition.