

(1991) 05 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Petition No's. 2616 of 1986 and 687 of 1987

Union of India

APPELLANT

Vs

I.S. Goel and Co. and Others

RESPONDENT

Date of Decision : 09-05-1991

Acts Referred:

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

Citation : (1991) 45 DLT 277

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : A.P. Aggarwal, Y.R. Sharma, S.K. Tiwari, Ramesh Chandra and Anand Yadav, for the Appellant;

Judgement

C.M. Nayar, J.

(1) These writ petitions have been filed by Union of India challenging the common order of the Additional District Judge, Delhi dated 22.2.1979 whereby the Additional District Judge accepted the appeals filed by M/s. I.S. Goel & Co. and M/s. Mehra Motors & Co. and set aside the order of the Estate Officer, Land and Development Officer dated 8.3.1978 ordering M/s. I.S. Goel & Co. to pay Rs. 4.49,223.00 for unauthorised occupation of public premises measuring 2481 sq. yds, situated near Arab-ki-Sarai, Nijamuddin and requiring R.K. Mehra of M/s. Mehra Motors & Co. to pay Khasra Girdavris and Jamabandi were at variance. The Additional District Judge has observed that the question of ownership cannot be decided only by looking at the Jamabandi. The Additional District Judge further observed that the land was purchased by way of a sale deed dated 10.8.1910 and the mutation was effected in the name of Baldev & Others in 1912. Khasra Girdavri entries also indicate that Baij Nath & Others were in possession since 1957. It is observed that the "Record of Right" is not prepared with care and the occupation of Public Witness .D. appears to be recorded without existence.

(2) In our view, question of ownership is a pure question of fact which cannot be

gone into in proceedings under Article 226 of the Constitution of India. In any event, in our view, no damages can be levied on the respondent unless ownership is proved by the petitioner.

(3) We have also perused the alleged notification dated 21.12,1911. We find that khasra number of the land in question has not been specifically mentioned in this notification, though the name of the village is mentioned. The petitioner has not placed anything on record to show that the government took possession of the land any time after 1911.

(4) We also find great force in the contention that these writ petitions are hopelessly time barred and the petitioner is guilty of laches. The reasons given by the petitioner for not filing the writ petitions till March 1986 are far from convincing. The impugned order was passed on 22.2.1979 and except stating that the file had passed through the hands of several Counsel, no convincing reason is forthcoming to explain the delay in filing the writ petition.

(5) Learned Counsel for the petitioner prayed for a further opportunity to search for the documents of acquisition of the land and prayed that the orders be deferred for a period of one week. In our view, no useful purpose will be served in adjourning the case any longer. If the petitioner could not trace the documents for 30 years, we fail to see how the petitioner can trace them in a week.

(6) In the circumstances, we see no merit in the writ petitions. Dismissed. Rule is discharged. The respondent will be entitled to costs quantified at Rs. 3000.00 .

(7) In our view, question of ownership is a pure question of fact which cannot be gone into in proceedings under Article 226 of the Constitution of India. In any event, in our view, no damages can be levied on the respondent unless ownership is proved by the petitioner.

(8) We have also perused the alleged notification dated 21.12,1911. We find that khasra number of the land in question has not been specifically mentioned in this notification, though the name of the village is mentioned. The petitioner has not placed anything on record to show that the government took possession of the land any time after 1911.

(9) We also find great force in the contention that these writ petitions are hopelessly time barred and the petitioner is guilty of laches. The reasons given by the petitioner for not filing the writ petitions till March 1986 are far from convincing. The impugned order was passed on 22.2.1979 and except stating that the file had passed through the hands of several Counsel, no convincing reason is forthcoming to explain the delay in filing the writ petition.

(10) Learned Counsel for the petitioner prayed for a further opportunity to search for the documents of acquisition of the land and prayed that the orders be deferred for a period of one week. In our view, no useful purpose will be served in adjourning the case any longer. If the petitioner could not trace the documents for 30 years, we fail to see how the petitioner can trace them in week.

(11) In the circumstances, we see no merit in the writ petitions Dismissed. Rule is discharged. The respondent will be entitled to costs quantified at Rs. 3000.00.