Dda Vs. Naresh Kumar and ors

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Court : Delhi

Decided On : Sep-30-2013

Judge : Najmi Waziri

Appellant : Dda

Respondent : Naresh Kumar and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on : Decided on : + 09.05.2013 30.09.2013 RFA (OS) 6 OF1993& CM 8200 OF2012DDA Through: ..... Appellant Mr. Lovkesh Sawhney, Adv. Mr. S.K.Ray, Advs. Versus NARESH KUMAR & ORS. Through : ..... Respondents Mr.J.P.Gupta, Adv. for R-1. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI % HONBLE MR. JUSTICE NAJMI WAZIRI1 This is an appeal against the judgment and decree of 30th May, 1991 whereby the learned Single Judge has decreed the suit in favour of respondent (plaintiff) for i) recovery of Rs.20,000/- (Rs.5,000/- towards damages on account of personal injury and Rs.15,000/- towards damages for unlawful demolition order), ii) for recovery of the amount towards loss of income at the rate of Rs.244.37 per month with effect from 7 th December, 1969 till the date of decree and iii) with the direction that the plaintiff would be entitled to interest on the decretal amount at the rate of six per cent per annum. It was further decreed that the appellant (defendant) shall restore forthwith to the respondent (plaintiff) a portion of the leased land in khasra No.257/227 (Bela Estate, Bela Road, Delhi).

2. The case of the appellants is that Bela Revenue Estate in Delhi is Nazul land owned by the Union of India. In or about 1937, this estate was placed at the disposal of the erstwhile, Delhi Improvement Trust (DIT) for the purpose of development. DIT was succeeded by the Delhi Development Authority (DDA) after enactment of the Delhi Development Act, 1957. In the said Revenue Estate, there was a plot of land measuring 14 bighas 10 biswas in khasra No.35/2. A lease was executed in favour of one Shri Amba Prasad in respect of this plot of land for 20 years, i.e. from 1st April, 1929 to 31st March, 1949. These rights were sold by the said lessee to one Shri Tara Chand in 1934 and then successively to one Shri Bela Prashad who further sold his leasehold rights albeit only in one part thereof, that is, in respect of a portion comprising one bigha 10 biswas in khasra No.257/227 out of the aforesaid larger plot of land to one Shri Jyoti Prashad through a deed registered on 4th March, 1941. Subsequent to the expiry of the 20 years lease on 31st March, 1949, the DIT discovered that the aforesaid land sublet to one Shri Jyoti Prashad was actually in the occupation of M/s. Wire Netting Stores, that is, respondent No.3 in this appeal. DIT permitted the continued user of the land by the occupant/respondent No.3 on the basis of oral agreement, subject to certain conditions. Admittedly, no regular agreement for grant of lease for period of thirty years and renewable thereafter had been executed and DIT was not agreeable to any such long term lease. Upon DDA stepping into the shoes of the DIT, the said area was demarcated in the Master Plan as a green zone i.e. for recreation and for public and private open spaces. In order to bring the land use in conformity with the Master Plan, DDA thought it necessary to evict all lessees from the Nazul land in Bela Revenue Estate. Accordingly, vide Resolution dated 20 th September, 1963, DDA directed that all such leases be terminated for good and the lessees be evicted from the land. As a corollary, a notice dated 12th April, 1963 was sent to respondent No.3 which reads as under:

From The Executive Officer (A) Delhi Development Authority To M/s. Wire Netting Store, House Nos.2338-2372 DELHI. Whereas you (M/s. Wire Netting Stores) were granted a monthly lease of a plot of Nazul Land measuring 1 bigha 11 biswas bearing Khasra No.257/227 plot No.X situated in Bela Estate by the Delhi Improvement Trust. AND WHEREAS the Delhi Improvement Trust has been succeeded by the Delhi Development Authority by virtue of Section 60 of the Delhi

Development Act, 1957 and the said plot of land now vests in the Delhi Development Authority. And whereas the Delhi Development Authority has decided to terminate the aforesaid lease; Therefore, I, C.L.Anand, Executive Officer (A) hereby give you notice that the lease of the aforesaid demised plot of land shall stand terminated on 31.07.1963 by which date you must quit and deliver possession thereof to the Tehsildar (Nazul), Delhi Development Authority. Please also take further notice that unless you remove the buildings and structures, if any, that may have been constructed on this plot of land, by the abovementioned date, the Delhi Development Authority will enter upon the said land and take possession of it along with the buildings and structures, if any, upon such land and you shall not be entitled to any compensation whatsoever. In case of your failure to quit and deliver possession by the aforesaid date, your occupation would be wrongful and unauthorized and you shall be liable for damage after that date and proceedings for taking possession and recovery of damages will be taken under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958. Executive Officer (A) DELHI DEVELOPMENT AUTHORITY3 Learned counsel for the appellant submits that on 10 th December, 1967, demolition at premises of respondent No.3 was carried out by DDA. A writ petition bearing No.299/1967 was filed before the Supreme Court of India under Article 32 of the Constitution of India. The Petition was allowed on 9th January, 1969 in the following terms:

...In any case, no opportunity appears to have been given to the Petitioners for showing cause against the proposed eviction. This is contrary not only to the law laid down but also to the principles of natural justice. In these circumstances, we have no option but to allow the petition. The action of the authority appears to have been most high-handed on the facts of the case as brought out before us. If the Authority wished to evict the petitioners from the occupation of these premises it behoved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil court should be so oblivious to their own duties as laid down in the Act. We accordingly allow the petition and order the restoration of the premises to the petitioners and return of all the machinery and other goods and parts of their factory which have been seized from them. It is alleged by the Petitioners that no inventory was made. If this is so, the Authority will be accountable to the

Petitioners for all the movable property taken from their possession. The Authority will also bear the costs of this petition.

On 8th August, 1968, suit bearing No.471/1968 was filed by respondent No.3 claiming damages from DDA. On 6th November, 1969, a notice under Section 4 of the Public Premises Act, 1959 was issued for 1078 square yards. However, dispossession of the occupant from this land was stayed in Civil Writ Petition bearing No.1204/1969. RFA (OS) 6/1993 December 1969, excluding 1078 square yards which was protected by the aforesaid stay order, the area remaining in 1523 square yards of the land was freed from the other unprotected occupiers, against whom necessary orders under the Public Premises Act had been issued. A suit bearing No.242 of 1970 was filed by respondent No.3 claiming damages and restoration of possession before the Delhi High Court. On 30th May, 1991, the aforesaid suits, (Suits No.471/1968 and 242/1970) were disposed-off. The judgment and decree in the latter suit has been impugned in this appeal on the ground that (i) the Learned Single Judge fell into error in holding that the notice of 12th April, 1963 did not terminate the lease of the entire 1523.05 sq. yds., and hence, the lease was not rightly terminated; (ii) that there was evident confusion in the area of land under the lease (1523 sq. yds.) and under the PP Act. Notice (1078 sq. yds.) which led to the erroneous impugned order; (iii) that there could be no restitution to the said land since the land had been repossessed way back in 1969 and had already been developed into a public park next to the bridge over the Jamuna and hence, delivery of the same was unfeasible and inequitable; (iv) that even if the land was reentered into in a technically incorrect manner, it would confer no right to the respondent to sue for compensation. Finally, counsel for the appellant argued that once proceedings under the Public Premises Act had been initiated, the suit was barred and ought to have been dismissed / rejected for want of jurisdiction of the Court.

4. In reply to these contentions, counsel for the respondents reiterated the submissions made in their reply-affidavit. He further argued that the ouster of respondents, who were lawful occupants of the entire land i.e. 1523 sq. yds., from the premises was mala fide and for ulterior purposes; that the removal of the occupants from area other than 1078 sq. yds. (of the 1523 sq. yds.) was illegal,

since the entire land had earlier been leased to the respondents.

5. It appears that the notice dated 12th April, 1963 pertained to the termination of the monthly tenancy apropos the entire leased premises, i.e. 1523 square yards whereas the notice of 6 th November, 1969 was issued under Section 4 of the Public Premises Act for recovery of 1078 square yards of land, i.e., only that area of land which was in possession and control of plaintiff No.3 (respondent No.3 in this appeal).

6. We have heard counsel for the parties. From the facts of the case it is evident that once the monthly lease got terminated with effect from 31.7.1963, the lessee became an unauthorized occupant of the premises in question and DDA could well have initiated action against such occupier under the Public Premises Act, which they did vide the subsequent notice dated 6th November 1969. The said notice was specifically in respect of one bigha 11 biswas as the lease stood terminated on 31st July 1963 and the occupant-respondent No.3 did not hand over the said land to the DDA. The latter entered into possession of the property in 1969, whereafter the plaintiff filed a suit for damages etc. in 1970. The suit was decreed by the order impugned in this appeal.

7. The impugned judgement holds that the plaintiff was not a licensee but had monthly tenancy and at best it was a permissible user. It further holds that the termination of lease was only for a part of the land, that is, 1 bigha 10 biswas and not of the entire land, thus, the eviction was bad. Accordingly, the learned Single Judge proceeded to award damages and ordered restoration of the said premises to the plaintiff.

8. Evidently, the learned Single Judge fell into error in the aforesaid reasoning since what was before him was the only issue relating to 1 bigha 10 biswas and not any claim with respect to other lands i.e. 14 bigha 10 biswas of Bela Revenue Estate. DDA could well have taken possession of the other lands also, however, there being no lis in the suit apropos those other lands of the Revenue Estate no benefit or advantage could accrue in favour of plaintiff No.3, i.e. defendant No.3 herein. Therefore, any reference or reliance upon the non-termination of the lease with respect to the entire land in the Bela Revenue Estate is misplaced.

9. In any case, the suit was decreed on 30th May, 1991. It could not have been decreed because of the bar to jurisdiction of any court under Section 15 of the Public Premises Act, 1971 which reads as under:

15. Bar of jurisdiction. No court shall have jurisdiction to entertain any suit or proceeding in respect of-(a) the eviction of any person who is in unauthorised occupation of any public premises, or (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or (cc) the sealing of any erection or work or of any public premises under section 5C, or (d) the arrears of rent payable under sub- section (1) of section 7 or damages payable under subsection (2), or interest payable under sub- section (2A), of that section, or (e) the recovery of-(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or (ii) expenses of demolition under section 5B, or (iii) costs awarded to the Central Government or statutory authority under sub- section (5) of section 9, or (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.

10. In view of the clear bar to any court having jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises, the learned Single Judge had no jurisdiction to proceed with the suit and pass the impugned judgment and decree, as he did in 1991. Respondent No.3, the monthly-lessee became unauthorized occupant of the said premises from the date of termination of the lease and was liable to be evicted therefrom under the provisions of Public Premises Act. They duly were removed from the premises. Therefore, the occasion of their being restored vide the impugned judgment to the same position or being awarded any cost or damages on account of the removal could not arise.

11. Upon inquiry during the hearing of this appeal, counsel for DDA informed the Court that the only reason why no further proceedings were pursued after issuance of the notice under s.4 of the PPA was the pendency of the suit. However, this caution was perhaps misplaced because stays/injunctions, if any,

apropos the s.4 proceedings had been vacated and the DDA could well have proceeded to conclude the process. Be that as it may, the lack of jurisdiction goes to the root of the matter and it is immaterial whether any party raised this plea earlier. Consequently, this Court is of the opinion that the impugned decree and order were passed de hors jurisdiction they need to be and are aside. For the reasons aforesaid, the appeal is allowed. NAJMI WAZIRI (JUDGE) S. RAVINDRA BHAT (JUDGE) September 30, 2013 sn