

Smt. Kailash Devi and Anr. Vs. Shri Brij Pal Manocha

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Court : Delhi

Decided On : Dec-09-2014

Judge : Valmiki J. Mehta

Appellant : Smt. Kailash Devi and Anr.

Respondent : Shri Brij Pal Manocha

Advocate for Pet/Ap. : Mr. Pradeep Dewan, Ms. Anupam Dhingra, Mr. Ankur Rai

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) No.1078/2014 9th December , 2014 % SMT. KAILASH DEVI AND ANR. Through:Petitioners Mr. Pradeep Dewan, Senior Advocate with Ms. Anupam Dhingra, Advocate and Mr. Ankur Rai, Advocate. VERSUS SHRI BRIJ PAL MANOCHA Through: Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. Yes VALMIKI J.

MEHTA, J (ORAL) C.M. Nos.20196-97/2014 (exemption) 1. Exemption allowed subject to just exceptions. C.M.s stand disposed of. + C.M.(M) No.1078/2014 and C.M. No.20198/2014 (stay) 2. This petition under Article 227 of the Constitution of India impugns the order of the executing court dated 25.11.2014 by which the executing court has dismissed the objections of the objectors/judgment debtors/tenants against the execution of the judgment and decree dated 27.5.2013 passed with respect to the tenanted premises being one room in the property

no.198/5, Gharhi Jharia Maria also known as Ramesh Market Garhi Jarhia, Lajpat Nagar, New Delhi as shown in red in the site plan filed alongwith the eviction petition.

3. An eviction petition for bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) was filed by the respondent against the petitioners and which petition was decreed by the trial court vide its order dated 27.5.2013 as the leave to defend application was not filed within time. The order of the Additional Rent Controller dated 27.5.2013 was upheld by this Court vide its judgment dated 31.7.2014 albeit with a modification that the eviction of the petitioners will only be with respect to the tenanted portion shown in red colour and not the green colour which did not form part of the tenanted premises. A challenge laid by the petitioners to the judgment of this Court dated 31.7.2014 before the Supreme Court by filing an SLP was unsuccessful and the SLP has been dismissed as conceded by the learned senior counsel for the petitioners.

4. Before I turn to the arguments urged on behalf of the petitioners/tenants, it requires to be noted that adjacent to the tenanted shop (which was shown in red colour in the site plan filed alongwith the eviction petition) there was a strip of municipal land in between the municipal road and the tenanted premises. This obvious position of municipal land existing between privately owned premises and the municipal road exists in all the cases because surely in front of every private premises which abuts a municipal road there is in between some municipal land i.e either a footpath or a passage or any other public utility area. The petitioners/tenants claim that they can be evicted from the tenanted premises shown in red colour in the execution proceedings, but, in view of the judgment passed by this Court on 31.7.2014 they cannot be ordered to be evicted from the green portion being the municipal land in front of the tenanted premises, and which green portion of the municipal land is between the municipal road and the tenanted premises.

5. Let me at this stage refer to the judgment passed on 31.7.2014 in RC. REV. No.313/2013 titled as Smt. Kailash Devi & Anr. Vs. Shri Brij Pal Manocha & Ors.

and the same reads as under:

1. This petition under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is filed against the impugned order of the Additional Rent Controller dated 27.5.2013 which has decreed the eviction petition for bonafide necessity on account of the petitioner/tenant failing to file leave to defend application within the statutory period of 15 days inasmuch as delay cannot be condoned in view of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LR's (2010) 2 SCC15.

2. Though counsel for the petitioner has sought to again argue that this Court has power to condone the delay in exercise of inherent powers or such powers which every High Court has to do justice, however, I refuse to allow the petitioner to raise such argument because if I permit so, it will be violating the direct ratio of the Supreme Court in the case of Prithipal Singh(supra) which says that neither the Additional Rent Controller nor the High Court has power to condone the delay of even one day inasmuch as neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of Code of Civil Procedure, 1908 (CPC) apply to the special procedure for eviction of the tenants on the ground of bonafide necessity.

3. There is however one ground which is rightly raised by the petitioner with respect to challenge to the impugned order, and which is that the impugned order grants eviction not only with respect to the tenanted premises with respect to which eviction was sought but also for an additional area. In order to appreciate this contention the operative portion of the impugned order is reproduced below:

In view of the same, eviction order is passed in favour of the petitioner and against the respondents in respect of suit premises No.198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi, which is one tea shed measuring 10x 9 as shown in red in the site plan and the open space in front of the Tea Shed as shown green in the site plan Ex.P-1 (exhibited today while passing this order).

(underlining added) 4. Therefore, eviction decree is passed both with respect to the portion marked in red and green, however, it is noted that even as per the

relief claimed in the eviction petition, the tenancy with respect to which eviction is sought is said to be shown in red. The relevant clause in the eviction petition reads as under:

a) pass an order for eviction in favour of the petitioner and against the respondents directing them to vacate the tin shed shown as red in the site plan i.e. Portion of property No.198/5, Garhi Jharia Maria, Lajpat Nagar, New Delhi. (underlining added) 5. Learned senior counsel for the petitioner has rightly drawn the attention of this Court to para 8 of the eviction petition which shows that the area in green is not the part of the tenancy premises, and this para 8 reads as under:

8. Details of accommodation available together with particulars as regards ground area garden and out house, if any (Plan to be attached). One tea shed measuring 10 x 9 apprx. as shown red in the site plan attached and the open space in front of the tea shed shown as green being illegally used by the respondent No.1 6. Since in law, Additional Rent Controller will have jurisdiction to decree an eviction petition only with respect to a tenanted premises ie where there is a relationship of landlord and tenant, and that too only as per the prayer made in the eviction petition, the impugned order of the Additional Rent Controller dated 27.5.2013 is modified by directing that the eviction decree will only be passed with respect to the prayer clause (a) which is reproduced above, ie the tin shed shown in red in the site plan forming part of the property bearing No.198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi.

7. In view of the above, the petition is dismissed, however, the impugned order is modified to grant eviction only with respect to the tenancy portion which is shown in red colour in the site plan filed in the eviction petition.

8. If respondent wants to take any action with respect to any area in green which does not fall in the tenancy, but is stated to be in illegal use of the petitioner, respondent/landlord can take such action against the petitioner as regards the green portion, in accordance with law. Parties are left to bear their own costs.

6. Learned senior counsel for the petitioners/tenants argues that the executing court has fallen into an error in directing removal of the petitioners from the green

portion and which cannot be done in view of the judgment dated 31.7.2014.

7. The present case is a peculiar case. The case is peculiar for the reason that at the time when RC. REV. No.313/2013 which was dismissed on 31.7.2014 the issue never came up that the green portion is the portion in between the tenanted premises and the municipal road and the green portion is actually the municipal land. The judgment dated 31.7.2014 only records the aspect that if the decree was prayed for the red colour portion, hence the eviction decree should be confined to the red colour portion and not also the green colour portion as per the clarification given vide judgment dated 31.7.2014 while dismissing the RC. REV No.313/2013 noting that the eviction was being sought only with respect to the red colour portion and not with respect to the green colour portion.

8. The issue which is presently called for decision is whether can execution proceedings lie by which effectively the petitioners/tenants will be asked to evict themselves from the green colour portion, and which portion is the land admittedly situated on public land/government land/municipal land, and which green colour portion/municipal land falls in between the municipal road and the tenanted premises.

9. At the outset, I would like to note that the powers under Article 227 of the Constitution of India are extraordinary and discretionary powers which are only meant to be exercised for ensuring that injustice is removed. Powers under Article 227 of the Constitution of India are not exercised, as has been repeatedly held, for causing injustice. Putting it in another words, even if the impugned order of a court below is not strictly legal, however if no injustice is caused, High Courts do not interfere in such orders in exercise of their discretionary powers under Article 227 of the Constitution of India.

10. Another aspect which I would like to note that if I interfere with the impugned order in the present case, the same will create chaos because that will mean that tenants who will get tenancy rights in a premises will occupy the municipal land in front of the tenanted premises i.e the portion between the municipal road and the tenanted premises, and thereafter claim that eviction can only be with respect to the tenanted premises and not the illegally occupied portion on the government

land. Also, it is relevant to note that effectively by this Court allowing the petitioners to succeed in their objections would amount to this Court giving a stamp of approval on illegal encroachment of public land, and which surely cannot be the legal position.

11. Let us now turn to the argument urged on behalf of the petitioners that they are entitled to legally possess the municipal land shown in green colour falling in between the tenanted premises and the municipal road and that the petitioners cannot be removed from this green colour portion as it was not the tenanted premises (red colour portion) with respect to which the eviction decree is passed.

12. In my opinion, the spirit of provision of Section 108(d) of the Transfer of Property Act, 1882 will apply, though that provision may not apply in the strict sense of the language in the said Section 108(d) of the Transfer of Property Act, 1882. Section 108(d) of the Transfer of Property Act, 1882 reads as under:

Section 108(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

13. A reading of Section 108(d) of the Transfer of Property Act, 1882 shows that if during the continuance of the lease any accession is made to the leased property, then, such accession will become comprised in the lease. Though this provision does not permit an illegality of allowing a lessee to occupy the government land/municipal land, effectively what this provision lays down is that any accession to a leased premises is for the benefit; not of the tenant; but for the owner/landlord of the tenanted premises. Therefore if the green colour portion being the municipal land becomes part of the leased premises, then, the tenant who is to be evicted from the tenanted premises has to be evicted also from the additional portion which becomes accession to the lease. Of course I am not stating that the landlord will get possession of the green colour portion being the municipal land and what I am only stating is that the tenants will have to be evicted from this green colour portion.

14. Besides the aspects which have been adverted to hereinabove, it is clear that entitlement to eviction of a tenant from a tenanted premises will carry with it an automatic entitlement of the access and the passage to the tenanted premises, and which access and passage has to be identical with the position which existed at the time of letting out of the tenanted premises. Petitioners/tenants cannot be permitted to argue that there is an alternative mode of ingress and egress to a tenanted premises and therefore once there is an alternative mode of ingress and egress to a tenanted premises, since the tenants are illegally occupying the municipal land which did not form part of the tenanted premises, therefore in execution of the judgment and eviction decree, the tenants cannot be dispossessed from the illegally occupied municipal land/government land.

15. In my opinion, the arguments urged on behalf of the petitioners are nothing but an endeavour to abuse the process of the law and in fact seek an imprimatur of this Court on the illegal action in occupying the government land. It goes without saying that Courts cannot pass judgments which effectively will allow illegal occupation of the land.

16. An aspect which is also to be noted in the present case against the petitioners is that the pleadings of the petitioners of entitlement to continue to occupy the municipal land by not being evicted from the same in execution of the judgment and decree dated 27.5.2013, viz the pleadings in the objection petition, are totally vague and lacking in particulars i.e to say that effectively in fact no legal cause of action is pleaded in terms of the objection petition filed.

17. Let me now turn to the relevant pleadings of the petitioners on the basis of which rights are claimed in the green colour portion/municipal land, and these paras 4 and 5 of the objection petition filed by the petitioners read as under:

4. That the portion shown in green in site plan is in possession of applicants long time prior to the inception of tenancy of the portion marked red in the plan for which an order of eviction has been passed. The portion marked/shown in green exists on municipal land. The document of title filed by the decree holder in the main petition clearly show that he has got no title in the said green portion. Prior to the lease of the suit premises, the applicants were running a tea shop in said

premises shown in green by setting up a temporary Tin shed outside the boundary wall of property No.198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi allegedly belonging to the decree holder. Since the tenanted premises were taken by respondents to keep their utensils, goods and wares relating to their business of tea shop by the decree holder. The entry to the tenanted premises at the time of commencement of tenancy was from the existing door in the street shown at Mark A1 in the plan filed as well as from the door where a window is now shown to be existing at point A2. Further, the tenanted premises are, and have always been accessible from gate at point A1 shown in the street. Apart from that there are other entries from the side land as well as other portion in possession of Petitioner which extends from point D to F.

5. After taking the suit premises on rent, an opening in the peripheral/boundary wall of the property No.198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi, allegedly owned by the petitioner, was made by the respondent/objectors for convenient use of the green portion occupied by them on the municipal land, as set out herein. After the applicants made an opening connecting the tenanted portion with the portion shown in green, the door, where a window is now existing at point A2 was closed. The entry to the suit premises as let out to the predecessor of the applicants had never been from the main road. There was no door on the side of the main road towards the patri/pavement which is a municipal land shown in green colour in the plan filed by the decree holder with the eviction petition. The decree holder cannot lay any claim for use of the said opening facing the main road unilaterally made by the applicant for the convenient use of the portion shown in green in as much as the said opening did not exist at the time of creation of tenancy. The applicant/objectors are required in law to restore and hand over the tenanted portion in the same state as it was given on lease.

18. A reading of the aforesaid paras makes certain aspects very clear that in these paras, there are no averments with respect to the specific month and year in which the petitioners occupied the municipal land.

19. Further, and not only there are no mandatory averments with respect to the month and year of the alleged occupation of the municipal land/green colour portion by the petitioners, there is even no prima facie proof filed with respect to when the petitioners allegedly took possession of the green colour portion/municipal land. Obviously, thus it is only after the petitioners/tenants occupied and took on tenancy the suit/subject/tenanted premises they would have encroached upon the municipal land in front of the tenanted premises.

20. In view of the aforesaid discussion, the following conclusions emerge:(i) There is an eviction decree against the petitioners which has been confirmed right till the Supreme Court. (ii) Petitioners are deliberately and malafidely creating some unnecessary grounds so as to illegally continue to stay, if not in the tenanted premises, then by illegally occupying the municipal land in front of the tenanted premises by pleading that the municipal land never formed part of the tenanted premises. (iii) Neither there are sufficient pleadings nor prima facie proof filed for the Court to accept or even prima facie believe the stand of the petitioners/tenants that they were in possession of the municipal land even prior to occupation of the suit/tenanted premises. (iv) Right to get back the tenanted premises, will mean right to get back a tenanted premises including all accessions thereto as existed on the date of creation of the tenancy i.e all accessions to the tenanted premises from the municipal land which was or could be a means of an access, approach and use as a passage to approach/use the tenanted premises. (v) Courts cannot give their seal of approval to the act of an illegal occupation of government land in the guise that the eviction decree is only with respect to a tenanted premises and not with respect to municipal land adjoining the tenanted premises which are illegally occupied by the tenants. (vi) The spirit of Section 108 (d) of the Transfer of Property Act, 1882 will apply in the limited sense that the petitioners/tenants can claim no right to any accession to a tenanted premises, much less on illegally occupied government land, independent of the right to continue in the tenanted premises. (vii) Though it is the case of the petitioners that they have created the entry to the tenanted shop shown in red colour from the portion in green colour, however, except self-serving averments there is nothing filed to even prima facie believe the averments made by the petitioners/tenants.

21. Therefore, neither there are sufficient pleadings nor prima facie evidence filed for sustaining the objections of the right of the petitioners that even prior to the commencement of tenancy, the petitioners were already in possession of the municipal land shown in green colour existing in front of the tenanted premises.

22. Though learned senior counsel for the petitioners very passionately argued that detailed enquiry and evidence is required to be led in the objections filed by the petitioners/tenants, however, I cannot agree because what is the procedure to be adapted for deciding objections depends upon facts of each case and an executing court can devise a procedure for deciding objections as per facts of each case vide para 9 of Noorduiddin Vs. Dr. K.L. Anand (1995) 1 SCC242 Once there are no requisite pleadings or prima facie evidence as stated above there was no requirement of disposal of the objection petition only after leading of evidence. Also, an unnecessary detailed enquiry will frustrate the eviction decree which has been upheld right till the Supreme Court and it will also permit the petitioners to illegally occupy the government land which is not permissible.

23. Also, it cannot be an argument on behalf of the petitioners that there is a government policy whereby the petitioners would get an alternative accommodation on account of their vacating the illegally occupied municipal land and therefore they should be allowed to continue to illegally occupy municipal land inasmuch as not only this Court would be loath to allow encroachment on government land, in fact and admittedly there is not even a whisper of this stand in the objections which have been filed by the petitioners/tenants.

24. In view of the above, I am of the opinion that if the petition such as the present, and the objections such as the present set of objections which are filed by the petitioners/tenants are permitted to succeed, then access to justice will mean entitlement to access the system of Courts to create illegal complications in execution of a judgment and decree which has been sustained till the Supreme Court, and more so by illegally occupying the government land. This petition, being an abuse of the process of the law, is hence dismissed with costs of Rs.50,000/- and which costs shall be paid to the Delhi High Court Legal Services Authority within a period of four weeks from today. It is high time that a very strong and stern

message is sent to a certain section of litigants in this country that access to justice is not to be resorted to with the object of using technicalities of law to start encroaching upon the government land and frustrate eviction decrees which have been sustained till the Supreme Court.

25. List the matter before the Registrar General on 12th January, 2015, and in case the petitioners have not in the meanwhile deposited the costs, then, the Registrar General will recover the costs as arrears of land revenue from the petitioners for being deposited with the Delhi High Court Legal Services Authority. DECEMBER09 2014 Ne C.M.(M) No.1078/2014 VALMIKI J.

MEHTA, J.

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