

Khairuddin Vs. Inspector of Works, Central Railway and ors.

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Court : Andhra Pradesh

Decided On : Nov-27-2002

Reported in : 2003(1)ALD707; 2003(3)ALT741

Judge : L. Narasimha Reddy, J.

Acts : [Arbitration Act, 1940](#)

Appeal No. : SA No. 882 of 2002

Appellant : Khairuddin

Respondent : inspector of Works, Central Railway and ors.

Advocate for Pet/Ap. : S. Satyam Reddy, Adv.

Disposition : Appeals dismissed

Judgement :

L. Narasimha Reddy, J.

1. These five Second Appeals arise under similar set of circumstances in all respects. Hence, they are disposed of through a common judgment.

2. The appellants were granted licences in respect of the vacant land belonging to the respondents (Railways), in the year 1977. It is the case of the appellants that with the permission of the respondents, they have made constructions and have

been using the same. In the year 1988, the respondents terminated the licences granted to the appellants. The appellants filed W.P.No.753 of 1998 and batch challenging the proceedings of termination of licences. The writ petitions were dismissed. They preferred writ appeals. A Division Bench of this Court dismissed the writ appeals also. One of the contentions raised by the appellants was that the documents under which they were granted licences provide for arbitration and that the same has not been resorted to. That aspect was left open by the Division Bench.

3. The appellants filed O.P.No.20 of 1990 and batch, in the Court of the Senior Civil Judge, Nizamabad, under Section 8 of the [Arbitration Act, 1940](#), for appointment of an Arbitrator in terms of Clause 28 of the Deed of Licence (Ex.B1 in the present proceedings). The Trial Court dismissed the same holding that there was no referable dispute.

4. The appellants filed CRP.No. 537 of 1992 and batch. The CRPs were dismissed through order dated 16-3-1993. However, at the request of the appellants to grant time to vacate the plots in question, this Court granted three months' time to vacate and deliver the possession of the same to the respondents. Accordingly, the appellants were under obligation to vacate the plots by 15-6-1993. However, they filed O.S.No. 180 of 1993 and batch on the file of the Principal District Munsif, Nizamabad, on 11-6-1993, seeking a declaration and injunction to the effect that the respondents have no right or authority to evict them without resorting to due process of law and without paying reasonable or due compensation. The respondents filed written statement resisting the same. The Trial Court dismissed the suits, through judgment dated 29-2-1996. Aggrieved thereby, the appellants filed A.S.No. 21 of 1996 and batch, in the Court of the II Additional District and Sessions Judge, Nizamabad. The appeals were dismissed through judgment dated 28-9-2002. The appellants challenge the judgment of the lower appellate Court in these Second Appeals.

5. Sri S. Satyam Reddy, learned Counsel for the appellants, submits that the Courts below have failed to decide the question as to whether the appellants were lessees or the licensees. It is also his contention that whatever be the nature of

possession of the appellants over the plots in question, the respondents cannot evict them except by initiating the appropriate proceedings in law. He assails the judgments of the Courts below insofar as they did not accept the contentions raised on behalf of the appellants.

6. If at all anything, these appeals demonstrate the gross misuse to which the legal system, particularly, on the civil side, can be put to. It also demonstrates the vulnerability of the system in the hands of those, who do not have any respect for law.

7. It is not in dispute that the only basis on which the appellants had entered the property belonging to the respondents was Ex. B1 (in all the cases). In unequivocal terms, this document reveals that what the appellants were granted was only licence. It is not as if the question was raised by the appellants for the first time in the suits alone. When the licences were terminated and the appellants were issued notices, they approached this Court by filing writ petitions. All possible pleas including the one relating to the nature of possession, etc., were dealt with and the writ petitions were dismissed. Even if the appellants did not raise any facet of the plea, the same shall be taken to have been raised and stands barred by principle of constructive res judicata in subsequent proceedings. Findings recorded in writ proceedings operate as res judicata in proceedings in Civil Courts between the same parties and vice versa. (See *Pala Narayana v. Munukuntla Pullaiah*, 1989 (1) ALT 66). The writ appeals filed against the writ petitions were also dismissed. When the appellants insisted about the existence of arbitration clause, the Division Bench of this Court permitted them to have recourse to the same, if it is otherwise permissible in law. It was in this context that they filed O.P.No. 180 of 1993 and batch under Section 8 of the [Arbitration Act, 1940](#). The Trial Court, after a full-fledged trial, recorded a finding that there was no referable dispute and dismissed the O.Ps. This Court affirmed the findings of the Trial Court in all respects in the batch of CRPs filed by the appellants. That the appellants themselves were reconciled to the fact that they did not have any further right was evident from the fact that they prayed for time to vacate the plots. When a specific request in this regard was made, this Court granted three months time to vacate the plots. The same is evident from the order of this Court in CRP.No. 537 of 1996

and batch:

'... The learned Counsel for the petitioners has requested that since the petitioners have been in occupation of the land since long time, it will be difficult for them to immediately pull down the structures and vacate the plots and therefore requested that they may be granted six months time. Having regard to the fact that they require sometime to make alternative arrangements for shifting their residences or business, I feel that it will be reasonable to grant them three months period. The petitioners shall vacate the plots and deliver possession to the Railway Administration...'

8. Having sought for indulgence of this Court, the appellants have become smart and filed suits just before the time granted by this Court was to expire. It was not as if the appellants were given any liberty to pursue the matter further. In view of the fact that the time granted by this Court expired by 15-6-1993, the Courts below ought not to have granted even a single day's time to the appellants to stay in the premises. In effect, they have extended the time granted by this Court, which cannot be sustained, either in law or on facts. In a way, it constituted impropriety also. Be that as it may, the suits were dismissed as also the appeals preferred against the same. The appellate Court granted 60 days time and the appellants are merrily enjoying the property though the time granted by this Court, at their request, expired 9 years back.

9. Even on merits, it needs to be seen that by its very nature, a licence does not convey any rights of possession to the licensees. In other words, a licensee does not have any possessory right over the property in respect of which licence is granted (See *APSRTC v. N. Jayalakshmi*, 1989 (2) ALT 247). Even where the licensee is evicted contrary to the terms of licence, the only remedy provided is to recover compensation as provided under Section 64 of the Indian Easements Act. In this case, such an eventuality did not arise. The suit was for a relief of declaration that the respondents have no right to evict the appellants without resorting to the due process of law. Even when this Court made persistent queries, the learned Counsel for the appellants was not able to submit as to what constitutes a due process in respect of a licence, particularly, in the context of

Section 64 of the Indian Easements Act. The appellants have also claimed reasonable and due compensation. Neither any provision of law nor any decided case has been cited in support of this plea. The whole effort was some how or the other to continue in possession. It has come on record that the appellants have stopped payment of the licence fee also since 1991. The appellants have taken for granted that once they have instituted proceedings in the Court below, they are not under obligation to pay any rent. The result is that they have enjoyed the property in more beneficial and effective manner than a person who would have enjoyed as an owner of it.

10. As observed earlier, this batch of cases demonstrates the vulnerability of the system, at the hands of unscrupulous and greedy persons. One can understand if somebody is pursuing his remedies in accordance with law, even on the slightest possible ground. When in two rounds of litigation, which have become final, the petitioners were sure that they did not have any semblance of right over the property in question, they had initiated the 3rd round. While the conduct of the appellants in this regard is reprehensible, the indifference and callousness exhibited by various Judicial Officers, who passed orders of temporary injunction in favour of the appellants in the suits filed by them, is noway less serious. But for such indifferent and callous attitude exhibited by the Courts, the appellants could not have continued in possession so long, in defiance of the orders passed by this Court, way back in the year 1993.

11. Normally, when a citizen approaches the Court, to certain extent, it reflects the law-abiding nature of the citizen, and in a way, provides the justification for the existence of the system. Where, however, the Courts are burdened with such frivolous litigations, apart from converting Courts into an instrumentality to perpetuate the illegality, such proceedings cut into valuable time of the Court, which has become very precious on account of mounting arrears. If substantial time of the Court is spent for such cases, ingeniously planned by the violators of law, genuine cases slip the attention of the Courts. A time has come when Courts, at all levels, have to be cautious in filtering such frivolous litigations and thereby save the time of the Court for genuine cases and also to enhance the effectiveness of the system.

12. It has come on record that though the time granted by this Court has expired way back on 15-6-1993, the appellants were permitted to remain in possession even thereafter. The Registrar (Vigilance) is directed to call for the records of the suits as well as the appeals and call for explanation from the concerned Judicial Officers, who have granted orders of temporary injunctions enabling the appellants to continue in possession and place before the concerned Committee for appropriate steps.

13. The Second Appeals do not deserve any merit; they do not raise any question of law, much less, substantial question of law and are accordingly dismissed. It shall be open to the respondents to take steps to recover damages from the appellants for using the property unauthorisedly. There shall be no order as to costs.

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