

Ratan Chand Vs. the Delhi Development Authority

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Court : Delhi

Decided On : Sep-04-1972

Reported in : AIR1974Delhi26

Judge : S.N. Shankar, J.

Acts : [Constitution of India](#) - Articles 14 and 226; Public Premises (Eviction of Unauthorised Occupants) Act, 1958 - Sections 3 and 7(2)

Appeal No. : C.W. No. 127 of 1967

Appellant : Ratan Chand

Respondent : The Delhi Development Authority

Advocate for Def. : Bishambar Dayal, Adv.

Advocate for Pet/Ap. : Mohan Behari Lal, Adv

Judgement :

1. This order will dispose of C. Ws. 127/67 and 331-D/66. The points involved in both the petitions; are the same and they have been argued together. For purposes of this order facts in C. W. 127/67 are being referred to.

2. The petitioner in C. W. 127/67 is an occupant of 93 square Yards of land situated at Motia Khan since prior to 1950. This land is Government land. The petitioner paid damages for his occupation of this land at the rate of Rs.5/- per

month per hundred square yards. On August 7, 1965 the Petitioner received a notice from the Estate Officer under sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, hereafter called 'the Act' demanding a sum of Rs, 837.12 in respect of his occupation of this land for the period with effect from April 1, 1963 to March 31. 1965 at the rate of Rs.37.50 Per hundred square Yards i.e. Rs. 34.88 for 93 square yards. The petitioner was required to show cause on or before September 23, 1965 why an order requiring this amount to be paid should not be made. In answer the petitioner submitted his objections. On September 23, 1965 and October 27, 1965 the petitioner himself attended the hearings of these objections before the Estate Officer. On October 27, 1965 the case was adjourned to December 31, 1965. According to the allegation in the petition, the petitioner fell ill on this date and sent his soil to get in adjournment but the E state Officer did not allow any adjournment and passed the exparte order dated December 31, 1965 directing recovery of a sum of Rs. 837.12 from the petitioner. Against this order, the -petitioner filed an appeal before the learned District Judge. By order dated November 9, 1966 this appeal was dismissed. The learned District Judge found that the petitioner was absent on December 31, 1965 in spite of full knowledge of the proceedings when the order for recovery was made by the Estate Officer and, thereforee, the exparte order was justified and that the assessment of damages at the rate of Rs. 37.50 per hundred square yards was perfectly in order as the locality where the. Land was situated was highly commercialised. The Petitioner has assailed the notice dated August 7, 1965 issued by the Estate Officer as well as the order of assessment dated December 31, 1965 passed by him as also the order of the learned District Judge, dated November 9. 1966 on grounds that the order was without jurisdiction and a nullity in law and was vitiated as no hearing had been allowed to the petitioner

3. In the return filed in opposition the averments made were denied and it was urged that the petitioner being a trespasser, in so far as he was to pay damages only in respect of the land, had no locus stand to file this petition.

4. It will be appropriate first to consider the preliminary objection urged on behalf of the respondent before taking up the merits of the Petition. The learned counsel for

the respondent contended that the petitioner was being charged damages only in respect of the land arid as such he had no right qua the land and had, therefore, no locus standi to file this petition. I see no merits in this objection the subject matter of this petition is not the right of the Petitioner to remain in occupation of the land but the act of the respondent in enforcing payment of damages at the rate not recoverable from him according to the Petitioner. By the impugned orders the occupation of land by the Petitioner is in no way sought to be disturbed. The order of the Estate Officer, which has been affirmed on appeal by the learned District Judge, has simply directed recovery of a certain amount from the Petitioner as arrears of land revenue, which the petitioner says, is not legally recoverable from him. The threatened recovery in the circumstances constitutes a threat to the property of the petitioner and as such entitles him to invoke Article 226 of the Constitution. The objection that the petitioner has no locus standi to file this petition thus has no merits and is repelled.

5. The learned counsel for the petitioner urged following grounds in support of the relief claimed in the petition:

(1) That Section 7(2) of the Act is violative of Article 14 of the Constitution and the order passed by the Estate Officer under this provision is a nullity.

(2) That the Estate Officer had no jurisdiction to increase the rate of damages from Rs. 5/- per hundred square yards to Rs. 37.50 per hundred square yards and the order passed by him was without jurisdiction.

(3) That there was no evidence before the Estate Officer on which he could base his Finding that damages could be charged at the rate of Rs. 37.50 per hundred square yards.

(4) That no hearing was granted to the Petitioner.

FIRST CONTENTION:

6. In support of the first contention the learned counsel argued that Section 7(2) of the Act made the Estate Officer to be a judge in his own cause and as such contravened the fundamental, Principles of natural justice and, was in violation of

Article 14 of the Constitution and thus void. The notice dated August 7, 1965 in the instant case, the learned counsel said was issued by the Estate Officer proposing to charge damages from the petitioner at the rate of Rs. 37.50 per hundred square yards and the Estate Officer then himself assumed the role of a judge to decide the dispute in regard to the rate of assessment. Justice the learned counsel concluded, should not only be done but should manifestly and undoubtedly be seen to be done. Reliance in support of these submissions was placed on observations in *Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corpn.* : AIR 1959 SC308 .

7. After hearing the learned counsel for the parties I am unable to sustain this contention. Section 7 of the Act reads as under: -

7. 'Power to Recover Rent or Damages in Respect of Public Premises as Arrears of Land Revenue-. (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may by order, require that person to Pay the same within such time and in such installments as may be specified in the order.

(2) Where any person is or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages, on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments as may be specified in the order:

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections if any, and any evidence he may produce in support of the same, have been considered by the estate officer.'

The provision confers a jurisdiction on the Estate Officer to pass an order requiring any person in arrears of rent in respect of any public Premises to Pay the said arrears and also to assess the damages and require the person in unauthorised

occupation to pay the same in terms of the section, but nowhere makes the adjudicating authority a party to the controversy before it. On the contrary, Section 3 of the Act provides that the Estate Officer shall be an independent person of the qualifications laid down in clause (a) of Section 3 who is appointed by the Central Government to act as such by notification in the official gazette. Clause (b) of this section further lays down that the Central Government shall also by the gazette notification, define the local limits within which or the categories of public premises in respect of which the Estate Officer so appointed shall exercise his powers conferred by the Act and perform the duties imposed by the Act. The provision of hearing, in subsection (3) of Section 7 also shows that the Estate Officer is to act in no way identified with the party seeking before him to obtain the order for the payment of rent or for its assessment.

8. The learned counsel for the Petitioner urged that the show cause notice dated August 7, 1965 (Annex. 'B') was issued by the Estate Officer and in that notice under the signature and seal of the officer issuing the notice he was described as 'Estate Officer, Delhi Development Authority'. This he said clearly showed that the Estate Officer himself proposed the enhancement of rent. There is no merit in this submission. No evidence other than the endorsement referred to above in the notice was placed on the record to show that the Estate Officer in this case was a party to the decision of the Department, managing the land in question, to charge rent at the rate mentioned in the notice. The description of the Estate Officer as Estate Officer, Delhi Development Authority did not prove that the Estate Officer as an Officer of the Delhi Development Authority was a party to this decision. The description simply sets out the categories of public premises in respect of which the Estate Officer could exercise his powers conferred by the Act as envisaged in clause (b) of Section 3 of the Act. Without any further positive evidence on the record therefore. I am not prepared to hold that in the instant case the Estate Officer who issued the show cause notice to the petitioner was a party to the decision to charge rent at the rate mentioned in the notice.

9. In Gullapalli Nageswara Rao's case, : AIR 1959 SC308 referred to by the learned counsel, one of the contentions raised was that the scheme framed, in Pursuance of which the petitioners were being deprived of their right to carry on

the business of motor transaction in certain districts of Andhra Pradesh, was promulgated in derogation to the Provisions of law. Amongst others, it was urged that the scheme did not disclose that the State Transport Undertaking was of the opinion that the scheme was necessary in the interests of the public, and as such a necessary condition for the initiation of the scheme was not complied with, and the scheme could not, therefore, be enforced. The procedure Prescribed for the approval of the scheme, the Court found, was that the State Transport Undertaking prepared a scheme for Providing for the road transport in relation to an area to be run or operated by the State Transport Under taking and any person affected by the scheme could within 30 days from the date of its publication file before the Secretary to the Government, in-charge of Transport Department, objections and representations in writing giving reasons in support thereof. After receiving the objections and representations the Government was to fix the date for hearing of the objections and after giving an opportunity to the persons concerned of being heard in person or by authorized representatives, consider the objections and then modify or approve the scheme. It was found in that case that after the Scheme had been prepared and published in the Official Gazette the petitioners and others filed objections before the Secretary to the Government. Transport Department within the prescribed time and the Secretary to the Government, in charge of Transport Department heard the representations of the objectors, prepared his notes and then placed the entire matter before the Chief Minister who passed orders rejecting the objection and approving the scheme. As one of the parties to the dispute before the State Government was the Transport Department functioning as a statutory authority under the Act and the person who was found to have received the objection of the Parties and heard them Personally or through representatives was the Secretary of the Transport Department, the Supreme Court held that the hearing and rejection of the objections by him was not proper as it was discharge of a quasi-judicial function and the person interested in one party namely, the Secretary of the Department, could not hear and decide the objections. On page 326 of the report the Court said: -

'The head of that department received the objections, heard the parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme. Though the formal orders were

made by the Chief Minister, in effect and substance the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself.'

After noticing the observations in *Ranger v. Great Western Rly. Co.*, (1854) 5 Hlc 72 = 10 Er 824, the Court then said:-

'The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not even formally take part in the proceedings though in fact he does not influence the mind of the Person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary. Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad.' The case in hand, for reasons already stated, is wholly different and these observations are not attracted. There is nothing on the record to show that the Estate Officer was in any manner concerned with the proposal to recover damages from the petitioner as claimed in the notice or had any bias whatever. The cited case therefore does not help the petitioner.

10. The first contention in consequence is repelled.

SECOND And Third CONTENTIONS:

11. These two contentions can be dealt with together. Reference to sub section (2) of Section 7 of the Act extracted above does not bear out the grievance of the petitioner that the Estate Officer had no jurisdiction to increase the damages. This provision in terms empowers the Estate Officer and then confers jurisdiction on him to assess the damages. The word 'assess' does not simply mean, 'calculate' or 'compute'. According to Chamber's Twentieth Century Dictionary, it means, 'to fix the amount of'. While fixing the amount the Estate Officer necessarily has the jurisdiction to fix the rate at which damages have to be paid and to hold that a particular rate at which damages were being claimed was not justified or in

conformity with the prescribed principles for assessment of damages and to increase or decrease it. He therefore, necessarily has the jurisdiction in case where damages were being recovered at a particular rate and were sought to be recovered at a higher rate to increase or decrease the rate. The submission that in the instant case he had, no Jurisdiction to order recovery of damages at a rate higher than the rate at which the petitioner was being charged previously has no merits.

12. In fixing the rate of damages the Estate Officer, according sub-section (2) of Section 7 has to have regard to the prescribed principles for assessment of damages. These Principles for assessment have been laid down in Rule 7 of the Rules framed by the Central Government under Section 13 of the Act, known as the Public Premises (Eviction of Unauthorised Occupants) Rules, 1958, here-after called 'the Rules'. Rule 7 provides:

'Assessment of damages: -

In assessing damages for unauthorised use and occupation of any public premises, the estate officer shall take into consideration the following, matters, namely: -

- (a) The purpose and the period for which the public premises were in unauthorised occupation;
- (b) The nature size and standard of the accommodation available in such premises;
- (c) The rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person;
- (d) Any damage done to the premises during the period of unauthorised occupation;
- (e) Any other matter relevant for the purpose of assessing the damages."

The Estate Officer in the impugned order dated December 31. 1965 has found that the rate of Rs. 37.50 per hundred square yards at which the damages were

claimed was reasonable in view of prevailing rental value of the lands in the locality. This finding is based on a relevant consideration provided for assessment in clause (c) of Rule 7 of the Rules. There is nothing to indicate that there was no evidence before the Estate Officer of the prevailing rental value. of lands in the locality. That this rental value was the rate at which damages were being claimed from persons other than the petitioner in occupation of neighboring lands is borne out by the fact that the Petitioner has not complained of any discrimination against him in this regard and it is not his case that damage, of similar lands in the locality had been assessed at a rate other than Rs. 37.50 per hundred square yards, if this was the prevailing rate of rent in the locality, as the order says it was, the Estate Officer was perfectly justified to adopt this basis to assess the damages payable by the petitioner. The Grievance in the circumstances of the case for reasons aforesaid, is without merit and does not call for interference in exercise of the writ jurisdiction.

FOURTH CONTENTION:

12A. The learned counsel conceded as indeed, it was admitted by the petitioner himself that the petitioner knew of the proceedings before the Estate Officer and the show cause notice, had been duly served on him. He however, urged that as the order was passed *ex parte* on December 31, 1965 and the Estate Officer failed to adjourn the proceedings the decision was bad and deserved to be quashed. There is no merit in the submission. The learned District Judge in appeal has found that on October 27, 1965, the case was adjourned to December 31 1965 in the presence of the petitioner and that on December 31. 1965 the petitioner did not turn up at the time of hearings. The learned counsel stated that it was because the petitioner was ill and that he had sent his son. There is nothing on the record to substantiate this contention. The learned counsel for the petitioner could have applied to the Estate Officer for the setting aside of the order and by producing available evidence in support of the allegations. This he failed to do. Even before the learned District Judge no evidence in support of the alleged illness was placed on the file for consideration of this plea. There is no indication on the record to show that any request for adjournment was made to the Estate Officer, which was unjustifiably refused. The grievance in these circumstances is misconceived and

cannot be entertained by the writ Court.

13. In the result, I find no case is made out for the petitioner. Civil Writ Petitions 127/67 and 331-D/66 are, therefore, dismissed. In the peculiar circumstances of these there shall be no order as to costs.

14. Petition dismissed.

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