

Delhi Development Authority Vs. Shri Raj Kumar

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Court : Delhi

Decided On : Apr-20-1999

Reported in : 1999IVAD(Delhi)215; 79(1999)DLT559

Judge : Madan B. Lokur, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rules 1 and 2; Public Premises (Eviction of unauthorised Occupants) Act, 1971

Appeal No. : Civil Revision No. 631 of 1993

Appellant : Delhi Development Authority

Respondent : Shri Raj Kumar

Advocate for Pet/Ap. : Mr. Jayant Bhushan, Adv

Judgement :

ORDER

Madan B. Lokur, J.

By a perpetual sub-lease dated 17th January, 1977, one Vidya Sagar was allotted a plot of land bearing No.52, Ishwar Colony, Pambri (Bambari) Road, Delhi, admeasuring about 200 square yards (hereinafter referred to as the suit property) by the Delhi Development Authority (for short, the DDA).

2. As a pre-condition to the allotment of the suit property, Vidya Sagar had given a declaration by way of an affidavit dated 6th December, 1976, wherein he had stated, inter alia, that neither he nor his wife own either in full or in part any plot of land in Delhi/New Delhi/Delhi Cantonment.

3. Subsequent to the allotment, a complaint was made against Vidya Sagar by his wife to the effect that the declaration furnished by him was false. Vidya Sagar's wife complained that he owned a house in Delhi in respect of which he had filed a Civil suit alleging that she is the benami owner of that property which was in fact purchased by him from his own funds.

4. Following the complaint, the Lieutenant Governor, Delhi, determined Vidya Sagar's sub-lease of the suit property by an order dated 19th December, 1978.

5. In the meanwhile, Vidya Sagar had already constructed a building on the suit property and, unfortunately, he had also since expired on 1st December, 1978.

6. Pursuant to the determination of the sub-lease, a publication was made in the Indian Express on 5th July, 1979, to the effect that the sub-lease in favor of Vidya Sagar had been cancelled.

7. The respondent Raj Kumar, who is stated to be the son of Vidya Sagar and the beneficiary under a will executed by Vidya Sagar, filed a suit on 24th March, 1988, against the DDA in the Court of the learned Sub-Judge, Delhi, praying, inter alia, for a declaration, a mandatory injunction and a perpetual injunction against the DDA that the proceedings for cancellation of the sub-lease in respect of the suit property be declared null and void and that the DDA be directed to substitute the name of Raj Kumar in place of Vidya Sagar in respect of the suit property and that the DDA be restrained from entering upon or disturbing the possession of Raj Kumar qua the suit property.

8. In the suit, which was registered as Suit No.137 of 1988, Raj Kumar moved an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for an interim injunction to the effect that the DDA be restrained from dispossessing him and interfering in his possession of the suit property.

9. By an order dated 21st April, 1992, the learned Trial Judge allowed the application and restrained the DDA from dispossessing Raj Kumar from the suit property till the decision of the suit.

10. Feeling aggrieved by the grant of injunction, the DDA preferred an appeal being MCA No.360 of 1992. The appeal was dismissed by the learned Additional District Judge, Delhi, by the impugned order dated 15th March, 1993. The learned Additional District Judge confirmed the injunction and further held that for re-possessing the property, the DDA must file a suit for possession against the person whose property it wants to re-possess.

11. The DDA has filed the present Civil Revision petition being aggrieved by the grant of injunction and by the conclusion arrived at by the learned Additional District Judge that the DDA must file a suit for possession. It is contended in the appeal, and also submitted by the learned counsel for the Petitioner, that the learned Additional District Judge has foreclosed the right of the DDA to take action under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Public Premises Act). It is further submitted that the decision relied upon by the learned Additional District Judge in the case of *Express Newspapers Private Limited Vs . Union of India*, : AIR 1986 SC872 does not support the conclusion arrived at by him.

12. Having heard the learned counsel for the Petitioner and having perused the records of the case, I am inclined to partly agree with the learned counsel for the Petitioner.

13. In the case of *Express Newspapers (supra)*, it has been held by A.P. Sen, J. in paragraphs 86 and 87 of the report as follows:

The Express Buildings constructed by Express Newspapers Pvt. Ltd. with the sanction of the Lesser i.e. the Union of India, Ministry of Works and Housing on plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease-deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the Lesser applying for eviction of the

Express Newspapers Pvt. Ltd. under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the Lesser i.e. the Union of India, Ministry of Works & Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease.

Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 where admittedly there is unauthorized construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2(e) and such person is in unauthorized occupation thereof.'

14. The other learned Judges who decided the petition filed by Express Newspapers did not disagree with the opinion expressed by A.P.Sen, J.

15. A perusal of the aforesaid paragraphs would show that it is not in every case of possession that the Government as Lesser is under an obligation to file a suit. There are cases where the Government can legitimately invoke its powers under the provisions of the Public Premises Act. As such, the learned Additional District Judge erred in his appreciation of the views of the Supreme Court in Express Newspapers (supra) and thereby erred in concluding that the DDA 'must file' a suit for possession. The conclusion arrived at by the learned Additional District Judge, at an interlocutory stage, foreclosed the right of the DDA to contend that the present case is one where it could legitimately exercise powers under the provisions of the Public Premises Act. Such a finding ought not to have been given by the learned Additional District Judge at an interlocutory stage.

16. Consequently, I am of opinion that this conclusion of the learned Additional District Judge deserves to be set aside.

17. As regards the grant of injunction, learned counsel for the Petitioner submitted that the Respondent Raj Kumar has not made out any prima facie case in his

favour. It was contended that since the declaration furnished by Vidya Sagar was false, the DDA was within its rights to determine the sublease and take possession of the suit property. While this may be so, the point at issue is whether at this stage, Raj Kumar ought to be dispossessed from the suit property. While deciding this, it is necessary to keep in mind the question whether the learned Additional District Judge has committed any jurisdictional error which may warrant interference by this Court.

18. Admittedly, Vidya Sagar has paid the entire premium for the suit property. He also constructed a building thereon. Even though the perpetual sublease was determined on 19th December, 1978, Raj Kumar was not dispossessed from the suit property. There is nothing on record to show that the DDA took any steps to re-possess the suit property till the filing of the suit in March 1988.

19. As regards the submission of a false affidavit by Vidya Sagar, this has yet to be adjudicated upon.

20. In view of the totality of facts, the Petitioner has not been able to make out any cogent reason for dispossessing Raj Kumar from the suit property at this stage. On the contrary, the balance of convenience lies in favour of the prayer of Raj Kumar being granted. Learned counsel for the Petitioner has also not been able to show any jurisdictional error committed by the learned additional District Judge.

21. Consequently, I decline to modify the injunction granted in favor of the Respondent Raj Kumar. The Petitioner DDA is restrained from dispossessing him from the suit property till the disposal of the suit.

22. The Civil Revision petition is disposed of in the above terms. The record received by the Registry be returned forthwith. There will be no order as to costs.