

Ravinder Singh Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Mar-20-2003

Reported in : 2003IIIAD(Delhi)627; 104(2003)DLT41; 2003(71)DRJ515

Judge : Sanjay Kishan Kaul, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W. No. 3776 of 2000

Appellant : Ravinder Singh

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Sangita Chandra, Adv. for Respondent No. 1, ; S.N. Choudhri, Adv. for Respondent No. 3/MCD and ;

Advocate for Pet/Ap. : P.N. Lekhi, Senior Adv. and; M.G. Vacher, Adv

Disposition : Writ petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The father of the petitioner was allotted a Tehbazari space/site No. 34, Kishore Market between shop No. 33 Stall No. 53 measuring 10 x 15 ft. in Wadhwa Market in Delhi who established the business of sale and repair of cycles. It is stated that

the site is a public road which vests with the respondent No. 3 Municipal Corporation of Delhi. The petitioner's father was asked to vacate the site and he filed a suit for permanent injunction. This litigation was fought till Supreme Court. The grievance of the father of the petitioner, inter alia, was that the petitioner was sought to be dispossessed without even issuance of a show cause notice. The petitioner succeeded in the suit and the appeals but the Supreme Court in terms of its order dated 27th September, 1991 held as under:

'The course spelled out in the judgment under appeal was that the appellant should issue notice to the respondent intimating him that it was proposed to cancel his license and then take such steps thereafter as were known to law. Almost twelve years have passed thereafter. We assume that in the absence of stay of the judgment the appellant has treaded that path. Thus due to the efflux of time, we dismiss this appeal and leave the question of law undecided and hence open. No costs.'

2. It is stated in the petition that the entire colony of Kingsway Camp was sought to be redeveloped and originally the scheme for redevelopment of the colony was transferred from the Municipal Corporation of Delhi to the Delhi Development Authority, respondent No. 1 and was thereafter transferred in 1979 back to the DDA. Since a number of shopkeepers adjoining the shop of the petitioner's father were sought to be removed, they filed a CWP No. 776/1997 challenging the action of the DDA. It is stated that in those proceedings, it is admitted by the DDA that Wadhwa Market forming part of the Kingsway Camp in which the shop of the petitioner's father is situate has not been transferred to DDA.

3. The father of the petitioner is stated to have died in 1989 and the Tehbazari rights were transferred in favor of the petitioner by the MCD on 11th May, 2000.

4. The petitioner has stated in the writ petition that the total number of the shops on the same land in Wadhwa Market opposite the public road on which the petitioner's shop is situate and which has been given on Tehbazari basis by the MCD is 53 besides the petitioner's shop and that the Kingsway Camp scheme was not meant to relocate the said shopkeepers to whom sites have been allotted by the Municipal Corporation of Delhi. It is thus stated that the Kingsway Camp

Scheme was only for resettlement in respect of residential accommodation occupied by the individuals who may have to be shifted as a consequence of the redevelopment scheme and that the 53 shops and the shop of the petitioner were outside the purview of the scheme.

5. The petitioner filed a suit against the Delhi Development Authority for permanent injunction restraining the DDA from dispossessing the petitioner or demolishing his shop. The petitioner was granted an ex-parte injunction. The said stay was, however, vacated on 6th March, 2000. The petitioner has made certain grievances in respect of the proceedings before the Trial Court but the same in any case cannot be impugned in the present proceedings.

6. The petitioner filed an appeal against the said order and interim stay was granted.

7. The petitioner has made a grievance in the present writ petition that the area of the petitioner's shop has been allotted to respondent Nos. 4 and 5 and numbered as shops Nos. 33-A and 33-B. Mala-fides are attributed to the DDA in this behalf. It is also stated that in the redevelopment scheme, even squatters could not be uprooted without allotment of alternative sites in case they cannot be rehabilitated on the existing site. It is further stated that in any case the petitioner is entitled to rehabilitation on the said site. The petitioner has prayed for quashing the allotment in favor of the respondent Nos. 4 and 5 and from prohibiting respondent No. 1 from dispossessing the petitioner from the shop in question.

8. The MCD in its counter-affidavit has stated that it had transferred the Tehbazari rights in favor of the petitioner and that Tehbazari fee up to 31st March, 2001 had been paid. Respondent No. 5 has stated that they are not concerned with the area of the petitioners since they have been allotted site No. 33-C while the area of the petitioner is in respect of 33-A and 33-B which has been allotted to respondent No.

4. Respondent No. 4 has alleged that the petitioner is an unauthorised occupant and has referred to the fact that in the plaint filed in Suit No. 304/1995, the petitioner admitted that he carried out some construction for residential purposes in the back portion of the land, It is further stated that the said respondent is the perpetual lessee in pursuance to sale deeds in respect of shops Nos. 2 and 3 at

Outrem Lines and the respondent has been asked to surrender the site for redevelopment of the area and in lieu thereof shop Nos. 33-A and 33-B have been allotted. It is thus alleged that there is no illegality in the allotment.

9. DDA has also made a reference to the earlier proceedings filed by the petitioner and has stated that the Appellate Court has also dismissed the appeal on 2nd November, 2000. The Appellate Authority has made reference to the petitioner using the premises for residential purposes. It is further noted that though it was stated that the site was being used by spreading tarpaulin on bamboos, the photographs show a puce structure. The case of the father of the petitioner in earlier suit was also that only tarpaulin and bamboos had been used. It is thus stated that the petitioner cannot seek the equitable relief through the present writ proceedings. The stand taken in the earlier writ proceedings that Wadhwa Market does not fall within the jurisdiction of the DDA is explained away by stating that the same was under a mistake and on a clarification being sought, it was found out that the work of redevelopment of Kingsway Camp was transferred to DDA in 1982 in terms of communication of the Government of India bearing No. J-20019/2/81/LD dated 4th September, 1982. It is thus stated that the petitioner cannot illegally construct the permanent structure under the garb of Tehbazari rights and that payment to the MCD would not create any right.

10. The present writ petition was taken up along with other writ petitions filed by the shopkeepers mentioned herein above being Civil Writ No. 776/1997. This writ petition was also notified along with the said writ petition from time to time. In fact, the matter was so notified in view of the submission of the learned Counsel for the petitioner on 22nd November, 2000 stating that identical matters are coming up for hearing on the subsequent date and the present writ petition be also heard along with the same. On 27th September, 2002, the said civil writ petition was disposed of by an agreement between the learned Counsel for the parties that the scheme of rehabilitation of the petitioner therein as proposed by the DDA was acceptable. Since the petitioners therein wanted some further concessions, certain additional directions were also passed including for the DDA to consider as a representation the issue raised by the petitioner therein in respect of the design of the market and the rate sought to be applied. It was made clear that no mandate was being issued

in that behalf. Three months' time was granted to the petitioner to move from the place occupied by them subject to the initial 25% of the amount to be deposited by the petitioner within eight weeks from the said date for which the demand was to be raised by the DDA and the benefit of the scheme was to be made available only to such persons who paid the 25% of the amount and the balance amount.

11. In so far as the present petition was concerned, the same was disposed of on the same date to treat the petitioner at par with the petitioners in Civil Writ Petition No. 776/1997. This direction was passed in view of the fact that the petitioner had claimed that he was similarly situated as those shopkeepers except that the petitioner had even filed independent proceedings in which the petitioner was not successful. Thus, the object was to extend the benefit of the said judgment to the petitioner though the same was objected to by the learned Counsel for the respondents on the ground that the petitioner had failed in the independent proceedings launched earlier and had come up in the writ petition only to circumvent the consequences of those proceedings.

12. The petitioner preferred an appeal against the said order. It was stated in the appeal that the petitioner was not a party to any concession given by the petitioner in Civil Writ Petition No. 776/1997 and that the petitioner wanted his writ petition to be disposed of on merits. The said LPA No. 822/2002 was allowed and the matter was remanded back for determination on merits since the petitioner was not willing to accept the scheme of the DDA which had been accepted by other parties in Civil Writ Petition No. 776/1997. In pursuance to the said demand, the present writ petition has been heard on merits.

13. Learned Senior Counsel for the petitioner sought to contend that in para 16 of the writ petition, it was clearly stated that the 53 shops and the shop of the petitioner were outside the purview of the redevelopment scheme to which there was only a mere denial. It is further stated that the verification of the counter-affidavit shows that the same has been verified as true and correct to knowledge even though the scheme was part of the record. A reference was made to the judgment of the Supreme Court in *Bharat Singh and Ors. v. State of Haryana and Ors.*, : AIR 1988 SC2181 which is as under:

'13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petition or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.'

14. The contention, thus, raised was that the respondents were duty bound to elaborate how the scheme was made applicable to the petitioner.

15. A reference was also made to the judgment of the Supreme Court in *Re: Sanjiv Datta and Ors.*, : 1995 CriLJ2910 which is as under:

'19. Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant public and to the Courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings

-- many times even Court-fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, at all. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the Court but do positive disservice to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.'

16. The said judgment has been referred to support the contention that the verification is not a matter of routine but the Counsel owe duty to the Court to file the pleadings with proper verification in accordance with law.

17. Learned Senior Counsel for the petitioner contended that there were allegations of mala fide made in Ground G to which there was no specific denial by MCD. A reference has also been made to the letter of mutation dated 11th May, 2000 by the MCD mutating the Tehbazari site in favor of the petitioner.

18. Learned Counsel for the respondent No. 4, on the other hand, contended that the grievances made by the petitioner were at best technical in nature in respect of pleadings but it had been clearly set out that the Kingsway Camp Redevelopment Scheme which was originally prepared by MCD with the approval of Government of India was transferred to the DDA and was still with the DDA. The averment to this effect has been made in para 8 of the counter-affidavit.

19. Learned Counsel for the respondents also referred to the plaint filed by the petitioner earlier and the averments therein to contend that the case now sought to be argued was neither the case made out in the plaint or in the present writ petition. In this behalf, a reference has been made to paras 15 and 17 of the plaint which are as under:

'15. That L&DO; formed a redevelopment scheme of Kingsway Camp. The said scheme was transferred to DDA for implementation.'

'17. That most of the scheme has been implemented by the Delhi Development Authority.'

20. It is further stated with reference to para 1 of the plaint that the own case of the petitioner was that the petitioner was situated in Wadhwa Market. Great emphasis has been laid on the findings arrived at by the Trial Court in which a conclusion was reached that the father of the petitioner own case was that the business was on the Tehbazari site by spreading tarpaulin on bamboos but now puce shops had been constructed without any permission from MCD or DDA. It is also found that the petitioner is in unauthorized occupation of area measuring-10 x 45 which is being used for residential purposes in respect of which no right and title has been established. The appellate order also records the claim of the petitioner that he had been residing over part of the land but Tehbazari could not have been granted for residence purposes which was merely to hawk the goods. Further, permanent structures had been constructed with iron shutters. A reference was made by the Appellate Court to the judgment in Gainda Ram and Ors. v. MCD and Ors., : [1993]3SCR704 , where the Supreme Court observed as under:

'We may also clarify that temporary tarpaulin covers/umbrellas would not fall within the expression covered 'tahbazari' because these would be necessary to combat the vagaries of nature. They will, however, be liable to be evicted if under this pretext they try to put up a semi-permanent cover over the area on which they are permitted to squat. By way of abundant caution and to avoid harassment it would be desirable for them to put up only a temporary cover to beat the sun or the rain and remove it when they leave the place after business hours.'

21. The Supreme Court also held that the directions given would be of general application and apply to all squatters/hawkers within the specified category.

22. Learned Counsel for the respondent/authority also referred to the judgment of the full Bench of this Court in Chandu Lal and Ors. v. MCD, 1978 RLR 278, to contend that even a licensee cannot claim the said status of a lessee even if he is given exclusive possession since once the license expires, the occupant becomes a trespasser. It is thus contended that in the present case only Tehbazari rights were given which have come to an end. It is further stated that the scheme is to be developed by the DDA and that the petitioner himself violated Tehbazari terms of the Tehbazari rights by constructing permanent structures and using it for

residential purpose.

23. I have considered the submissions advanced by the learned Counsel for the parties. There is no doubt that the MCD had given Tehbazari rights to the petitioner. However, the area in question came in a redevelopment scheme and other shopkeepers including the petitioners were sought to be removed. Scheme of rehabilitation was proposed for the said shopkeepers. However, the petitioner had filed a suit and initiated independent legal proceedings. In the said suit as well as in appeal, a finding was reached that the petitioner had violated the very basis of the grant of Tehbazari rights by constructing permanent structures and using a part of the premises as a residence. The admitted case of the father of the petitioner in the earlier proceedings was that only a tarpaulin was being used. This is not the present position.

24. In my considered view, the petitioner agitated the rights in those proceedings and lost, and rightly so. A person approaching the Court must come with clean hands before the Court. The own case of the petitioner was that the father of the petitioner was given Tehbazari rights. It was these Tehbazari rights which were transferred by the Corporation to the petitioner. The case set up by the father of the petitioner was only that the tarpaulin was being used. Contrary to all grants of such Tehbazari rights, permanent structure are constructed including a part of the area over which the petitioner had no right and was used as a residence. Thus, the petitioner himself indulged in all kinds of breaches. It is also relevant to note that the case set up by the petitioner before the Trial Court was that the petitioner was identically situated as the other shopkeepers and that the scheme had been transferred to the DDA. I fail to appreciate how the petitioner can do a somersault and claim otherwise in the present petition. The only averment made in para 16 is that the petitioner is identically situated as the other 53 shopkeepers and all of them are outside the scheme which has been denied in the counter-affidavit. The petitioner, thus, has claimed parity with other 53 shopkeepers. All of them formed a part of the scheme which is now being handled by the DDA. In fact, the petition was also listed at the request of learned Counsel for the petitioner from time to time, as is apparent from the order sheets, along with the other writ petition. However, at the stage of grant of relief, the petitioner has now sought to contend

that he is in a different position. In my considered view, this is not the case set out in the earlier proceedings or the present proceedings. The earlier pleadings cannot be ignored and the pleadings have to be read as a whole.

25. The direction issued by the Supreme Court in Gainda Ram's case (supra), has also to be understood in that context and person indulging in breaches of the very terms of permission to occupy such land should not be granted the benefits. Despite this fact, when Civil Writ Petition 776/1997 was disposed of, it was considered appropriate that the petitioner should not be deprived of the benefits of the scheme of redevelopment granted to the other shopkeepers. However, as is apparent from the subsequent development and the pleas raised by the petitioner before the Appellate Court, the petitioner is not desirous of the said benefit and has also not complied with the said directions to avail of the scheme.

26. No one can doubt the proposition that pleadings should be drawn up carefully and proper verification should be done. There is no doubt that better verification was required in the counter-affidavit. However, that cannot be a ground to grant relief to the petitioner in the present case.

27. The petitioner cannot claim to continue to occupy the land which was at best a Tehbazari right granted to the petitioner and the terms and conditions of which the petitioner has violated. The petitioner wants to obstruct the Kingsway Camp Redevelopment Scheme possibly with the object of extracting an extra pound of flesh. The Court cannot permit this object to fructify.

28. The petitioner has made a turn around after admitting in the earlier plaint that he was part of the Wadhwa Market and the scheme had come into operation in the case of the petitioner, the petitioner cannot hide behind technicalities of the pleadings of the respondent when his own pleadings are to the contrary in earlier proceedings in the present proceedings.

29. The present writ petition is another attempt on the part of the petitioner to obstruct the implementation of the scheme having failed to get reliefs from the Trial Court and the Appellate Court in the earlier proceedings. The judgments of the Trial Court and the Appellate Court are also in accordance with law and have

given a clear finding in this behalf against the petitioner.

30. I am mentioning so in view of the fact that CR No. 1160/2000 had been filed by the petitioner impugning the said decisions which was disposed of on 27th September, 2002 in view of the orders passed in the present writ petition. The petitioner did not make any further grievance in that behalf against the said order. However, the fact that the present matter was remanded back in pursuance to the order of the Division Bench and had been considered on merits in the present proceedings, had also to be considered.

31. I am thus of the considered view that there is no merit in the writ petition. The same is dismissed leaving the parties to bear their own costs.

32. A copy of this order be also placed in CR No. 1160/2000.

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