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Pushpa Grover Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Mar-16-1990

Reported in : 41(1990)DLT171; 1990RLR245

Judge : R.N. Pyne and; P.N. Nag, JJ.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1978 - Sections 5; Public Premises (Eviction of Unauthorised Occupants) Rules, 1971; [Constitution of India](#) - Article 227; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 144

Appeal No. : Civil Writ Petition No. 1386 and 2361 of 1988

Appellant : Pushpa Grover

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : J.P. Gupta and; S.P. Kaira, Advs

Judgement :

P.N. Nag, J.

(1) Both these writ petitions are inter-connected and can be disposed of by a common judgment.

(2) The brief facts (in Writ Petition No. 2361/88) which are relevant for the determination of the controversy may first be slated. The petitioner, Delhi

Development Authority, has filed this petition for quashing the order dated 14.12.1987 of Shri S.P. Sabharwal, Addl. District Judge, Delhi whereby he has set aside the order dated March 24, 1987 and remanded the case back to the Estate Officer with the direction that the Estate Officer should give one more opportunity to the appellant, Smt. Pushpa Grover, to adduce evidence and then after hearing both the parties he should decide the matter afresh. The Estate Officer vide order dated March 24, 1987 had passed an order of ejectment against the petitioner from the premises Rose Garden, Indraprastha Estate, New Delhi which was given to her on license basis in 1978 for a period of 11 months, to begin with. The proceedings for ejectment were taken by the petitioner and after chequered history of litigation, which may not be necessary to be referred to here, the petitioner, Smt. Pushpa Grover, was ejected by the Estate Officer vide its order dated March 24, 1987 and the possession of the said premises was taken by the petitioner, D.D.A., on April 11, 1987 in pursuance of the ejectment order. It appears, respondent No. 1, Smt. Pushpa Grover, filed a writ petition, being Civil Writ Petition No. 1035/87 in this court which was dismissed presumably on the ground that an alternative remedy was available She consequently filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act') before Shri S.P. Sabharwal, Addl. District Judge, Delhi (respondent No. 2) who allowed the same and remanded the case to the Estate Officer directing him to provide further opportunity, as already referred to above.

(3) Smt. Pushpa Grover consequent upon the passing of the order dated 14.12.1987 by the Addl. District Judge, Delhi setting aside the order of ejectment passed by the Estate Officer, Respondent No. 2, has filed the Civil Writ Petition No. 1386/88 for restoration of possession of the premises. The petitioner, Smt. Pushpa Grover, has stated that she had filed C.W. 154/88 before this court in which this Court by order dated May 26, 1988 directed respondent No. 2 to dispose of her application dt. 16.12.1987 filed before him for restoration of possession. Respondent No. 2, the Estate Officer, rejected the application dated 16.12.1987 for restoration of possession vide his order dated June 27, 1988, annexure '0' to the writ petition, as, according to him, the application was not maintainable as provisions of Section 144 of the Code of Civil Procedure were not applicable to the proceedings under the Act.

(4) Mr. Kalra, learned counsel for the Dda, in Cw 2361/88 has tried to assail the order of the Additional District Judge on various grounds. In the first instance, he contended that the appeal before, the Additional District Judge, respondent No. 2, was hopelessly barred by limitation and there was no application for condensation of delay before him and, therefore, the appeal should have been dismissed as time-barred. This contention of the learned counsel for the Dda has to be rejected outrightly. The record was shown to us during the course of hearing and it was brought to our notice that an application for condensation of delay was, in fact, made and the delay was condoned by the learned Addl. District Judge and thereafter the appeal was heard. Such a submission of the learned counsel for Dda is completely devoid of force and has been made without fully going through the facts of the case. In fact Ground 'L' in para 8 of the petition has been taken to this effect which factually is incorrect and contrary to the record of the case.

(5) It was next contended by Mr. Kaira that the learned Additional District Judge has gravely erred in law by having come to the conclusion that the order dated March 24, 1987 passed by the Estate Officer was not served upon the appellant, Smt. Pushpa Grover, under Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as 'the Rules'). According to him, there is no requirement of personal service or service on an adult member of the family. Under Section 5 of the Act it is sufficient if such a copy of the ejectment order is fixed on the outer door or on some other conspicuous part of the premises of which the ejected person is in occupation. According to him. Rule 4 of the Rules is in conflict with Section 5 of the Act and as such Rule 4 cannot be given effect to. We are afraid that this contention of learned counsel for Dda cannot be accepted. The Rules have been framed under Section 18 of the Act and these provide for personal service of the order of ejectment passed by the Estate Officer on the person to whom it is intended or on any other adult member of the family etc. in addition to oilier mode of service provided in the Act. There is no conflict between Section 5 of the Act and Rule 4 enacted there under. In fact. Rule 4 supplements to what is provided in the Act. therefore, the finding of the learned Addl. District Judge that there has not been any valid service, under Rule 4 of the Rules, of the ejectment order of Estate Officer dated March 24, 1987 cannot be termed as illegal or without any basis and does not call for any

interference as this itself is sufficient ground for setting aside the order of the learned Addl. District Judge.

(6) It was further submitted by Mr. Kalra that there is no basis for the learned Addl. District Judge to come to the conclusion that no order was passed by the Estate Officer on March 24, 1987 as two advocates, namely, Sh. R.D. Vats and Shri J.D. Gupta who have given affidavits which could lead to the inference that no order was passed on 24th March, 1987 by the Estate Officer cannot be relied upon as no notice was given to the Delhi Development Authority for that purpose. Assuming that no notice was given about the filing of the affidavits by the advocates to the Dda, independent of those affidavits there is sufficient material on record to substantiate that in fact no order was passed by the Estate Officer on March 24, 1987. One of the glaring circumstance brought to our notice was and which has also been taken note of by the learned Addl. District Judge was that no 'peshi register was produced by the Dda prior to April 2, 1987 for the reasons best known to the authorities concerned. The Peshi Register was produced with effect from April 2, 1987 onwards. The Peshi Register was directed to be produced in this court as well prior to April 2, 1987. However, no entries prior to period April 2, 1987 have been shown to this court as well and, therefore, adverse inference can only be drawn against the DDA. The learned Addl. District Judge after taking into account the aforementioned facts and circumstances of the case and other material on record has come to the conclusion that no order was passed on March 24, 1987 and the order deserves to be set aside and such a finding given by him cannot be termed as perverse or reasonable so that no reasonable person can come to such a conclusion. In this writ petition we are not sitting as a court of appeal and cannot substitute our judgment and finding over the judgment of the learned Addl. District Judge. There is no error apparent on the face of the record of the case. Even otherwise where two views are possible and the trial court has taken one view which is possible and plausible, merely because another view is attracted the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the [Constitution of India](#) over such decision. In view of this there is hardly any substance in the submission of the learned counsel for the Dda and, therefore, this contention must fail, and as such Civil Writ Petition No. 2361/88 is dismissed with costs.

(7) The next question that arises for consideration is whether, consequent upon the order of the Estate Officer dated March 24, 1987 having been set aside by the learned Addl. District Judge, Civil Writ Petition No. 1386/88 should be allowed and the petitioner, Smt. Pushpa Grover, be restored the possession of the premises which has been taken over by the DDA. in pursuance of the order of the ejectment passed by the Estate Officer. A similar question arose for consideration in a case reported as Binayak Swain v. Ramesh Chandra Panigrahi and another : [1966]3SCR24 where ex-parte decree passed by the District Judge was set aside by the High Court and suit was remanded for re-hearing and fresh disposal, the Supreme Court observed in para 4 of that judgment as under :

'THE question presented for determination in this case is whether the appellant was entitled to restitution of his properties purchased by decree-holder in execution of the decree passed by the District Judge on the ground that the decree was set aside by the High Court and the suit was remanded for re-hearing and fresh disposal under the provisions of S. 144 of the Civil Procedure Code..... The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from.'

(8) In this connection it may be relevant to refer to the decision of the Supreme Court in Chinnammal & others v. P. Arumugham and Another (Judgment Today 1990-1 Sc 51) where the observations made in paragraph 17 may be extracted:

'17. This is also the principle underlying Section 144 of the Code of Civil Procedure. It is the duty of all the Courts as observed by the Privy Council 'as aggregate of those tribunals' to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court. The above passage was

quoted in the majority judgment of this Court in A.R. Antulay v. R.S. Nayak and Ors. : 1988 CriLJ1661 . Mukharji.J., as he then was, after referring to the said observation of 'Lord Cairns, said (at p. 672) : 'No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justice, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remanded.'

Reference may also be made to the decision in Zafar Khan and others v. Board Revenue. U.P. and others : [1985]1SCR287 wherein again the same principle has been laid down that the person is entitled to restitution in case the judgment is set aside. In view of the law laid down by the Supreme Court it becomes the bounden duty of the Court to restore possession which has been taken in proceedings taken against the petitioner. Mr. Kalra, learned counsel for the Dda, however, again contended that the possession can be restored on the judgment having been set aside only by the trial court, i.e., by the Estate Officer and not by the High Court. As already pointed out, in fact, the petitioner, on the order of the Estate Officer having been set aside, applied to the Estate Officer for restoration of possession of the premises but the same was rejected by the Estate Officer on the ground that Section 144 of the Code of Civil Procedure is not applicable to the proceedings before him. No appeal is provided against this order to the District Judge. therefore, the petitioner was left with no other alternative remedy except approaching to this Court for restoration of possession. Assuming, for the sake of arguments, Section 144 of the Code of Civil Procedure is not applicable to the proceedings before the Estate Officer, this Court is not powerless to restore possession to the petitioner of the premises, which was taken in possession by the Dda in pursuance of the order of the Estate Officer, in writ jurisdiction.

(9) No other point was urged.

(10) In the light of the discussion above. Civil Writ Petition No. 1386/88 is allowed with costs and Civil Writ Petition No. 2361/88 is dismissed also with costs. We accordingly set aside the order of the Estate Officer dated 27.6.1988, Annexure to

the Civil Writ Petition No. 1386/88, and direct respondent to deliver possession of the premises to the petitioner in Cw 1380/88, i.e., Smt. Pushpa Grover, within one week from today. Counsel's fee in both writ petitions is assessed at Rs. 1,000.00 each.

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