

Mohinder Singh Vs. Shanti Devi

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Court : Delhi

Decided On : Feb-15-1973

Reported in : 9(1973)DLT242; 1973RLR479

Judge : V.S. Deshpande, J.

Acts : Slum Area (Improvement and Clearance) Act, 1956 - Sections 19

Appeal No. : Second Appeal No. 189 of 1972

Appellant : Mohinder Singh

Respondent : Shanti Devi

Advocate for Pet/Ap. : Mohan Singh,; Amarjit Singh and; H.R. Dhawan, Advs

Judgement :

V.S. Deshpande, J.

(1) What is the legal basis of the audi alteram partem principle of natural justice which requires that a person must be given a fair opportunity of answering the case against him before he is deprived of his liberty or property This basic question arises for consideration in the following circumstances :

(2) Though the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958, enables a landlord to apply for the eviction of his tenant on any of the

grounds set out therein, the amendment made by Act 43 of 1964 to section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, (hereinafter called the Slums Act) prescribes a condition precedent to the making of such application in sub-sections (1) (a) and (3) of section 19 in the following words:-

'19.(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority.- (a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964. any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum Area: ** ** (3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks 'fit, shall by order in writing, either grant or refuse to grant such permission.'

(3) The respondent landlord Shanti Devi applied to the competent Authority under section 19(2) of the Slums Act for permission to institute proceeding against her tenant Mohinder Singh for eviction. The Competent Authority passed an order dated 23-rd August. 1969 granting such permission to the landlord ex-parte against the tenant. The landlord Instituted a proceeding for the eviction of the tenant before the Rent Controller under the proviso to sub-section (1) of section 14 of the Delhi Rent Control Act, 1958. But subsequently on 5 May, 1970 the Competent Authority set aside the said ex-parte order granting permission on the ground that the tenant had not been served with the notice of the proceeding before it. The landlord did not challenge the validity of the order dated 5 May, 1970 by which the Competent Authority set aside the ex-parte order granting permission previously. The tenant, therefore, urged before the Rent Controller that the application for his eviction filed by the landlord could not be proceeded with as the permission of the Competent Authority on which it was based had ceased to exist in view of the order passed by the Competent Authority on 5 May, 1970. The Controller, however, rejected the contention of the tenant and held that the ex-parte permission which had been granted by the Competent Authority validly enabled the landlord to file the application for the eviction of the tenant before the Rent Controller. As the proceeding for the eviction having been validly instituted,

the subsequent order of the Competent Authority passed on 5 May, 1970 had no effect on the institution of the proceeding for eviction. The permission which had been previously granted did not cease to exist because of the order dated 5 May, 1970 passed by the Competent Authority. The Controller held that despite the order dated 5th May, 1970 passed by the Competent Authority the landlord was entitled to proceed with the proceeding for eviction of the tenant. The application of the tenant was, therefore, dismissed by the Controller. In the first appeal before the Rent Control Tribunal, the decision of the Controller was upheld. Hence this second appeal by the tenant.

(4) The question for decision is whether the institution of the eviction proceeding by the landlord against the tenant on the strength of the ex-parte permission granted by the Competent Authority was valid even though the said ex parte order was later on set aside by the Competent Authority

(5) The answer to this question primarily depends on the construction of sections 19(1) and 19(3) of the Slums Act reproduced above. Neither section 19 nor any other provision of the Slums Act enables the Competent Authority to set aside an ex-parte order granting permission passed by itself on the ground that the tenant had not been served with the notice of the inquiry to be held by the competent Authority was on the application of the landlord made against the tenant for permission to institute a proceeding for the eviction of the tenant. The provisions of the Civil Procedure Code including section 144 and Order IX rule 13 have not been made applicable to the inquiry under section 19 of the Slams Act. Nor do they apply to such an inquiry by virtue of section 141 of the Civil procedure Code. Unless, therefore, section 19 can itself be construed as empowering the Competent Authority to set aside an ex-parte order passed by itself, it would have no such power. The following reasons will show that the Competent Authority must be construed to possess such a power.

(6) Firstly, a rule of statutory construction developed in England During the 19th century by which every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences, to individuals Wood v. Wood, was required to construe every statute as containing within itself the rule of

audi alteram partem unless such a rule was expressly excluded by the statute. With the increase in the regulatory functions of the State, a large number of public authorities were empowered to interfere with the property and civil rights of individuals. Where a statute authorising such interference was silent on the question of notice and hearing, the question arose whether, nevertheless, an individual was entitled to such notice and hearing before a decision adverse to his civil or property rights was taken, the leading case in which this question was decided is *Cooper v. Wandsworth Board of Works*. In that case, the plaintiff brought an action in trespass against the Wandsworth Board of Works for pulling down and demolishing his house. The defense was that the Board had a statutory power to do so under section 76 of the Metropolis Local Management Act, 1853, which authorised the Board of Works to pull down and demolish a house of any person who had begun to build without giving seven days notice beforehand. 'The contention on the part of the plaintiff has been that, although the words of the statute, taken in their literal sense, without any qualification at all, would create a justification for the act which the District Board has done, the powers granted by that statute are subject to a qualification which has been repeatedly recognised, that no man is to be deprived of his property without his having an opportunity of being heard.' To the argument that the Board were not obliged to do more than observe the statutory conditions precedent to the exercise of the power, the reply was given by Byles, J., in one sentence : 'The justice of the Common law will supply the omission of the legislature.' The Court, therefore, followed the rule said to be 'of universal application and founded on the plainest principles of justice' that notice and hearing had to be given to the plaintiff even though the statute was silent on the question. This rule has since been followed consistently as was pointed out by Lord Reid in *Ridge v. Baldwin* at pages 66-68.

(7) If this is the rule of statutory construction, unless its application is excluded by a particular statute, it would follow that if notice and hearing have not been given to a person, such a person would have the right to get the ex-parte order passed against him set aside. This would imply the power to set aside an ex-parte order in the Competent Authority. Secondly, the amended section 19(3) of the Slums Act expressly requires the Competent Authority to give notice and hearing to the tenant before permission is granted to the landlord to institute a proceeding

against the tenant for eviction. It would follow, therefore, that if in a particular case such notice and hearing are denied to the tenant by some mistake such as the con-service of the notice on the tenant, then the Competent Authority would have the power to set aside the ex-parte order which had been passed against the tenant.

(8) Thirdly, the Comptent Auihority acts as a quasi-judicial tribunal under section 19(3). It is therefore, in the same position as a court. Every court or quasi.judicial tribunal has inherent power to prevent the abuse of its process. One way in which such abuse can be perpetrated is for one parly to obtain a snap decision against his opponent even though the latter has not been served and bad, therefore, no opportunity of defending himself. In Shivdeo Singh v. State of Punjab, the question was whether in a writ petition under Article 226 of the Constitution, the High Court had inherent power to set aside an order passed against a party who had no notice of the proceeding in which order was passed. The Supreme Court held in favor of such inherent jurisdiction in the following words in paragraph 8 of the judgment :-

'IT is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors comilted by it. Here the previous order of Khosla, J. affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing 80, he merely did what the principles of natural justics required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla J.'

In Rameshwar Dayal v. Ram Avtar etc., also it was held that the Competent Authority had inherent power to review the previous ex-parte order passed by it to

prevent an abuse of its process.

(9) Fourthly, the exercise of the inherent power to set aside an *ex parte* order on the ground of non service of notice would be futile unless a court or a quasi-judicial tribunal has the further inherent power to order restitution of the benefit which a party might have secured on the basis of the *ex parte* order before it was set aside. The principle of restitution is embodied in section 114 of the Civil Procedure Code which runs as follows :

'144.(1) Where and in so far as a decree or order is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made at will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed ; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages compensation and mesne profits, which are properly consequential on such variation or reversal. (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)'.

In *Jai Berham v. Kedar Nath Marwari*, the Judicial Committee of the Privy Council observed as follows :-

'IT is the duty of the Court under section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. As was said by Cairns, L.C., in *Rodger v. Comptoir d'Escompte de Paris* (1871) L.R. 3 P.C. 465 one of the first and highest duties of all Court is to take care that the act of the Court does no injury to any of the suitors.'

In *Jai Berham's* case, a sale in execution of a decree was set aside on the ground that the sale certificate comprised property different from that which was attached. The principle underlying section 144 Civil Procedure Code was thus applied as an

inherent power of the Court exercisable under section 151 Civil Procedure Code, even though section 144 did not apply in terms as no decree was either varied or reversed.

(10) The Competent Authority acting under section 19 would thus have inherent jurisdiction to withdraw the permission which had been granted by it to the landlord and the landlord could be made by the Controller to restore the benefit which he had obtained acting on such permission.

(11) Lastly, an order passed without notice and hearing in violation of the natural justice rule of audi alteram partem is void as being without jurisdiction even though initially the Competent Authority may have had jurisdiction to hold an inquiry under section 19(3). This is settled law since the decision of Ridge v. Baldwin (1964) A.C. 40, and in Anisminic Ltd. v. Foreign Compensation Commission at 171. The observations in the Anisminic case were expressly approved by the Supreme Court in Union of India v. Tarachand Gupta at 496. It follows, therefore, that the Competent Authority had the power to set aside the ex-parte order on a correct construction of section 19 of the Slums Act. What is the effect of the letting aside of the ex-parte order by the Competent Authority under section 19 of the Slums Act on the proceeding which had already been instituted before the Controller on the strength of the said ex-parte order? The Controller and the Rent Control Tribunal purported to rely on two Supreme Court decisions, namely :- (1) Bhagwan Das v. Paras Nath, and (2) Mohammad Ismail v. Nanney Lal. for the proposition that the proceeding before the Controller which was validly instituted after obtaining the permission of the Competent Authority did not cease to be maintainable even if the said permission was later on revoked by the Competent Authority when it set aside the ex-parte order granting the same. It is an elementary rule of statutory construction that a decision based on the construction of one statute is not to be applied to the construction of a different statute unless the two statutes are capable of the same construction. It is necessary, therefore, to carefully consider whether the above-mentioned decisions of the Supreme Court are applicable to the construction of section 19 of the Slums Act. These two decisions of the Supreme Court were concerned in construing section 3 and section 7F of the U.P. (Temporary) Control of Rent and Eviction Act 1947 which

disclose the following features:-

(1) The permission granted by the District Magistrate under section 3(1) was expressly made subject to any order that may be passed by the Commissioner under section 3(3) of the said Act. On the contrary, the permission granted under section 3(1) was not made subject to any other order that the State Government may pass under section 7F. (2) The revision to the Commissioner under section 3(3) had to be filed within six weeks from the date of the order passed by the District Magistrate under section 3(1). No such limitation was prescribed for filing a revision before the State Government under section 7F. In Bhagwan Das case the Court was impressed with the argument that curious results would follow if the order of the State Government is to interfere with the proceeding which had already been instituted on the strength of the permission granted by the District Magistrate. The order of the State Government may be passed at any time, say, after ten or twenty years. (3) In Bhagwan Das case, the Court observed at page 306 of the report as follows : 'It is true that the finality or the force of a decree can be taken away by a statute, but the Court will not readily infer that a decree passed by a competent court has become unenforceable unless it is shown that a provision of law has specifically or by necessary implication made that decree unenforceable.'

(12) Learned counsel for the landlord further relied on the Supreme Court decision in *Raivshundry Electric Supply Corporation v. A. Nageshwara Rao* For taking action under section 153C(3)(a)(i) of the Indian Companies Act, 1913, the consent of ten percent of the shareholders was necessary. Such a consent had been obtained before the application was filed. But thereafter some members were alleged to have withdrawn their consent with the effect that the number of consenting shareholders was reduced to less than ten per cent. It was argued, therefore, that the application ceased to be maintainable. At pages 10.0.1071 of the report, this contention was rejected by the Court in the following words :-

'The validity of a petition must be judged on the facts as they were at the time of its presentation and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by

reason of events subsequent to its presentation.'

(13) After anxious consideration of the abovementioned decisions of the Supreme Court in the light of the statutory provisions construed therein, I am of the view that they are not applicable to the construction of section 19 of the Slums Act with which I am concerned in the present case. My reasons are as follows : Firstly, the permission granted by the District Magistrate in Bhagwan Das and Mohammad Ismail cases was valid when it was granted, Similarly, the consent initially given by the shareholders in the Rajahmundry Electric Supply Corporation case was also valid. On the contrary, the ex-parte permission granted by the Competent Authority was void in the present case. While the permission and the consent referred to in the Supreme Court cases were not vitiated by lack of jurisdiction, the ex-parte permission granted by the Competent Authority was so vitiated. Consequently, while the permission and the consent referred to in the Supreme Court cases were valid, the ex-parte permission granted in the present case was void. Secondly, the permission granted in section 3 (1) of the U. P. Act was subject only to the order which may later on be passed under section 3 (3) of the said Act. It was not subject to the order which may be passed under section 7F of the Said Act. On the contrary an ex-parte permission granted by the Competent Authority under section 19 of the Slums Act was subject to the said ex-parte order being set aside later on the ground that it was passed without notice and hearing being afforded to the tenant. The requirement of notice and hearing based on natural justice is implied in the construction of a statute interfering with the civil or property rights of a person. Such an implication can be made only insofar as the audi alteram partem rule of natural justice has to be followed by every tribunal or court in construing such a statute. The ex-parte order granting permission Under section 19 is contrary to the said rule of natural justice. It was, therefore, contrary to section 19 when it is construed to require such notice and hearing. As contrasted with this, no such implication had to be read in sections 3 and 7F of the Up Act inasmuch as no rule of natural justice was violated when the order of the District Magistrate was reversed by the State Government. The permission granted by the District Magistrate could not, therefore, be said to be contrary to the statute under which it was granted. On the other hand, the permission granted by the Competent Authority ex parte could be said to be contrary to section 19 as it violated not only

the requirements of natural justice but also those of sub-section (3) of section 19. Thirdly, a cause of action which has validly arisen cannot be destroyed by the unilateral action of a party taken at his sweet will. thereforee, the consent once given by the shareholders could not be withdrawn by some of them to the detriment of the applicant in Rajahmundry Electric Supply Corporation case in the absence of a provision to that effect in the statute But no such question arises in the present case. The ex parte permission had to be revoked not because of the voluntary conduct of any party but because the requirement of natural justice had been violated. Fourthly, the inherent powers under which the ex-parte permission had to be revoked in the present case on the analogy of Order IX rule 13 and section 144 Civil Procedure Code have to be exercised by every court or tribunal to prevent abuse of its process. On the contrary, in the Supreme Court decisions referred to above no question of the exercise of such inherent power arose. thereforee, in those cases no abuse of the process of court had to be prevented. Lastly, though no limitation is prescribed for an application to set aside an ex-parte order made by the Competent Authority, the analogy of limitation prescribed for an application to set aside an ex-parte decree under Order IX rule 13 Civil procedure Code will have to be borne in mind. Applications filed after the expiry of the period of such limitation would be regarded as unduly delayed. The Competent Authority would have the discretion not to entertain a delayed application inasmuch as it is acting in exercise of inherent jurisdiction and not under any specific statutory provision. In exercising such discretion, the Competent Authority would have to further bear in mind whether setting aside an ex-parte permission would involve injustice or hardship. The inherent power would be so exercised by it as to avoid such hardship or injustice.

(14) For the above reasons, the appeal is allowed and the orders of the Controller and the Rent Control Tribunal are set aside. In C. M. (Main) 126 of 1972 between the same parties decided today, the parties have been directed to appear before the Competent Authority on 5th March 1973 so that a fresh order under section 19(3) may be passed by the Competent Authority. If the Competent Authority grants permission to the landlord for the institution of a proceeding for the eviction of the tenant, then the application of the landlord pending before the Rent Controller for the eviction of the tenant would be supported by this new permission

which may be granted by the Competent Authority. Strictly speaking, the said application should have been dismissed as the old permission on which it was instituted has disappeared and a new application would have had to be filed by the landlord on the strength of the new permission to be granted by the Competent Authority hereafter. But this would involve unnecessary delay as the tenant would have to be served afresh by the landlord. The proceeding before the Competent Authority has already shown the difficulty and delay encountered by the landlord in serving the tenant. As a special case, therefore, the present application of the landlord which is pending before the Controller is itself allowed to be kept on the file by the Controller until the Competent Authority grants fresh permission to the landlord for institution of a proceeding for the eviction of the tenant. As observed by the Supreme Court under somewhat similar circumstances in the context of section 171 of the Companies Act, 1913 in *Bansidhar Shankarlal v. Mohd Ibrahim*, in paragraph 7, 'the suit of proceeding instituted without leave of the Court may, in our judgment, be regarded as ineffective until leave is obtained, but once leave is obtained the proceeding will be deemed instituted on the date granting leave.' If, however, the Competent Authority refuses to grant such a permission, then the application of the landlord before the Controller would stand dismissed for want of such permission.

(15) The parties are directed to appear before the Controller on 5th April 1973 to apprise the Controller as to whether the Competent Authority has granted the permission to the landlord or not. There will be no order as to costs of this appeal.