

Delhi Development Authority and Others Vs. S.N. Kapoor and Others

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SooperKanoon Citation : sooperkanoon.com/703218

Court : Delhi

Decided On : Mar-01-2000

Reported in : 2000VAD(Delhi)905; 2000(53)DRJ562

Judge : Dr. M.K. Sharma, J.

Acts : Public Premises (Eviction of unauthorised Occupants) Act, 1971 - Sections 4

Appeal No. : C.W.NO. 1282/1993 and 2967/1992

Appellant : Delhi Development Authority and Others

Respondent : S.N. Kapoor and Others

Advocate for Def. : Mr. V.K. Sharma and ; Mr. S.P. Kalra, Adv.

Advocate for Pet/Ap. : Mr. V.K. Sharma and; Mr. A.P.S. Ahluwalia, Adv

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. Both the aforesaid appeals have been preferred in this Court as against the order dated 24.4.1992 passed by the Additional District Judge allowing the appeal PPA No. 16/1991 filed by Shri Des Raj, one of the respondents in the present

case. As the issues raised in both the appeals are common, I propose to dispose of both the appeals by this common judgment and order.

2. Shop No. 1181-A, New Subzi Mandi, Azadpur, Delhi, was auctioned by Delhi Development Authority. In the aforesaid auction conducted by Delhi Development Authority, Swaroop Singh was the highest bidder at Rs. 16,600. Said Swaroop Singh deposited 25% as per the terms and conditions being Rs. 4,100/- Along with an amount of Rs. 500/- as earnest money. On 16.11.1970 a letter was sent to Swaroop Singh communicating confirmation of the bid and asking him to pay the balance amount of Rs.12,000/- to be deposited by 16.12.1970. Later on by an order dated 30.7.1971 the name of Des Raj was included Along with Swaroop Singh in respect of the aforesaid property. It is alleged by Des Raj that it is at the behest of Swaroop Singh that his name came to be included Along with Swaroop Singh pursuant to which Des Raj deposited the amount claimed by Delhi Development Authority. However, on the basis of the representation of Swaroop Singh inclusion of the name of Des Raj as against the aforesaid property was cancelled by Delhi Development authority by letter dated 3.4.1978 and thereafter proceedings were initiated by Delhi Development Authority as against Des Raj under Section 4 of Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter called the P.P. Act for short) seeking for his eviction from the aforesaid premises. A show cause notice was issued by the Estate Officer to said Shri Des Raj under Section 4(1) of the Act on 4.9.1982 asking him to show cause why an order of eviction in respect of the aforesaid premises should not be passed for his unauthorised occupation. Des Raj contested the aforesaid proceedings. However, by order dated 28.12.1990 the Estate Officer held that Des Raj was an unauthorised occupant in the Public Premises and therefore, liable to be evicted. He accordingly, passed an order directing Des Raj and all other persons concerned to vacate the said land within 15 days failing which Des Raj and all other persons concerned would be liable to be evicted by use of such force as may be necessary.

3. Being aggrieved by the aforesaid order an appeal was filed before the Additional District Judge under Section 9 of the P.P. Act. The Additional District Judge by his order dated 24.4.1992 allowed the appeal and set aside the

impugned order. The Additional District Judge while allowing the appeal held that the matter could not have been tried under the P.P. Act in view of the decision of the Supreme Court in *Express Newspapers Pvt. Ltd. Vs . Union of India*, : AIR 1986 SC872 . He further held that the spirit of promissory estoppel as well as the kind of the detriment determined in the case of *M.P. Sugar Mills Vs . State of U.P.*, : [1979]118ITR326(SC) would apply as Des Raj was allowed to continue on the promise made by Delhi Development Authority as well as by Swaroop Singh for about 9 years. Being aggrieved by the aforesaid judgment and order passed by the Appellate Court the present two writ petitions have been preferred in this court one by Delhi Development Authority which is registered as C.W.P. No. 1282/1993 and the other writ petition by Shri Swaroop Singh which is registered as C.W.P. 2967/1992.

4. During the course of hearing Delhi Development Authority was represented by Mr. V.K. Sharma whereas Mr. Swaroop Singh was represented by Mr. A.P.S. Ahluwalia and Mr. Des Raj was presented by Mr. S.P. Kalra. It was submitted by the counsel appearing for the petitioners namely Delhi Development Authority and Swaroop Singh that the Additional District Judge committed error apparent on the face of the record in holding that the ratio of the principle laid down in *Express Newspapers Limited (Supra)* would apply to the facts and circumstances of the present case. It was submitted that in the present case no lease was executed in between Delhi Development Authority on the one hand and Des Raj and Swaroop Singh on the other and therefore, Delhi Development Authority under no circumstances could be said to be as Lessor. They also submitted that it is not in every case of possession that the Government is under an obligation to file a suit and that there are cases where the Government can legitimately invoke the powers under the provisions of P.P. Act and the present case is a case where no suit was required to be filed by Delhi Development Authority, seeking delivery of possession of the property. It was also submitted by the counsel appearing for the petitioners that the principle of promissory estoppel was and is not applicable to the facts and circumstances of the present case, for there cannot be any estoppel as against a Statute as also as against a judgment of the Competent Court of Law and therefore, Additional District Judge committed manifest error of law in holding that such a such a principle is applicable in the facts and circumstances of the

present case.

5. Mr. Kalra appearing for Des Raj however, submitted that in a matter like this where Des Raj was included as one of the colessees by the Lesser in respect of the properties and when such a co-lessee is sought to be evicted from the suit premises, Delhi Development Authority could not have proceeded under the provisions of P.P. Act and was required to file a regular suit seeking for eviction of a co-lessee. He also submitted that the principle of promissory estoppel does apply to the facts and circumstances of the present case inasmuch as after Des Raj was inducted as one of the co-lessees in respect of the property the balance amount of the auction price was paid by Des Raj to the Delhi Development Authority besides making payment for the construction made on the said premises by DDA. It was, therefore, submitted that Des Raj could not have been evicted from the suit premises, as there was a promise made by Delhi Development Authority on which Des Raj acted in consonance with the promise and therefore, Delhi Development Authority is estopped from proceeding against Des Raj seeking for his eviction.

6. Taking notice of the aforesaid submissions I may consider the merit of the submissions in the light of the records of the present case. The afore said premises was auctioned by Delhi Development Authority. Swaroop Singh was the highest bidder in the aforesaid auction and he deposited 25% of the amount immediately as per the terms and conditions of the auction. The bid was confirmed by the letter dated 16.11.1970 which sent by Delhi Development Authority demanding payment of the balance amount. One of the terms and conditions for sale by aforesaid auction was that a change in the name of the intending purchaser would not be allowed under any circumstances. It was also stipulated in the said terms that the terms and conditions of the lease would be those which would form the terms and conditions of the Perpetual Lease Deed which will have to be executed by the intending purchaser in the form when called upon to do so. It was also one of the conditions of the said lease deed that the lessee would not be entitled to subdivide the plot or to amalgamate it with any other plot. It was also stipulated therein the lessee would not be entitled to transfer the plot before or after the erection of the building without prior permission of the Government and

that such permission would not be given for a period of 10 years from the commencement of the lease unless in the opinion of the Lesser exceptional circumstances exist for the grant of such permission.

7. The contention on behalf of Swaroop Singh is that by entering the name of Des Raj Along with Swaroop Singh the Delhi Development Authority violated the terms and conditions of the sale by auction. It was stated that when it was brought to the notice of Delhi Development Authority about the afore said violation they rectified the mistake and deleted the name of Des Raj as a colessee.

8. It however, transpires from the record that subsequent to the confirmation of the bid a demand for payment of the balance amount was made by Delhi Development Authority. Des Raj paid the balance amount and thereafter the name of Des Raj came to be included Along with Swaroop Singh in respect of the aforesaid property. However, on 1.3.1978 the Vice Chairman, DDA cancelled the allotment of the aforementioned shop in the joint names of Swaroop Singh and Des Raj further directing that the shop would stand allotted in the name of Swaroop Singh only. In terms of the aforesaid order of the Vice Chairman the amount deposited by Des Raj was directed to be refunded to Des Raj. At that stage Des Raj instituted a suit as against Delhi Development Authority as also Swaroop Singh seeking for permanent injunction restraining the said defendants from dispossessing Des Raj from the suit premises. The suit was registered as Suit No. 446/1998. The trial court by his Judgment/Order dated 28.1.1989 dismissed the suit holding that once the order regarding the inclusion of the name of Des Raj as co-owner in the shop in question had been cancelled then virtually Des Raj had no right to remain in possession of the shop in question. It was further held that Des Raj had not sought for any declaration to the effect that the orders of the Vice Chairman deleting his name as co-lessee was illegal and ultravires and under such circumstances the suit seeking for permanent injunction was dismissed.

9. Des Raj, being aggrieved by the aforesaid

JUDGMENT / ORDER

filed an appeal which was registered as RCA No. 41/1989. The said appeal later on came to be dismissed as withdrawn. After the aforesaid suit was dismissed by the trial court, the aforesaid proceedings under the P.P. Act were initiated by the Delhi Development Authority. The Estate Officer considered the definition of 'unauthorised occupant' given in section 2(g) of the said Act and in the light thereof held that if the authority by which one becomes entitled to occupy the premises is withdrawn and if he still continues to be in occupation then the status of the person continuing in possession would become unauthorised occupant' and, thereforee, as the name of Des Raj was deleted as co-lessee, he would fall within the ambit of the definition of the expression 'unauthorised occupant'. He also found that physical possession of the premises was not handed over in spite of notices served and thereforee, after taking notice of the judgment and order passed by the trial court in Suit No. 446/1988 it was held that Des Raj was in unauthorised occupation of the public premises and was thereforee, liable to be evicted.

10. Learned counsel appearing for Des Raj, during the course of his arguments submitted that the balance amount towards the purchase price as also for construction on the aforesaid premises were deposited by Des Raj after being permitted to do so as a co-lessee and the entire amount was paid on the basis of the promise of Delhi Development Authority from which Delhi Development Authority cannot resile later on at the behest of Swaroop Singh. The question, thereforee, to be examined is whether the inclusion of name of Des Raj at one point of time by Delhi Development Authority was legal and also whether Delhi Development Authority could not have withdrawn the name of Des Raj as one of the Co-lessees. It is an admitted position that the name of Des Raj came to be included in the records Along with Swaroop Singh in respect of the aforesaid premises by an order some time on 23.8.1971. However, the matter came to be examined later on by the Vice Chairman. A copy of the order which is contained in the file has been placed on record as Annexure R-1 on behalf of Des Raj. In the said order passed as early as 1971 a decision was taken that the brother-in-law could not be made a partner. Subsequently however, on 13.7.1971 Delhi Development Authority agreed to include the name of Des Raj as a partner and a letter in that behalf was issued on 13.7.1971 informing him that Delhi Development Authority had agreed to his request. On consideration of the correspondence on

record the Vice Chairman found that the manner in which Des Raj was inducted would give rise to a considerable suspicion of introduction of a party on a subsequent stage. It was also held that as per the original terms and conditions of allotment the shop would stand in the name of Shri Swaroop Singh only and could not have been transferred to any other person and therefore, the orders allotting the shop jointly to Swaroop Singh and Des Raj were cancelled and the amount deposited by Shri Des Raj were ordered to be refunded to him. Counsel for Des Raj however, placed strong reliance on the orders contained in the note sheet subsequent to 1.3.1978 wherein suggestion was put in for review of the order dated 1.3.1978. The Vice Chairman however, did not agree with the aforesaid proposal mooted in the office and stated that since the matter is subjudice in the court the order dated 1.3.1978 cannot be reviewed. Thus, it cannot be said, as sought to be submitted by the counsel for Des Raj that the order dated 1.3.1978 was reviewed at a subsequent stage by Vice Chairman of Delhi Development Authority. This contention cannot be held as valid and the same is only a figment of imagination of Des Raj. The aforesaid order was also subject matter of the suit filed by Des Raj seeking for a decree for permanent injunction restraining the defendants namely - Delhi Development Authority and Swaroop Singh from dispossessing Des Raj from the premises in question. In the said suit several issues were framed by the trial court. One of the issues framed as issue No. 7 was-

'Whether the plaintiff was absolute owner in possession of leasehold rights in respect of plot bearing No. 1181/A, New Subzi Mandi, New Delhi?

Issue No.8 was framed as follows-

'Whether the plaintiff was entitled to the relief as prayed for?

The trial court discussed the evidence on record and thereafter held that it was not disputed that the allotment of the shop in the name of Des Raj had been cancelled and that he was intimated about the same under notice dated 28.4.1978 whereupon the petitioner was called upon to hand over possession of the shop to defendant No. 1. It was held that once the allotment of the shop in the name of Des Raj was cancelled, then he had no legal right to remain in possession of the

shop in question. It was also held that once the order regarding inclusion of the name of Des Raj as co lessee of the shop in question was withdrawn then virtually Des Raj had no right to remain in possession of the shop in question. As stated herein above, an appeal filed against the aforesaid Judgment and decree was withdrawn by Des Raj. thereforee, the judgment and order of the trial court as also the order of cancellation of the name of Des Raj in the records of DDA have become conclusive and binding on the parties.

11. The learned Additional District Judge held that principles of promissory estoppel are applicable to the facts and circumstances of the case, for there was a promise made by Delhi Development Authority in terms of which payments have been made by Des Raj and he was in possession of the premises for about 9 years. In my considered opinion the principles of promissory estoppel cannot have any application when there was a specific clause in the terms and conditions of the auction that the premises cannot be transferred to any third party. Even otherwise the decision of the trial court in S. No. 446/1988 that once the order regarding the inclusion of the name of Des Raj as colessee in the shop in question was withdrawn then virtually the petitioner had no right to remain in possession of the property in question was valid and binding on all the parties as against which the principles of promissory estoppel could not and should not have been held to be applicable. In my considered opinion, the Additional District Judge thus committed manifest error of law in holding that the said principles are applicable, which in my considered opinion, cannot be made applicable, particularly in view of the decision of a Competent Court on the aforesaid issue holding that Des Raj has no right to remain in possession of the shop in question after his name was deleted by the Competent Authority.

12. The next question that arises for my consideration is whether the ratio of the decision of Express Newspapers Case could be said to be applicable to the facts and circumstances of the case as was held by the Additional District Judge. In the case of Express Newspapers (Supra) it has been held by Hon'ble Mr. Justice A.P. Sen (as His Lordship then was) in paragraphs 86 and 87 thus-

'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 & 10, Bahadurshah Zafar Marg demised on perpetual lease deed dated 17.3.1958, can by no process of reasoning, be regarded as public premises be longing to the Central Government under section 2(c). That being so, there is no question of the Lesser applying for eviction of the Express Newspapers Pvt. Ltd. under Section 5(1) nor has the Estate Officer any authority or jurisdiction to direct their eviction under subsection (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 and 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.'

13. A careful reading of the aforesaid extract as also paragraphs 86, 87 & 88 of the aforesaid decision would indicate that it is in the context of the facts of Express Newspapers Pvt. Ltd. case that the aforesaid decision was rendered. The Court has cautioned that whatever is stated in the afore said judgment should not be construed to mean that the Government did not have the power to take recourse to the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 where admittedly there is unauthorised 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 unauthorised occupation thereof.

14. thereforee, there are cases where the Government can legitimately invoke its powers under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act. In the case in hand no lease was executed between the parties whereas in the case of Express Newspapers Limited the lis between the parties was decided entirely on the basis of the lease deed between the parties. This is a glaring distinguishing feature in the two cases. When a power has been given to an authority to proceed in accordance with law, it can proceed by invoking the provisions of the said powers and jurisdiction when the preconditions for proceeding under the aforesaid remedy are satisfied.

15. In my considered opinion, it was not the intention of the Supreme Court to state in *Express Newspaper Pvt. Ltd. (Supra)* that the Government in an appropriate case cannot proceed under the Public Premises (Eviction of Unauthorised Occupants) Act when the preconditions set out therein are satisfied in a particular case. In fact that has been explicit made clear by their Lordships in the aforesaid decision in paragraph 88 of the said judgment.

16. The trial court in the aforesaid suit also held that once the allotment of the shop in the name of Des Raj had been cancelled then said Des Raj had no legal right to remain in possession of the shop in question. Thus, Des Raj was in unauthorised occupation of the premises which is a public premises and therefore, the proceedings initiated by Delhi Development Authority against Des Raj for his eviction under the Public Premises (Eviction of Unauthorised Occupants) Act could not have been said to be not permissible.

17. In the result the judgment and order passed by the Additional District Judge is set aside. Both the writ petitions stand allowed and the order of the Estate Officer is upheld and affirmed. However, the parties are left to bear their own costs.