

Delhi Development Authority Vs Kela Devi

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Court : Delhi

Decided On : Oct-20-2010

Judge : Mr. V.B.Gupta. J

Acts : [Constitution of India](#) - Article 227,

Appeal No. : CM (M) No. 1150/2010 & CM No. 16070/2010

Appellant : Delhi Development Authority

Respondent : Kela Devi

Advocate for Pet/Ap. : Mr. Rakesh Mittal, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?

Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

1.Present petition under Article 227 of the [Constitution of India](#) has been filed by petitioner seeking quashing of order dated 10th March, 2010 passed by Additional District Judge, Delhi.

2. Brief facts of this case are that respondent had filed a suit for permanent injunction against the petitioner claiming that her husband has occupied a piece of land in the year 1965/1966 out of Khasra Nos. 712/673 and 713/673, Village Wazirpur, Delhi and started residing there after raising a Kuccha structure and started keeping cattles thereupon on about 260 sq. yds. On the remaining portion, respondent planted trees and developed the same. The case of respondent is that the suit property falls on private land and only rest of the land has been acquired.

3. Along with the suit, respondent filed an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure (for short as Code) seeking injunction against the petitioner not to interfere in any manner with the possession of the respondent over the land in question.

4. Petitioner in its written statement took the stand that respondent is not in possession of Khasra Nos. 712/673 & 713/673 of Village Wazirpur, Delhi as claimed by the respondent. In fact, respondent has encroached upon the Government land which falls under Khasra No. 680 min and 692 min. The said land along with land in Khasra No. 712/673/1 is acquired land and has been placed for disposal before the Petitioner Authority and as such respondent is not entitled to any relief in equity.

5. Trial court, vide order dated 11th December, 2009 allowed the application of the respondent filed under Order 39 Rules 1 & 2 of the Code and restrained the petitioner from interfering with the possession of the respondent, till the final disposal of the suit.

6. Petitioner filed an appeal against the order of trial court. Appeal of the petitioner was dismissed, vide impugned orders by the First Appellate Court.

7. It has been contended by learned counsel for petitioner that the Civil Judge after considering the demarcation reports and relying upon the fact that the land in question comes under Khasra No. 680, wrongly concluded that the land in possession of the respondent may fall apart from Khasra No. 680/1, 680/2 and 680/3, which has already been acquired by the petitioner and physical possession of which was taken by the petitioner on 1st September, 1962. Since the land in

question has already been acquired, respondent under these circumstances is a trespasser on the Government land and the Courts below wrongly concluded that there is prima facie case in favour of the respondent.

8. Present petition has been filed under Article 227 of the [Constitution of India](#). It is well settled that jurisdiction of this Court under this Article is limited.

9. Article 227 of The [Constitution of India](#) reads as under;

"227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces."

10. In *Waryam Singh and another v. Amarnath and another*, AIR 1954, SC 215, the court observed;

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in *Dalmia Jain Airways Ltd. V. Sukumar Mukherjee*, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

11. In *Mohammed Yusuf v. Faij Mohammad and Ors.*, 2009 (1) SCALE71, Supreme Court held;

"The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety".

12. In *State of West Bengal and Ors. v. Samar Kumar Sarkar*, JT 2009 (11) SC 258 Supreme Court held;

10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* (AIR 1975 SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in

appropriate cases. High Courts function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

13. In *Laxmikant Revchand Bhojwani and Anr. v. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7)SC400, Apex Court observed;

"The High Court under Article 227 of the [Constitution of India](#) cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

14. In light of principles laid down in the above decisions, it is to be seen as to whether this petition under Article 227 of the [Constitution of India](#), against impugned orders is maintainable or not.

15. It is an admitted case of the petitioner that, respondent is in occupation of the Government land, though as an unauthorized occupant. When admittedly, respondent is in the occupation of the land in question though as an unauthorized occupant, even then he cannot be evicted from land in question, except by due process of law.

16. It is petitioners own case that, land in question was acquired in the year 1962 and physical possession of the same was taken on 1 st September, 1962. Then how after obtaining the physical possession of the land in question, petitioner has permitted the respondent to occupy or stay in the Government land for last so many years.

17. The trial court in this regard observed:- "After the demarcation report, there is no dispute with the identity of land however perusal of the notifications dated 03.08.63 and 05.09.64 shows that land falling in Khasra no. 680/1, 680/2 and 680/3 only had been placed at the disposal of DDA. It means that whole of khasra

no. 680 has not been acquired. Plaintiff has shown her settled possession in the property bearing no. 45-A and as per MCD, property falling in 45 is old and occupied. In view of this, application is hereby allowed and DDA is hereby restrained from interfering with the possession of the plaintiff of the property bearing no. 45 and 45-A, Harijan Basti, Sawan Park Extn., Ashok Vihar, Phase- III, Delhi-52 till the final disposal of the suit. Interim order passed on 21.09.06 stands confirmed."

18. While, First Appellate Court in impugned order held;

"Be that as it may, admittedly, the respondent is in possession of the suit premises. It cannot be said with certainty at this stage as to whether the suit property falls in Khasra No. 712 & 713 or in Khasra No.680. I am in agreement with the submissions of Ld. Counsel for the respondent that the demarcation reports are not a concrete and conclusive evidence regarding the situation of the land in question and same cannot be relied upon without calling for proof of the same. It is a settled position of law that a person in settled possession of land cannot be dispossessed without affording opportunity him to prove his case before the Court."

19. As per petitioners case, respondent is a trespasser and an unauthorized occupant of the Government land, since 1962, then I fail to understand as to what prevented the petitioner from taking action against the respondent in accordance with the provisions of law. It is apparent that petitioners officials are gross negligent and careless in performing their duties. During last more than 50 years they have not taken any action against the respondent, (so called trespasser and unauthorized occupant of the Government Land).

20. Petitioner authority is having a large army of employees working under it, but it is manifestly clear that its officials are hand in glove with the rank trespasser/unauthorized occupants of the Government Land and that is why thousands of acres of Government Land is still under illegal occupation of the trespassers.

21. No unauthorized occupant/trespasser can remain in possession of the Government land for more than 50 years, unless and until officials of petitioner authority are in collusion with such trespassers.

22. Since, respondent is in occupation of the land in question for last many years the courts below have rightly granted injunction in favour of the respondent. It is well settled that where two courts below gives concurrent finding of facts, this Court under Article 227 of the [Constitution of India](#), should not disturb the same.

23. In Narain Singh through LRs & Ors. vs. Shanti Devi through LRs & Ors., 2010 (115) DRJ 601, this court observed:-

"It is well settled that where two courts below have given a concurrent finding of facts, this court under Article 227 of the constitution of India shall not disturb the finding even if there is some mistake committed in appreciation of some part of evidence. Under Article 227, the court does not correct the mistakes of law or mistakes of facts. The intervention of this court under Article 227 has to be only in those exceptional cases where the courts below had either not exercised their jurisdiction or had acted beyond jurisdiction or had ignored the well-settled legal proposition and acted contrary to law."

24. Thus, no fault can be found with the concurrent findings of the Courts below.

25. Before parting with, this Court must express its deep anguish over the manner in this petition has been filed. Petitioner being a statutory body without applying its mind has filed this petition just to waste the time of this court. It is well known fact that Courts across the country are saddled with large number of cases and Government bodies are the biggest litigant in these cases. The courts have been expressing their displeasure at the statutory bodies compulsive litigation habit.

26. It has been observed time and again by the Supreme Court and this Court that frivolous and meritless litigation must be dealt with heavy hands. Time has come to fix personal responsibility on the concerned officials. With this measure only frivolous and needless litigation can be checked. The rise in litigation is also because govt. departments do not examine the cases properly and goes on filing

frivolous and needless petition in the Court. The frivolous litigation clogs the wheels of justice, making it difficult for courts to provide easy and speedy justice to genuine litigants.

27. A strong message is required to be sent to those litigants (whether Government or Private) who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who go on filling frivolous applications one after another.

28. Under these circumstances, present petition being meritless, bogus and most frivolous one, is hereby dismissed with costs of Rs.50,000/- (Fifty Thousand Only).

29. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this court, within four weeks from today.

30. Meanwhile, petitioner shall recover the cost amount from the salaries of delinquent officials who have been pursuing this meritless and frivolous litigation with the sole aim of wasting the public exchequer. Affidavit giving details of the officials from whose salary the costs have been recovered be also filed in four weeks.

31. Dismissed.

32. List for compliance on 23rd November, 2010.

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