

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 8172/2010 & CM No. 21059/2010

Judgment delivered on: 07.12.2010

Mohd. Faheem Petitioner.
Through: Mr. Sudershan Rajan with
Md. Qamar, Advs.

Versus

State of Andhra Pradesh Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | |
|--|----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. Oral:

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 22.11.2010 passed by the

learned District Judge and the order dated 21.4.2006 passed by the learned Estate Officer.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner was in occupation of premises at No.3, Ashoka Road Compound, New Delhi for a long time. That on 23.9.2000 a show cause notice for eviction under the Public Premises Act, 1971 was issued to the petitioner and thereafter an eviction order dated 21.4.2006 was passed against him. Consequently, the petitioner filed an appeal under Section 9 of the PP Act which vide judgment dated 22.11.2010 was dismissed. Feeling aggrieved with the abovesaid two orders, the petitioner has preferred the present petition.

3. Assailing both the orders, Mr. Sudershan Rajan, counsel for the petitioner, submits that the respondent has not placed on record any document to show its ownership in respect of the garage in question. Counsel thus states that the respondent has no locus standi to invoke the provisions of the Public Premises Act to seek eviction of the petitioner from the said garage. Counsel further submits that the petitioner has been in occupation of the said

garage since 1968 and he was enjoying his possession uninterruptedly ,on payment of various taxes, with all the facilities like telephone connection etc. Counsel also submits that the learned Estate Officer had himself filed an affidavit and then decided the eviction proceedings himself and therefore, the learned Estate Officer became judge in his own case. Counsel also submits that the case of the petitioner is similar to the case of those occupants whose petitions were allowed by this court vide order dated 5.8.2010. In support of his arguments, counsel has placed reliance on the following judgments:-

- (1) State of Uttar Pradesh Vs. Mohammad Nooh, [1958] 1SCR 595;
- (2) Arjun Chaubey Vs. UOI & Ors. (1984) 2 SCC 578;
- (3) Government of Andhra Pradesh Vs. Thummala Krishna Rao & Anr. (1982) 2 SCC 134;
- (4) Baldev Singh Vs. Manohar Singh AIR 2006 SC 2832
- (5) Union of India & Ors. Vs. Taj Trading Co. (1982) 2 SCC 141;
- (6) State of U.P. & Anr. Vs. Zia Khan (1998) 8 SCC 483;
- (7) Dattatraya Vs. Rangnath Gopalrao Kawathekar 1971 SCC 2548
- (8) Sushil Kumar Jain Vs. Manoj Kumar & Anr. (2009) 14 SCC 38

4. I have heard learned counsel for the petitioner at considerable length and gone through the records.

5. The petitioner was declared unauthorized occupant in respect of the said garage in question. The respondent had served show cause notice dated 23.09.2000 under Section 1 of Clause b (ii) of sub-Section 2 of Section 4 of the Public Premises Act upon the petitioner. In reply to the said show cause notice, the petitioner took a stand that his father was owner in respect of the said garage but the ownership papers were lost by him. An additional reply was also submitted by the petitioner to the said show cause notice and in the additional reply, the petitioner sought to claim ownership of the said garage by adverse possession. The learned Estate Officer after having gone through all the issues raised by the petitioner vide detailed order dated 21.04.2006 passed the eviction order against the petitioner thereby giving him 15 days time to hand over the peaceful and vacant possession of the said garage. Feeling aggrieved with the said order, the petitioner preferred an appeal under Section 9 of the Public Premises

Act. Vide order dated 22.11.2010 the said appeal was dismissed by the learned District Judge. Before the Appellate Court also the petitioner sought to challenge the ownership of the respondent but did not succeed to disprove the ownership of the respondent. After detailed discussion on the question of ownership, the learned District Judge upheld the view taken by the learned Estate Officer on the alleged claim of ownership of the petitioner over the said garage.

6. It is a settled legal position that for invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, the first prerequisite is that the petitioner must disclose his clear legal right over the property in question. Neither before the Estate Officer and the Appellate Court and nor before this Court, the petitioner has disclosed his legal right over the said garage in question. Earlier in the reply dated 10.10.2000 to the show cause notice dated 23.09.2000 sent by the Estate Officer, the petitioner took a stand that his father was the owner of the garage in question and later in his

additional reply dated 03.11.2000 the petitioner took a somersault to the stand that he became the owner by adverse possession. Mere fact that the petitioner remained in possession of the said garage for a considerable period would not permit the petitioner to set up a hostile title as against the owner. It is not the case of the petitioner that before any authorities he ever claimed his title over the said land adverse to the title of the respondent or any other statutory authority. Merely because the petitioner succeeded in getting the facility of telephone connection or other municipal facilities the same would not legitimize his possession. The petitioner is thus clearly unauthorized occupant of the said garage and he was rightly declared as unauthorized occupant by the respondent. The petitioner has no legal right to retain possession of the said garage and already he has been enjoying the possession of the said garage in question without payment of any damages to the respondent. The existence of legal right is the foundation for invoking the jurisdiction of the High Court under Article 226. The

present petition filed by the petitioner fails on this very ground.

8. On the other pleas taken by the petitioner also, this court does not find any merit. The petitioner has taken the plea that the order of the Estate officer was a nullity as a person cannot be a judge in his own case. But the petitioner has failed to show how any prejudice or bias is caused by the Estate Officer in rendering the said order of eviction. The learned Estate Officer has passed the order in his capacity as a quasi-judicial body and hence his role is of adjudicatory nature. The maxim that no one shall be a judge in his own case means that he should not have a private interest in the case he is adjudicating. The Estate officer acts as a Tribunal and has no private interest. Being an Estate Officer he is discharging his public duties and is not acting in his private capacity and thus is competent to pass an order of eviction. Hence there is no violation of principles of natural justice as the Estate Officer had no personal interest in passing the said order of eviction.

9. The other pleas of the petitioner also do not stand on a firm footing as it has been a case of shifting stands. In the very first reply to the eviction notice he claimed to be the owner and the next time in the additional reply he claimed to be the owner by adverse possession. The status of a person who is in occupation of any premises is either that of a owner, landlord, tenant or licensee and even an owner by adverse possession and it can be of an unauthorized occupant or of a rank trespasser and thus it is for the person in occupation to clearly disclose that in what capacity he is in occupation of that particular premises. The petitioner has failed to disclose that how he came into occupation of the said garage, how his father was inducted and with what right. The petitioner has failed to disclose his legal right to remain in occupation of the said garage in question, and simply because the petitioner succeeded in obtaining the telephone connection or some other municipal facilities would not strengthen his claim to occupy the said garage as these municipal documents cannot confer any legal right on a person over a property. It is quite intriguing to find that the petitioner is in

possession of garage situated at such a prime place without any right, title, interest and without paying any damages to the respondent. As already discussed above, the existence of a legal right is a condition precedent to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and having failed to establish any legal right over the said garage in question, the petitioner is not entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. The reliance placed by the counsel for the petitioner on the aforesaid judgments will be of no help to the petitioner in the facts of the present case and the legal position discussed above.

10. So far the contention raised by the counsel for petitioner that the respondent has not proved on record its ownership over the garage in question is concerned, I find the submission equally devoid of any merit. The learned Estate Officer and the learned Appellate Court have gone into the said issue much in detail and came to the conclusion that based on the documents placed on record by the respondent, it is the respondent alone who is the

owner of the said garage in question. I do not find any infirmity in the said findings arrived at by both the Courts below.

11. In the light of the above discussion, I do not find any merit in the present petition and the same is hereby dismissed.

December 07, 2010
mg/rkr

KAILASH GAMBHIR, J