

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 1105/2011

% Judgment delivered on: 12th May, 2011

Lal Man Yadav Petitioner.

Through: Mr. Sunil Ahuja, Adv.
versus

Union of India & Anr. Respondents

Through: Mr. Sunil Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

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KAILASH GAMBHIR, J. Oral

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 13.9.1985 and sealing order dated 20.7.2010

passed by the respondent no.2. The petitioner also seeks directions to direct the respondents to de-seal and not to demolish the premises bearing No. C-95/5, Aaram Bagh, Panchquian Road, New Delhi and to put back the petitioner in possession of the said premises after de-sealing the same.

2. The case of the petitioner is that the petitioner is in occupation and possession of the property approximately measuring 15 yards in the colony popularly known as Aaram Bagh 'I' Point, Punchquian Road, New Delhi, where he has been residing along with other more than hundred habitants occupying their respective units. The petitioner has further stated that he has been in possession of the premises bearing No. C-95/5, Aaram Bagh, Panchquian Road, New Delhi since the year 2000 and suddenly on 21st July, 2010 some of the officers of the Land & Development Office visited the said premises of the petitioner and had forcibly sealed the same. The petitioner has further stated that after putting serious efforts the petitioner came to know that eviction order dated 13.9.1985 was passed by the

learned Estate Officer against one Mr. Ram Kumar and the said eviction order remained unexecuted for a period of about 25 years and then suddenly on 20th July, 2010, the impugned order was passed by the Land & Development Office to evict the petitioner from his lawful occupation. It is further stated by the petitioner that no show cause notice was served upon him before taking the said illegal action of sealing the said premises of the petitioner and even no proceedings under the Public Premises Act were initiated by the respondents against him.

3. Mr. Sunil Ahuja, counsel for petitioner submits that the petitioner has been in settled and uninterrupted possession of the said premises bearing no. C-95/5, Aaram Bagh, Panchquian Road, New Delhi, since 2000 and the petitioner had also been enjoying electricity connection after the same was installed in the name of the petitioner and the petitioner was regularly receiving the bills from BSES in his name at the said address. Counsel further submits that even the ration card and the election card

clearly bear the name of the petitioner at the said residential address. Counsel also submits that no proceedings were initiated by the respondents against the petitioner under the Public Premises Act and even no show cause notice was served by the learned Estate Officer upon the petitioner and the premises of the petitioner had been sealed in a most illegal and draconian manner by the respondent, without taking care to follow the law of the land. Counsel also submits that the premises under the occupation of the petitioner is not connected in any manner with the premises which was under the occupation of Mr. Ram Kumar against whom the eviction order was passed in the year 1985. In support of his arguments counsel has placed reliance on the order passed by this court in ***W.P.(C) No. 5235/2010, titled Mahesh Kumar Sharma Vs. UOI, dated 4.8.2010.***

4. The respondent/Union of India in their counter affidavit on the other has taken a stand that the eviction order under Section 5 of the P.P.Act was passed by the

learned Estate Officer as long back as on 13.9.85 and possession of the site measuring 7 sq. yards was retrieved by sealing the same on 21.7.2010. It is also the stand of the respondent that the site in question was also handed over by them to the CPWD. The respondent has also taken a stand that the petitioner has no locus standi to file the present petition as nowhere in the present petition he has disclosed that how he came to occupy the said land in question. In the counter affidavit filed by the respondent they have also given the background of facts leading to the eviction of Mr. Ram Kumar from the said premises. Mr. Sunil Kumar, counsel for the respondent has submitted that the petitioner had no legal right to occupy the said premises, more so when already an eviction order was passed by the learned Estate Officer against the original occupant of the said premises. Counsel has also submitted that nowhere the petitioner has disclosed that from whom he has purchased the said land and how and in what manner he came to occupy the said premises. Counsel thus urges that the petitioner was not

entitled to any show cause notice as the respondent has merely executed the said eviction order which was passed long back in the year 1985.

5. I have heard learned counsel for the parties and given my anxious consideration to the arguments advanced by both of them.

6. In the entire petition, the petitioner has nowhere disclosed his legal right over the said premises bearing No. C-95/5, Aaram Bagh, Panchsuan Road, New Delhi. A mere fact that the petitioner got the electricity and water connection at the said address or in the ration card the said address of the petitioner has been registered, the same would not confer any legal right on the petitioner to occupy the said premises. During the course of arguments, counsel for the petitioner took a stand that the said plot was taken over by the petitioner from one lady named Rumali, but despite questioning by the court repeatedly to disclose the legal right of the petitioner and through which documents the petitioner came to occupy the said premises, no answer

came forth from the side of the counsel for the petitioner. It is a settled legal position that the person claiming to be the authorized occupant has to clearly establish a legal right to claim the ownership of the land in occupation as reiterated by this court in ***Krishna Devi vs. Estate Officer 2010(174)DLT698*** and ***Ganpat Ram vs. Union of India 2010(172) DLT 657***.

7. The petitioner has invoked the writ jurisdiction of writ court and writ jurisdiction of the court can be invoked only when one has a legal right which is under challenge or which has been violated by the Government or any Government agency. Under the Public Premises Act also the onus is on the occupier to show that he is in authorized occupation of the same. Perusal of the impugned order dated 20.7.2010 clearly shows that the respondent has executed the order of eviction which was passed by the learned Estate Officer vide order dated 13.9.85 in the eviction case No. E.S.O.11-4(6)/84 and in the schedule of the said order the measurement of the area which was under

the occupation of Mr. Ram Kumar has been shown as 7 sq. yards situated at 'T' Point Crossing, Panchkuian Road, New Delhi. It is quite evident that the respondent had failed to execute the said eviction order for such a long period of 25 years and certainly during that period the land in question might have passed many hands and the present petitioner might have succeeded to such unauthorized transfer of the said premises. Had there been no delay on the part of the respondent in executing the said order, the present petitioner and his predecessors could not have the advantage of coming into the occupation of the said plot of land. Be that as it may, the petitioner cannot be put to any advantage on account of delayed action on the part of the respondent in seeking physical possession of the premises in question pursuant to the passing of the eviction order dated 13.9.85 by the learned Estate Officer against one occupier Mr. Ram Kumar. This court, therefore, does not find that the petitioner was entitled to any show cause notice as the petitioner was occupying the said premises against

which already an eviction order was passed. If the contention of the counsel for the petitioner that the petitioner was also entitled to show cause notice under the provisions of P.P. Act is accepted, then such a course will encourage the wrong doers to scuttle the legal process and frustrate the order of eviction which was legally and validly passed by the learned Estate Officer against one Mr. Ram Kumar.

8. So far the reliance placed by the counsel for the petitioner on the order passed by this court in W.P.(C) No. 5235/2010 is concerned, perusal of the same shows that the facts of the present case are distinguishable from that case as in the present case the respondent has placed reliance on the order of eviction already passed against the previous occupier Mr. Ram Kumar from the premises which came to be occupied by the petitioner later in time.

9. The petitioner is thus an encroacher upon the government land as even in the eviction order passed by the Estate officer it has been clearly stated that the said Mr. Ram

Kumar was also an encroacher upon the said land and thus this trend have to be dealt with a heavy hand by the respondents. The respondent authorities cannot adopt a cavalier approach by letting the encroached sites pass hands for decades altogether perpetuating unauthorized occupations leading to lawlessness.

10. In the light of the above discussion, this court does not find any merit in the present petition and the same is accordingly dismissed, leaving the parties to bear their own costs.

May 12, 2011
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KAILASH GAMBHIR, J