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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2150/2014 & CM Appl. 4491/2014

SURESH KUMAR & ORS

..... Petitioners

Through: Mr. R.S. Rathi, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Sanjeev Narula, Advocate with
Mr. Ajay Kalra, Advocate for UOI.
Mr. Praveen Kumar, Advocate for
Railways.

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Date of Decision: 17th October, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed challenging the judgment and order dated 28th March, 2014 passed by the District and Sessions Judge in PPA No.54/2013 whereby the petitioners' appeal challenging the Estate Officer's eviction order dated 31st October, 2013 had been dismissed.
2. The relevant portion of the orders passed by the Estate Officer and by the District & Sessions Judge in appeal is reproduced hereinbelow:-

A. Estate Officer's Order

"4. I have gone through the entire documents, reply, rejoinder filed by the parties. I have also gone through the evidence and records placed before me and heard the

arguments addressed by the Ld. Counsel for the applicant and respondents. It is an admitted fact that the suit land belongs to the applicant and the respondents are mere unauthorised occupants thereon without any legal authority and are using the same for commercial purposes i.e. Dhobi Ghat. The respondents have failed to prove on record any legal authority in their favour from the Competent Authority. Mere payment of some charges does not create any legal right over the Public Premises/Land. After giving my careful consideration to the entire facts and circumstances, documents placed on record, evidence produced before me and law applicable thereto, I am of the considered view that the Public Premises is under an unauthorized use and occupation of the respondents and consequently the respondents are liable to be evicted from there forthwith. The entire claim of the applicant remain uncontroverted and the documents placed on record by the parties show that the application of the applicant is correct and the same be decreed as the respondents are unable to file any plausible evidence and to handover the vacant possession of the land in question to the applicant. The respondents are holding the Railway Land even after the service of the notices by the Competent Authority. The act of the respondent is highly objectionable act which warrants deterrent disciplinary action against the respondent. Anyone without valid allotment by the Competent Authority is always an unauthorised occupant qua the public premises and no one can be allowed to forcibly occupy the Railway Land/Public Premises. After giving careful consideration to the entire facts and circumstances, evidence produced and law applicable thereto, I am of the considered opinion that the public premises is under an unauthorised use and occupation of the respondents and the respondents are liable to be evicted from the land/premises in question as claimed by the applicant in their application.”

B. District & Sessions Judge’s Order

12. The reply on behalf of the respondents/appellants does not prove the title of the property in question as the appellants have

admitted that they were made to pay certain meagre charges till 2006. It is further evident from the reply to the show cause notice dated 14.5.2007 that the appellants made payment to the Railway Department vide receipt No.467197 dated 30.1.2006 for Rs.2550/- for the period July 2005 to December 2006. Therefore the plea of the adverse possession of the appellants fails for want of hostile possession. Consequently ownership title remains with UOI and no right of title accrued over the land Measuring 334 Sq. Mtrs., Railway Colony, Tilak Bridge, New Delhi in favour of the appellants/respondents.

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16. The contention of the appellants that the Estate Officer has violated the principle of natural justice in the present case does not seems to be convincing as the appellant were issued required notices and appellants have filed reply and put forward their defence and thereafter the respondent no.1 UOI has examined the two witnesses who has proved the site plan and form of report U/s 4 & 7 of the PPE Act 1971 Ex.AW1/D. Evidence of AW1 and AW2 was recorded on 28.10.2013 and order sheet dated 28.10.2013 shows that respondents were not interested in leading evidence on their behalf. Therefore, the Estate Officer after recording the statement of respondent Suraj and Suresh closed the evidence of the appellants/respondents and thereafter passed the impugned order.”

3. Mr. R.S. Rathi, learned counsel for the petitioners contends that both the Estate Officer and the District and Sessions Judge failed to appreciate that the land measuring 334 sq. mtrs. Railway Colony, Tilak Bridge, New Delhi between Bungalow No.14A and Officer's Club had been granted to the petitioners by the British Crown even prior to the year 1947. He states that the petitioners upon payment of meagre charges had been allowed to retain possession of the aforesaid land. He, however, candidly admits that

the petitioners are not seeking any ownership or title in the land in question.

4. Mr. Rathi submits that both the impugned orders are in violation of principles of natural justice inasmuch as the petitioners had not been given an opportunity to lead evidence by the Estate Officer. He points out that the respondents led their evidence on 28th October, 2013 and the final eviction order was passed by the Estate Officer on 31st October, 2013.

5. Mr. Rathi lastly submits that the impugned judgment and order violate the petitioners' right to life and livelihood as guaranteed under Article 21 of the Constitution of India. In support of his submission, he relies upon the following judgments of the Supreme Court:-

A. N.D. Jayal & Anr. vs. Union of India & Ors., (2004) 9 SCC 362 wherein it has been held as under:-

“60. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in Narmada Bachao Andolan case [(2000) 10 SCC 664] . The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in B.D. Sharma v. Union of India [1992 Supp (3) SCC 93] and this was reiterated in Narmada [(2000) 10 SCC 664] . This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.”

B. Angad Das vs. Union of India & Ors., (2010) 3 SCC 463 wherein it has been held as under:-

“People in power and authority should not easily lose equanimity, composure and appreciation for the problems of the lesser mortals. They are always expected to remember that power and authority must be judiciously exercised according to the laws and human compassion. Arrogance and vanity have no place in discharge of their official functions and duties.”

C. Centre for Environment and Food Security vs. Union of India & Ors., (2011) 5 SCC 676 wherein it has been held as under:-

“15. The legislative scheme of the Act clearly places the “right to livelihood” at a higher pedestal than a mere legal right. Conjunct reading of the aforereferred provisions of the Act demonstrates that the legislature desired to provide minimum one hundred days of employment to one person in the family to ensure that the members of the family do not starve and are able to make their ends meet with reference to the bare minimum requirements for existence. The Act provides constitution of fora and functionaries right from the higher levels in the Central and State Governments to the grassroot levels at block and panchayat.”

D. Ratnagiri Gas and Power Private Limited vs. RDS Projects Limited and Others, (2013) 1 SCC 524 wherein it has been held as under:-

“25. Even otherwise the findings recorded by the High Court on the question of mala fides do not appear to us to be factually or legally sustainable. While we do not consider it necessary to delve deep into this aspect of the controversy, we may point out that allegations of mala fides are more easily made than proved. The law casts a heavy burden on the person alleging mala fides to prove the same on the basis

of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove mala fides on the part of the decision-maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to conduct an inquiry into their veracity.

“Malice in law

47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. ‘Legal malice’ or ‘malice in law’ means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for ‘purposes foreign to those for which it is in law intended’. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorised purpose constitutes malice in law. (See ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , Union of India v. V. Ramakrishnan [(2005) 8 SCC 394 : 2005 SCC (L&S) 1150] and Kalabharati Advertising v. Hemant Vimalnath Narichania [(2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808 : AIR 2010 SC 3745] .)”

E. Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Ors., (2014) 1 SCC 161 wherein it has been held as under:-

24. Ordinarily, after so stating we would have proceeded to scan the anatomy of the Act, the Rules, the concept of the Scheme under the Act and other facets but we have thought it imperative to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It is an ingenious and adroit innovation of the Judge-made law within the constitutional parameters and serves as a weapon for certain purposes. It is regarded as a weapon to mitigate grievances of the poor and the marginalised sections of the society and to check the abuse of power at the hands of the executive and further to see that the necessitous law and order situation, which is the duty of the State, is properly sustained; the people in impecuniosity do not die of hunger; the national economy is not jeopardised; the rule of law is not imperilled; human rights are not endangered; and probity, transparency and integrity in governance remain in a constant state of stability. The use of the said weapon has to be done with care, caution and circumspection. We have a reason to say so, as in the case at hand there has been a fallacious perception not only as regards the merits of the case but also there is an erroneous approach in issuance of direction pertaining to recovery of the sum from the holder of the post. We shall dwell upon the same at a later stage.

31. Thus, from the aforesaid authorities it is quite vivid that the public interest litigation was initially evolved as a tool to take care of the fundamental rights under Article 21 of the Constitution of the marginalised sections of the society who because of their poverty and illiteracy could not approach the court. In quintessence it was initially evolved to benefit the have-nots and the handicapped for protection of their basic human rights and to see that the authorities carry out their constitutional obligations towards the marginalised sections of people who cannot stand up on their own and come to court to put forth their grievances. Thereafter, there have been various phases as has been stated in *Balwant Singh Chauhan v. State of Uttaranchal*, (2010) 3 SCC 402 :

(2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . It is also perceptible that the Court has taken note of the fact how the public interest litigations have been misutilised to vindicate vested interests for the propagated public interest. In fact, as has been seen, even the people who are in service for their seniority and promotion have preferred public interest litigations. It has also come to the notice of this Court that some persons, who describe themselves as pro bono publico, have approached the Court challenging grant of promotion, fixation of seniority, etc. in respect of third parties.

6. On the other hand, Mr. Praveen Kumar, learned counsel for the respondent-Railways vehemently denies that there has been any violation of principles of natural justice. He refers to the order sheets of the Estate Officer dated 28th October, 2013 and 31st October, 2013 as well as the statement given by the authorized representative of the petitioners to contend that the petitioners themselves had stated that they do not wish to lead any evidence. The relevant portion of the order sheets dated 28th October, 2013 and 31st October, 2013 as well as statement given by the authorised representative of the petitioners is reproduced hereinbelow:-

A. Order sheet dated 28th October, 2013

“AW-1 & AW-2 are examined and discharged. The applicant closed his evidence in affirmative. The respondents do not want to produce any evidence. The statement of the respondent is recorded on a separate sheet. As per the statement of the respondents, the evidence of the respondents is closed. The case is adjourned to 31.10.13 at 15: hrs. for final arguments.”

(emphasis supplied)

Statement dated 28th October, 2013

“We are Respondents in this case and are authorised persons as we are well conversant with the facts and circumstances of

the case. We do not want to produce any evidence/witness to prove our case as we have already stated each and everything in our reply along with document filed by us on 3.10.13. The same be as read as Part & Parcel of our evidence. We close our evidence on behalf of the Respondents.

(emphasis supplied)

B. Order sheet dated 31st October, 2013

“ Arguments on behalf of both the parties heard. Order is announced separately. A copy of the order is given dasti to the respondents. After hearing of both the parties the case is reserved for judgment.”

(emphasis supplied)

7. Mr. Kumar lastly submits that there is no violation of the right to life and livelihood as eviction proceedings had been initiated in accordance with law. He emphasizes that possession of the land in question has already been taken over by the Railways on 31st March, 2014.

8. Having heard learned counsel for the parties, this Court is of the view that it is first essential to outline the scope of judicial review in such matters. In the opinion of this Court, judicial review is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner

in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

9. In ***Tata Cellular Vs. Union of India, AIR 1996 SC 11*** the Supreme Court has held as under:-

“89. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

90. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

91.....It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal.....

100.....It is not function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

217.....Since the power of judicial review is not an appeal from the decision. We cannot substitute our decision since we do not have the necessary expertise to review.....

219.....Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere.”

10. In ***Ex. Naik Sardar Singh Vs. Union of India & Ors., AIR 1992 SC 417*** the following statement of law by Lord Diplock in *Civil Service Unions Vs. Minister for Civil Service* (1984) 3 ALL E.R. 935 was cited with

approval by the Supreme Court:-

“5.....Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds, on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety!’”

11. Consequently, the only three grounds for invoking judicial review in such like matters are illegality, irregularity and procedural impropriety.

12. Keeping in view the aforesaid principles of law, this Court is of the opinion that the petitioners have no right, title or interest in the land in question. No permission or letter allowing the petitioners to use and occupy the land has been placed on record. Consequently, this Court is of the view that the petitioners are in unauthorised occupation and possession of the land in question.

13. Further, the plea of violation of principles of natural justice is misconceived on facts as from the orders dated 28th October, 2013 and 31st October, 2013 and the statement recorded by the Estate Officer, it is apparent that the petitioners had themselves made a statement that they do not wish to lead any evidence.

14. This Court is also of the opinion that the judgments cited by the learned counsel for the petitioners are inapplicable to the facts and circumstances of the present case. While *N.D. Jayal and Another v. Union of India and Others (supra)* deals with rehabilitation measures which had to be mandatorily undertaken on account of construction of Tehri Dam, *Centre for Environment and Food Security v. Union of India & Others (supra)*

deals with the scheme prescribed under the NREG Act. Similarly, *Angad Das v. Union of India & Others* (*supra*) deals with service law and *Central Electricity Supply Utility of Odisha* (*supra*) deals with Electricity Act, 2003 and Orissa Electricity Reforms Act, 1995. In *Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Others* (*supra*), the Supreme Court only defined what constitutes malafide action—which issue has not been urged by the petitioners’ counsel. Consequently, none of the observations by the Apex Court in the aforesaid judgments are relevant to the present proceeding.

15. In any event, as the land in question is admittedly owned by the Railways and is covered by the Public Premises Act, this Court is of the view that the initiation of eviction proceedings by the respondents cannot and do not amount to violation of the petitioner’s fundamental right to life and livelihood. Consequently, the present writ petition and pending application being bereft of merits, are dismissed.

Order dasti.

MANMOHAN, J

OCTOBER 17, 2014
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