

Sohan Lal

Vs

The Union of India

Civil Appeal No. 132 of 1954

(N. H. Bhagwati, B. Jagannath Das, Syed Jafar Imam JJ)

07.03.1957

JUDGMENT

IMAM J. -

The respondent Jagan Nath filed a petition under Art. 226 of the Constitution in the Punjab High Court which was allowed. The High Court ordered the respondent The Union of India and the appellant Sohan Lal to forthwith restore possession of house No. 35 situated in West Patel Nagar, Delhi to Jagan Nath. Against this order of the High Court the appellant applied for and obtained special leave to appeal to this Court.

Jagan Nath is a displaced person and a refugee from Pakistan. The Government of India had devised various schemes for the rehabilitation of refugees. One of these was a scheme for sale of certain houses constructed by the Government of India for refugees in West Patel Nagar. It was not intended under the scheme to entertain applications from displaced persons who had already been allotted agricultural land in East Punjab. A limited number of houses known as "box-type tenements" were constructed. According to the procedure prescribed in order to give effect to the scheme, only those displaced persons, who were registered before the 15th of August, 1948, and were gainfully employed, were eligible for allotment of a house. A displaced person wishing to apply for allotment of a house was required to submit an application in the prescribed form offering to purchase a house in West Patel Nagar. If the applicant was prima facie eligible, he could be instructed to deposit the sale price of the house in the treasury, his eligibility to be verified later on. Permission to deposit the sale price did not mean that this eligibility had been accepted. After payment of the sale price the applicant could be required to produce proof of his eligibility. A list would be prepared of all the applicants who had deposited the sale price and whose eligibility had been verified. If the number of the applicants was in excess of the available number of houses, those, whose treasury challans bore a later date, would be excluded and their money refunded. The applicants whose names were included in the final list would be required to pay the ground rent by a specified date. A particular house would be allotted to an applicant by drawing lots. Jagan Nath had got himself registered as a refugee on December 31, 1947. He had made his application in the prescribed form. He had deposited the sum of Rs. 5,600 as the sale price after his prima facie eligibility had been accepted. He had also deposited the ground rent for the plot on which the house had been built, having been informed previously that it had been decided to allot him a two-roomed enclosed verandah "box-type" house in West Patel Nagar. He was informed that the allotment of a particular house would be decided by drawing lots at site on February 15, 1952, at 3 p.m. As the result of the drawing of lots, house No. 35, the property in dispute in this appeal, fell to his lot. According to Jagan Nath, on May 10, 1952, the Accommodation Officer in his absence removed the members of his family along with his entire belongings to the house in dispute in a truck and he and

his family thus entered into possession of the house in dispute. Jagan Nath, however, was evicted from the house in dispute on September 27, 1952, by virtue of a warrant of eviction dated September 11, 1952, purporting to have been issued under s. 25 of Ordinance III of 1952. After his eviction, possession of the house in dispute was given to the appellant on October 3, 1952. The appellant, who is also a displaced person, had applied on February 27, 1952, for allotment of a house in West Patel Nagar. He had made the deposit of Rs. 5,600 as sale price and had apparently complied with all the necessary conditions for allotment of a house to him and the house in dispute was allotted to him on July 31, 1952. The appellant has been in possession of the disputed house since October 3, 1952.

The appellant's main contention has been that, having regard to the circumstances of the case, the High Court erred in making the order it did which presumably purported to be in the nature of a writ of mandamus. There was a serious dispute on questions of fact between the parties and also whether Jagan Nath had acquired in law any title to the property in dispute. Proceedings by way of a writ were not appropriate in a case where the decision of the Court would amount to a decree declaring Jagan Nath's title and ordering restoration of possession. The proper remedy open to Jagan Nath was to get his title declared in the ordinary way in a Civil Court. The alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and Jagan Nath's title to the property in dispute was clear. It was further contended on behalf of the appellant that a writ of mandamus or an order in the nature of mandamus could not be made against the appellant, a private individual. He had come into lawful possession and there was no evidence of collusion between him and the Union of India and there was no finding by the High Court that the appellant had acted in collusion with the Union of India as a result of which Jagan Nath was dispossessed of the property in dispute and the same was allotted to him.

On behalf of Jagan Nath, it was urged that when he entered into possession of the property in dispute he did not do so as a trespasser. He had been inducted on the property by the Accommodation Officer. He could not have been illegally evicted. S. 3 of the Public Premises (Eviction) Act, 1950 (Act No. XXVII of 1950), required a notice to be served upon him directing him to vacate the premises within 15 days from the date of the service of the notice upon him before he could be evicted. This was not done and he had been evicted without complying with the mandatory provisions of s. 3 of the said Act. His eviction was a high-handed act of the Government without any legal justification whatsoever. The Union of India which had illegally evicted him should be ordered to restore possession of the property in dispute to him and as the eviction was at the instance of the appellant, he should also be directed to restore possession of the said property to Jagan Nath. Reliance was placed upon certain decisions of the High Courts of Punjab in *Khushal Singh v. Shri Rameshwar Dayal, Deputy Commissioner, Delhi* [I.L.R. [1954] Punjab 211], Hyderabad in *G. Kistareddy v. Commr. of City Police, Hyderabad* [A.I.R. [1952] Hyderabad 36] and Pepsu in *Mohinder Singh v. State of Pepsu* [A.I.R. [1955] Pepsu 60], as well as certain observations in the judgment of this Court in the case of *Wazir Chand v. The State of Himachal Pradesh* [[1955] 1 S.C.R. 408] in support of the proposition that, as Jagan Nath was in possession and he had been illegally evicted, he was entitled to have property, from which he had been illegally evicted, restored to him.

We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law

which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.

Jagan Nath had entered into a transaction with the Union of India up to a certain stage with respect to the property in dispute, but no letter of allotment had been issued him. Indeed, he had been informed, when certain facts became known, that the property in question could not be allotted to him as he was a displaced person who had been allotted land in East Punjab. As between Jagan Nath and the Union of India it will be necessary to decide what rights were acquired by the former in the property up to the stage when the latter informed Jagan Nath that the property would not be allotted to him. Another question for decision will be whether Jagan Nath was allowed to enter into possession of the property because it was allotted to him or under a misapprehension as the Union of India was misled by the contents of his application. The case of the Union of India is that under the scheme Jagan Nath was not eligible for allotment of a house in West Patel Nagar, as it was subsequently discovered that he had been allotted, previous to his application, agricultural land in the District of Hissar. Being satisfied that Jagan Nath was not eligible for allotment, the Union of India refused to allot to him the tenement No. 35, West Patel Nagar and allotment of that house was made to the appellant who was found to be eligible in every way. The appellant was accordingly given possession of the property after Jagan Nath's eviction. The appellant had complied with all the conditions imposed by the Union of Union of India and a letter of allotment was actually issued to him and he entered into possession of the property in dispute under the authority of the Union of India. Did the appellant thereby acquire a legal right to hold the property as against Jagan Nath ? In our opinion, all these questions should be decided in a properly constituted suit in a Civil Court rather than in proceedings under Art. 226 of the Constitution.

The eviction of Jagan Nath was in contravention of the express provisions of s. 3 of the Public Premises (Eviction) Act. His eviction, therefore, was illegal. He was entitled to be evicted in due course of law and a writ of mandamus could issue to or an order in the nature of mandamus could be made against the Union of India to restore possession of the property to Jagan Nath from which he had been evicted the property was still in the possession of the Union of India. The property in dispute, however, is in possession of the appellant. There is no evidence and no finding of the High Court that the appellant was in collusion with the Union of India or that he had knowledge that the eviction of Jagan Nath was illegal. Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Laws of England Vol. 11, Lord Simonds Edition, p. 84). If it had been proved that the Union of India and the appellant had colluded, and the transaction between them was merely colourable, entered into with a view to deprive Jagan Nath of his rights, jurisdiction to issue a writ to or make an order in the nature of mandamus against the appellant might be said to exist in a Court. We have not been able to find a direct authority to cover a case like the one before us, but it would appear that so far as election to an office is concerned, a mandamus to restore, admit, or elect to an office will not be granted unless the office is vacant. If the office is in fact full, proceedings must be taken by way of injunction or election petition to oust the party in possession and that a mandamus will go only on the supposition that there is nobody holding the office in question. In *R. v. Chester Corporation* [[1855] 25 L.J.Q.B. 61 (*Regina v.*

Chester, Mayor, etc.] it was held that it is an inflexible rule of law that where a person has been de facto elected to a corporate office, and has accepted and acted in the office, the validity of the election and the title to the office can only be tried by proceeding on a quo warranto information. A mandamus will not lie unless the election can be shown to be merely colourable. We cannot see why in principle there should be a distinction made between such a case and the case of a person, who has, apparently, entered into bona fide possession of a property without knowledge that any person had been illegally evicted therefrom.

In our opinion, the High Court erred in allowing the application of Jagan Nath filed under Art. 226 of the Constitution and making the order it did. The appeal is accordingly allowed and the order of the High Court is set aside. In the circumstances of the present case, however, we are of the opinion that each party should bear his own costs in this Court and in the High Court.

Appeal allowed.

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