State of Jammu and Kashmir and Others

Vs

Haji Wali Mohammed and Others

Civil Appeal Nos. 144 to 147 of 1969

(A. N. Grover, D. G. Plekr JJ )

08.08.1972

JUDGMENT

GROVER, J. -

1. These appeals arise out of a common judgment of the Jammu and Kashmir High Court given in four writ petitions filed by the respondents.

2. The respondents are stated to be purchasers of certain premises which were originally owned by Dewan Bishan Das who was a former Prime Minister of the State of Jammu and Kashmir. He had constructed several buildings and structures on the disputed property which was situated in Magharmal Bagh in Srinagar. The respondents Haji Abdul Aziz Shah and his wife. Abdul Salem Shah and Haji Mohammed Ramzan Shah purchased rights in 8 Kanals 9 Marlas and 10,000 sq. feet of the area bearing Khasra Nos. 885 and 890 by two sale deeds which were got registered in July 1967. Respondent Haji Wali Mohammed purchased rights in the land measuring 25,704 sq. feet along with buildings and garages situated in Sarai Pain near the exhibition grounds. According to the respondents they started their own business establishments in the properties which had been purchased. It may be mentioned that the properties had been sold by Purmesh Chander and others who were heirs of Dewan Bishan Das to the respondents. For the purpose of more detailed facts we may refer to the petition filed by the respondent Haji Wali Mohammed. It was alleged therein that in the month of December 1967 municipal buildings in Hari Singh High Street, Srinagar caught fire. The Municipality cleared the debris and took possession of the lands which became vacant as a result of the buildings having been destroyed by the fire. It was alleged that the Deputy Commissioner who was also the Estate Officer purported to issue certain notices in terms of the provisions of the Land Grants Act, 1960 and the Jammu and Kashmir Public Premises (Eviction of Unauthorised occupants) Act, 1959. These notices, however, were never served on the writ petitions. Para 9 of the position was as follows :

> "That petitioner is not liable to any proceedings under any provision of the aforementioned laws. That matter being, however, before the Estate Officer will be dealt with in terms of law."

It was further alleged that on January 9, 1968 the Administrator of the Srinagar Municipality got a notice affixed near the petitioners' property. This notice purported to have been issued in terms of Section 129 of the Municipal Acts of Samvat 2008. The said notice was never served upon the petitioner; according to law only 24 hours' notice was given for dismantling the huge structures on the petitioner's land. This was followed by a very large number of police personnel and municipal employees coming to the property of the petitioner on January 11, 1968 who demolished the

properties of the petitioner. Even the movable properties like iron pipes, timber and fixtures were either damaged or removed. The Administrator also took illegal possession of the petitioner's property without any authority of law. It was prayed that a writ or direction be issued to the Administrator of the Municipality prohibiting him from interfering with the physical possession of the petitioner and commanding him to forbear from taking possession of the property without authority of law. The notice issued under the signature of the Administrator of the Municipality which was Annexure B to the petition was as follows :

> "Whereas your one storeyed garage without a roof situate at Bagh Magharmal is in a dilapidated condition and there is a danger of an accident under Section 129 of the Municipal Act of 2008, therefore, you are hereby informed through this notice of twenty-four hours under the said section to dismantle the said structure within the said period. In case of non-compliance the Municipality will get it demolished through its employees and will recover the charges thereof from you."

A letter as well as a telegram were sent by the Advocate of Haji Wali Mohammed on 10th and 12th January, 1968 respectively to the Administrator calling upon him, inter alia to stop all illegal action of demolition of the building as also the structures on the property of Haji Wali Mohammed. It was also pointed out that property worth several lakhs had been damaged or destroyed.

3. By means of a petition, dated February 18, 1968, Haji Wali Mohammed sought to introduce some additional grounds in the writ petition. These were :

> "(a) That the proceedings taken against the petitioner by respondent No. 2 under Section 4 and 5 of Public Premises Eviction Act are ultra vires the Constitution and violating fundamental rights and liable to be quashed.
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> (b) That Sections 4 and 5 of the Act violate Article 14 of the Constitution of India."
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> An additional prayer was introduced to the effect that the writ be issued against the Estate Officer and the State of Jammu and Kashmir quashing proceedings under the Public Premises Eviction Act pending before the Executive Officer.

4. The respondents filed preliminary objections to the writ petition saying that the Public Premises Eviction Act had been held to be intra vires and that the petition was misconceived and because other efficacious remedies by way of appeal and suit were available the writ petition should be dismissed. The Executive Officer filed a return, dated June 7, 1968 denying most of the averments contained in the writ petition and it was not denied that the notice had been issued under Section 5 of the Public Premises Eviction Act. It was however, claimed that the same had been done in accordance with law. It was denied that the petitioner Haji Wali Mohammed had any locus standi to file a petition because the transaction by means of which he claimed to have acquired the rights was null and void. The Administrator also filed a reply in which he maintained that the Estate Officer was within his rights in the proceedings taken under the Public Premises Eviction Act as also under the Land Grants Act, 1960. As regards the notice issued under Section 129 of the Municipal Act it was stated that its service had not been accepted by the petitioner and therefore the same had to be served under the provisions of the Municipal Act by fixing it on the premises. Paragraphs 12, 13 and 14 may be reproduced :

> "12. That the contents of the para are denied as incorrect. The dilapidated condition

of the structure was rendered more dangerous due to the heavy snowfall and as such the life of the inhabitants of the locality was in imminent danger and as such a notice under Section 129 Municipal Act, 2008 Srinagar was warranted by the conditions obtained at that time and the same was done bona fide.

13. That the respondent has no knowledge about it. That the contents of this para are partly admitted inasmuch as the structure was already removed as its dilapidated condition was a positive threat to the life and property of the locality and the passersby. And due to heavy snowfall the structure was further damaged and in order to ward off any threat to life and property to the inhabitants of the locality the petitioner and to the public in general. The notice was served and received by the respondent No. 1 after the structure was demolished.

14. The contents of the para are denied. The petitioner failed to comply with the notice under Section 129 of the Municipal Act 2008 and the respondent in exercise of the powers conferred on him under the Act, after getting fully convinced by the technical and expert opinion to avert danger to human life and property, demolished the structure."

It was firmly claimed that the dilapidated house had been demolished under Section 129 of the Municipal Act.

5. We have referred to the pleas in one of the writ petitions and the returns, etc. filed on behalf of the respondents before the High Court in some detail because one of the main grievances of Dr. Singhvi, who appeared for the appellants in this Court, relates to the High Court having gone into and decided certain points which did not arise in the pleadings. The High Court in its judgment referred to some admitted fats which had been concluded from the unrebutted assertions made by the petitioner and also from the Government file No. 561 produced by the Additional Advocate General. It referred firstly to the law under which the land, which according to the State, had been granted to Dewan Bishan Das on what is called Wasidari tenure was substantially a lease-hold tenure. The possession of the land could be resumed by the State on certain conditions one of which was that the compensation was to be assessed by the Government in accordance with Paragraph 21 of the rules for grant of land in Jammu and Kashmir State for building purposes and the compensation was to be paid to the lessee. On September 22, 1957 the Government decided to resume the lands in question as they were required for constructing the tonga and lorry stands. Certain orders were passed later by which the lands sought to be resumed were to be transferred in favour of the Road and Buildings Department for Government purposes. The orders were made that the possession was to be taken only on payment of compensation.

6. The compensation, according to the High Court, was ultimately fixed at Rs. 1,39,260/-. After certain notices had been served regarding fresh assessment of valuation by the Divisional Engineer the lessees filed appeals to the Chief Engineer. Those appeals were filed by the predecessors in-interest of the respondent, namely, Purnesh Chander and others. The appeals were dismissed. It was found by the High Court that while the correspondence between the Deputy Commissioner and certain Government departments concerned was still continuing for the payment of compensation composite notices under the Sections 4 and 5 of the Public Premises Eviction Act were served on the tenants on June 19, 1963. Thereafter the matter was completely dropped and no steps either to pay the compensation to the lessees or to acquire the land or two continue the valuation proceedings under the aforesaid Act were taken. It is mentioned in the Judgment of the High Court that no

reasonable explanation was given by the Additional Advocate General for this silence for a long time on the part of the Government or its officers. The inference which the High Court drew from this long unexplained silence was that the Government on second thoughts did not want to pursue the matter.

7. On January 5, 1968 an order of eviction was passed under the Premises Eviction Act. The High Court noticed the allegation of the parties with regard to the service of the notice as also the case of the petitioner that although the notice was dated January 8, 1968 it was anti-dated the date shown being January 5, 1968. That was the day on which a devastating fire broke out in the municipal building which was adjacent to the building in dispute and by which large portion of the municipal buildings was burnt down to ashes. The case of the writ petitioners before the High Court was that since lands had been resumed by the Government for purposes of building flats for the municipality, the municipality thought it a fit occasion to grab the lands. Since its own buildings were gutted the Administrator of the Municipality acting in collusion with the Estate Officer got a notice issued to the petitioners under Sections 4 and 5 of the Premises Eviction Act. The Administrator also issued a notice on January 9, 1968 under Section 129 of the Municipal Act, giving only 24 hours' notice for demolishing the building if there was non-compliance with the order. A number of contentions were advanced on behalf of the writ petitioners before the High Court with regard to the validity of the proceedings under Sections 4 and 5 of the Premises Eviction Act. The Additional Advocate General relied on the validating legislation but the High Court, after referring to certain decisions of this Court, took the view that Section 5 was ultra vires and could not be revived by the validating or amending legislation. It was observed that the only alternative for the State was to take fresh proceedings under the amended Act against the petitioners.

8. As regards the notice issued by the Administrator of the Municipality under Section 129 of the Municipal Act the High Court expressed the view that there had been interpolations in the notices issued on the various dates to the tenants nor had the notices properly been served as required by the provisions of the Municipal Act. Furthermore the haste in which the notices had been issued and the buildings demolished raise "a cloud of dust on the nature of the proceedings taken by the Administrator". It was emphasised that the notice issued by the Municipality did not "specify the nature of the portion of the building which is dangerous nor does it give sufficient time to the petitioners to repair the buildings or to make representation to the Administrator." The High Court considered that it was manifestly clear that the Deputy Commissioner and the Administrator of the Municipality had entered into an unholy alliance in order to forcibly and illegally dispossess the petitioners of their property at a time when the entire valley was in the grip of heavy snowfall and roads were completely blocked and the Government and High Court were functioning at Jammu. The following circumstances and reasons were set out for arriving at that conclusion :

> "(1) That the petitioners and before them their predecessors-in-interest were in lawful possession of the premises in dispute for a long time.
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> (2) That although the lands were ordered to be resumed, the petitioners could not be evicted until the compensation was paid to them and the Dy. Commissioner had himself clearly adverted to this legal position in his letters to various authorities and had requested the Government for making funds available for payment of compensation to the lessees.
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> (3) That at the time when notice under Section 4 and an order under Section 5 of the old Act were issued, the compensation though assessed under the new Rules and not

under the Rules which applied to the present case was neither offered nor paid to the petitioners.

(4) That after issuing notice under Section 4 some time in 1963, no further proceedings were taken for about five years and suddenly an order under Section 5 was issued on January 8, 1968.

(5) That the notice under Section 129 of the Municipal Act bore clear marks of interpolation and was not in accordance with Section 129 of the Municipal Act.

(6) That even the report of the Asstt. Municipal Engineer on the basis of which the demolition was ordered merely showed that the shed was in a dangerous condition and it did not at all refer to the buildings being in such a dangerous condition so as to be demolished.

(7) That a major portion of the premises in dispute were demolished on February 1, 1968 and soon thereafter these very premises were transferred to the Municipality by an executive order of the Dy. Commissioner without sanction of the Government."

The petitions were allowed and writes of certiorari quashing the order of eviction made against the petitioners and restraining the responds from evicting them except in due course of law were issued. Writs of Mandamus were also issued directing the responds to restore possession to the petitioners immediately of the properties from which they had been dispossessed.

9. Apart from the grievance mentioned before on which a great deal of stress has been laid by Dr. Singhvi it has been strenuously urged that the High Court has gone into matters which were not germane or relevant and had taken into consideration material which was not on the record by making use of a file which had been produced by the Additional Advocate General with regard to which no opportunity was given to either explain or rebut the inference which were drawn from the documents and correspondence contained in that file. It is pointed out that in view of the pleadings there was no justification for going into the various points on which the High Court rested its judgment.

10. We consider it wholly unnecessary to determine the correctness or otherwise of all the findings given by the High Court, particularly, the conclusion relating to collusion between the various Government officers for dispossessing the respondents before us from their properties and demolishing them and the mala fide nature of their action. It is common ground that the validity of the provisions of the Premises Eviction Act which were struck down by the High Court can no longer be impugned in view of the decision of this Court in Hari Singh and Others v. The Military Estate Officer and Another (C.A. No. 493 of 1967, decided on 3-5-1972 : (1972) 2 SCC 239.), and the connected appeal. The question relating to the resumption of all the properties in dispute by the Government on the ground that they were Wasidari lands was again a matter which had not been raised with any precision in the pleadings of the parties and it was wholly unnecessary for the High Court to have gone into that question for that reason pleadings and without relevant documents having been made a part of the record. In our judgment the writs and orders issued by the High Court must be sustained on the principal ground which was taken up in the writ petitions and which related to the action taken by the Administrator of the Municipality after issuing the notices under Section 129 of the Municipal Act. Section 129 is in the following terms :

> "Should any building, wall or structure or anything affixed thereto, or any bank, or tree be deemed by the Executive Officer to be in ruinous state or in any way dangerous or there be any fallen building or debris or other material which is unsightly or is likely to be in any way injurious to health, it may by notice require the owner thereof either to remove the same or to cause such repair to be made to the building, wall, structure or bank as the Executive Officer may consider necessary for the public safety and should it appear to be necessary in to prevent imminent danger, the Executive Officer shall forthwith take such steps at the expense of the owner to avert the danger as may be necessary."

Section 238 provides that when any notice under the said Act requires any act to be done for which no time is fixed by the Act a reasonable time for doing the same shall be specified in the notice. Section 239 gives the procedure relating to authentication of service of a valid notice. It is provided by sub-section (1) that every such notice may be served in the manner provided for the service of summons in the Civil Procedure Code so far as may be applicable. The High Court found that the notice under Section 129 had not been served in accordance with law and no proof was adduced by way of an affidavit of the process-server or any other officer of the Municipality that any attempt was made to serve the notices on the petitioners personally.

11. It cannot be and indeed it has not been disputed that notices were not served in accordance with the procedure prescribed for service of summons in the Civil Procedure Code. Even if we accept that Dr. Singhvi says that there was a refusal to accept the summons and that was the reason for effecting service by affixation the provisions of Order V, Rule 19 of the Code were not complied with by the filing of an affidavit of the serving officer, etc. All that has been pointed out by Dr. Singhvi is that the notices were produced along with the writ petitions which showed that they had been affixed to the premises and that in the writ petitions it was admitted that notices had been affixed on January 9, 1968 on the properties of the petitioners. We do not consider that any such averment dispensed with the requirement of the statutory provision contained in Section 239 of the Municipal Act in the matter of service of notice.

12. Furthermore, we entirely fail to see how the requirement of Section 238 of the Municipal Act was satisfied. Section 129 does not specify or fix any time for complying with the notice issued under that section. Under the provisions of the Section 238, therefore, a reasonable time for doing the acts required to be done by the notice was to be fixed. Taking the notice issued to Haji Wali Mohammed, only 24 hours' time was given for dismantling the structure which was stated to be in a dilapidated condition. It is extraordinary that no time was given for repairing the structure and the owner or occupier of the property was required to straightaway demolish the building or the structure. Section 129 does contemplate that the owner may be required either to remove the structure which is considered dangerous or to cause such repairs to be made to it as may be considered necessary for public safety. According to all the petitioners they were carrying on their business in the buildings and structures which were ordered to be demolished. In the month of January there is usually a snowfall in the Kashmir Valley as has been pointed out by the High Court. Considering that at no previous stage the officers of the municipality had formed an opinion that the structures in question were in such a dangerous condition or were so dilapidated that they should be demolished the notices which were given and the drastic step of demolition which was desired to be taken in 24 hours on the face of it appeared to be rather harsh and unusual. The time of 24 hours which was given for demolition was so short that in spite of Dr. Singhvi's arguments we have not been persuaded to hold that it was a reasonable time. The petitioners had to make some arrangements for removal of either their goods or business equipment or whatever articles that were

lying in these buildings or structures. We have no manner of doubt that the notices issued to the respondents before us did not comply with the provisions of Section 238 of the Municipal Act and the time which was granted was so short that it was not possible for the respondents either to comply with the notices or to take any effective steps in the matter of filing any appeal or revision to the appropriate authorities.

13. Owing to the non-compliance with the provisions of Sections 239 and 238 of the Municipal Act the action taken by the Municipality in the matter of demolition must be held to be entirely illegal and contrary to law. The conclusions and observations of the High Court on all the points which have not been decided by us become unnecessary in the view we have taken with regard to the illegality and invalidity of the demolition carried out pursuant to the notices issued under Section 129 of the Municipal Act. The observations made by the High Court or the conclusions reached by it on all the points would naturally not be binding in any proceedings which may be initiated or taken or continued either by the present respondents or by the appellants under the law. However, we uphold the orders made by the High Court and dismiss the appeals with costs. One hearing fee.

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