

Ishar Singh

Vs

District & Sessions Judge

Special Leave Petition (C) No. 2906 of 1998

(D.P. Wadhwa, U.C. Banerjee JJ)

11.02.1999

JUDGMENT

D.P. Wadhwa J

1. This petition is directed against the order dated December 22, 1997 of the Punjab & Haryana High Court dismissing the writ petition filed by the petitioner seeking quashing of the orders of the authorities for taking possession of public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'PP Act'). The lease of the public premises had been resumed under the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the Chandigarh Lease-hold of Sites and Buildings Rules, 1973 (for short, the 'Act' and the 'Rules'). Public premises comprise a booth/shop for the trade of furniture bearing No. 225, Sector 34-D, Chandigarh.

2. By letter dated September 3, 1979, booth was allotted on lease to Niranjana Kaur and her four sons Ishar Singh, Pritpal Singh, Bablu and Bintu (@ Inderjit Singh & Sardool Singh) by the Estate Officer, Chandigarh Administration. Allotment was governed by the Act and the Rules. Various terms and conditions were set out in the allotment letter. Allottees violated the terms of payment of instalments and also committed breach of condition by assigning the booth to M/s. Kang Furniture & Co. (also described as Kang Enterprises). Lease of the booth was cancelled and proceedings were initiated to resume the booth. By order dated October 13, 1987, the Estate Officer cancelled the lease and forfeited the security amount of Rs. 2,249/-. It was directed that the amount of arrears be recovered as arrears of land revenue and possession of the booth be taken under the Rules.

3. Describing as "Niranjana Kaur and others" an appeal was filed under the Rules (Rule 22) before the Chief Administrator, Union Territory of Chandigarh against the order of the Estate Officer cancelling the lease of the booth. This was dismissed by order dated February 28, 1990. It was held that it was a case of illegal transfer of the booth by the appellants which was allotted to them at concessional price. The booth had been sublet to M/s. Kang Enterprises against the terms of the lease. Contention of the allottees that a partnership had been entered into between M/s. Kang Enterprises was repelled. The Chief Administrator observed that "a perusal of the copy of so-called business agreement produced before me reveals that there does not exist a real partnership between the appellants and M/s. Kang Enterprises, who are in the physical possession of the said booth because of the essential ingredients of a partnership firm are not contained in that agreement." It appears matter was thereafter taken to the Punjab and Haryana High Court but without success.

4. Possession of the allottees or anyone claiming through them of the booth thus became unauthorised. Thereafter, proceedings were held under the PP Act for taking physical possession of

the booth. By order dated December 15, 1990 made under Section 5 of the PP Act, the Estate Officer ordered that "Smt. Niranjana Kaur and others and all other persons who may be in occupation of the said premises or in part thereof vacate the said premises within 15 days of the date of publication of this order". It was directed that in the event of refusal or failure to comply with the order within the period specified, Smt. Niranjana Kaur and others and all other persons concerned were liable to be evicted from the said premises, if need be, by the use of such force as may be necessary. Against the order M/s. Kang Enterprises and Ishar Singh, one of the original allottees, filed appeal before the District Judge, Chandigarh under Section 9 of the PP Act. This appeal was allowed by the order dated February 28, 1995 holding that proper opportunity had not been given to the appellants before the order under Section 5 of the PP Act was made by the Estate Officer.

5. Again, proceedings were initiated for taking possession of the booth by notice dated June 15, 1995 under Section 4 of the PP Act issued to Smt. Niranjana Kaur and others and M/s. Kang Furniture & Co. After holding the necessary proceedings by order dated May 16, 1996, the Estate Officer passed another order under Section 5 of the PP Act. This order was addressed to Pritpal Singh, Ishar Singh, Inderjit Singh, Sardool Singh and M/s. Kang Furniture & Co. It may be noticed that first four persons are the original allottees with their mother Niranjana Kaur, who had since expired. Time was given to the notices to vacate the premises within 15 days of the date of publication of this order. It was similarly directed that in the event of refusal or failure to comply with the order within the period specified, Shri Pritpal Singh & others and all other persons concerned were liable to be evicted from the said premises even by force, if necessary. Against this order of the Estate Officer, an appeal was filed by Ishar Singh, one of the original allottees, to be District Judge under Section 9 of the PP Act. It was noticed by the District Judge that during the proceedings before the Estate Officer, it was brought to his knowledge that Niranjana Kaur had since died leaving behind Pritpal Singh, Sardool Singh, Ishar Singh and Inderjit Singh as her heirs. It was found from the record that three of the brothers had shifted to Shimla and their addresses were not known. Service of the notice under Section 4 had been effected on Pritpal Singh as heir of Niranjana Kaur and when he even did not appear, order dated May 16, 1996 was passed by the Estate Officer. The District Judge also noticed that M/s. Kang Furniture & Co. had also filed an appeal against the order dated May 16, 1996 of the Estate Officer passed under Section 5 of the PP Act. That appeal was dismissed by order dated December 20, 1996 taking into consideration the fact that the Resumption order had been upheld even up to the High Court. In the instant appeal by Ishar Singh, the District Judge wondered how Ishar Singh came to know the order dated May 16, 1996 on February 2, 1997. He did not find any ground for condoning the delay in filing appeal by Ishar Singh and dismissed the same as barred by time by order dated November 13, 1997. The District Judge also observed that service of notices under the PP Act had been validly effected.

6. Ishar Singh then filed a petition in the High Court invoking its jurisdiction under Articles 226 and 227 of the Constitution. High Court by the impugned judgment dismissed the writ petition at the admission stage holding that resumption proceedings had since been finalised and Ishar Singh and other co-owners had hardly left any interest in the public premises and that the necessary parties and that all concerned had been duly served and heard in the matter. Both the District Court and the High Court held that notices had been properly served.

7. Ishar Singh now seeks leave to appeal to this Court. On notice being issued, respondent filed its affidavit in reply. Before us also the same very argument was repeated that notices were not properly served on the original allottees. We do not find any substance in such a submission. NO other original allottee has been made party in this petition and it appears to us that Bhag Singh as attorney of Ishar Singh who is stated to be the proprietor of M/s. Kang Furniture & Co. is fighting

this litigation. In his affidavit, the Estate Officer has pointed out that on many occasions during the course of proceedings under the PP Act, Ishar Singh had received notices and on other occasions another son of Niranjana Kaur had received notices on behalf of Niranjana Kaur. The Estate Officer had further stated that he had issued an authority letter on December 21, 1997 for eviction of all the unauthorised occupants of the booth and that in execution of the eviction warrants premises were sealed on January 24, 1998 by Mr. Prem Chand, Sub-Inspector (Enforcement) from the office of Estate Officer, Chandigarh in the presence of Bhag Singh, Proprietor of M/s. Kang Furniture & Co. and other witnesses. Bhag Singh had been appearing before the legal forums as attorney of Ishar Singh. It is alleged that Bhag Singh thereafter illegally trespassed into the premises duly sealed by the Sub-Inspector (Enforcement) by opening the back side shutter of the booth and kept "Shri Akhand Path" there. This was found by the Sub-Inspector (Enforcement) on January 25, 1998 when he again visited the premises. The Estate Officer has stated that this "Shri Akhand Path" was kept by Bhag Singh in order to defeat the legal action to take possession of the booth being the public premises. A report was also lodged with the Senior Superintendent of Police, Chandigarh for registration of criminal case against Bhag Singh and others for having trespassed into the booth. However, on receipt of the order dated February 17, 1998 of this Court regarding maintenance of status quo, a request was made to the Senior Superintendent of Police not to take action regarding registration of the case. In the affidavit filed by way of rejoinder and sworn by Bhag Singh, it is stated that when the booth was sealed, nobody on behalf of the petitioner was present and that only the main entrance of the booth was sealed and that remains sealed and intact. He said that the small back exit door was inadvertently never sealed. It is not possible to believe the version of Bhag Singh. He has not explained as to what was the occasion to have "Shri Akhand Path" and to enter the booth from the back exit door even if it was not sealed inadvertently and when according to his own showing main entrance door of the booth was lying sealed. Shri Akhand Path is continuous and uninterrupted recitation of Shri Guru Granth Sahib, a holy book of Sikhs and Shri Akhand Path is performed for forty eight hours ending with 'Bhog' ceremony. This Shri Akhand Path was kept by Bhag Singh obviously to thwart the legal process which had been set in motion to take possession of the booth. With such a conduct of the petitioner who took cover of a religious practice to defeat the process of law, we do not think he is even entitled to any equitable considerations. Moreover, he has not shown his right, if any, to remain in occupation of the booth. There is no case to grant him leave to appeal under Article 136 of the Constitution. There is no merit in this petition. It is dismissed with costs.