

SUPREME COURT OF INDIA

Om Parkash

Vs.

Amar Singh

C.A.No.8175 of 2019

(Navin Sinha and B.R.Gavai,JJ.,)

21.10.2019

JUDGMENT

Navin Sinha,J.,

SLP(C)No.3343 of 2014

1. Leave granted.
2. The appellant-Om Parkash is the decree holder aggrieved by the order of the High court holding that the delivery of the suit to him in the execution proceedings by use of police force, was vitiated in law as no orders had been obtained from the Court for such police assistance. Judgment debtor Amar Singh has been directed to be put back in possession through the bailiff. The execution proceedings closed on 11.10.2013 after delivery of possession, has been revived. The entitlement to possession has been left to be decided afresh in the revived execution proceedings. The parties shall hereinafter be referred to as decree holder and judgment debtor respectively for convenience.
3. The controversy for our determination in the present appeal as addressed by learned counsel for the parties is extremely limited. Whether delivery of possession to the decree holder with police assistance was vitiated in absence of any orders by the Court for providing such police assistance?
4. Learned counsel for the decree holder Shri Gagan Gupta submitted that the High Court has erred in holding that the decree holder had resorted to unlawful and illegal methods for execution of the decree for possession. The decree holder had never made any request for deployment of police force for execution. The Tehsildar himself being apprehensive of law and order problems during delivery of possession to the decree holder, had suo moto sought police assistance from the District Magistrate and in pursuance of which the Commissioner of Police had directed the deployment. The Deputy Commissioner had instructed the Tehsildar to send compliance report to the court directly. In consequence, possession was delivered on 11.10.2013. The executing court accepted the report regarding delivery of possession and closed the execution proceedings. The decree holder had

purchased the suit lands in a court auction sale dated 27.03.1990. Sale certificate was issued in his favour on 27.04.1998 and registration completed on 30.04.1998. After a protracted battle at the instance of the judgment debtor Amar Singh, delivery of possession had been effected. The decree holder has remained in possession by virtue of the order of status quo passed by this court on 05.02.2014.

5. Shri Rakesh Kumar Khanna, learned senior counsel appearing for judgment debtor, submitted that the anxiety expressed by the High Court in the impugned order is fully justified and calls for no interference. In an execution proceeding, resort to use of police force for effecting delivery of possession without obtaining appropriate orders from the executing court in that regard is a practice fraught with danger. A decree holder cannot be permitted to resort to procedures contrary to the law to take forcible possession by sheer use of police force merely because he has a Decree in his favour. Such an act amounts to subverting the law and misusing the process of law and courts. A litigant cannot be permitted to abuse the process of law and must pay the price by redelivery of possession. Repeated judicial pronouncements have held that in this country, possession can be taken even by a lawful owner only in accordance with law and if dispossession is contrary to law, the person evicted has to be put back in possession till he is duly evicted in accordance with law.

6. We have been carefully taken through the materials on record and have also heard the counsel for the parties at length. Though the nature of the controversy before us is extremely limited, a brief recapitulation of facts will be necessary to put matters in its proper perspective for better appreciation.

7. The judgment debtor claimed to be a purchaser of the suit property by a sale deed dated 13.02.1973. His writ petition challenging the acquisition proceedings under Section 4 of the Land Acquisition Act, 1894 dated 10.12.1973, after publication of the award, was dismissed on 10.04.1989. The acquired lands became the subject of recovery proceedings with regard to a claim for compensation by another whose lands were also acquired but compensation was not paid. The decree holder was the successful bidder in a court auction held on 27.03.1990. The auction sale was confirmed on 17.03.1997, sale certificate was issued in his favour and the sale deed registered on 30.04.1998. The decree holder then applied for delivery of possession in an execution proceeding dated 19.09.1998. At this stage, judgment debtor filed Civil Suit No.236 of 1998 seeking permanent injunction against dispossession from the suit lands. Objections were also filed by judgment debtor under Order 21, Rules 97 & 99 of the Code of Civil Procedure (hereinafter called “the CPC”) in the execution proceedings instituted by the decree holder. On 20.10.1999, the execution proceedings were dismissed as being barred by time with liberty to file a substantive civil suit for possession. The decree holder then filed a fresh suit for possession on 11.01.2000. The judgment debtor had filed a Miscellaneous Application in the execution proceedings to restrain his dispossession from the suit lands. The decree holder had preferred Civil Revision No. 4348 of 2006 against the same before the High Court which culminated in a Civil Appeal No. 1637 of 2011 before this Court by judgment debtor. On

14.02.2011, the Civil Appeal was disposed of granting status quo till disposal of the proceedings pending before the High Court. A contempt petition has also been filed arising from the same. In view of the fact that the proceedings before the High Court had itself been disposed of, in our opinion nothing survives in the contempt petition.

8. The Civil Suit filed by the decree holder for possession and the suit filed by the judgment debtor for injunction, were heard together. The suit by the decree holder was decreed and the suit by the judgment debtor was dismissed. The first appeal preferred by the judgment debtor was dismissed on 10.04.1989. Thereafter, he preferred a regular second appeal only in the year 2019 and which is stated to be pending before the High court.

9. The decree holder then filed fresh execution proceedings on 26.05.2012. The objections filed by judgment debtor to the execution proceedings were dismissed on 10.04.2013 and the appeal preferred him has also been rejected on 12.04.2017.

10. At this stage, it may only be noticed that after dismissal of his writ petition on 10.04.1989 challenging the land acquisition proceedings, judgment debtor had filed an application under Order 7 Rule 11 CPC for rejection of the suit for possession filed by the decree holder. The application was rejected. Civil Revision No. 4522 of 2009 preferred by judgment debtor was also dismissed by the High Court holding that the lands had already vested in the State pursuant to acquisition and that judgment debtor had no subsisting right, title or interest in the suit lands. The order of status quo in Civil Appeal No.1637 of 2011 arose from the execution proceedings levied on 27.03.1990 by another claimant who had not been paid compensation for acquired lands and for which reason the suit lands were attached as ownership stood vested in the State by virtue of acquisition. Once the suit property was auction sold in the said execution proceedings and it came to an end, the order of status quo loses much of its significance. In any event the appellant instituted fresh execution proceedings on 26.05.2012. It will, thus, be seen that notwithstanding the decree in his favour, the decree holder has since long been prevented and stalled by the judgment debtor from obtaining possession in execution proceedings.

11. Warrant for possession was issued on 13.03.2013, which could not be executed. Fresh warrants for possession were issued on 10.05.2013 which also could not be executed. Consequently, fresh warrants were again issued for 19.07.2013 which were followed by fresh warrants returnable on 27.08.2013. In the meantime, the Tehsildar on 09.05.2013 wrote to the District Magistrate requesting for police help as he apprehended trouble at the time of delivery of possession. There is no material to conclude that it was done at the behest of the decree holder. The delivery warrants issued on 27.08.2013 was made returnable on 05.10.2013. The authorities were nonetheless proceeding on basis of the earlier delivery warrants. The request for police help by the Tehsildar was then routed through the Sub-Divisional Magistrate, the District Magistrate, the Deputy Commissioner and the Commissioner of Police. Possession was delivered in presence of the police on 11.10.2013. The delivery of possession proceedings records that there had been some obstruction during the process which was also video graphed but ultimately in view of the

police presence matters were pacified. The warrants recording delivery of possession were returned back to the court leading to the closing of execution proceedings on 11.10.2013.

12. The judgment debtor was well aware that the lands had already vested in the State pursuant to the land acquisition proceedings. His challenge to the same had been unsuccessful. His suit had as also the First Appeal had been dismissed. His objections in the execution proceedings were also rejected. He therefore had no authority or right to remain in possession of suit lands and was required to vacate the premises. In the circumstances, it cannot be said that the apprehensions expressed by the authorities at the time of delivery of possession was malafide or wholly unwarranted. The present is not a case where the judgment debtor has been forcibly ousted from the suit lands by use of brute police power without any orders in court proceedings.

13. Order 21 Rule 25 of the CPC provides for endorsement by the officer entrusted with the execution that if he is unable to execute the process, the court shall examine the reasons for the alleged inability and pass appropriate orders. No report was submitted by the bailiff asking for police assistance in execution for reasons specified. Likewise, there is no report under Order 21 Rule 35(3) CPC requesting for police assistance for effectuating delivery of possession. There is no material if the application before the Tehsildar was made by the bailiff or the decree holder. Be that as it may, we are constrained to hold that the procedure adopted by the police with regard to the delivery of possession by resorting to a manner outside the procedure of the court, using the court orders as an umbrella was wholly unwarranted. The executive authorities were completely unjustified in their over enthusiasm without asking for proper court orders regarding police assistance despite the fact that they were fully aware that possession was to be delivered in pursuance of a court order. At this belated point of time, we are not inclined or persuaded to order further enquiry into that aspect of the matter. The anxiety expressed by the High Court cannot be said to be unfounded or without substance. We fully endorse the anguish of the High Court, but in the peculiar facts and circumstances of the present case, the apparent absence of the semblance of any right, title or interest in the judgment debtor to be on the lands in question, in exercise of our discretionary jurisdiction decline to interfere with the order dated 11.10.2013 recording delivery of possession. This order is being passed in the peculiar facts of the present case. We may not be understood to have pardoned or overlooked the executive authorities for the manner in which they have acted and any misadventure in future without appropriate orders of a court will be obviously at their own risks, costs and consequences.

14. We, therefore, set aside that part of the order of the High Court by which possession has been directed to be redelivered to judgment debtor, and the execution proceedings have been revived for fresh delivery of possession to the decree holder. With that modification of the impugned order, the appeals and contempt petition stand disposed of.