RAJASTHAN HIGH COURT

Kanti Chand Sharma

Vs.

Municipal Corporation

Civil Revn.Petn. No. 417 of 2000
(A.C. Goyal, J.)

26.05.2004

ORDER

A.C. Goyal, J.

1. The petitioner-plaintiff has preferred this revision against the order dated 21-4-2000 whereby learned Additional Civil Judge (Junior Division) No. 4, *Jaipur City, Jaipur* dismissed the execution application.

2. The relevant facts in brief are that the petitioner instituted a civil suit in January, 1994 against the defendant-non-petitioner No. 1 Municipal Corporation, *Jaipur* (in short the M.C.) with the averments that disputed plot of land is situated near *Ambabari, Jaipur.* The petitioner is in possession of that land for the last 30 years and he has acquired title on account of adverse possession. On 29-1-1994 the employees of M.C. came over the land and tried to demolish the constructions made by the petitioner. Hence, the petitioner prayed for a decree of permanent injunction against the M.C. This case was registered as Civil Suit No. 193/1994.

3. This case was placed in LokAdalat on 25-10-1996. The parties arrived at compromise in LokAdalat and the trial Court passed a compromise decree in the following terms :-

(Vernacular matter omitted.)

4. Thus, the M.C. was restrained from demolishing the constructions made over the land under dispute and from making the interference in the peaceful enjoyment and use of it without adopting due process of law and without affording a sufficient opportunity of hearing to the petitioner.

5. On 20-1-1997 the petitioner filed an execution application under Order 21, Rule 11, Civil Procedure Code for execution of the decree dated 25-10-1996 with the averments that the employees of M.C. came over the disputed land and demolished the constructions without giving any notice and an opportunity of hearing. They caused damages to the tune of Rs. 6 lacs. It was also averred that entire activities of demolition were carried out at the instance of non-petitioners No. 2 the Mayor and No. 3 the Commissioner of the M.C. It was prayed that the non-petitioner Nos. 2 and 3 should be sent to civil imprisonment, the non- petitioners should be directed to pay a sum of Rs. 6 lacs with interest @ 2% per month as damages, to pay a sum of Rs. 10,000/- as monthly damages or they should be directed to reconstruct the building and to hand over the same to the petitioner. Execution Case No. 1/1997 was registered.

6. Vide reply of this application, the M.C. denied all the allegations and pleaded that the petitioner was trespasser over the land which belongs to the M.C. and the petitioner himself removed his possession and the goods from the disputed land on 2-11-1996. It was also stated in reply that one notice dated 21-8-1996 and the other dated 30-10-1996 under Section 203 of the Rajasthan Municipalities Act, 1959 (in short the Act) were served upon the petitioner but the petitioner failed to reply and appear and thus, the encroachment was removed having followed the due process of law.

7. After recording the evidence of the parties, the Executing Court i.e. Additional Civil Judge No. 4, *Jaipur City, Jaipur* vide impugned order dated 21-4-2000 held that the possession of the petitioner over the disputed land was removed by following due process of law. It was also held that the petitioner himself removed his possession and the goods vide Ex. 4, dated 2-11-1996 and thus dismissed the execution petition.

8. I have heard learned counsel for the parties. On the basis of the submissions, following questions arise for consideration:-

(i) Scope of revision under Section 115, Civil Procedure Code.

(ii) What is due process of law ?

(iii) Whether due process of law was adopted in the instant case ?

9. First Point :- A perusal of the provisions of Section 115, Civil Procedure Code makes it clear that the High Court may interfere with the order in revision where (a) the trial Court has exercised a jurisdiction not vested in it by law, or (b) has failed to exercise a jurisdiction so vested, or (c) has acted in exercise of its jurisdiction illegally

or with material irregularity.

10. According to learned counsel for the petitioner the Executing Court has acted illegally or at least with material irregularity in holding the service of notice dated 30-10-1996 upon the petitioner. He referred the report of the process server as well as the entries made in the dispatch register. According to learned counsel for the M.C. the Executing Court considered the entire evidence and reappreciation of evidence in revision is not permissible. It was also submitted that even an erroneous decision on a question of fact and law cannot be set aside in revision. He placed reliance upon *Shri M.L. Sethi v. Shri R. P. Kapur,*[1]herein it was held with regard to the jurisdiction of the High Court under Section 115, Civil Procedure Code that it is a limited one and the section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. An erroneous decision on a question of law reached by the subordinate Court which has no relation to question of jurisdiction of that Court, cannot be corrected by the High Court under Section 115, Civil Procedure Code. Similar view was taken in *M/s. D.L.F. Housing and Construction Co. (P) Ltd. v. Sarup Singh,* [2] and *Sher Singh (dead) through L.Rs. v. Joint Director of Consolidation,* [3]

11. I have gone through the impugned order. The Executing Court considered the oral testimony as well as the notice Ex. JD1 and entry Ex. JD2 in the dispatch register and came to the conclusion that this notice was served upon the petitioner on 30-10-1996. According to learned counsel for the petitioner, the entries after S. No. 123 by manipulating the words 'A' and 'B' with the entry No. 123 were added in the dispatch register and it shows that no notice dated 30-10-1996 was ever issued and if issued no service of this notice was ever made upon the petitioner. I have considered the said submissions in the light of the oral as well as documentary evidence and am of the view that the Executing Court took into consideration the objections made in this revision. It does not appear a case of misreading, non-reading or wrong-reading of evidence and thus, the findings with regard to issuance and service of notice upon the petitioner are in no way illegal or suffering from material irregularities. Keeping in view the jurisdiction of the High Court under Section 115, Civil Procedure Code which is limited one, such finding of fact cannot be set aside in revision.

12. Second Point :- On behalf of the petitioner it was submitted that the possession of the petitioner over the disputed land was more than 30 years old, hence the petitioner acquired title by adverse possession and such possession was not to be removed till the M.C. gets a declaration of its title through a civil suit decided by the competent civil Court and removal of encroachment by mere giving notice under Section 203 of

the Act does not amount to removal of possession by due process of law; that the provisions of Section 203 of the Act were amended in the year 1991 and the same were not applicable in the instant case as the possession of the petitioner was more than 30 years old. He placed reliance upon *PuranaNand Jain HitkariSamiti, Jaipur v. Jaipur Development Authority,* [4]This judgment deals with various modes of execution of a decree. Reliance was placed upon one judgment of this Court dated 9-9-1986 delivered in S.B. Civil Revision No. 446/1986 wherein while dealing with the provisions of Sections 72 and 100 of the J.D.A. Act it was held that according to the non-petitioner himself, Section 100 of the JDA Act is applicable for purposes of taking possession over constructed building, hence notice under Section 72 of the JDA Act for removal of encroachment over the building was not sufficient. In *State of Rajasthan v. Smt. Padmavati Devi (dead) by L.Rs.,* [5]it was held that claim raising questions involving applicability and interpretation of various laws, documents and recording of evidence cannot be adjudicated in summary proceedings under Section 91 of the Rajasthan Land Revenue Act and such questions can be more properly considered in regular proceedings. In *Express Newspapers Pvt. Ltd. v. Union of India,*[6] it was held in a case of termination of the lease that recourse to summary eviction of the lessee under Public Premises (Eviction of Unauthorized Occupants) Act cannot be taken. While taking similar view this Court in *Raja Fateh Singh v. State of Rajasthan,* [7]held that such questions could be decided only by civil Courts. It has to be borne in mind that in the instant case, the petitioners himself instituted the civil suit which has already been decided in terms of the compromise. In *Chauthmal v. State of Rajasthan,* [8]it was held by this Court that 'Nazul' land belonging to Government does not vest in Municipality. In *Mehar Singh v. Municipal Committee,* [9]it was held on the point of limitation that where a suit is brought by a Municipal Committee for possession of land belonging to Government but vested in the Committee for Management, the Committee cannot take advantage of 60 years' limitation. On the point of limitation another judgment relied upon was delivered in *Bhavnagar Municipality v. Union of India,* [10]wherein it was held that the title cannot be proved on the basis of mere evidence of claim for the land made by the plaintiff earlier. Possession and title having not been proved by the plaintiff, it was not necessary for the defendant to plead and prove adverse possession. On the same point reliance was placed upon *Pyarelal v. Municipal Committee,* [11]

13. Learned counsel for the M.C. submitted that due process of law means the procedure prescribed by law and Section 203 of the Act provides the procedure for removal of encroachment and that procedure provided under Section 203 of the Act

was adopted by the M.C. It was also contended that the petitioner himself removed his encroachment vide Ex. D4, dated 2-11-1996 and thus no other procedure was required by the M.C. for removal of the encroachment. Reliance is placed upon *Anamallai Club v. Government of T. N.,* [12]

14. I have considered the rival submissions. In the instant case, the procedure for removal of the encroachment over the land not being the private property, whether such land or space belongs to or vests in the Board or not is provided under Section 203 of the Act. Filing of the suit by the M.C. for declaration of its title over the disputed land was in no way required in the instant case. The petitioner himself instituted the suit in the year 1994 claiming the title by adverse possession over the disputed land with only prayer of permanent injunction and that suit was decided on account of compromise arrived at between the petitioner and the M.C. Hence, no separate suit for declaration of title or possession on behalf of M.C. was or is required to be filed. Section 203 of the Act provides detailed procedure for removal of the encroachment as well as for confiscating the property. Sub- section (10) of Section 203 of the Act provides that a notice in writing has to be given and after affording an opportunity of making a representation in writing within reasonable time, the encroachment may be removed or the goods may be confiscated. Sub-section (12) of Section 203 of the Act further provides remedy by way of filing the appeal before the concerned District Judge. The amendments in the provisions of Section 203 of the Act relate only to the enhancement of the punishment which came into effect from 27-8-1991. Thus, the procedure is provided under Section 203 of the Act and no civil suit on behalf of the M.C. was required to be filed. The submission made by learned counsel for the M.C. finds support from the judgment of the Hon'ble Supreme Court delivered in Anamallai's case (supra). According to para 6 of this judgment, the Hon'ble Supreme Court while dealing with the procedure prescribed under the Act for taking possession of the land by the Government held in the case of *East India Hotels Ltd. v. Syndicate Bank,* [13]as under :-

> "They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by rule of law even an unauthorized occupant can be ejected only in the manner provided by law. The remedy under Section 6 is summary and its object is to prevent self-help and to discourage people to adopt any means, fair or foul to dispossess a person unless dispossession was in due course of law or with consent."

15. Thus, the possession by the M.C. was obtained with consent of the petitioner

himself according to the M.C.

16. Learned counsel for the petitioner contended that this consent in writing Ex. D4 was obtained under threat exercised by the officials of the M.C. The Executing Court considered this objection in detail and held that the petitioner failed to prove that Ex. D4 was executed by the petitioner under any threat as this document is dated 2-11-1996 and the execution petition was filed on 20-1-1997 and during this period the petitioner nowhere raised this objection that his signatures on this document were obtained under any threat. It was also observed that the petitioner filed a writ petition in the High Court against his dispossession and even in that writ petition no such objection was taken by the petitioner. Keeping in view the above facts and circumstances, the submission of learned counsel for the petitioner that the signatures of the petitioner on this document were obtained by threat has got no merit. A perusal of this document Ex. D4, dated 2-11-1996 makes it clear that the petitioner himself voluntarily removed his encroachment and goods from the disputed land. Thus, the second point is decided that the due procedure for removal of encroachment in the instant case was provided under Section 203 of the Act.

17. Third Point :- According to learned counsel for the petitioner notice was not served upon the petitioner. This objection has already been dealt with while deciding the first point. It was next submitted that no reasonable time was given to the petitioner to submit reply of the notice and to appear before the concerned authority. He placed reliance upon *State of J. and K. v. Haji Wali Mohammed,* [14]wherein twenty four hours' time to dismantle the building was held to be unreasonable by the Honble Supreme Court. In *State of Haryana v. Ram Kishan,* [15] it was held that in case of termination of mining lease the Executive Authorities should take into consideration the principles of natural justice by giving a right of hearing to the affected persons before taking any decision. Learned counsel for the M.C. referred one earlier notice dated 21-8-1996 which was served upon the petitioner and the petitioner submitted a detailed reply of this notice. It was next submitted that the notice dated 30-10-1996 was served upon the petitioner on the same day and vide this notice he was required to file reply and to appear before the M.C. on 1-11-1996 and thus two days' time was given to the petitioner which was quite reasonable in the instant case and there is no violation of any principle of natural justice. He placed reliance upon *KondaLakshmanaBapuji v. Govt. of A. P.,* [16] wherein it was held that finding of the Court that the defendant was land grabber and his possession was without lawful entitlement, such finding is not liable to be set aside. On the question of natural justice the Hon'ble Supreme Court in

Ahmedabad Municipal Corporation v. Nawab Khan Gulabkhan, [17] held that no flexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment by Municipality needs urgent action.

18. I have considered the rival submissions. At the cost of repetition, it is observed that service of notice dated 30-10-1996 has rightly been found proved by the Executing Court. Vide this notice, the petitioner was given two days' time to submit his reply, if any, and to appear before the concerned authority, but he failed to do so and thereafter the encroachment was removed on 2-11-1996 and that too it was the petitioner himself who removed his encroachment and goods from the disputed land and he acknowledged these facts vide Ex. D4 which admittedly was signed by him. Thus, the encroachment of the petitioner was removed by adopting the procedure established by the law.

19. In view of the entire discussions made hereinabove, this revision petition being devoid of merit is hereby dismissed with costs.

Petition dismissed.

Cases Referred.

1. AIR 1972 SC 2379
2. AIR 1971 SC 2324
3. AIR 1978 SC 1341
4. 1990 (2) RLW 425
5. 1995 (1) RLW (SC) 117
6. (1986) 1 SCC 133: (AIR 1986 SC 872
7. 1986 RLR 966
8. 1971 WLN 213
9. AIR 1948 Lahore 153
10. 1989 Supp (2) SCC 758: (AIR 1990 SC 717)
11. AIR 1955 Punjab 1057
12. (1997) 3 SCC 169: (AIR 1997 SC 3650)
13. 1992 Supp (2) SCC 29
14. (1972) 2 SCC 402: (AIR 1972 SC 2538)
15. (1988) 3 SCC 416: (AIR 1988 SC 1301)
16. AIR 2002 SC 1012

17. AIR 1997 SC 152