

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7405 OF 2008
(Arising out of SLP (C) No.15579 of 2006)

Shri Najmuddin & Ors.

... Appellants

Versus

Union of India & Ors.

... Respondents

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.
2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 25.8.2006 passed by a Division Bench of the High Court of Judicature at Delhi in CM No.7244 of 2005 and Writ Petition No.2068 of 1985.
3. Appellants who are three in number filed the aforementioned writ petition in the year 1985 questioning the validity and/or legality of a notification issued by

the Union of India seeking to acquire lands bearing Khasra No.186, admeasuring 3 Bigha 6 Biswas pertaining to Khewat No.50/50, Khatoni No.100 and Khasra No.334/206 admeasuring 3 bigha 6 biswas as per Khewat No.92/96, Khatoni No.174, both situated at Village Begumpur, Tehsil Mehrauli, Delhi purported to be in terms of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (for short, 'the Act'). Indisputably, the said Act was enacted in the wake of partition of the country as a result whereof there was a large scale migration to and from India.

Md. Sheruddin whose name was said to have been recorded in Jamabandi in the year 1948-1949 shifted to Meerut in the State of Uttar Pradesh. He was declared an evacuee in terms of the Administration of Evacuee Property Act in the year 1953. He prayed for restoration of the said land and allegedly an order in his favour was passed on 28.7.1956 by the Additional Custodian of Evacuee Property (Rural). Yet again after the death of Md. Sheruddin which took place on 9.4.1958, the property was declared to be an evacuee property and yet again an order restoring the land in question in favour of the appellants herein was passed on 10.10.1958 by the appropriate authority accepting their claim of entitlement to the extent of 1/3rd share of said Md. Sheruddin.

4. Appellants contend that although a purported notification in terms of the provisions of the said Act was issued in 1948 but they were not aware

thereof. They came to know of the said notification while some officials of the Delhi Development Authority (DDA) came on the said land representing that the same had been transferred in its favour and, thus, were required to take possession thereof.

An application for injunction was also filed in the said suit. Thereafter a suit was filed. An interim order was passed restraining the defendant from forcibly dispossessing them. The said suit, however, was withdrawn and a writ petition was filed praying, inter alia for the following reliefs :

- “(a) quashing the notification No.F1/(72)/48-LSG(III) (Annexure P-5) and the offer No.1000-A alleged to be made on 7.5.1962 (Annexure P-6) in respect of the said land of the petitioner comprising of Khasra Nos.186/2 (2 Bighas 18 Biswas) and Khasra No.334/206 (19 Biswas) total measuring 3 bighas 17 biswas situated in the revenue estate of village Begum Pur, Tehsil Mehrauli, Union Territory of Delhi.
- (b) quashing the entire acquisition proceedings or any other subsequent actions of the respondents by calling the records of the petitioner’s case.
- (c) to issue a writ directions order declaring that the notification and the offer (Annexures P-5 and P-6) qua the petitioners’ land are illegal null and void and have no effect whatsoever.
- (d) declaring that the action of the respondents are invadation of fundamental, constitutional and legal rights guaranteed to the petitioners under Articles 14, 19, 21, 31 and 300-A of the Constitution of India.

- (e) restraining the respondents from interfering with the petitioners peaceful occupation, possession, user, enjoyment, right, title and interest in the aforesaid land houses and structures standing thereon and further directing the respondents not to interfere in any manner in respect of the said land.
- (f) restraining the respondents from taking forcible possession of the aforesaid land and houses of the petitioners standing thereon.”

5. Indisputably, an ad-interim order dated 30.8.2005 was passed by the High Court in terms whereof dispossession was directed to remain stayed. The said ad interim order was made absolute on or about 20.9.1985.

Before the High Court, the Delhi Development Authority filed a counter affidavit, inter alia, contending that they had all along been in possession of the lands in question pursuant to an award made in the proceedings initiated in terms of the notification of 1948. It was furthermore averred :

“That Shri Najmuddin son of late Mohd. Sheruddin, petitioner, had filed a suit against the Defendant/Respondent No.4 in the Lower Court and obtained stay order in respect of Khasra No.186 and 334/206 of village Begumpur to restrain from demolishing the plaintiff/petitioner from the land in question unless through due process of law. The same has been vacated on 14th February, 1985.

That the possession of the suit land along with other land in this area has been handed over to the Delhi

Development Authority after removal of the engrossments. The petitioners are no more in possession of the land in suit.

That the land in suit belongs to the Government of India (MOR) and has been transferred to the answering Respondent by the Ministry of Rehabilitation under a package deal vide Government letter No.4(19)/78/....-II (Vol....) dated 2.09.82 and the possession has been handed over to the DDA by the Ministry of Rehabilitation on 09.08.85 after removal of the encroachment.”

6. The said writ petition was listed for hearing in 2002. Appellants were taking adjournments. The writ petition was ultimately dismissed for default on 11.2.2005.

7. An application for restoration was filed, in support whereof one Shri Sanjeev Singh affirmed an affidavit, stating :

“That I am the duly constituted power of attorney of the original petitioners, namely, Shri Najmuddin, Shri Mohiuddin and Shri Wahabuddin, all sons of Late Mohd. Sheruddin and residents of House No.226 village – Hauzrai (Near Malviya Nagar), New Delhi 110017 and as such competent to swear this affidavit.”

8. As an affidavit in support of the said application for restoration was not affirmed by any of the appellants, the power of attorney in terms whereof the said deponent claimed himself to be entitled to affirm an affidavit on their behalf was

directed to be filed pursuant whereto a General Power of Attorney dated 24.9.1985 executed by appellant, wherein it was stated as under :

“25. And we do hereby declare that by virtue of agreement to sell executed between us and the said (1) Sh. Sanjiv Singh, (2) Sh. Noordesh Singh both sons of Sh. Pal singh and (3) Smt. Pushpa Devi w/o Sh. Pal Singh all r/o house No.A-26, Ring Road, Lajpat Nagar-IV, New Delhi 110 024, whereunder we have received a sum of Rs.1,50,000/- (Rupees one lac fifty thousand only) as per receipts duly signed and executed by us in full and final consideration amount of the aforesaid land, the possession of which is already with the said persons for the last so many years, thus this deed of General Power of Attorney is for valuable consideration and as such its irrevocable and shall always remain irrevocable. We shall not cancel or withdraw the powers given under this deed of General Power of Attorney, under any circumstances whatsoever.”

9. In an affidavit affirmed on 30.3.2006, the Appellant No.1 stated :

“That my other two brothers namely i.e. Mohiuddin, Wahabuddin are the co-owners along with me in land in question and both of them frequently go on visits with respect to their works i.e. Rajmistri and presently they are at Gwalior and since I am an old man and unable to look after the instant litigation, we had appointed Shri Sanjeev Singh to look after the litigation of the instant case.

That there was an intention and likelihood to sell off the land in question but, however, I have never sold off the land in question in any manner whatsoever.”

10. By reason of the impugned judgment, the application for restoration was dismissed, holding :

- (1) Appellants, having transferred their land in terms of the said power of attorney, were in effect pursuing a proxy litigation on behalf of some other persons.
- (2) A third party right having been created without permission of the court, they were not entitled to any indulgence of the Court.
- (3) In view of the averments made in paragraph 25 of the General Power of Attorney dated 24.9.1985, it is evident that appellants have sold away their interest in the property.
- (4) The averments made in the affidavit affirmed by the appellant No.1 are by way of an afterthought and does not clearly rule out the impact of clause 25 of the power of attorney.

It was furthermore held :

“In any event, we heard the submissions of Mr. Harish Malhotra, learned senior counsel for the petitioners. The challenge in the writ petition is to a notification dated 7th May, 1962 Mr. Malhotra was unable to give any satisfactory explanation as to why the present writ petition filed on 2.8.1985 should not be dismissed on the ground of laches alone. Further in the counter affidavit filed by the DDA, it was pointed out that the petitioners

had filed a suit against the DDA in respect of the same land and a stay order obtained in the said proceedings stood vacated. Following this the possession of the land in question was handed over to the DDA. It was pointed out that the petitioner were no longer in possession of the said land. Mr. Malhotra was unable to explain why these facts had been suppressed in the writ petition. He also fairly stated that no rejoinder had been filed denying these submissions in the counter affidavit.

Mr. Malhotra attempted to point out that the acquisition of the land in question under Section 3 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 was wholly illegal because no notice as contemplated under Section 4 of the Act was served on the petitioners. In our view this plea no longer is available to be urged by the petitioners 23 years after the notification, particularly considering the fact that the original notification was issued on 16th September, 1948 and the impugned notification on 7th May, 1962. Clearly, the challenge is barred by laches.”

11. Mr. Mukul Rohtagi, learned senior counsel appearing on behalf of the appellant, would, inter alia, contend :

- (1) The High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the appellants had been pursuing their remedies in the writ application bona fide.
- (2) While considering an application for restoration of the writ petition, the High Court should not have considered the merit of the writ petition itself.

- (3) In any event, the writ petition having not been disposed of on merit, the same should be directed to be heard on merit on such terms as the court may think fit and proper.

12. Mr. Krishna Kumar, learned counsel appearing on behalf of Delhi Administration and Mr. Saharya, learned counsel appearing on behalf of DDA, on the other hand, supported the impugned judgment.

13. The Writ Petition was dismissed for default, as noticed hereinbefore, by an order dated 11.2.2005. For reasons best known to the appellants they have not filed a copy of the said order. When a writ petition is dismissed for default, indisputably, the High Court may restore the same in exercise of its jurisdiction under Article 226 of the Constitution of India itself and/or in exercise of its inherent power. For the purpose of passing such order conduct of the parties would be a relevant factor. Appellants filed a writ application, inter alia, on the premise that they had no knowledge of the purported notification issued by the Delhi Administration which was issued as far back as in 1962.

It was contended even before us that the appellants did not receive any amount of compensation. Appellants do not deny or dispute that the power of attorney in favour of Sanjeev Singh and others was executed. It also stands admitted that the same has not been revoked. The very basis on which the writ

petition was filed was their purported continuous possession of the land in question. In the writ petition, no averment had been made as regards institution of a suit but in the list of dates, it has been mentioned that an interim order had been passed in the suit. However, from the impugned judgment, now it transpires that the said interim order was vacated and only thereafter the suit was withdrawn and the writ petition was filed.

14. It is true that in the writ petition, an interim order was passed in their favour.

It, however, now transpires that an Arbitrator appointed under the Rehabilitation Act had made an award on or about 7.5.1962 in respect of one-third share of Md. Sherruddin for Plot No.334/206 and one-eighteenth share of Plot No.404/315, 405/315, 402/315, 403/315, 316/227, 317/227 and 318/227 at the rate of Rs.322 per bigha plus interest at the rate of 4 per cent per annum. An ex gratia amount was also directed to be paid from the date of taking over of possession.

Appellants were, thus, merely co-sharers. They have not stated that there had been a partition amongst the co-sharers or they were in possession of a part of the lands appertaining to the aforementioned Khasras.

15. It appears from the records that on or about 8.10.1991, an application was filed to make the order of stay dated 30.8.1985 absolute and allow the appellant to deal freely with his one-third share of the land in any manner he liked. Therein

also appellants claimed themselves to be owner in possession of the lands in question. The General Power of Attorney executed by the appellants on 24.9.1985 evidently was an irrevocable one. By reason thereof, all the powers of the owners were delegated; clause (4) whereof reads as under :

“To submit and file all kinds of applications, petitions, affidavits, written statements, suits, writs in any court of law or in the High Court or in the Supreme Court or before Revenue Courts in respect of the above said land and pursue all matters, writs, suits, applications, petitions pending before any court of law or any Government office or authority in respect of the said land.”

16. Despite the same, in his affidavit filed on 13.03.2006, appellant No.1 stated that he never intended to sell the property in favour of the said Sanjeev Singh and others. If the said constituted attorney had been in possession of the property in question for a long time, as has been averred in paragraph 25 of the General Power of Attorney, evidently the appellant had not been in possession thereof and consequently, the story that they came to know about the said notification issued in the year 1962 cannot be accepted as correct. As the constituted attorney of appellants had been in physical possession of the property and had been pursuing the writ petition before the High Court, the averments made in the subsequent affidavits cannot be accepted as correct. Even the said stand taken by the

appellant No.1 cannot be accepted in view of Section 91 of the Indian Evidence Act.

17. The High Court, therefore, in our opinion, cannot be said to have committed any error in refusing to exercise its discretionary jurisdiction in favour of appellants. The impugned order, therefore, does not warrant any interference by us in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India.

18. The appeal is, therefore, dismissed with costs. Counsel's fee assessed at Rs.50,000/-.

.....J.

(S.B. Sinha)

.....J.

(Cyriac Joseph)

New Delhi;

December 18, 2008