

Wire-Netting Stores And Another vs Delhi Development Authority And Others on 9 January, 1969

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Bench: M. Hidayatullah, J.C. Shah, V. Ramaswami, G.K. Mitter, A.N. Grover

CASE NO.:

Writ Petition (civil) 292 of 1967

PETITIONER:

WIRE-NETTING STORES AND ANOTHER

RESPONDENT:

DELHI DEVELOPMENT AUTHORITY AND OTHERS

DATE OF JUDGMENT: 09/01/1969

BENCH:

M. HIDAYATULLAH CJI & J.C. SHAH & V. RAMASWAMI & G.K. MITTER & A.N. GROVER

JUDGMENT:

JUDGMENT 1969 (3) SCC 415 The Judgment of the Court was delivered by M. HIDAYATULLAH, C.J.- This is a petition under Article 32 of the Constitution by Messrs Wire-Netting Stores, a partnership firm, through one of its partners and also by the same partner in his own name. It is directed against the Delhi Development Authority, the Delhi Administration, the Delhi Municipal Corporation and certain officers of the Delhi Development Authority and the Delhi Administration. The petitioners ask for a writ of mandamus or any other writ or order restraining the respondents from dispossessing the petitioners of Khasra No. 257/287 (1523.5 sq. yards) Municipal No. 2330-72 at Bela Estate, Bela Road, Delhi and for restoration of immovable and movable property and goods belonging to the petitioners. The facts are these:

2. The Delhi Development Authority is a statutory authority constituted under Act 61 of 1957 and has taken over properties, rights and liabilities of the Delhi Improvement Trust. The Delhi Municipal Corporation is the successor of the Delhi Municipal Committee under Act 66 of 1957. The plot in question has changed hands in the past. The petitioners have given one version of the changes and the Delhi Development Authority another. Nothing such turns upon it and we shall advert to these changes later. On or about the time, the events which have led to this petition took place, the plot was in the possession of the petitioners who had put up a factory for the manufacture of wire-nettings. The factory was working till December 10, 1967 when the Delhi Development Authority began to evict the petitioners from the premises in their occupation. The Delhi Development Authority purported to have acted in this manner because, according to it, it had cancelled the lease from July 31, 1963. The

allegation in the petition is that without any notice to the petitioners and without affording them any opportunity of being heard, as was required by Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, the action has been taken most highhandedly. According to the petitioners the respondents entered into the premises of the factory, demolished the factory and removed the machinery and other goods in trucks. The petitioners protested but no protest was heard. The petitioners were helpless as the 10th of December, 1967 was a Sunday and no stay order or injunction from court could be obtained. The petitioners subsequently filed a suit and obtained temporary injunction till December 26, 1967. The petitioner also filed a writ petition under Article 226 of the Constitution in the Delhi High Court but withdrew it and moved this Court. The petitioners, therefore, seek relief as described above. The respondents filed a number of affidavits.

According to them the history of this plot is thus: In 1929 a 20 years' lease was granted to one Amba Prasad and it was to expire on March 31, 1949. Amba Prasad sold his leasehold rights to Jyoti Prasad by a registered deed dated March 4, 1941. In 1949 it was found that this land was actually in occupation of Wire-Netting Stores and the Authority decided not to renew the lease. They were contemplating grant of a temporary monthly lease to the Wire-Netting Stores who also paid Rs 5180.75 as damages. Jyoti Prasad filed a suit to restrain the authorities from giving the monthly lease to the Wire-Netting Stores. The suit was later dismissed. A lease on monthly basis was then given to Wire-Netting Stores at Rs 10 per 100 sq. yards. Although no lease deed appears to have been executed a model lease form has been produced and it shows that the Authority was to reserve right to terminate the lease on one month's notice and that no fresh construction was to be made by the lessee. The letter of allotment is dated May 7, 1954 [No. 1/12(28)/54]. Admittedly the Wire-Netting Stores paid the rent till 31-7-1963.

3. On January 29, 1963 the Delhi Development Authority passed a resolution (No. 37) by which it decided to evict all persons from the Bela Estate Area since that area was shown in the Green Belt in the Master Plan. The Delhi Development Authority claims that it had terminated the lease by a notice dated April 12, 1963 from July 31, 1963. It also appears that rent was also realised from the Wire-Netting Stores till July 31, 1963 and a notice was given on September 23, 1965 to the Stores assessing damages amounting to Rs 2083.80 which were demanded from the Stores under Section 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The notice also called upon the Stores to show cause on or before November 17, 1965 why an order requiring them to pay the said damages should not be made. On December 10, 1967 the Delhi Development Authority through its officers went to the premises and took possession of the same. A squad then demolished the factory of the petitioners and carried away a part of the machinery and other equipment in trucks. It may be pointed out that the Stores had a licence under the Factories Act and the factory also had the sanction from the Health Department of the Delhi Municipal Committee and a connection for electricity. The Stores had also applied for a regular lease and deposited Rs 181 vide receipt No. 51428 on May 24, 1954 with the Delhi Improvement Trust. No regular deed, however, was executed, nor was any regular lease given to them.

4. The Delhi Development Authority had taken similar action against other occupants of the Bela Estate. Most of the evictees were offered alternative sites in industrial areas and had accepted them. The case of the Stores is that no such alternative site was allotted to them although this fact was denied by the Authority which asserts that alternative sites were offered but were not taken by the Stores.

5. The case of the Stores is that the action of the Delhi Development Authority is without authority of law and that the procedure under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was not followed and no opportunity was given to the Stores to represent its case. The Stores also claim that having been allowed to occupy the premises they had with the consent and knowledge of the Delhi Improvement Trust and its successor the Delhi Development Authority constructed the structure on the premises and, therefore, their lease or even licence was protected under Section 60 of the Indian Easements Act and they cannot be evicted from the premises. They also contend that the Public Premises (Eviction of Unauthorised Occupants) Act is ultra vires the Constitution because it creates an alternative remedy to a civil suit leading thereby to discrimination between persons who are proceeded against under the ordinary law and those proceeded against under the Eviction Act. They cite in support of their contention a ruling of this Court reported in AIR (1967) SC 1581 in which Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (Act 31 of 1959) was struck down by this Court. The Delhi Development Authority joins issues on all the above points and also on the point that there was no discrimination made between the Stores and other evictees in the matter of an offer of the alternative site.

6. We need not in this case decide whether the Public (Premises Eviction of Unauthorised Occupants) Act, 1958 is ultra vires or not. Nor is it necessary for us to decide whether the action of the Delhi Development Authority was discriminatory between the Stores and other evictees. In our judgment the Stores are entitled to succeed because the procedure laid down by the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 itself has not been followed.

7. It may be pointed out that by reason of an Ordinance promulgated by the President amending the said Act in 1968 (Ordinance 5 of 1968) the civil court has no jurisdiction to entertain any suit or proceeding in respect of eviction of any person who is in unauthorised occupation of any premises etc. In other words, the present petitioners have no other remedy but to approach this Court if the action of the Authority was contrary to law because no other adequate remedy exists. It cannot be doubted that the action of the Authority is calculated to invade the right of the petitioners to occupy the premises and to hold and to possess their own property in the premises. If the Authority had validly terminated their occupation and had followed the law the action could be described as valid but in the present case they have not followed the procedure laid down by the Act under which they were acting.

8. Two notices are referred to as having been issued by the Authority to the Stores. One of them is dated September 23, 1967 which only called upon the stores to pay damages under Section 7(2) of the Eviction Act. It gave them opportunity to show cause why an order requiring them to pay the said damages should not be made. The other notice is one dated April 12, 1963 by which it is said

that the lease of the Stores was terminated from July 31, 1963. This notice has not been filed by either party. We have opportunity to the Delhi Development Authority to let us see the notice which was issued so that we might be able to determine whether it was in accordance with the Act under which it was given. No copy of the notice was produced before us. It appears, however, that a notice had been given but what its contents were it is difficult to say. The petitioners have quoted a paragraph from this notice in one of their affidavits. It reads as follows:

"In case of your failure to deliver possession by the aforesaid date, your occupation would be wrongful and unauthorised and you shall be liable for damages after that date and proceedings for taking possession and recovery of damages will be taken under the provisions of the Public Premises (Eviction of Unauthorised Occupants), Act 1958."

In one of the affidavits filed on behalf of the Authority it is stated as follows:

"I also submit that it is not necessary to refer to sections of the Public Premises (Eviction of Unauthorised Occupants) Act as done by the petitioner since the notice clearly mentioned that re-entry will be effected by the authorities if the conditions of the lease and the notice are not complied with."

Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act reads as follows:

"4. Issue of notice to show cause against order of eviction.-(1) If the estate officer is of opinion that any person are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the estate officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of

sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed."

It is only after the procedure in this section is complied with that the eviction of unauthorised occupants under Section 5 can take place. It appears that the Estate Officer did not follow the procedure of Section 4, nor did he give a notice which would comply with its terms and that is the reason why the notice has not been produced before us for our perusal. The petitioners said that they had mislaid the notice and could not produce a copy which probably is also not true. In any case, both sides seem to have suppressed the notice from the Court. In this view of the matter we can hold that the procedure laid down by Section 4 was not followed, for it was the burden of the authority to establish to our satisfaction that they were acting in accordance with the law. In any case, no opportunity appears to have been given to the petitioners for showing cause against the proposed eviction. This is contrary not only to the law laid down but also to the principles of natural justice. In these circumstances, we have no option but to allow the petition. The action of the Authority appears to have been most high-handed on the facts of the case as brought out before us. If the Authority wished to evict the petitioners from the occupation of these premises it behaved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil court should be so oblivious to their own duties as laid down in the Act. We accordingly allow the petition and order the restoration of the premises to the petitioners and return of all the machinery and other goods and parts of their factory which have been seized from them.

9. It is alleged by the petitioners that no inventory was made. If this is so, the Authority will be accountable to the petitioners for all the movable property taken from their possession. The Authority will also bear the costs of this petition.