

Paras Ram Dungal Society vs Estate Officer -Iv Dda And Anr on 17 February, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1980/2023 & CM APPLs. 7554/2023 & 7555/2023

PARAS RAM DANGAL SOCIETY Petitioner

Through: Ms. Deepika V. Marwaha, Sr.

Advocate with Ms. Stuti Gupta,

Ms. Raunika Johar and Mr. Faiz

Khan, Advocates

(Ph.9560493552, e-mail:

lexalliance.stuti@gmail.com).

versus

ESTATE OFFICER -IV DDA AND ANR Respondents

Through: Ms. Mrinalini Sen, Standing

Counsel for DDA with Mr.

Shantanu Lakhotia, Advocate

(Ph. 9873367274, e-mail:

mrinalinisgupta@gmail.com)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% 17.02.2023 [Physical Hearing/ Hybrid Hearing]

1. This is an application seeking exemption from filing true typed copies of the dim and/ or improperly formatted and/ or certified copies of the documents / annexures filed along with the accompanying writ petition.

2. Exemption allowed subject to just exceptions. Application is disposed of.

W.P.(C) 1980/2023 and CM APPL. 7554/2023 (for ad-interim stay)

3. The present writ petition has been filed seeking prayer for setting aside the order dated 06.12.2022 passed by the Id. Principal District and Sessions Judge (HQ), Tis Hazari Courts, Delhi in PPA No. 03/2017. By way of the said order dated 06.12.2022, the district court has dismissed the appeal of the petitioner herein against order dated 21.01.2010 passed by the Estate Officer on the ground of delay of 2568 days, which was not condoned as recorded in the impugned order.

4. As per the petition, petitioner Society was formed in 1959 for promoting wrestling and was founded by renowned wrestler late Guru Chiranjilal. The petitioner society was allotted property admeasuring about 1864 Sq. yds by virtue of indenture of lease dated 07.01.1967 executed by the President of India through Land and Development Office, (L&DO) New Delhi, for purpose of promoting the ancient art of wrestling. The supervisory powers vested in the L&DO were transferred

by it in favour of respondent No.2, DDA. Hence, as of today the respondent No.2 is the governing authority/lessor as far as the property in question is concerned.

5. It is the case of the petitioner that the petitioner Society continued to be in uninterrupted possession of the said originally leased property in question w.e.f. 1934 to 1986. Sometime around in 1986, Government requested the petitioner to handover certain portion of the property in question, i.e., land measuring 1234 Sq. Yds as the same was required by the Government for construction of ISBT flyover. Thus, petitioner handed over the area measuring about 1234 Sq. yds. Subsequently, the Public Works Department (PWD) vide letter dated 24.02.1988, called upon the petitioner for collecting part compensation cheque in lieu of acquired land and demolished structure.

6. It is submitted that Deputy Director (Lands), DDA issued a letter dated 03.03.1988 to Deputy Director (Hort.) II, DDA with respect to temporary allotment of land measuring 1180 Sq. Yds. to the petitioner adjacent to the earlier site of the petitioner for wrestling on payment of license fee. The petitioner paid the requisite license fees to the authorities, which was duly acknowledged vide letter dated 03.08.1990.

7. This Court in a Public Interest Litigation (PIL) titled as Wazirpur Bartan Nirmata Sangh vs. UOI & Ors., bearing W.P.(C) No.2112/2002, vide order dated 16.11.2005, constituted a Committee to remove encroachment and to clear the Yamuna Bed and its embankment. Further, vide order dated 08.12.2005, directions were given to the committee to take steps for removing encroachment upto 300 meters from both the sides of river Yamuna. In view of the various directions issued by this Court in W.P. (C) 2112/2002, the respondents sought to demolish the structures on the property of petitioner.

8. This led to the petitioner filing an application before this Court for impleadment. The petitioner gave an undertaking before this Court that the entire structure would be removed, except one room for the caretaker, considering the cause of clearing the Yamuna Bank. It is submitted that the undertaking given by the petitioner was duly complied and the petitioner itself removed the entire structure on the property in question.

9. It is submitted on behalf of the petitioner that as recorded in order dated 11.10.2006 in W.P.(C) No. 2112/2002, petitioner made a statement that it did not wish to press its application for impleadment, however, it should be given similar treatment as given to other Akharas. Thus, the Committee constituted by this Court recommended that in view of the land being used by the Akhara, they should be given some alternative place by the DDA. This Court directed that DDA must have some policy and if it does not have such a policy, they must formulate a policy to accommodate the Akhara in question.

10. Since the DDA failed to formulate any policy to accommodate the petitioner in terms of order dated 11.10.2006 in W.P.(C) 2112/2002, petitioner filed a contempt petition against respondent No.2. In the contempt proceedings, the petitioner was permitted to run the Akhara on the existing land in a manner that it does not disturb the ecology of river Yamuna.

11. In the meanwhile, the DDA also initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act), against the petitioner herein. It is the case of the petitioner that the petitioner participated in the proceedings before the Estate Officer. When the matter was listed before the Estate Officer on 28.05.2009, the petitioner appeared and apprised the Estate Officer about the orders passed by this Court in the contempt proceedings.

12. It is the case of the petitioner that the petitioner appeared before the Estate Officer on 15.01.2010 and filed its reply to the demand letter of the petitioner. The Estate Officer recorded in his proceedings that the reply has been filed on behalf of petitioner herein. Subsequently, when the matter was listed on 21.01.2010, the Estate Officer held that since no one had appeared on behalf of the petitioner, the matter is proceeded ex parte and thus decided the case on merits without hearing the petitioner. Thus, by order dated 21.01.2010, the Estate Officer passed an order for payment of damages by the petitioner herein for the period from 15.07.1987 to 31.08.2006, totalling to Rs. 34,90,145/-. The said order further states that order in Form 'G' be issued, which as per Id. Counsel for the petitioner pertains to format of ex parte proceedings.

13. It is submitted that the petitioner received the notice with respect to demand pursuant to order of the Estate Officer and the order dated 21.01.2010 passed by the Estate Officer, only by notice dated 18.06.2010. The petitioner made a representation to the Estate Officer on 05.07.2010, thereby enquiring about the basis of levy upon the petitioner. Subsequently, the petitioner issued a notice to the respondent on 10.07.2010, stating that the order dated 21.01.2010 was passed without the knowledge of the petitioner and without considering the reply filed on behalf of the petitioner.

14. It is the case of the petitioner that the DDA provided certified copy of the proceedings to the petitioner on 26.08.2010. It was at that time that the petitioner came to know that the Estate Officer had passed ex parte order against the petitioner without considering the reply filed on behalf of the petitioner and despite the fact that the petitioner had been regularly attending the matter. The petitioner met the senior officials of DDA on 06.12.2010, when the petitioner was directed to give representation. The petitioner thereafter gave detailed representation dated 08.12.2010. The representation of the petitioner was considered and it was informed that the recovery proceedings have been stopped and the matter is under review. Thereafter, the petitioner did not receive any communication with respect to the status of representation of the petitioner or with respect to any recovery.

15. Id. Senior Counsel appearing for the petitioner has relied upon the file noting of the DDA dated 10.12.2010, wherein it had been recorded that the recovery proceedings against the petitioner had been stopped and the matter was under review. It is submitted that the said file noting was made in the presence of the petitioner. The file noting dated 10.12.2010 of the DDA as attached with the present petition, is reproduced as under:

"This is a matter of recovery of damages/arrears of land revenue M/s Vikram Vashisth President ParshuRam Dangal Society. As per N.R.C. received from Collector (Nazul) in respect of M/s Vikram Vashisth President ParshuRam Dangal Society Ghat No. 13, KudasiaGhat, Bela Road, I.S.B.T amounting to Rs.34,90,145/-

The defaulter so called society has moved a representation dated 8.12.10 challenging the amount mentioned in the N.R.C. The matter was placed before the Collector (Nazul), the defaulter was also present during the discussion. The matter was briefed to Collector (Nazul), that the matter is still pending before the E.O IV E.O. IV has given in writing to the defaulter that the recovery proceeding be stopped. The matter is under review....."

16. It is the case of the petitioner that it pursued the matter with the concerned senior officials of DDA and the petitioner was made to believe that the matter stood closed. Since the petitioner again received notice from DDA for 14.10.2013 and 02.05.2014, the petitioner appeared before DDA and sought time. Thus, the petitioner again made representation on 01.12.2014 to the DDA thereby requesting for withdrawing the demand notices issued to the petitioner. It is submitted that there was no communication from respondents for almost two years.

17. Subsequently, petitioner came to know that DDA had written to the Police on 30.11.2016 that it will carry out demolition on the property of the petitioner. Thereafter, the petitioner deposited Rs. 7 Lakh with the DDA and also submitted an affidavit dated 22.12.2016 with the DDA that the petitioner shall deposit the rest of the amount in instalments. It is the contention on behalf of the petitioner that the same was done under duress.

18. Thereafter, petitioner moved application under RTI Act and obtained various documents from DDA. Subsequently, petitioner filed a writ petition being W.P.(C) 1210/2017 before this Court. The said petition was dismissed as withdrawn vide order dated 10.02.2017 thereby granting liberty to the petitioner to file appeal under the PP Act before the competent authority.

19. Pursuant to the aforesaid, petitioner filed an appeal under Section 9 of the PP Act challenging the order dated 21.01.2010 passed by the Estate Officer. By the impugned order dated 06.12.2022, the appeal filed on behalf of the petitioner was dismissed thereby dismissing the application of the petitioner herein for condonation of delay in filing the said appeal. Hence, present writ petition has come to be filed.

20. Ld. Senior Counsel for the petitioner submits that the petitioner had justified the delay in filing the appeal under Section 9 of the PP Act, therefore, the said delay ought to have been condoned. It is submitted that there were sufficient grounds to condone the delay and hear the matter on merits. She submits that limitation is a mixed question of facts and law, therefore the District Court ought to have considered the facts of the present case, which it refused to consider.

21. She submits that finding by the ld. District Court is contrary to record. Attention of this Court has been drawn to para 15 of the impugned order, wherein it has been recorded that the petitioner herein concealed the records pertaining to deposit of Rs. 7 Lakh with the DDA and the fact that an affidavit had been submitted by the petitioner with the DDA undertaking to pay the balance amount in six equal monthly instalments. It is submitted that the said finding by the ld. District Court is wrong, as the petitioner herein had clearly mentioned about the payment of the amount of Rs. 7 lakh to the DDA in para 46 of the appeal filed before the District Court. It is further submitted that the affidavit submitted before the DDA by the petitioner was also duly filed along with the appeal.

22. Ld. Senior Counsel for petitioner further submits that though in para 6 of the impugned judgment, the various judgments as relied upon by the petitioner herein were mentioned, however, the same were not discussed.

23. It is submitted that by way of order dated 21.01.2010, the Estate Officer had allowed a time barred claim, passing the order as an ex parte order, despite the fact that the petitioner herein had been appearing before the Estate Officer. The DDA had filed its reply before the District Court and had not raised the plea of limitation therein. It is submitted that the DDA has already taken Rs. 10 lakh from the petitioner herein.

24. Ld. Senior Counsel for the petitioner has also relied upon order dated 14.03.2017 passed by the District Court, wherein the interim protection as granted in favour of the petitioner herein on 14.02.2017 was confirmed till disposal of the appeal. The order dated 14.03.2017 passed by the District Court is reproduced as below:

"Paras Ram Dangal Society Vs. Estate Officer IV 14.3.2017 Present: Sh. Gaurav Tanwar, Advocate for appellant.

None for the respondent.

Be awaited.

(Dr. Kamini Lau) ADJ-02, Central/14.3.2017 11.10 AM Present: None for the appellant.

Sh. K.D. Sharma, Advocate for respondent. Heard arguments. Hon ble Delhi High Court vide order dated 28.5.2009 has very specifically expressed concerns over the manner in which the DDA had singularly targeted the appellant and issued a notice to the appellant being unconcerned about other unauthorized encroachments made in the area by illegal occupants. Ld. Counsel for the respondent submits that he has no instructions from the department with regard to removal of other structures or issuance of notice to any other encroacher in the area and has instructions only to seek time for filing the reply. The record of Estate Officer is not received. The Estate Officer to appear in person on next date along with the relevant record. Under these circumstances, the interim protection granted on 14.2.2017 is confirmed till disposal of the appeal. Case be listed for reply, arguments and disposal of the appeal on 12.07.2017.

(Dr. Kamini Lau) ADJ-02, Central/14.3.2017"

25. Ld. Senior Counsel has also relied upon judgment passed by Hon'ble Supreme Court in the case of New Delhi Municipal Committee Vs. Kalu Ram and Ors., (1976) 3 SCC 107 to contend that Section 7 of PP Act cannot be resorted for recovering time barred debt or rent.

26. During the course of hearing, ld. Senior Counsel for petitioner relied upon the following judgments:

I. New Delhi Municipal Committee Vs. Kalu Ram & Ors. (1976) 3 SCC 107 II. Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji & Ors., (1987) 2 SCC 107 III. Ajoy Bag @ Roy & Ors. Vs. Estate Officer, Calcutta Post Trust & Anr., 2011 SCC Online Cal 3854 IV. Krishan Pal & Ors. Vs. The Commissioner, Rohtak Division & Ors., MANU/SC/2068/2019

27. On the other hand, Ms. Mrinalini Sen, Standing Counsel for DDA has vehemently opposed the present petition. She submits that under proviso to Section 9 (2) of PP Act, condonation of delay can be done only in exceptional circumstances. The petitioner has not been able to show any exceptional circumstances, and thus, delay in filing the appeal against the order of the Estate Officer, has rightly not been condoned.

28. She submits that the petitioner has not been able to justify or explain the delay and mere representations made on behalf of the petitioner will not have the effect of extending the period of limitation. The conduct of the petitioner has been indolent and it was for the petitioner to pursue its remedies properly.

29. It is further submitted that the contention of the petitioner that it deposited Rs. 7 lakh with the DDA under coercion and submitted affidavit dated December 2016 to the DDA under duress, is absolutely wrong and denied. No one from the DDA directed the petitioner to deposit any amount or submit such affidavit. The petitioner itself deposited the amount and submitted the affidavit that it will deposit rest of the amount in instalments, since the petitioner accepted the order passed by the Estate Officer. Therefore, the petitioner cannot now go back upon the same after having accepting the order of the Estate Officer.

30. It is further submitted that the land occupied by the petitioner is prime land and that the petitioner is not even paying the basic licence fee. The petitioner has not been able to discharge the onus upon it to bring its case within exceptional circumstances, as envisaged under Section 9 of the PP Act for condoning delay in filing the appeal.

31. Ld. Counsel for the respondent has relied upon the following judgments:

i. S.D. Bandi Vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation and Others, (2013) 12 SCC 631 ii. Jatinder Singh Chawla Vs. Delhi Development Authority And Anr., 2022/DHC/003657 iii. Rajabhau Vs. Divisional Railway Manager, Central Railway and Ors., MANU/MH/3191/2019

32. I have heard ld. Counsels for the parties and perused the documents on record.

33. At the outset, it would be useful to refer to the order dated 21.01.2010 passed by the Estate Officer, which is reproduced as below:

"IN THE COURT OF ESTATE OFFICER I & IV, DELHI DEVELOPMENT AUTHORITY, VIKAS SADAN, NEW DELHI Case/File No. D-2(38)06/Damage DDA Vs. VikramVashistha, Paras Ram Dangal Society Ghat No.13, Kudsia Ghat, Bela Road, Near ISBT, Delhi ORDER Case Called DDA Counsel present, Respondent Sh. VikramVashistha is not present today inspite of service of the show cause notice and acknowledgment of the date. In the circumstances, I am compelled to take ex-parte proceedings against the respondent and proceed to decide the case on merits.

No written objection have been filed on behalf of the respondent. I accordingly assess him/her/them to pay damages for 1180 sq. yards of Nazul land being used for residential/ commercial purposes bearing property/ Kahsra/ House No. situated in Near ISBT, revenue estate Delhi for the period from 15.7.87 to 31.8.2006 at the rate of Rs. - totalling Rs. 34,90,145/- which I hereby confirm.

The rates at which the respondent has been assessed to damages are quite reasonable keeping in view the rental value prevailing in the locality. The above said amount will be payable by the respondent in lump sum within a month, failing which it shall be recovered along with simple interest @18% per annum as arrears of land revenue.

Order in Form „G be issued accordingly.

Sd/-

Estate Officer DDA 21.1.2010"

34. Perusal of the aforesaid order clearly shows that despite the petitioner having appeared before the Estate Officer on previous occasions and also having filed its reply, the Estate Officer proceeded ex parte against the petitioner and passed the impugned order without hearing the petitioner. Further, it may be noted that the said order dated 21.01.2010 passed by the Estate Officer pertains to only an order of damages in favour of DDA, though the petition filed by the DDA was for eviction as well as damages, under Sections 4 and 7 of the PP Act. Thus, no eviction order has come to be filed against the petitioner. In view thereof, fact remains that there is no eviction order against the petitioner as on date. It is not even the submission on behalf of the DDA that any eviction order has been passed against the petitioner.

35. It is also noted that by order dated 21.01.2010, the Estate Officer has not disposed of the proceedings initiated by the DDA. Upon query by this Court as regards whether the said proceedings had been concluded by the Estate Officer by way of the said order dated 21.01.2010, the Standing Counsel for DDA was unable to answer the same in the absence of requisite instructions in that regard.

36. Considering the various issues raised before this Court, it is held that the matter requires consideration.

37. Issue notice. Notice is accepted by Ld. Standing Counsel for DDA. Let reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

38. This Court has considered the fact that the petitioner herein has enjoyed interim protection in its favour from 2017 till 06.12.2022, till the disposal of the appeal by the District Court.

39. In view of the submissions made before this Court and after considering the documents on record, it is directed that no coercive steps shall be taken against the petitioner till the next date of hearing, subject to the petitioner herein depositing an amount of Rs. 2 lakhs with the DDA within four weeks from today.

40. List for hearing on 28.04.2023.

MINI PUSHKARNA, J FEBRUARY 17, 2023/au