
**(1995) 1 AD 894 : (1995) 1 ALT(Cri) 18 : (1995) 1 Crimes 648 : (1995) 57 DLT 749 :
(1995) 32 DRJ 521**

Delhi High Court

Case No: Criminal Writ Appeal No. 856 of 1993

R.M. Tiwari

APPELLANT

Vs

Aditya Singh and
Others

RESPONDENT

Date of Decision: Feb. 7, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1995) 1 AD 894 : (1995) 1 ALT(Cri) 18 : (1995) 1 Crimes 648 : (1995) 57 DLT 749 :
(1995) 32 DRJ 521

Hon'ble Judges: M.S.A. Siddiqui, J; A.B. Saharya, J

Bench: Division Bench

Advocate: Anil Sapra and Suresh Tripathy, for the Appellant;

Judgement

M.S.A. Siddiqui, J.

(1) This is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking relief for the issue of the writ of mandamus to the respondents to pay a sum of Rs. 10 lakhs to the petitioner by way of compensation consequential upon the commission of the offence of house trespass by the respondents.

(2) Briefly, stated, the facts giving rise to this petition, are as under: The petitioner is a practicing Advocate. On 16.7.1993, one Risaldar Chanda Singh, a Junior Commissioned Officer of the President's Bodyguard Unit of the Indian Army, engaged the petitioner to defend him in a departmental proceedings initiated against him by the Military Authorities. According to the petitioner, on 26.10.1993, at about 7.30 P.M. when he reached his house, he found that his office-cum-residence was put under blockade by the respondent Nos.2 to 8 and 10. He also found two lady A.S.I, Along with 5 to 6 armed policemen standing on the main door passage of the house causing wrongful confinement to his

family members. On being questioned by the petitioner, the police party declared its intention to search his house to recover the identity card from Risaldar Chanda Singh who had been hiding himself in the petitioner's house. However, despite the petitioner's strong protest, the respondents wrongfully entered the petitioner's house and illegally searched and ransacked his house. Thereafter, the petitioner rushed to the P.S. Dabri, New Delhi to lodge a report of the alleged incident, but the respondents No.2 to 8 and 10, who were present at the Police Station, threatened and intimidated the petitioner. Hence this petition.

(3) Respondents No.1 to 10 denied the petitioner's case and alleged that on 26th October, 1993 Risaldar Chanda Singh was discharged from service and after notification of the said discharge order, he was directed not to leave the unit lines until his identity card was returned and the formalities of his discharge were completed. But, in defiance to the said directions, Risaldar Chanda Singh, rushed out in uniform and unauthorisedly left the unit lines at about 3.45 on his scooter without depositing the identity card. It is further alleged that in the interest of service security and norms, it was essential to collect identity card from Chanda Singh. Hence, respondent No.2 was detailed to follow Chanda Singh for the said purpose. At about, 4.15 p.m., the respondent No.2, accompanied by some 4 to 5 persons of the unit, followed Chanda Singh who had taken shelter in the petitioner's house, after parking his scooter outside the house. It is also alleged that the petitioner's children were familiar with the personnel of the P.B.G and on seeing them, they invited the said personnel and the respondent No.2 to come into the house but they declined to enter the house and requested them to send Chanda Singh out so that his identity card could be collected from him. On this request, the petitioner's wife denied presence of Chanda Singh in her house. Thereafter respondent No.2 contacted the respondent No. 1 on phone and who advised him to seek police assistance to recover and seize the identity card from Chanda Singh. Accordingly, police assistance was sought and the police authorities requested the family members of the petitioner to ask Chanda Singh to come out and surrender his identity card but they refused to co-operate with the police. Since the petitioner was not present and only female members of the petitioner's family were in the house, A.S.I, did not enter the petitioner's house and called lady police for the said purpose." While they were waiting for the lady police to come, at around 6.15 p.m. the petitioner came to the house. In the meantime, at around 6.20 p.m. A.S.I. Jiya Ram Yadav accompanied by two lady police officers also arrived at the spot and asked the petitioner regarding whereabouts of Chanda Singh. Incensed by this, the petitioner became extremely rude and threatened the police with dire consequences as a result whereof the police did not search the petitioner's house. However, the police seized Chanda Singh's scooter u/s 66 D.P. Act which was parked inside the petitioner's house.

(4) The contention of the learned counsel for the respondents in the first place is that the writ petition is not maintainable as the petitioner had an adequate alternative remedy. We are of the view that the point taken by the respondent is of substance. It is pertinent to note here that the acts complained of fall in the realm of torts and Article 226 of the

Constitution of India can't be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. A money claim has Therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. We may hasten to add that under Article 226, this court can pass an order in the nature of compensation consequential upon the deprivation of a fundamental right. It has been held by the Apex Court in [Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others](#), that "the High Court can't allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly." (See also [Burmah Construction Co. Vs. The State of Orissa and Others](#), .

(5) The second contention urged by the learned counsel for the respondents is also of substance. According to. the learned counsel the facts as alleged by the petitioner are in controversy and they can be adjudicated upon by a regular trial. It is significant to note here that the petitioner has based his claim for compensation on the following grounds:

I)that on the day in question, the respondent Nos. 2 to 10 committed house trespass and illegally searched his house;

II)that the respondents No.2 to 10 caused wrongful confinement to his family members.

(6) The respondents No.2 to. 10 have denied the aforesaid allegations. Respondent No.2 has stated in his counter affidavit that on the day in question he along with some personnel of the Presidential Body Guard had gone to the petitioner's house with a view, to collect identity card from Risaldar Chanda Singh, who had been hiding himself in the petitioner's house. He further stated that P.B.G. personnel were familiar with the petitioner's children and on seeing them, they (petitioner's children) invited them to come inside the house but they declined the offer and requested them to send Risaldar Chanda Singh out of their house so that they could collect his identity card. Petitioner's additional rejoinder dated 20.7.1994 shows that he had also served in the Presidential Body Guard till 1982. This circumstance, to a great extent, probablises the case of the respondent No.2 that P.B.G. personnel had cordial relations with the petitioner. It is beyond the pale of controversy that at the relevant time the scooter of Risaldar Chanda Singh was found parked outside the petitioner's house and the same was seized subsequently by the police. This clearly shows that the respondent No.2 had a reasonable ground for believing that Risaldar Chanda Singh had been hiding himself in the petitioner's house. In this view of the matter and in the facts and circumstances, could it be held that the action of the respondent No.2 in visiting the petitioner's house was culpable. On the contrary, circumstances surfaced on the record clearly indicate that the dominant attention of the respondent No.2 in visiting the petitioner's house was not to commit any offence or to annoy the petitioner but to collect identity card from Risaldar Chanda Singh in the interest of high security of the President of India.

(7) Bearing in mind the peculiar facts and circumstances of the present case, the petitioner can't be permitted to invoke the proposition that every person intends the natural consequences of his act. In this connection, we may usefully excerpt the following observations of their lordships of the Supreme Court in [Mathuri and Others Vs. State of Punjab](#), .

".....THE proposition that every person intends the natural consequences of his act, on which the learned counsel relies, is often a convenient and helpful rule to ascertain the intention of persons when doing a particular act. It is wrong however to accept this proposition as a binding rule which must prevail on all occasions and in all circumstances. The ultimate question for decision being whether an act was done with a particular intention all the circumstances including the natural consequences of the action have to be taken into consideration.....".

(8) Counter affidavit filed by the respondent No.2 also shows that owing to the uncooperative attitude of the petitioner's family, he had to seek the police help to get the identity card recovered from Risaldar Chanda Singh; that on arrival the police authorities requested the petitioner's family members to ask Risaldar Chanda Singh to come out of the house and surrender his identity card but in vain; that since the petitioner was not in the house. Assistant Sub-Inspector expressed his inability to enter the house and thereafter he went away to fetch the lady police for that purpose. Respondent No.2 further stated that in the- meantime the petitioner also arrived at the house and he did not allow the police party to search his house. Respondent No.10, S.H.O. Hans Raj has stated in his counter affidavit that on 26th October, 1993, on receipt of a complaint from the respondent No.2, A.S.I. Jiya Ram had gone to the petitioner's house. According to the respondent No.10, on reaching the spot, Jiya Ram requested the petitioner to hand over Risaldar Chanda Singh to the respondent No.2 but the petitioner did not cooperate and he also threat end the police officers. Petitioner has denied the aforesaid allegations. The question then is whether the respondents No.2 to 10 were throughout conducting themselves" in an honest and bonafide manner in the discharge of their duties and the petitioner was justified in preventing them from discharging their official duties. This is a disputed question of fact which can be adjudicated upon by holding a regular trial. In the instant case, the foundation of the alleged house trespass is the doing of. an illegal act, forcibly and without legal authority, as against the property of the petitioner. The alleged illegality and the wrongfulness of the acts must be established by proof. In [D.L.F. Housing Construction \(P\) Ltd. Vs. Delhi Municipal Corpn. and Others](#), , it was observed that;

"IN our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending upon evidence are involved the writ court is not the proper forum for seeking relief."

(9) It is significant to note here that the petitioner has averred that the respondents acted malafide in taking search of his house. The respondents have seriously contested the petitioner's allegations. It has to be borne in mind that allegations of malafide are easy to

make although very difficult to prove. It is well settled that he who seeks to invalidate or nullify any act, must establish the charge of bad faith, abuse of power. (See [Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others](#), . In the instant case, the petitioner, Therefore, must establish the charge of bad faith, abuse or misuse of power by the; respondents. The motive or purpose of bad faith of the respondents is difficult to establish by direct evidence as it is difficult to establish the state of a man's mind but malafide in the sense of improper motive must be established by direct evidence, i.e. it must be discernable from the conduct of the respondents. The inference of bad faith, ill will or misuse of power can be drawn on proved facts. In this view of the matter we do not propose to inquire into the merits of the rival claims. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a court exercising the prerogative of issuing writs.

(10) It has also been averred in the petition that at the relevant time, the respondent Nos. 2 to 10 also wrongfully confined the petitioner's family members in the house inasmuch as they were not allowed to move out of the house. Surprisingly, none of the family members of the petitioner has filed any affidavit to substantiate the said charges. It is well settled that a wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond a certain circumscribed limits. (See [Shyam Lal Sharma, etc. Vs. State of Madhya Pradesh](#),). The petitioner's rejoinder dated 2.7.94 shows that his children went out of the house to make telephone calls from neighbour's house. It is obvious that the petitioner's claim to compensation is factually controversial, in the sense that a civil court may or may not uphold his claim. In our opinion, it would not be appropriate for this Court to appreciate the documents and affidavits filed by the parties in support of their pleadings, by treating them as evidence, delving into the disputed questions of fact in its jurisdiction under Article 226 of the Constitution and award compensation to the petitioner by converting itself into a trial court. The appreciation of evidence is the function of the trial court. Though it is neither possible nor advisable to lay down any inflexible rule to regulate jurisdiction under Article 226. of the Constitution, one thing, however, appears clear that in exercising that jurisdiction, this court should not embark upon an enquiry to adjudicate upon disputed questions of fact by converting itself into a trial court. Since the petitioner had an adequate alternative remedy of a civil suit, we are not inclined to go into the disputed questions of fact. Consequently the petitioner's writ petition is liable to be dismissed on this count alone.

(11) For the reasons discussed above, the petition is dismissed.