

(1998) 08 AP CK 0018

Andhra Pradesh High Court

Case No: CMP No. 11430 of 1998 and Batch

Sunder Singh

APPELLANT

Vs

Municipal Corporation of
Hyderabad

RESPONDENT

Date of Decision: Aug. 27, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: (1998) 6 ALD 112 : (1998) 6 ALT 202 : (2000) 2 APLJ 330 : (1999) 1 RCR(Civil) 285

Hon'ble Judges: S.V. Maruthi, J; G. Bikshapathy, J

Bench: Division Bench

Advocate: Mr. Rajendra Deshmukh, for the Appellant; Mr. Gharte Rama Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.V. Maruthi, J.

This petition is filed for clarification of the order dated 13-5-1998. On 13-5-1998 in CMP No.9928 of 1998 we have passed the following order:

"Status-quo to continue"

2. It is necessary to refer briefly the previous history and facts of the case. The plaintiff in OS No.573 of 1991 is the appellant. The present appeal CCCA No.64 of 1998 is filed against the dismissal of the suit OS No.573 of 1991. The plaintiff/appellant claims that he and his predecessors were in possession of the disputed land called "Jumerath Bazaar" (and other lands) from 1889. On every Thursday the market is held at "Jumerath Bazaar". In 1936, the Nizam claimed the market as his personal property, took over and gave it to Municipal Corporation of Hyderabad along with other markets on rent. On 21-9-1948, the appellant's father applied to the Sarfekhas which after holding an enquiry determined that the

property belonged to the appellant's father and on 8-2-1950 the market was directed to be handed over to Devi Singh (father of the appellant) with mesne profits. On 22-5-19550, Mohatamim Bazarath directed the Inspector to hand over possession to Devi Singh. On 17-5-1952, a letter was written to the Municipal Corporation of Hyderabad stating that Devi Singh, the father of the appellant, is the owner of the property and that the possession is now with him and he is entitled to collect the Zameendari (rent). When there was an interference by the Government in 1953, a suit OS No.7/58 was filed on the file of the II Additional Judge, Hyderabad for a permanent injunction restraining the respondent from interfering with the peaceful possession and enjoyment of the suit schedule property. The suit was decreed. The respondent-Corporation preferred CCCA No.6 of 1961 on the file of the High Court and on 26-2-1967 the High Court allowed the appeal and dismissed the suit. The appellant's father filed an appeal in the Supreme Court viz., CA No.743 of 1967. The Civil Appeal was remanded by the Supreme Court to the trial Court with a specific direction to decide the matter afresh. The suit was decreed after remand. The respondent-Corporation preferred an appeal CCCA No. 112/75 against the judgment of the trial Court dated 23-12-1974 in OS No.7 of 1959. The appeal was allowed on 20-7-1979 and the suit was dismissed. While so, the present suit OS No.573 of 1991 was filed for declaration of title and possession and also for grant of permanent injunction against the defendant-Corporation. Pending disposal of the suit, IA.No.530 of 1991 was filed for a temporary injunction which was allowed. The suit was decreed ex parte on 9-7-1992 against which CCCA No. 16 of 94 was filed by the Corporation. CCCA No. 16 of 94 was allowed and the matter was remanded to the Civil Court. After remand, the appellant filed IA No.837 of 95 on 12-7-1995 and obtained status quo order. This order continued till the dismissal of the suit On 24-4-1998. On 12-5-1998 the appellant filed the present appeal and on 13-5-1998 the impugned order "status quo to continue" was passed.

3. The main argument of the learned Counsel for the appellant is that there was an injunction order in IA No.830 of 1991 which continued till CCCA No. 16 of 94 was disposed of and after the remand, in IA No.837 of 95 the trial Court ordered "status quo". By virtue of the said orders the appellant continued to be in possession of the property. Since the appellant continued to be in possession of the property, he requested this Court to continue the same status quo in CMP No.9928 of 98 which came up for consideration on 13-5-1998 and this Court passed the order". status quo to continue". The respondent now contends that it has taken possession of the property on 7-5-1998 and, therefore, claims that it is in possession and the effect of the impugned order is that it should continue in possession by collecting the rents from the Jumcrath Bazaar. The learned Counsel for the appellant submits that status quo to continue means whatever is the position as on the date of dismissal of the suit and the undisputed fact is that as on the date of dismissal of the suit the appellant was in possession and it is only on 7-05-1998 the respondent claims to have taken possession of the property. The fact that the suit filed by the

plaintiff/appellant was dismissed does not give the respondent a right to forcibly occupy the property without taking recourse to due course of law as it has been held in *Munshi Ram v. Delhi Administration*, AIR 1968 SC 702, that,

".....no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner.....

The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner."

The learned Counsel also relied on the following passage in [Ram Rattan and Others Vs. State of Uttar Pradesh](#) :

"A true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law."

Relying on [Mogilipuvvu Annapurnaiah Vs. Malampati Narasimha Rao and Another](#) , wherein it was held that:

"It is always better that a "person" is driven to a Court of law rather to permit him to forcibly evict a tenant. A tenant by sufferance is entitled to remain in possession of the demised premises till he is evicted in the course of law.....

A person who has no title including a trespasser, cannot be evicted by force even by a person who has a right to occupy the land."

and contended that on dismissal of the appellant's suit, the respondent cannot forcibly dispossess the appellant. The respondent has to take recourse of law viz., either it has to initiate proceedings under the Land Encroachment Act or Public Premises (Eviction of Unauthorised Occupants) Act as on the date of the dismissal of the suit the possession of the plaintiff became that of a trespasser. The fact that the possession of the appellant has become that of a trespasser does not give a right to the respondent to forcibly dispossess him.

4. Relying on the judgment in [Bishan Das and Others Vs. The State of Punjab and Others](#) , wherein the Supreme Court held that:

"...the action of the Government in taking the law into their hands and dispossessing the petitioner by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably

be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property....

We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority."'"

contended that the fact that the respondent-Corporation had taken possession on 7-6-1998 does not confer any right to claim possession by authority of law.

5. The learned Counsel for the appellant submitted that the conduct of the respondent showed a total lack of respect for the judicial process refer to United States v. Mine Workers, 330 US 258.

6. The learned Counsel also brought to our notice the judgment of Kerala High Court in Karthiyayani Amma Vs. Govindan, , wherein it was held that:

"A person in possession can be evicted only in due process of law. Even the rightful owner cannot eject him with, force. If he cannot be evicted with force, he continues to be in possession and he can resist invasion of his possession by every one including the rightful owner."'"

7. From the above, the contention of the learned Counsel for the appellant appears to be that he has accomplished his possession and the fact that he was in possession of the property from 1889 is not in dispute. On the dismissal of his suit for declaration of title and injunction on 24-4-1998 his possession became that of a trespasser which is subject to the result of the appeal viz., CCCA No.64 of 98. Even in the case of a trespasser, when once the trespasser has accomplished his possession, the remedy of the true owner is to take recourse to due process of law. If he takes possession forcibly it shows a total lack of respect for the judicial process. Even accepting that on 7-5-1998 the respondent has collected rents in Jumerath Bazaar, such possession has no legal authority or force. Therefore the possession of the respondent cannot be recognised. When once its possession has no legal force and cannot be recognised under the law, status quo to continue means whatever the status quo as on 24-4-1998. Therefore, the order dated 13-5-1998 means that the appellant is entitled to possession of the property and collect the rents and the action of the respondent in collecting the rents from 7-5-1998 cannot be recognised as it is without force of law.

8. While so, the Standing Counsel for the Municipal Corporation of Hyderabad contended that the respondent-Corporation was a successful party not only in the earlier litigation, but also in the present litigation. By virtue of the earlier litigation and the present litigation, it is established that the respondent is the owner of the property and, therefore, it is entitled to collect the rents from the tenants of Jumerath Bazaar. It is further contended that the intention of this Court when it has passed the order on 13-5-1998 stating that "status quo to continue" was to

recognise the possession of the respondent. In other words, the Court has accepted that the respondent has taken possession even without any legal force. Therefore, status quo to continue means whatever is the position on 24-5-1998 which means that the respondent is in possession and entitled to collect the rents from the tenants of Jumerath Bazaar.

9. The undisputed facts are that the plaintiff's suit was dismissed on 24-5-1998. The fact that the plaintiff was in possession of the property prior to the filing of the suit and during the pendency of the suit and as on the date of the dismissal of the suit is not disputed. It is not the case of the respondent-Corporation that it was collecting rents prior to the institution of the suit-OS No.573 of 91 or after the institution of the suit and during the pendency of the suit. In other words, the fact that the appellant was collecting the rents till 7-5-1998 is undisputed. Further the fact that the respondent-Corporation has collected the rents on 7-5-1998 is also not disputed. By the impugned order we have stated that "status quo to continue". On the day when we have passed the order viz., 13-5-1998, we were not aware that the respondent-Corporation have taken the possession of the land. Therefore, the question is whether the action of the respondent in taking possession of the land on 7-5-1998 can be recognised in order to give effect to the order dated 13-5-1998. In our view, the possession taken by the respondent on 7-5-1998 cannot be recognised as it has no force of law. We have referred to various decisions in extenso wherein it was held that even in the case of a trespasser, the true owner cannot dispossess the trespasser forcibly. He has to take recourse to the due process of law. He has no right to dispossess the trespasser without following due process of law and if he does, his conduct shows a total lack of respect for the judicial process and lack of discipline of law. Pursuant to the dismissal of the suit filed by the plaintiff/appellant, the respondent ought to have initiated proceedings for taking delivery of possession either under the Public Premises (Eviction of Unauthorised Occupants) Act or Land Encroachment Act. Without taking recourse to the due process of law, it cannot forcefully take possession of the property notwithstanding the dismissal of the suit filed by the plaintiff/appellant. The dismissal of the suit of the plaintiff gives the respondent a right to evict him from the possession by taking recourse to the due process of law. It does not give it a right to forcibly dispossess the appellant/plaintiff. Therefore, the action of the respondent has no legal force and this Court cannot recognise its action. When this Court cannot recognise the action of the respondent in taking possession of the land on 7-5-1998, it cannot be said that it has taken possession of the property. Consequently, "status quo to continue" means whatever is the status quo which has the force of law as on 24-4-1998 shall continue. In other words, the plaintiff/appellant is entitled to collect the rents from the tenants of the Jumerath Bazaar.

10. However, the undisputed fact is that the respondent succeeded in the earlier litigation as well as in the Civil Suit OS No.573 of 91 and the plaintiff/appellant failed throughout. Taking into the feet that the CCA is pending in this Court, we direct the

appellant/ plaintiff to deposit Rs.4,000/- per week from out of the rents collected by him from the tenants of the Jumerath Bazaar to the credit of CCCA 64 of 98. The amounts shall be deposited on or before Thursday of every week.

11. The order dated 13-5-1998 is accordingly clarified.