

Case Note: The present Public Interest Litigation was filed by a NGO, Wazirpur Bartan Nirmata Sangh against Union of India in order to remove squatters and encroachers from the public land. This writ petition is a continuous mandamus and heard by the High Court of Delhi on a regular basis. This is one of the landmark cases as it led to the removal of thousands of encroachments of varying nature from the bank of the river. In the present judgment, the High Court of Delhi ordered that 'direct all the authorities concerned, i.e., DDA, MCD, PWD, DJB as well as the Central Government to forthwith remove all the unauthorized structures, jhuggies, places of worship and/or any other structure which are unauthorizedly put in Yamuna Bed and its embankment, within two months from today'.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM Nos.11672-73/2006 in WP(C) No. 2112/2002

Judgment reserved on: September 19, 2006

28.09.2006

Judgment delivered on: September, 2006

Wazirpur Bartan Nirmata Sangh

Vs.

Union of India and other

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J :

This order shall dispose of two CMs moved by the applicant in the present case. The application bearing No. 11672/2006 has been filed by Shri Brij Bhushan Sharan, Resident of 3-A, Jaipur Estate, East Nizamuddin, New Delhi-110013 for intervention/impleadment and for seeking appropriate directions against the Delhi Development Authority (D.D.A). The other CM No. 11673/2006 has been moved by the applicant for stay against dispossession from the site bearing Ghat No. 5, Kudasiya Ghat, Bela Road, Delhi-110054. The applicant claims that the site bearing Ghat No. 5, Kudasiya Ghat, Bela Road was originally leased to Shri Lachman Dass vide duly registered Lease Deed dated

10.04.1925, which lease deed was extended from time to time. The applicant further claims that his name was substituted in place of Shri Lachman Dass vide letter dated 18.09.1939 of Notified Area Committee and after the said substitution the applicant alone became lessee of the said site. The applicant has claimed extension of his lease through Temporary Lease Agreement vide Annexure P-3 which is dated 14.07.1967 for a period of five years commencing from 01.07.1963. Another extension of the lease is claimed by the applicant through letter dated 06.04.1970 which is annexed as Annexure P-4 with the application and by which the extension of lease has been claimed from 01.07.1968 to 30.06.1973 on the existing terms and conditions. The applicant also states that he had been continuously depositing the ground rent vide letters dated 18.04.1970, 02.03.1971 and 03.06.1972 which as per applicant evidences proof of deposits made by him towards ground rent. It is further stated that the ground rent deposited vide letter dated 03.06.1972 for the period w.e.f. 01.07.1971 to 30.06.1973 was not accepted by LandDO on the ground that the land under the bathing ghats was transferred to DDA, therefore, the applicant was required to make necessary payments to DDA, in future. Pursuant to the said letter of the LandDO, the applicant sent the ground rent to DDA but vide letter dated 20.09.1972 DDA refused to accept the ground rent saying that the necessary records from the LandDO were not received by them. Further letters were written by the applicant but since there was no response from the DDA, the applicant kept depositing the ground rent with the LandDO and as per the applicant the same stands deposited upto 30.06.2008. The applicant further claims that the plan of the said site was also sanctioned in the year 1924-26 vide various resolutions passed by Notified Area Committee and he has been uninterrupted possession of the said site and no unauthorized construction has been raised by him at the site. Thus, the applicant claims to be in legal possession on Ghat No.5, Kudasiya Ghat, Bela Road, Delhi-110054 on the strength of the aforesaid documents.

The main contention raised by the learned counsel appearing for the applicant is that the possession of the applicant in no way can be considered to be unauthorized as the genesis of applicant's possession is through the Lease Deed dated 10.04.1925, which was extended from time to time. The applicant has also relied upon clause 10(a) of the Lease Deed dated 14.07.1967 which mandates extension of lease for every five years block from time to time on the same terms and conditions if the lessee so desires. Clause 10(a) of the lease is reproduced as under:-

?10(a) at the expiry of the period of 5 years on 30.6.68. But if the conditions of the lease are observed to the satisfaction of the lessor, and the building is used for the purpose for which it is erected, and the land is not required for any other public purpose this lease shall be renewed every 5 years, from time to time, on existing terms and conditions if the said lessee so desires.?

The applicant has further relied upon the various deposits made by him towards ground rent from time to time and various covering letters sent by the applicant along with the cheques amounting to Re.1/- per year to make payment of ground rent to the DDA and LandDO. The applicant has also relied upon the letter dated 07.08.1974 of LandDO whereby the applicant was informed that due to the transfer of the land of Bathing Ghat No.5 in favour of DDA on 07.07.1971, the rent beyond that period was to be deposited to DDA and not to LandDO. The applicant has also relied upon the letter sent by the

LandDO after the advise given by the DDA vide letter dated 22.07.1978 for the deposit of the money with the LandDO. The applicant has also relied upon the letter dated 12.02.1987 whereby the LandDO informed the applicant that the payment made by him towards ground rent was under consideration. The applicant has also relied upon the receipt issued by the LandDO, Ministry of Urban Development, whereby cheque for an amount of Rs.4/- was received by the LandDO on 15.09.2004 towards the deposit of ground rent. Another covering letter dated 02.08.2005 for a deposit of Rs.3/- towards ground rent from the period 01.07.2005 to 30.06.2008, which carries endorsement of Accounts Officer, LandDO, has also been relied by the applicant. Based on these documents the applicant has claimed himself to be in legal and authorized occupation of Ghat No.5, Kudasiya Ghat, Bela Road, Delhi-110054 and therefore, he claims that he cannot be dispossessed from the site, in question.

Another contention which has been raised by the applicant is that even if he is not held out to be a tenant in respect of the said premises due to expiry of the lease, still his status would remain as that of 'tenant by holding over' and due to this status also he is protected and cannot be dispossessed without taking recourse to law. This status of tenant by holding over has been claimed by the applicant on the basis of various deposits made by him towards ground rent to DDA and LandDO. Yet another contention which has been raised by the applicant is that he enjoys protection under the Public Premises Act even if his status is considered as that of an unauthorized occupant.

Let us now deal with the aforesaid contentions of the applicant.

Admittedly, the applicant claims to have succeeded to the temporary lease after the demise of his father late Shri Brij Bhushan Sharan and after mutation of his name by the Notified Area Committee, an agreement of Temporary Lease dated 14.07.1967 came to be executed by the President of India in favour of the applicant - Shri Brij Bhushan Sharan. This is the last agreement which was executed by the LandDO in favour of the applicant and thereafter no lease agreement came to be executed between the parties. The applicant has also relied upon letter dated 06.04.1970 from the Office of Land and Development whereby his Temporary Lease was extended for a period of five years from 01.07.1968 to 30.06.1972 but thereafter neither any agreement of lease came to be executed between the parties nor any extension letter has been issued by the LandDO. Since the applicant has laid emphasis on the said lease agreement, therefore, it would be worthwhile to examine the terms and conditions of this lease agreement and effect of these terms for deciding the status of the applicant in respect of the site, in question. The title as ascribed to this agreement is 'Temporary Lease'. This Temporary Lease was executed on 14.07.1967 for the past five years period commencing from 01.07.1963. The relevant clauses taken out from the said temporary lease which have bearing on the controversy in the present matter are read as under:-

?1. That subject to observance of the conditions of this lease and to the payment of the rent hereby reserved, the said ghat site No.5 containing by measurement 1539.55 Sq.yds. of land which is more particularly describe in the schedule hereto and with the boundaries thereof has, for greater clearness, been delineated on the plan annexed to these presents

and thereon coloured red shall remain demised for a period of five years commencing from 1st July, 1963 to the said lessee for the said purpose.

2. The plans of any buildings to be erected on the said land are subject to the approval of the lessor who may reject them without assigning any reason.

3. In no case shall the lessee use the site hereby leased or any portion of it, or any building standing thereon, as a place of worship, or the seat of an idol or god, or permit similar sites being so used by any other lessees.

4. No building erected on the said site, no portion of the said site shall be used for residential purposes.

5. The lessee shall not use or permit being used any portion of the site leased, or any building standing thereon, for residential purposes by any person other than the caretaker.

6. The lessee shall maintain the building in a proper state of repair during the period of this lease.

7. The lessee shall give free access to the said site and to the buildings, shed and steps, erected thereon, to all visitors of the Hindu sect who come there to bathe in the river, subject only to such regulations the said lessee may with the approval of the lessor from time to time issue, or which the said lessor may from time to time require the said lessee to issue and observe.

8. The said lessee shall observe, and enforce observance of all regulations which the lessor may require to be observed with reference to the use as a bathing ghat, of the said site and the buildings erected thereon by the visitors.

9. During the period of this lease the said lessee shall pay to the said lessor by way of rent a sum of Re.1/- per annum advance.

10. This lease shall determine on the happening of any of the following events:-

(a) at the expiry of the period of 5 years on 30.6.68. But if the conditions of the lease are observed to the satisfaction of the lessor, and the building is used for the purpose for which it is erected, and the land is not required for any other public purpose this lease shall be renewed every 5 years, from time to time, on existing terms and conditions if the said lessee so desires.

(b) at the expiry of a notice of three months should the lessee commit a breach of any of the conditions of this lease or should the site be needed for a public purposes within the meaning of the Land Acquisition Act, and a declaration by the President to the lessee that the site is needed for a public purpose will be accepted as conclusive proof of its being so needed.

At the determination of this lease, unless renewed, the lessee shall peacefully yield possession of the leased site in the condition in which it was, and remove the buildings standing thereon without claiming compensation for the same. And in witness thereof this

lease has been drawn up and the said lessor and the said lessee have set their respective seals and signatures in token of this acceptance this day.?

After perusal of the above terms let us see as to what situation emerges to determine the exact status of the applicant viz-a-viz the site in question. Firstly, the heading of the said agreement is 'Temporary Lease', secondly, the lease is for a period of five years and thirdly, the premises in question was to be used as a Bathing Ghat, fourthly, the lease is to immediately end at the expiry of the period of five years i.e. on 30.06.1968 unless the same is renewed for a further period of five years. Clause 10 of the said agreement further brings out a clear intention of the lessor/that the lessee to peacefully yield possession of the site leased after removing the building standing thereon at the determination of the lease without even claiming any sort of compensation subject to only one exception that unless any renewal was made in favour of the applicant. The applicant has relied upon only one renewal through letter dated 04.04.1970 whereby the President of India had granted extension of the lease for a period of five years w.e.f. 01.07.1968 to 30.06.1973 on the same terms and conditions, and, whereafter neither any lease was executed nor any extension was granted by the Land and Development Office or DDA. It is thus evident that the lease of the applicant, even if the said extension letter dated 06.04.1970 is taken into account, legality of which is highly questionable, it came to an end at best on 30.06.1973. Thereafter, admittedly, no lease was extended either through any agreement or even through an extension letter but still the applicant continued in possession of the said site, in question, without any right, title or interest. Under no circumstances such possession of the applicant can be considered to be either legal or authorized. We, therefore, reject the first contention of the applicant that he has been in legal and authorized occupation of the site in question.

The next contention which has been raised by the applicant is that he become tenant by holding over as envisaged under Section 116 of the Transfer of Property Act because he has been making the payments towards ground rent to the LandDO and DDA. This argument of the applicant also has no substance and merit rejection. The payments made by the applicant towards ground rent and the letters sent by the applicant can be of no help to the applicant. Even otherwise as would be evident from the various letters filed by the applicant in support of his application neither the DDA nor LandDO had accepted the payments towards ground rent although the petitioner kept on sending the cheques right from 01.07.1971. In the communication dated 04.07.1972, sent by LandDO the applicant was informed that land under the Bathing Ghats was transferred to the DDA. Similarly, in another letter dated 22.07.1978 the DDA wrote to LandDO, copy of which was endorsed to the applicant, making a reference to transfer of 30 acres of land which includes Ghat No.5, the site of the applicant in question to the DDA under the River Front Scheme. It is probably because of the transfer of land by LandDO to DDA process of which might have been started in the earlier 1971, lease of the applicant was not extended. As a result of this transfer of land under the River Yamuna Front Scheme the payments sent by the applicant from time to time were neither accepted by the LandDO nor by the DDA. Letter dated 16.01.1993 was sent by the applicant to the Office of Land and Development whereby he had forwarded cheque for 22 years towards ground rent @ of Rs.1 per annum w.e.f. 01.07.1971 to 30.06.1993. This letter itself indicates that no rent was accepted by the LandDO from 01.07.1971 onwards although many covering letters with cheques were

sent by the applicant. Similar is the fate of other subsequent cheques sent by the applicant. However, the applicant has filed one receipt for Rs.4/- issued by the office of Land and Development, Ministry of Urban Development on 15.09.2004 to show that the ground rent deposited by him was accepted by the LandDO. The relationship of lessor and lessee cannot be created where the leases are created by the Government or any Government Agency just by the incidence of making some payment at the cash counters of their offices as such payments towards various deposits are effected by large number of people at the cash counters of these Government Authorities. It would be disastrous to give weightage to such receipts issued by these Authorities for the purpose of determining relationship between the parties. We, therefore, do not accept the plea of the applicant that simply he went on sending the ground sent to the LandDO and DDA, therefore, a fresh relationship between the applicant and the LandDO/DDA came into existence. On the contrary, the presumption is against the applicant as he went on sending the ground rents without there being any extension of lease in his favour either through any agreement or even through any extension letter and in the absence of these documents, the lease in favour of the applicant safely can be considered to have come to an end on 30.06.1973. Another factor which goes against the applicant is that he never took any legal remedy against the LandDO or DDA after he was not granted any extension and, therefore, the applicant himself had admitted his status as that of unauthorized occupant and in an attempt to give legal cover to his status, he kept on sending cheques towards ground rents which were neither accepted by LandDO nor by DDA except one payment of Rs.4/- in the year 2004 Under these circumstances, the status of the applicant cannot be considered to be that of tenant by holding over, as envisaged under Section 116 of the Transfer of Property Act. For better appreciation of this principle of 'tenancy by holding over' it would be better to reproduce Section 116 of the Transfer of Property Act which reads as under:-

?116. Effect of holding over ? If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.?

What the said Section clearly contemplates is that on one side there should be an offer of taking a renewed or fresh demise duly evidenced by the lessee's or sublessee's continuing in possession or occupation of the property after his interest has ceased, and on the other side there must be a definite consent to the continuance of possession by the landlord or his legal representatives duly expressed by the acceptance of rent or otherwise. In the present case there is no express or implied consent on the part of the lessor to renew or extend the lease of the applicant. Tenancy by holding over is a creature of a bilateral, consensual act and does not come into existence by a mere unilateral intendment or declaration by one of the parties. The applicant, thus, cannot claim any advantage of various payments sent by him towards the ground rent to LandDO and DDA and, therefore, this plea of the applicant claiming 'tenancy by holding over' in respect of the said premises, in question, also fails.

The last contention which has been raised by the applicant is that even if he is considered to be unauthorized occupant, still he enjoys protection under the Public Premises Act.

This plea of the applicant claiming protection under the Public Premises Act though not raised in the present CM but only raised by the learned counsel appearing for the applicant during the course of his arguments. In view of the facts and circumstances of the present case, backdrop of which has been discussed and enumerated above, we fail to comprehend as to how the applicant can claim protection under the Public Premises Act. We again revert back to Clause 10 of the Temporary Lease Agreement to decide as to whether the applicant can claim any protection under the Public Premises Act. As per the said Clause which has already been reproduced above, the lease was to be determined after the expiry of period of five years and in the present case even after taking into account the extension letter dated 06.04.1970 the said temporary lease deed at best came to an end on 30.06.1973. Consequently, as per said Clause 10 of the Temporary Lease Agreement dated 14.07.1967, the lessee himself was to peacefully deliver possession of the site after removing the building standing thereon and without claiming any sort of compensation. The applicant has not given any explanation on the effect and import of the said Clause of the Temporary Lease Agreement which mandates peaceful handing over of the possession of the leased site at the expiry of the period of five years which as per own case set up by the applicant came to an end on 30.06.1973 by virtue of extension letter dated 06.04.1970.

Another important factor in the present case is that LandDO had transferred the possession of 125.31 acres of land to DDA on 25.03.1973 for the development of Yamuna river water front in which specific directions were given that no third party interest by way of lease etc. will be created by DDA in any part of the said land without any prior approval of the lessor. Now once this land itself stood transferred to DDA by the lessor, therefore, automatically there was an extinction of the said temporary lease on 25.03.1973 and, therefore, the applicant cannot claim any sort of protection under the Public Premises Act. It is also pertinent to state here that the unauthorized structures as existing at Ghat No.5 have already been demolished by the DDA and no premises of the applicant exist at the site except the applicant only claims possession of the land. Other adjoining Ghats except one of them have already been demolished and possession of all these sites are with the DDA for the development of Yamuna River Front as per the Central Government Sponsored Scheme of 'Chanalisation of River Yamuna'. With the said demolition of the site by the DDA no protection can be claimed by the applicant under the Provisions of Public Premises Act. The unilateral deposit of ground rent without there being any demand from the lessor cannot give any legitimacy or validity to the status of the applicant whose lease had come to an end on 30.06.1968 and even after taking into account the extended period, the said lease is automatically came to an end on 25.03.1973, the date when the LandDO had transferred the entire stretch of that land in favour of the DDA. It appears that this position has been duly acknowledged and acquiesced by the applicant because after the transfer of the said land by LandDO to DDA on 25.03.1973 as no steps whatsoever were taken by the applicant, thereafter to move the Authorities seeking any sort of extension in the lease. Thus, the applicant is estopped by the doctrine of estoppel to claim any right in respect of the said site after having acquiesced to the said position first due to determination of his lease as per Clause

10 of Temporary Lease Agreement and later on with the transfer of the said site by the LandDO to DDA under the River Front Scheme. In view of the aforesaid discussion, we reject this contention of the applicant and hold that the applicant has no right to claim any protection under the provisions of Public Premises Act.

Before parting with the present CMs, we need to observe that the Hon'ble Supreme Court of India from time to time has given directions to the concerned authorities for taking effective steps whereby the quality of the Yamuna water can be improved. It would be worthwhile to reproduce from the judgment of Supreme Court reported in (2004) 8 Supreme Court Cases 638 titled News Item Published in Hindustan Times Titled "And Quiet Flows the Maily Yamuna", In Re which reads as under:-

"4. Considering the gravity, we deem it expedient that all authorities must sit together, apply their minds to various factors including the source of the generation of waste and industrial effluents, and draw up a plan which may help in achieving results at the ground level. It is necessary to undertake such an exercise since monitoring in the last more than 4 years has not resulted in improving the quality of water. Thus, we direct that a meeting from the officers of the following Departments shall take place:

1. Ministry of Urban Development, Government of India
2. Ministry of Environment and Forests, Government of India
3. National Capital Territory, Delhi
4. Delhi Jal Board
5. Delhi Development Authority
6. Municipal Corporation of Delhi
7. New Delhi Municipal Council
8. Delhi Cantonment Board
9. Delhi State Industrial Development Corporation
10. State of Uttar Pradesh

5. The Secretary, Ministry of Urban Development would act as a Chairperson and convener of the aforesaid High Powered Committee. The other Governments/Departments should be represented by officers not below the rank of Joint Secretaries. It would be open to the Chairperson/convener to appoint a Member-Secretary of this Committee. The Committee would also be assisted by Mr. Ranjit Kumar, Amicus Curiae, who will be given due notice of the date and time of the meeting by the Member-Secretary. An action plan shall be prepared by the Committee and submitted to this Court within a period of six weeks suggesting the mode and manner in which the quality of the water can be improved and the steps and measures required to be taken by various authorities. This order should not be understood to mean that there should be any laxity in the steps already being taken as a result of orders earlier passed or otherwise. All concerned are directed to render full cooperation to the aforesaid High Level Committee

also bearing in mind that the problem being examined is the one which concerns all and sundry.?

Considering the gravity of the situation this Court also vide order dated 03.03.2003 had given directions to various statutory authorities including the Central Government to remove all unauthorized structures, jhuggies, place of worship etc. which are polluting the river Yamuna. The relevant extract of order dated 03.03.2003 is also reproduced as under:-

?What is required to be done in the present situation in this never ending drama of illegal encroachment in this capital city of our Republic? River Yamuna which is a major source of water has been polluted like never before. Yamuna Bed and both the sides of the river have been encroached by unscrupulous persons with the connivance of the authorities. Yamuna Bed as well as its embankment has to be cleared from such encroachments. Rivers are perennial source of life and throughout the civilised world, rivers, its water and its surroundings have not only been preserved, beautified but special efforts have been made to see that the river flow is free from pollution and environmental degradation. The Yamuna River has been polluted not only on account of dumping of waste, including industrial waste, medical waste as well as discharge of unhygienic material but the Yamuna Bed and its embankment have been unauthorizedly and illegally encroached by construction of pucca houses, jhuggies and places for religious worship, which cannot be permitted any more. As a matter of fact, under the garb of reallocation, encroachers are paid premium for further encroachment. Delhi with its present population of twenty million people can take no more. In view of the encroachment and construction of jhuggies/pucca structure in the Yamuna Bed and its embankment with no drainage facility, sewerage water and other filth is discharged in Yamuna water. The citizens of Delhi are silent spectators to this state of affairs. No efforts have been made by the authorities to remove such unauthorized habitation from Yamuna Bed and its embankment.

We, therefore, direct all the authorities concerned, i.e., DDA, MCD, PWD, DJB as well as the Central Government to forthwith remove all the unauthorized structures, jhuggies, places of worship and/or any other structure which are unauthorizedly put in Yamuna Bed and its embankment, within two months from today.?

Vide order dated 16.11.2005 this Court had constituted a Committee under the Chairmanship of Hon'ble Ms. Justice Usha Mehra (Retired Judge) of this Court to monitor all operations for the removal of all unauthorized encroachments on Yamuna Bed and its embankments. This is in furtherance to these directions the Monitoring Committee has been giving various suggestions and passing various orders so that Yamuna embankments and its Bed are free from all sorts of unauthorized encroachments. The applicant has also been unauthorizedly occupying Ghat No.5, Kudasiya Ghat, Bela Road, Delhi-110054 and already he has been enjoying the fruits of his illegal possession primarily due to the carelessness of Government Agencies although his right to occupy the said land came to an end as long back as in 1973.

Yamuna is one of the holiest river of India. This river Yamuna is a part of our National ethos and it is mentioned not only in our Rig Vedas but it is proudly mentioned in our National Anthem as well. It is shocking that this sacred, holly and majestic river is now totally polluted with all kinds of domestic waste, industrial waste, silt and other pollutants. 75% of Delhi's water is supplied from the river Yamuna by the Delhi Jal Board and with such heavy in flow of sewage, sullage, poisonous and other noxious chemicals this river has practically become a drain of Delhi. It is, thus, bounden duty of all citizens of Delhi to lend a hand of cooperation, particularly, those living along the banks of Yamuna so that once again this holly river is brought back to its original shape. The pure, clean and clear water of river Yamuna and its encroachment free embankments will certainly help not to few but all the citizens of Delhi as river Yamuna is the lifeline, for the Capital. With these observations, the present applications are dismissed.

Kailash Gambhir, J.

September , 2006 Acting Chief

Justice

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