

JHUMMAN SINGH AND ORS.

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v.

CENTRAL BOARD OF INVESTIGATION AND ORS.

MARCH 30, 1995

[B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

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Constitution of India, 1950: Articles 32, 136, 142

Writ—Allegation of abuse of process of Court—Obtaining spurious decrees by tenant for eviction of co-tenants—Held a blatant abuse of process of Courts—Court has power to rectify such an abuse—Writ held maintainable—Imposition of heavy costs—Supreme Court's directions.

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The petitioners filed a Writ Petition in this Court for a direction to the Central Board of Investigation to investigate and prosecute the Respondent-3 and other persons responsible for obtaining fraudulent decrees for unlawful eviction of the petitioners. Their case was that they as tenants were in possession of four shops while the third respondent was in possession of the fifth shop of a property owned by one SG. After the death of SG three of the petitioners purchased three shops from the landlady, wife of SG and sale deeds were also executed in their favour. However, after the death of the landlady the third respondent started declaring himself as the owner of all the five shops and demanded rent from the purchaser but they resisted. Further with a view to evicting the petitioners from the shops otherwise than by due process of law Respondent 3 resorted to a devious device and obtained two decrees in a fraudulent manner against petitioners 1 and 2 - one from the Court of District Judge I Guwahati and the other from Sub-Judge I Gaya. In terms of these decrees petitioners 1 and 2 were to handover peaceful possession of their shops to the respective decree holders. The petitioners further alleged that neither had they anything to do with the persons shown as plaintiffs in the said decrees nor had they any dealing with them and that they came to know of the said decrees only when the Bailiff came with the warrants of delivery to take possession of the premises.

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The third respondent on the other hand denied the petitioners' claim of title and claimed ownership of the shops on the basis of sale deeds executed by the landlady in 1992. As regards the decree, he stated that the

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A plaintiffs in these two decrees contacted him stating that they wanted to execute the decrees and after execution they will give the shops to some other persons and get 'pagri' but he purchased the said decrees from those plaintiffs for rupees twenty thousands each and obtained powers of Attorney from them to enable him to execute the said decrees. The third respondent also raised objection as to the maintainability of the writ petitions on the ground that on the basis of nature of complaint made by the petitioners a writ under Article 32 was wholly inappropriate because the petitioners were not seeking to enforce any of their fundamental rights.

Allowing the petition, this Court

C HELD: 1. The manner in which the decrees were obtained and sought to be put in execution by the third respondent through the Court at Delhi is a clear case of abuse of process of courts. The whole story, every bit of it, appears to be a fabricated one meriting no consideration whatsoever. It is abundantly clear that the said stratagem was resorted to by the third respondent with a view to obtain the surreptitious eviction of the 1st and 2nd petitioners in execution of the said spurious decrees since he may have thought that it would be difficult- at any rate, it will take a long time - for him to obtain eviction of the said writ petitioners in accordance with the correct procedure prescribed by law. [101-D, C]

E 2. The story put forward by the third respondent with respect to the circumstances in which he claims to have purchased the said decrees are highly tell-tale. The whole story appears to be a fabricated one. Instead the third respondent has himself manipulated to get the said decrees from Guwahati and Gaya Courts with a view to evict petitioners 1 and 2 otherwise than in accordance with law. He has tried to over-reach the courts and to circumvent and defeat the ends of justice by resorting to the said tactic. It is necessary that not only such tactics be not allowed to succeed but persons indulging in them should be dealt with appropriately. In such a situation, Court is not inclined to accept that this writ petition under Article 32 is not maintainable. When such a blatant abuse of process of courts and judicial system comes to the notice of this Court, it has the power, indeed the duty, to rectify it whether the power to do so is traced to Articles 32, 136 or 142 of the Constitution. Accordingly the following directions are issued:- [101-H, 102-A-C]

H (i) The impugned decrees are declared inexecutable. Petitioners

1 and 2 shall not be evicted from the shops in execution of the said decrees; [102-E]

(ii) The third respondent shall pay as costs Rupees one lakh which shall be paid to Writ Petitioners 1 and 2 - rupees fifty thousands each; and [102-H]

(iii) the third respondent or any other person claiming under or through him shall not be entitled to evict the Writ Petitioners 1 to 4 from the shops in their occupation except in accordance with law. [103-B]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 487 of 1994.

(Under Article 32 of the Constitution of India.)

M.C. Bhandare and R.P. Gupta (Intervenor) with him for the Petitioners.

K.T.S. Tulsi, Additional Solicitor General, K.G. Bhagat, P.K. Jain, T.C. Sharma and P. Parmeswaran with them for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. This writ petition brings to light a serious abuse of process of court - indeed an abuse of the process of more than one court - indulged in by certain unscrupulous persons. Since the facts of the case are themselves demonstrative of the said abuse perpetrated by Respondent No. 3, we would set them out first.

The four writ petitioners are the tenants of four shops comprised in property bearing No. WZ-93, Titarpur, Najafgarh Road, New Delhi-110027, while the third respondent is occupying the fifth shop as a tenant. According to the petitioners, one Siyaram Gupta was the owner of the said five shops. On his death in or about 1983, his wife, Smt. Urmila Devi and her three daughters became the owners. Towards the end of the year 1992, the petitioners say, the landlady offered to sell the shops to the respective tenants. Three of the petitioners purchased the three shops occupied by them. Sale deeds were also executed in their favour. After the death of Smt. Urmila Devi, the petitioners say, the third respondent, Sri Sangat

- A Singh started declaring himself as the owner of all the five shops and demanded rent from the petitioners which they resisted.

The petitioners complained that with a view to get the writ petitioners evicted from the shops otherwise than by due process of law, the third respondent resorted to a devious device. Two decrees were obtained against the Petitioners 1 and 2 - one from the Court of Assistant District Judge-I at Gauhati against the first petitioner and the other from the Sub-Judge-I, Gaya (Bihar) against the second petitioner's father. The decree from the Gauhati court is dated May 18, 1994 in Arbitration Suit No. 47 of 1994 making an award the rule of the Court. The award is said to have been obtained by one Sri Bhupinder Singh, S/o Sri Harcharan Singh, R/o Sri Mantapur, Bhangaghar, Gauhati against Sri Jhumman Singh, S/o Sri Chadda Singh, R/o Titar Pur, New Delhi (the first writ petitioner in this writ petition). The decree says that the defendant, Sri Jhumman Singh shall pay a sum of Rupees fifty thousand plus interest @ twelve per cent per annum from April 1, 1992 till the day of payment to Sri Bhupinder Singh and shall also hand over peaceful vacant possession of the property bearing Shop No. 4 forming part of premises WZ 93/4 situated at Titar Pur, Main Najafgarh Road, Tagore Garden, New Delhi. A site plan is attached to the said decree specifying Shop No. 4 which the defendant to the said decree was to hand over to the plaintiff therein. The other decree passed by Sub-Judge-1st, Gaya is also a decree making an award the rule of the court. The award which has been made a rule of the Court directs *inter alia*, that Sri Ala Noor S/o Sri Amir Bux, R/o Titarpur, New Delhi shall hand over to the plaintiff therein peaceful vacant possession of the Shop No. 3 forming part of property No. 93/3, Titar Pur, Main Najafgarh Road, Tagore Garden, New Delhi - 27 (specified in the annexed plan) within fifteen days of the said Award being made a rule of the Court. In default, the plaintiff, Sri Ravi Raj Singh, was held entitled to execute the said decree and recover the possession. Execution was taken out of the said two decrees and then transferred to Delhi for execution. Petitioners 1 and 2 came to know of the said decrees only when the Bailiff came along with the warrants of delivery of possession of the said premises. On account of the resistance put up by the petitioners, supported by the neighbours, the Bailiff could not execute the decrees on that day. On verification from the Court records, the petitioners say, they came to know the particulars of said decrees. Petitioners 1 and 2 say that they had nothing to do with the persons shown as plaintiffs in the said decrees, had no dealings with

them much less was there any dispute between them either at Gauhati, A
 Gaya or anywhere else. They even doubt whether any such persons really
 exist. According to them, the whole thing is a fabrication indulged in by
 third respondent to get the Petitioners 1 and 2 evicted surreptitiously. They
 submit that obtaining the said fraudulent decrees and the manner in which
 they were sought to be executed and the petitioners sought to be evicted B
 from their shops is the result of a criminal conspiracy hatched by the third
 respondent. It amounts to criminal offence besides a gross abuse of
 process of the Court. Accordingly, they pray for issuance of an appropriate
 writ, order or direction directing the C.B.I. to enquire and investigate into
 the circumstances in which the aforesaid decrees were passed and to take
 appropriate action against the persons responsible therefor. C

The writ petition was entertained by this Court on September 5,
 1994 and stay of dispossession pursuant to the aforesaid arbitral awards
 granted.

The third respondent, Sri Sangat Singh, has appeared and filed a D
 counter-affidavit. He states that he is the owner of the shops in occupation
 of the writ petitioners by virtue of the sale deed(s) executed by the
 aforementioned landlady in his favour in the year 1992. He admits that the
 petitioners were tenants in respect of the four shops under Smt. Urmila
 Devi but denies the petitioners' claim of title. Against the third writ E
 petitioner, Sri Vijay Kumar Behl, he says, he has filed a suit (Suit No. 97
 of 1993) seeking his eviction. In the written statement, he states, Vijay
 Kumar Behl has admitted the ownership of Smt. Urmila Devi. With respect
 to the circumstances in which he took out execution of the aforesaid two
 decrees against Petitioners 1 and 2, the third respondent has made the F
 following averments, which are better set out in his own words:

"(2) It is submitted that one Bhupender Singh of Gauhati and other
 Rabi Raj from Gaya contacted the replying respondent and told
 him that they want to execute a decree against Jhumman Singh
 and Alanur therefore after execution of decree they will give the G
 shop to some body else and will get pagari. The deponent told
 them that he is the owner of the shops therefore will not allow any
 third person to enter in his shops therefore the deponent asked
 them to sell the decree to the deponent and execute the Power
 of Attorney in his favour. The replying respondent paid them Rs. H

A 20,000 each after taking loan from their friends and filed the case for execution of decree.....

(9) That the contents of para 11, 12, 13 of the writ petition are denied. It is submitted that the replying respondent is the owner of the disputed property and the petitioner wants to grab the petitioner's property. It is submitted when he came to know that two persons on Shri Bhupender Singh and Sh. Ravi Raj Singh who both used to come to Shri Jhumman Singh and Alanur occasionally and later on when their relation became very strained they came to the respondent and told him that they had obtained decree against the petitioners and after execution of decree they will give the shops to third person on pagari. The replying respondent then requested them not to execute the decree as the he is owner of the disputed shops but they did not accept the deponent request.

D The Bhupinder Singh and Ravi Raj Singh executed the power of attorney in favour of the replying respondent and gave him the power to executed the decree in their behalf. It is vehemently denied that any signature or agreement was forged. Smt. Urmila Devi also given on affidavit on 17.7.92. The true photocopies of power of Attorney as Annexure VI collectively and the true copy of collectively and the true copy of affidavit dated 17.7.92 is Annexure-VII."

(Quoted from the paper-book)

F We must say at once that the story put forward by the third respondent is incredulous, to say the least. It is delightfully vague in relevant particulars. It is curious how the two plaintiffs, Bhupinder Singh of Gauhati and Ravi Raj Singh of Gaya, who had obtained two identical decrees from Gauhati and Gaya courts against Petitioners 1 and 2 respectively, simultaneously contacted the third respondent about the decrees obtained by them and how both of them made identical statements to third respondent that after executing the decrees they will give the shops to some other persons and get 'pagri'. What is more curious is that the third respondent, who claims to have become the owner of all the said four shops in the year 1992 itself having purchased them from Smt. Urmila Devi did not protest against the third parties seeking to evict, what according to him, are his

tenants from the premises owned by him and their proposal to lease them out to third parties and collect 'pagri' themselves. One would have expected the third respondent to question immediately the right of those third parties to evict his tenants and obtain possession of the shops with which they had nothing to do and which, according to him, are his own properties. Not only did he not do that, he, without any demur, purchased the said decrees from the said two persons paying them Rupees twenty thousand each and obtained Powers of Attorney from them to enable him to execute the said decrees. The whole story, every bit of it, appears to be a fabricated one meriting no consideration whatsoever. It is abundantly clear that the said stratagem was resorted to by the third respondent with a view to obtain the surreptitious eviction of the 1st and 2nd petitioners in execution of the said spurious decrees since he may have thought that it would be difficult - at any rate, it will take a long time - for him to obtain eviction of the said writ petitioners in a straight-forward manner, i.e., in accordance with the correct procedure prescribed by law. We are of the opinion that the manner in which the said decrees were obtained and sought to be put in execution by the third respondent through the Court at Delhi is a clear case of abuse of process of courts.

Sri M.C. Bhandare, learned counsel appearing for the petitioners, submits that such fraudulent proceedings are becoming rampant in the Courts at Delhi and it is necessary in the interest of justice that persons indulging in such proceedings should be dealt with severely. He, therefore, requests that that C.B.I. be asked to investigate and prosecute the persons responsible for perpetrating the said fraud. On the other hand, Sri K.G. Bhagat, learned counsel for the third respondent, submitted that this writ petition is wholly misconceived as also the prayer made in the writ petition. He says that the Code of Criminal Procedure prescribes the procedure to be followed in cases of complaint of the nature made by the writ petitioners herein and that a writ petition under Article 32 of the Constitution of India is wholly inappropriate. He says that the petitioners are not seeking to enforce any of their fundamental rights and hence, the writ petition is itself no maintainable in law. He also submits that the third respondent has *bonafide* purchased the decrees and put them in execution and is not guilty of any criminal offence or abuse of process of Court.

We are of the opinion that the story put forward by the third respondent with respect to the circumstances in which he claims to have

A purchased the said decrees are highly tell-tale. The whole story appears to be a fabricated one. It is evident that the third respondent has himself manipulated to get the said decrees from Gauhati and Gaya Courts with a view to evict Petitioners 1 and 2 otherwise than in accordance with the proper procedure prescribed by law. It is clear beyond any doubt that the third respondent has tried to over-reach the courts and to circumvent and defeat the ends of justice by resorting to the said tactic. It is necessary that not only such tactics be not allowed to succeed but persons indulging in them should be dealt with appropriately. In such a situation, we are not inclined to agree with Sri Bhagat that this writ petition under Article 32 is not maintainable. When such a blatant abuse of process of courts and judicial system comes to the notice of this court, it has the power, indeed the duty, to rectify it whether the power to do so is traced to Articles 32, 136 or 142 of the Constitution. Accordingly, the following directions are made:

D (i) The decrees aforementioned, viz., (1) between Sri Bhupinder Singh, S/o Sri Harcharan Singh, R/o Sri Mantapur, Bhangaghar, Gauhati Versus Sri Jhumman Singh, S/o Sri Chadda Singh, R/o Titar Pur, New Delhi in Arbitration Suit No 47 of 1994 passed by the Court of Assistant District Judge-I at Gauhati and (2) between Sri Ravi Raj Singh, S/o Sri Iqbal Singh, R/o Church Road, Gaya Versus Ala Noor, S/o Sri Amir Bux, R/o WZ-42, Titar Pur, New Delhi are declared inexecutable against E Petitioners 1 and 2 through any court in Delhi. Petitioners 1 and 2 shall not be evicted from the shops mentioned in the said decrees in execution of the said decrees.

F (ii) The third respondent, Sri Sangat Singh, shall pay costs of this writ petition assessed at Rupees one lakh. The said amount shall be deposited in this Court within one month from today. On such deposit, the said amount shall be paid to Writ Petitioners 1 and 2 (Rupees fifty thousand each). If the third respondent fails to deposit the said amount within the period prescribed, this order shall be executable and be executed as a decree of the civil court by and at the instance of G Petitioners 1 and 2 either jointly or separately, as the case may be.

H (iii) The third respondent and/or any other person claiming under or through him shall not be entitled to evict the Writ Petitioners 1 to 4 from the shops in their occupation forming part of premises No. WZ-93, Titar

Pur, Najafgarh Road, New Delhi except in accordance with law, viz., by approaching a court at Delhi having territorial jurisdiction either in accordance with the Rent Control Act or through an ordinary civil action, as the case may be. A

(iv) The petitioners are free to take such proceedings against the third respondent, civil or criminal, as are open to them in law. B

We make it clear that we did not intend to and we do not express any opinion on the pleas of the writ petitioners or of the third respondent with respect to their claim of having purchased the said shop or shops, or with respect to their respective claims of ownership of the said shops. C

The writ petition is allowed in the above terms. Costs as indicated above.

T.N.A.

Petition allowed.