Delhi High Court
Suraj Prakash vs Union Of India on 9 December, 1997
Equivalent citations: 1998 IAD Delhi 301, AIR 1998 Delhi 236, 71 (1998) DLT 532, 1998 (44) DRJ 251, 1998 RLR 10
Author: M Shamim
Bench: M Shamim
JUDGMENT Mohammad Shamim, J.

(1) The appellants/plaintiffs(hereinafter referred to as the appellants for the sake of convenience) through the present second appeal have taken exception to a judgment and decree dated December 23, 1997 passed by an Additional District Judge, Tis Hazari, Delhi, whereby he dismissed an appeal preferred by the appellants herein against the judgment and decree dated December 18,1968 passed by a Sub Judge, Tis Hazari,Delhi.

(2) Brief facts which are necessary for the appreciation of the points involved in the present appeal are being reproduced below: that the appellants are in occupation of a plot bearing No. 34/27, Ward No.16, Pusa Road, Delhi(hereinafter referred to as the disputed property for the sake of brevity) fully shown by letters Abcd in the plan annexed with the plaint. The disputed property is a nazul land belonging to the Government of India (hereinafter referred to as the respondent No.1). The interest of the respondent No.1 in the said property vested in the Delhi Improvement Trust, now Delhi Development Authority,(hereinafter referred to as respondent No.2) through an agreement in between respondent No.1 and the Delhi Improvement Trust, for the purpose of management of the said property. The respondent No.1 and the Delhi Improvement Trust were both non-evacuees and as such their proprietary rights in the disputed property were non evacuee rights and thus neither could vest in the Custodian nor could this be acquired by the Central Government under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act (No.44 of 1954),('The Act' for short). The disputed property was leased out through a lease deed dated January 30,1942 by the then Delhi Improvement Trust to one Shri Dhanpat Rai, a non-evacuee, for a period of 99 years (the lease being renewable after a period of 10,20,30 or 60 years respectively) from the Ist day of April of calender year in which the lease was granted as per the terms and conditions of the aforementioned lease deed. In case of breach of any of the terms and conditions the leasehold rights were to revert to the Delhi Improvement Trust (now DDA) automatically. The aforesaid lessee Shri Dhanpat Rai without the permission of the Delhi Improvement Trust or the Government of India sub let the disputed property to a Muslim evacuee who migrated to Pakistan in the year 1947 owing to the disturbances in the country and as such the lessee's rights in the disputed property were taken over by the Custodian Department though they had no right or jurisdiction to do so. Neither Shri Dhanpat Rai nor the Muslim evacuee fulfillled the terms and conditions of the lease inasmuch as the lease was never renewed either by the Muslim evacuee or the Custodian and as such it reverted to the non evacuee landlord. Furthermore, the Custodian of Evacuee Properties by a Notification dated May 13,1949 as published in the Gazette of India (Extraordinary) dated May 28,1949 restored the lease rights to non evacuee landlord i.e. Delhi Improvement Trust. Consequently, the disputed property from the date of the above Notification ceased to be the evacuee property. The disputed property being a non evacuee property could not have been acquired and was in fact not acquired under Section 12 of the Act and thus did not vest in the Central Government.The appellants raised

super-structure over the disputed property in their respective portions after the allotment of the same to them and spent a sum of Rs.70,000.00 in connection therewith. Some of the appellants are running their industrial concerns in their respective portions. Thus the disputed property is being used for residential as well as commercial purposes. The disputed property being the nazul land could not have been acquired under Section 12 of the Act nor could it have been disposed of by the Union of India through their Managing Officer in view of the provisions of Article 299 of the Constitution of India. Respondent No.1 are not competent to authorise the Managing Officer to sell the properties other than those forming part of the compensation pool. The appellants are lawful tenants under the respondent No.1. Respondent No.3 as such has got no right and title to eject the appellants from the disputed property. The transfer of the disputed property in favour of respondent No.3 by the respondent No.1 is therefore, null and void and does not confer any right or title on the respondent No.3. The disputed property in utter disregard to the provisions of law was sold at a public auction held on September 18,1960 and was purchased by respondent No.3. The appellants objected to the sale of the disputed property as the same was non evacuee property and could not be sold and filed an appeal before the Assistant Settlement Commissioner. The said appeal was dismissed vide order dated March 28, 1961. The appellants then presented a revision against the said order. However, the revision petition was also dismissed on September 13, 1961 by the Deputy Chief Settlement Commissioner. Petition under Section 33 of the Act against the order passed by the Deputy Chief Settlement Commissioner was dismissed as communicated to the appellants by letter dated December 21, 1961. The orders with regard to the sale of the disputed property in pursuance whereof the auction was held on September 18, 1960 and the order passed by the Assistant Settlement Commissioner dated March 28, 1961 and the impugned order dated September 13, 1961 passed by the Deputy Chief Settlement Commissioner and the order passed by the Central Government communicated to the appellant on December 21, 1961 are illegal, invalid, void and without jurisdiction and as such not binding on the appellants for the reasons stated in paras(a) to (t) of the plaint.

(3) Notice under Section 80 of the Code of Civil Procedure was served on respondent No.1. The appellants have thus prayed that the auction sale in regard to the disputed property held on September 18, 1960 and the purchase of the same by respondent No.3 and the order dated March 28, 1961 passed by the Assistant Settlement Commissioner and the order dated 13, 1961 passed by the Deputy Chief Settlement Commissioner in revision and the order passed by the Central Government an d communicated to the appellants vide letter dated December 21, 1961 be declared as illegal and void and without jurisdiction and not binding on the appellants. They have further prayed that the appellants being the lawful tenants are entitled to the transfer of the disputed property in their favour and they be not held liable to eviction by the respondent No.3 since they have raised super structures of permanent nature over the disputed property.

(4) Respondent No.3 has put in contest, inter alia on the following grounds: that the appellants have no locus standi to bring forward the present suit. The appellants are in illegal occupation over different portions of the disputed property. The present suit is barred by the provisions of the Act. The Civil Court has got no jurisdiction to entertain the present suit. The disputed property admittedly vested in the Central Government and formed part of the compensation pool. The suit is also barred by the provisions of the Administration of Evacuee Property Act (No.31 of 1950). The

only remedy available under law to the appellants is to file a suit for cancellation of the sale in favour of respondent No.3. The disputed property was an evacuee property and as such vested in the Custodian of Evacuee Properties. It was rightly acquired by the Government and was correctly sold subsequently to respondent No.3 in a public auction held on September 18,1960. It is correct that unauthorised constructions have been raised on some parts of the disputed property and the same are liable to be removed at the instance of the persons who have constructed the same. It is wrong and incorrect that the disputed property could not have been acquired by the Central Government under Section 12 of the Act. The fact is that the disputed property belonged to the Government and the same was leased out to a Muslim in whose favour a mutation had been effected. On his migration to Pakistan the property was declared as an evacuee property and vested in the Custodian of Evacuee Properties. It is wrong and false that the lease or the sub-lease in favour of the Muslim evacuee was illegal. It is wrong and false that Shri Dhanpat Rai or the Muslim evacuee did not fulfill the terms and conditions of the lease. The Notification dated March 13,1949 is not applicable to the facts of the present case. It is incorrect that the sale in favour of respondent No.3 is illegal or void. The appellants are not the tenants and are thus liable to eviction at any time. Similarly, the super structures raised by them are unauthorized and are thus liable to be removed. The Assistant Settlement Officer was fully competent to sell the disputed property and he validly sold the same by public auction and the same was legally and validly purchased by respondent No.3 for a consideration of Rs.1,40,000.00 . The appeal against the impugned order of the Settlement Commissioner was rightly rejected. The revision petition was also rightly dismissed by the Deputy Chief Settlement Commissioner. Similarly the petition under Section 33 of the Act against the order of the Deputy Chief Settlement Commissioner was rightly dismissed. The orders with regard to the sale of the disputed property and its subsequent sale by auction on September 18, 1960 passed by the Assistant Settlement Commissioner the order dated March 28,1961 passed by the Deputy Chief Settlement Commissioner and that of the Central Government communicated to the appellants on December 21,1961 are perfectly legal and valid and within jurisdiction. The present suit is an abuse of the process of the court and the same has been filed simply with a view to delaying the eviction from the disputed property. It is incorrect that the disputed property belonged to the respondent No.2. The fact is that the same only vested in respondent No.2 for purposes of management. Respondents No.1 and No.2 having admitted the validity of the sale by respondent No.1 in favour of respondent No.3 the appellants have no right to challenge the same. In view of the above the appellants have no cause of action against the respondents. The suit is false and frivolous and the same is liable to be dismissed.

(5) Respondent Nos. 1 & 2 have supported the case of respondent No.3 through their written statements.

(6) It has been urged for and on behalf of the appellants that the appellants are lawful tenants in the disputed property. They have been in occupation over the same since June 1948. They have been paying house tax and lease money. Thus they are not liable to eviction. The disputed property has been allotted to them as is manifest from the inspection report dated July 20,1953 (vide Ex.Public Witness 9/A). They have also raised construction over the same with bricks and cement. The learned counsel further contend that the disputed property ceased to be an evacuee property w.e.f. May 13,1949 as it was on the said date the Custodian of Evacuee Properties transferred the management

of the tenancy rights to non evacuee landlords. Thus after the transfer of the disputed property to non evacuee landlords, according to the learned counsel, the disputed property was no more an evacuee property on the date it was put to sale through an auction which was held on September 18,1960. Consequently the same could not have been purchased by respondent No.3 vide sale deed dated February 28,1966 (Ex. D-35). Hence the said auction held on the above said date was null and void and without any jurisdiction. Learned counsel have next contended that there is no lease deed in favour of Shri Salah-Uddin. Hence there is no evidence that Shri Salah-Uddin, Muslim evacuee, was ever a lessee of the disputed property. Ergo the disputed property could not have been declared as an evacuee property vide Notification dated November 19,1948. Both the courts below misconstrued the documents. The construction of documents relating to the rights of the parties is a question of law. In view of the above this Court can interfere in a second appeal under Section 100 of the Code of Civil Procedure.

(7) Learned counsel for respondent No.3, Mr. Mukul Rohatgi, Senior Advocate, has urged to the contrary. He has contended that Civil Court has got no jurisdiction to entertain the present suit (vide Section 36 of the Act). The suit is also barred by Section 28 & 46 of the Administration of Evacuee Property Act 1950. According to the learned counsel the disputed property was admittedly declared an evacuee property as the same belonged to a Muslim owner who migrated to Pakistan. It formed part of the compensation pool and was rightly acquired under Section 12 of the Act and was rightly put to auction on September 18,1960 and was rightly sold by respondent No.1 and purchased by respondent No.3. The appellants are neither the tenants nor the licensees of the disputed property. In fact they got into possession over the disputed property without any right or title. Thus they are the trespassers and as such are liable to be evicted therefrom.

(8) It is manifest from above that the main contention put forward by the learned counsel for the appellants is that the appellants are tenants in the disputed property by virtue of an allotment from Government of India. Learned counsel in this connection have placed much reliance on an inspection report which, according to them, is nothing else but an allotment letter i.e. Ex.Public Witness 9/A. The learned counsel on the basis of the said inspection report (Ex.Public Witness 9/A) have contended that it is nothing but an allotment letter. It goes a long way to show and prove that the appellants are in occupation over the disputed property since June 1948. It further goes to show that the appellants have been assessed to house tax. They are paying rent at different rates mentioned therein. They have raised pucca structures with bricks and cements on the disputed property. The learned counsel on the basis of the above report (Ex.Public Witness 9/A) wants me to conclude that the appellants are lawful occupants over the disputed property and they are thus not liable to eviction.

(9) I am sorry, I am unable to agree with the learned counsel. A close scrutiny of the above document (Ext.Public Witness 9/A) reveals that the same is nothing but an inspection report. There is no dispute with regard to the fact that the appellants are in occupation over the same and the same has also not been challenged by the learned counsel for respondent No.3. Thus there is nothing strange when an officer visited the disputed property on July 20.1953 and found the appellants in occupation thereof. However, simply because a man is in occupation over a particular property he cannot be termed as a tenant or a licensee on the basis of his occupation. A tenancy like

any other fact is a fact which is to be proved by evidence. The appellants curiously enough, have not placed even a tiny piece of paper in support of their assertion that they are in fact the tenants under the respondent No.1. Neither any lease deed nor any rent note or any other piece of paper was placed on record in support of the above contention.

(10) The appellants have then relied on the house tax receipts issued in their favour in order to substantiate their contention that they are the lawful occupants of the disputed property (vide Exts.Public Witness 9/N, P & Q). The said contention, I feel is also of no avail to the appellants. The payment of the house tax can by no stretch of imagination be equipollent to an agreement of tenancy. House tax is levied on a person whosoever is in possession over a particular property. No enquiry with regard to the status of the person is conducted at the time of the levy of the house tax. The Municipal Corporation is concerned with the recovery of the house tax from any person whosoever is in occupation over a particular property. Thus they would recover the house tax from any person whosoever is ready to pay the same. Admittedly, the appellants were looking for creating evidence in their favour as the lawful occupants. Thus there is nothing strange in order to create the said evidence in their favour they paid the house tax to the Municipal Corporation of Delhi.

(11) Learned counsel for the appellants have then led me through certain rent receipts issued by the Ministry of Rehabilitation in favour of the appellants to show and prove that the appellants are in fact tenants (vide Exts.Public Witness 9/R, S, T & U). The contention of the learned counsel, I feel, does not hold any water.

(12) A perusal of the said rent receipts reveals that the said receipts were issued without prejudice and it was clearly mentioned therein that the same would in no way affect the status of the appellant. Thus the appellant cannot be allowed to draw any sustenance from the mere issue of the said receipts in their favour.

(13) Furthermore the appellants while contending before the Court that they are the tenants in the disputed property are raising a question which is a question of fact. While doing so they are oblivious of the fact that they are in second appeal. Thus they are debarred in a second appeal from challenging the finding of the two courts below on the factum of tenancy. The above view was given vent to by the Hon'ble Supreme Court as reported in Shri Raja Durga Singh of Solon v. Tholu and others, , "..... " In an ejectment suit a finding by the District Judge on the question whether the defendants were the tenants of the plaintiff, arrived at, on the consideration of all evidence, oral documentary, adduced by the parties is a finding of fact and cannot be set aside in second appeal by the High Court.....".

(14) To the same effect are the observations of the Hon'ble Supreme Court as reported in Bhinka and others v. Charan Singh, .

(15) There is another aspect of the matter. The appellants got into possession over the disputed property in the wake of disturbances in the country as an aftermath of the partition. Thousands of persons migrated to India from Pakistan. The Government of India was facing the problem in finding a shelter for the refugees. The refugees were also themselves looking for a roof over their

head. Hence they occupied any property which was found lying vacant. The Government initially did not disturb their possession as they were unable to find out an alternative accommodation for them and it was a knotty problem to settle them. Consequently there is nothing strange, that initially they were not disturbed and since they were in occupation over certain properties the Government received from them certain amounts in lieu of their occupation over the said properties. This is exactly what happened with the appellants since they were in occupation over the disputed property. Certain amounts were received from them in lieu of the said occupation. However, the appellants cannot now be allowed to take advantage of the situation which was obtaining in the country in the wake of the partition .Thus the payment of the said amounts by the appellants to the respondent No.1 in lieu of their occupation over the disputed/ property can by no stretch of imagination lead us to the inference that the appellants are lawful tenants in the property.

(16) Learned counsel for the appellants have then argued that in the absence of a clear cut evidence with regard to the factum of the tenancy, the Courts would be justified in taking the help from the surrounding circumstances to come to a conclusion with regard to the factum of the tenancy. The learned counsel then contend that the said surrounding circumstances lead us to one and the only conclusion that is inevitable that the appellants are lawful tenants. Admittedly they have been in occupation of the disputed property since 1948. They have been paying rent and the house tax. Thus the logical inference is that they are lawful tenants. The learned counsel in support of their contention have led me through the observations of a Single Judge of Calcutta High Court as reported in Dwarka Dass Marwari and others v. Smt. Parbati Dassi, Air 1942 Calcutta, "In the absence of a written lease creating a tenancy, the nature of the tenancy must be determined from surrounding circumstances, and in particular from the course of dealings by the parties concerned " the said observations of the learned Single Judge were subsequently reiterated by another Single Judge in Murlidhar Kulthia & Smt.Tara Dye, .

(17) Learned counsel have also relied upon the observations of a Division Bench as reported in Ramayan Saran v. The Patna Improvement Trust, , wherein the Division Bench relied upon the observations of a Full Bench of the same Court to the effect " The possession of a lessee becomes wrongful from the time of his entry on the basis of a void or invalid lease, but if he pays rent which is accepted by the lessor, his possession ceases to be adverse to the lessor and a relationship of landlord and tenant comes into existence, in other words, he no longer remains a trespasser but becomes a tenant". The above said authorities are not applicable to the facts of the present case inasmuch as the said authorities deal with a situation in which the lease granted in favour of the lessee is initially invalid or illegal. However, if he gets into possession over the same and pays the rent which is accepted by the landlord in that eventuality the lessee would be deemed to be a lawful tenant. Admittedly this is not the case in hand. The appellants herein have not placed are thing on record in the present case to show and prove any agreement between them and the Government of India with regard to their occupation over the said property. Thus I am of the view that both the Courts below rightly concluded that the appellants herein are the trespassers.

(18) During the course of arguments learned counsel for the appellants have laid much stress upon the Notification dated May 13, 1949 issued by the Government of India. The learned counsel have contended on the basis of the same that the disputed property no more remained an evacuee

property inasmuch as the same was transferred to a non evacuee landlord vide the above Notification. Thus, according to the learned counsel, the disputed property was no more an evacuee property when it was put to sale in an auction by the Settlement Officer on September 18,1960.

(19) Since we are concerned with the construction of the said Notification, alluded to above, it would be in the fitness of things to refer to the same before proceeding any further in the matter. It is in the following words:-

"Where And whereas I have decided to do the same by general order as prescribed under the aforesaid section;

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Now, I do her eby stand absolved from today of all responsibilities in respect of such evacuee tenancy rights as have vested in me or the leases and allotments granted thereof".

"12. Power to acquire evacuee property for rehabilitation of displaced persons - (1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section. (2) On the publication of a notification under sub-section(1), the right title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published , be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances"."60 License when Revocable . A license may be revoked by the grantor, unless --(a) it is coupled with a transfer of property and such transfer is in force ;(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the executions". Learned counsel for the appellants on the basis of the above have argued that admittedly the appellants have been in occupation since 1948. They while acting upon the license raised permanent structures. Thus they are not liable to eviction. The contention of the learned counsel is without any merit."36. Bar of jurisdiction - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act of determine, and no injunction shall be granted by any court of other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".Learned counsel for the respondent No.3, Mr. Mukul Rohatgi, Senior Advocate has then led me through the provisions of Sections 28 & 46 of the Administration of Evacuee Property Act. Section 28 of the said Act is couched in the following words :-"28. Finality of orders under this Chapter - Save as otherwise expressly provided in this Chapter, every order made by the Custodian General, Custodian, Additional Custodian, Authorized Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding".Section 46 envisages " Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction - (a) to entertain or

adjudicate upon any question whether any property or any right or interest in any property is or is not evacuee property : or (b) ..... (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine" ."A review of the relevant authorities on the point leads to the following conclusions: (1) An Exclusionary Clause using the formula "an order of the tribunal under this Act shall not be called in question in any court " is ineffective to prevent the calling in question of an order of the tribunal if the order is really not an order under the Act but a nullity. (2) Cases of nullity may arise when there is lack of jurisdiction at the stage of commencement of enquiry, e.g. when(a) authority is assumed under an ultra vires statute; (b) the tribunal is not properly constituted, or is disqualified to act; (c) the subject matter of the parties are such over which the tribunal has no authority to enquire; and (d) there is want of essential preliminaries prescribed by the law for commencement of the enquiry. (3) Cases of nullity may also arise during the course or at the conclusion of the enquiry. These cases are also cases of want of jurisdiction if the word "jurisdiction" is understood in a wide sense. Some examples of these cases are : (a) when the tribunal has wrongly determined a jurisdictional question of fact or law; (b) when it has failed to follow the fundamental principles of judicial procedure e.g., has passed the order without giving an opportunity of hearing to the party affected ; (c) when it has violated the fundamental provisions of the Act, e.g. when it fails to take into account matters which it is required to take into account or when it takes into account extraneous and irrelevant matters ; (d) when it has acted in bad faith; and (e) when it grants a relied or makes an order which it has no authority to grant or make ; as also (f) when by misapplication of the law it has asked itself the wrong question".1. Dhulabhai etc. v. State of Madhya Pradesh and another, . It was observed "..... on the facts and in the circumstances of the case that the suit in question for declaration that the provisions of the law relating to assessment under the M.B.Sales Tax Act (30 of 1950) were ultra vires and for refund of the amount of the tax illegally collected was not barred by Section 17 of the Act".2. Abdul Majid Haji Mahmomed v. P.R.Nayak, "..... If the orders are in excess of jurisdiction or are passed in violation of the fundamental principles of justice they can be corrected by the issue of a writ of certiorari by the High Court".3. Secretary of State v. Mask & Co.,AIR 1940 Privy Council 105, "..... Even if jurisdiction is so excluded, the Civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure".(1) Save where otherwise expressly provided in the body of this code or any by other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely : (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits."