

Jai Datt

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 484 of 1969

(A. P. Sen, V. D. Tulzapurkar, P. S. Kailasam JJ)

26.10.1978

JUDGMENT

SARKARIA, J. –

1. This is an appeal by certificate against a judgment, dated July 28, 1967, passed by the High Court of Allahabad in Special Appeal 352 of 1967. It arises out of these facts :

2. Jai Datt, appellant, was in possession of public land bearing Survey Nos. 130, 131-A and 131-B, with an aggregate area of 80 Bighas and 19 Biswas in the area of village Guljarpur Purramsingh, Tehsil Kalachungi, District Nainital. The Public Authority, Nainital served a show-cause notice, dated August 26, 1963, under Section 3(1) of the U.P. Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 (hereinafter called the Eviction Act) on the appellant for his eviction from this land on the ground that he was in its unauthorised occupation. The appellant contested the notice on the ground that he was in its possession for more than 12 years and had acquired the rights of a hereditary tenant in the land under Section 180(2) of the U.P. Tenancy Act, 1939 (for short, called the Tenancy Act). On these premises the appellant contended that the land was not 'public land', and as such, the Eviction Act had no application and the notice was illegal.

3. By its order dated October 31, 1963, the Public Authority dismissed the objections, holding that the appellant "has not filed any documentary evidence to show that the land in dispute was allotted to him by a competent authority, while the documents filed on behalf of the State show that it is a public land and the O.P. (appellant herein) is a trespasser thereon", and he is, therefore, liable to be evicted therefrom under Section 4(1) of the Eviction Act. The Public Authority further assessed Rs. 12 as damages payable by the appellant.

4. Against this order of the Public Authority, Jai Datt carried an appeal under Section 5 of the Eviction Act to the District Judge. The appeal was heard by the Additional District Judge, Kumaon - Nainital, before whom the appellant reiterated the contention that he had been in possession of the land in question for the preceding 12 years, and, as such, had acquired the rights of a hereditary tenant thereon. There, the appellant seems to have further contended that he had been paying "rent" for his occupation of the land. He appears to have shown some receipts also to the Additional District Judge.

5. The Additional District Judge negatived all the contentions and dismissed the appeal.

6. The appellant then filed a writ petition under Article 226 of the Constitution before the High Court to impugn the orders of the Public Authority and of the Additional District Judge, inter alia

on the ground that since he had been paying rent for the land which has been in his cultivating possession for a number of years preceding the eviction proceedings, he could not be said to be an 'unauthorised occupant', but a hereditary tenant under Section 180(2) of the Tenancy Act. The learned Single Judge of the High Court, who heard the writ petition, rejected this contention with the observation that

the Khatauni of 1368 Fasli entered the petitioner's possession over the disputed plots as ranging from 1 to 6 years. The oral evidence led by the petitioner does not outweigh the force of the entries in the Khatauni. The petitioner, therefore, did not acquire any title under Section 180 of the U.P. Tenancy Act before 1953.

The learned Single Judge further observed that the decision of the Division Bench of that High Court in *Shri Chandra v. State of U. P.* (Writ Petition No. 3277 of 1966 decided on February 13, 1967) was applicable to the case and the land in dispute will be public land and the possession of the appellant unauthorised. In the result, the writ petition was dismissed with costs. The appellant's Special Appeal was dismissed by a Division Bench of the High Court on July 28, 1967. In the meantime, the Eviction Act was successfully challenged before the High Court in Writ Petitions 3755 and 3756 of 1962 which were decided on May 24, 1968.

7. Keeping in view the value of the subject-matter which exceeded Rs. 20,000 and the question of the Constitutional validity of the Eviction Act, the High Court granted a certificate under Article 133(1)(a) and (c) of the Constitution, that the case was fit of appeal to this Court. Hence, this appeal.

8. Mr. M. S. Gupta, appearing for the appellant, has now given up the challenge to the Constitutional validity of the Eviction Act on the ground of its being violative of Article 14 of the Constitution, because this ground of attack no longer survives in view of this Court's judgment in *Maganlal Chhaganlal v. Municipal Corporation of Greater Bombay* ((1974) 2 SCC 402 : (1975) 1 SCR 1 AIR 1974 SC 2009). He, however, sought to make out these points :

(i) The appellant had been in cultivatory possession of the land for a number of years and no action for his eviction was taken for a long time and since no steps were taken by the Government to evict him within two years of his entry into possession, he became a hereditary tenant under Section 180(2) of the Tenancy Act.

(ii) Even if the appellant did not acquire the rights of a hereditary tenant in the disputed land, he had by long possession acquired the rights of a tenant or tenure-holder of any other kind under the Government. He has been paying rent in respect of the land to the Government, and as such was not in unauthorised occupation of the land. Since the land was held by the appellant as a tenant, it did not fall within the definition of 'public land' given in Section 2(e) of the Eviction Act.

(iii) Since the objections raised by the appellant in response to the show-accuse notice issued under Section 3(1) of the Eviction Act were substantial, the Public Authority was bound to refer the dispute to the Civil Judge under Section 7 of the Eviction Act. Its failure to do so, vitiates the order of eviction passed by it.

(iv) One of the prerequisites of taking action under Section 3(1) of the Eviction Act is that the public land is required "for one or more public purpose of this Act". Sub-

section (2) (a) of Section 3 requires that the notice shall "specify the grounds on which the order of eviction is proposed to be made". The impugned notice issued by the Public Authority did not comply with these requirements of Section 3 and was therefore, illegal.

9. Points (i) and (ii) : Mr. Gupta did not seriously press the first point, obviously because it was without sub-stance. It may be noted that Section 180 of the Tenant Act is subject to the restrictions contained in Section 30 of that Act, which provides :

Notwithstanding anything in Section 29, hereditary rights shall not accrue on

(3) land acquired or held for public purpose or work of public utility.

Even if it is assumed that the appellant was at the material time in occupation of this land for more than two years, he would not acquire rights of a hereditary tenant under Section 180(2). Omission of the State Government, therefore, to institute a suit under Section 180(1) within the prescribed period of limitation would not bring into existence relationship of landlord and tenant between the Government and the appellant, and the latter's possession would remain, as it was at its inception, that of a trespasser or unauthorised occupant.

10. This point is further highlighted by the definition of "unauthorised occupation" given in clause (h) of Section 2 of the Eviction Act, which states :

"Unauthorised occupation" means occupation of a public land by any person without the authority of the owner for such occupation of allotment, lease or grant anything contained in U. P. Tenancy Act, 1939 to the country notwithstanding.

11. In the context, the definition of "Public Land" given in Section 2(e) of the Eviction Act may also be seen. This definition, so far as material for our purpose, states :

Public land means land belonging to or owned by the State Government but does not include land -

(i) for the time being held by a tenure-holder for the State Government under the U.P. Tenancy Act, 1939."

12. Section 2(b) of this Act defines "Lease" to mean "a lease as defined in Section 105 of the Transfer of Property Act, 1882".

13. There is neither any factual nor legal basis for the appellant's contention that he had acquired some kind of tenure as a tenant by remaining in twelve years' continuous possession of the land in dispute. As noticed by Additional District Judge and the learned Single Judge of the High Court, the Khasra tendered in evidence before the Public Authority, shows that in the years 1362, 1363, 1365 and 1367 Fasli (which we are told roughly corresponds to 1955-56, 1956-57, 1958-59 and 1960-61 A.D.) the land in dispute was lying banjar (barren). That is to say, in the years 1955 to 1961, the appellant was not in occupation of this land. During those years, when the land was lying banjar, its possession would be presumed to be of the lawful owner, viz., the State Government. The appellant's possession over the land is shown for the first time in Khasra of the year 1368 Fasli

(roughly corresponding to 1961-62) as "bila tasfia, ziman 10-Ka". Same is the position shown in the Khatauni 1368 Fasli. "Bila Tasfia" obviously means "without settlement or allotment or grant". The documentary evidence from the revenue records, accepted by the courts below, had thus discounted the appellant's claim that he had been in cultivatory possession of the disputed land for 12 years preceding the issue of the impugned notice under Section 3(1).

14. It was never the case of the appellant that he had lawfully entered into possession of the land. On the contrary, his case was that he took possession of the land without any grant, settlement or lease from the land owner. Indeed, by claiming acquisition of a hereditary tenancy under Section 180(2), he admitted that he had taken possession without any title and without the consent of the land-owner.

15. Mr. Gupta has been unable to show that the appellant's occupation of the land even for one or two years preceding the notice under Section 3(1) was that of a "tenure holder" within the contemplation of the saving sub-clause (i) in the definition of "public land" in Section 2(e) of the Eviction Act.

16. The appellant's contention that he has been paying rent for this land does not appear to be well-founded. No such plea appears to have been raised before the Public Authority, much less was any evidence, such as a rent receipt produced there. The Public Authority has noted in its Order dated October 3, 1963, that the O.P. (appellant herein) did not produce any documentary evidence to show that he was holding the land with the permission of or under allotment from any competent authority. Nor was this plea agitated or pressed before the learned Single Judge or the Division Bench of the High Court. Even now, before us, counsel has not referred to any rent receipt or like document on record showing that the appellant had paid rent in respect of this land to the Government for the period of his possession preceding the notice under Section 3(1) of the Eviction Act. Even the Additional District Judge, to whom for the first time in appeal, some "rent receipts" appear to have been shown by the appellant, has not recorded any clear-cut finding that those documents evidence the receipt of rent by the Government in respect of the disputed land for the relevant period preceding the issue of notice under Section 3(1). This being the situation, in this appeal arising out of writ proceedings under Article 226, we decline to embark upon a speculative examination of this argument for which there is no firm factual foundation and which was never raised before the Public Authority, nor pressed before the High Court.

17. Be that as it may, the provisions of Sections 3(18), 30, 180(2) of the Tenancy Act on the one hand and Section 2(b), 2(e)(i) and 2(h) of the Eviction Act on the other, are to be construed in harmony with each other. So construed, a person occupying land belonging to the State Government, as a trespasser or without title or a person holding over after the revocation or cancellation of the lease, allotment or grant in accordance with the conditions thereof, cannot be considered "a tenure-holder from the State Government under the U.P. Tenancy Act, 1939" within the meaning of Section 2(e)(i) of the Eviction Act. There was thus no doubt that the disputed land was "public land" and the appellant was in its "unauthorized occupation" within the meaning of the Eviction Act.

18. Point (iii) : Section 7 (so far as material), reads thus :

7(1) Where an objection is taken on the ground that the disputed land is not public land and the Public Authority is of the opinion that the objection is not prima facie baseless or frivolous, he shall refer the question to the Civil Judge, having

jurisdiction, stating the facts of the case and the point in issue.

19. From a plain reading of the Section 7(1), extracted above, it is clear that the obligation to refer the question whether or not the land is public land, is not absolute, but contingent. It arises only if the Public Authority is of the opinion that the objection is not prima facie baseless or frivolous. In the instant case, a perusal of the impugned order would show that although the Public Authority did not say in the phraseology of the statute that the objection raised by the appellant was prima facie "baseless". yet in sub-stance, he unhesitatingly came well-nigh to the same conclusion when he observed :

The O.P. has not filed any documentary evidence to show that the land in dispute was allotted to him by a competent authority. The documents filed on behalf of the State show that the land in dispute is a public land and the O.P. is a trespasser thereon.

20. We are, therefore, of opinion that there was no infraction of Section 7.

21. Point (iv) : This point was not raised before the Public Authority no in any of the Courts below. It is sought to be raised for the first time in this Court now. We decline to entertain it at this stage. It is not a pure question of law which could be decided on the basis of material already on record. The appellant has not produced even the copy of the notice under Section 3(1) which was served upon him and is supposed to be in his possession. In the circumstances of the case, the maxim omnia praesumuntur rite esse acta will be attracted. It will be presumed that the public purpose of the Act for which the appellant was sought to be evicted from the public land, was duly specified in the notice in compliance with the acquirement of sub-section (2) of Section 3 of the Act.

22. Thus, all the contentions advanced by the appellant are devoid of merit.

23. In the result, the appeal fails and is dismissed with costs.

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