

Life Insurance Corporation of India

Vs

Shiva Prasad Tripathi and Others

Civil Appeal No. 2244 of 1996

(M.M. Punchhi, K. Venkataswami JJ)

18.01.1996

ORDER

1. Leave granted.

2. This is an appeal against the judgment and order of a Division Bench of the Bombay High Court dated 21-2-1995 passed in Civil Writ Petition No. 276 of 1995 whereunder certain directions have been made towards conferral of jurisdiction on the Small Cause Court, Bombay which, prima facie, it is debarred to have.

3. The respondent - Shiva Prasad Tripathi - was an employee of the appellant-Life Insurance Corporation of India and on that basis was allotted the premises owned and possessed by it. On expiry of the tenure of his service, the respondent was required to vacate the premises. When he refused to do so, the Estate Officer of the Corporation was brought into action in issuing a notice to the respondent to show cause why appropriate orders under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act') not be passed against him. The cause shown by the respondent did not appeal to the Estate Officer and thus an order of eviction was passed. The said order was unsuccessfully challenged in appeal by the respondent before the City Civil Court at Bombay. The plea of the respondent before the appellate court that he was a tenant in the disputed premises, having security of tenure, was not entertained and the matter was left at large.

4. The respondent then moved the High Court in writ jurisdiction so as to challenge the orders of the Estate Officer as also that of the appellate authority. Though the respondent could not demolish the grounds for eviction in the High Court, he clung to the plea of despair that if he were to enter the Small Cause Court to establish his tenancy rights, his possession in the interregnums would not be protected by the Small Cause Court due to Section 10 of the Act, which reads as follows :

"10. Save as otherwise expressly provided in this Act, every order made by an Estate Officer or Appellate Officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

5. The respondent was given a leeway by the High Court on taking the view that the question of tenancy pertains to property, which plea was adjudicable before a court or a competent authority, and that court or authority could issue an injunction or an interim direction, and no bar could be erected to stop it towards the grant thereof. If in these circumstances that the High Court directed that the Judge, Small Cause Court, shall adjudicate on the question of tenancy when raised by the

respondent in the suit and such court, in that event, would be able to issue any interim order or injunction which the respondent may be found entitled to. In addition to that the High Court also ordered that the impugned orders of the Estate Officer and the appellate authority would remain suspended till the decision of the application for an interim relief was filed before the Court of Small Causes. This has raised the instant challenge.

6. We regret to say that the orders of the High Court are bereft of any reasoning in giving a complete go-by to the bar erected under Section 10 of the Act. Section 10 had not to be viewed in isolation but had to be understood in the context of the other provisions of the Act standing in support thereof. Clearly, a suit for injunction to negate the orders of those two authorities stood barred under Section 10. The legislative mandate was that the court by order cannot obstruct the execution of the orders passed by the Estate Officer and the appellate authority. The court's power, otherwise, to adjudicate on the question whether a person was a tenant or not, in no way, has been taken away by Section 10. The adjudication however would be declaratory in nature and may sequently end up in a consequence. Nothing interim however is obtainable. We therefore do not agree with the High Court that whatever stood achieved by the appellant under the Act, would suffer deprivation just because the plea of the respondent being a tenant is debatable in the court. We, therefore, upset the impugned order of the High Court and dismiss the writ petition preferred by the respondent before the High Court.

7. Learned counsel for the respondent, however, has been successful in persuading us to grant him a twofold relief, namely, (i) the respondent shall not immediately be disturbed and would get six months' time for vacating the premises; of course, on his executing the usual undertaking before this Court to vacate the premises within a period of four weeks from today, the quantum of rent/damages payable not forming part of, or made reference of in that undertaking; and (ii) within a period of two months, the appellant shall be duty-bound to clear the retiral dues of the respondent such as provident fund, gratuity etc., as are legally due to him, so that he has enough funds in his hands to seek an alternate accommodation in the meantime.

8. The appellant is, accordingly, directed.

9. The question of rent/damages is left open. The appellant has gracefully given out that should the respondent make a representation to the appellant for waiving of rent/damages for the period for which those would be payable, the appellant undertakes to consider that representation sympathetically. It is so ordered.

10. In light of the above, this appeal stands allowed. For the respondent however, this matter stands concluded finally because of the individual reliefs we have granted to him. No costs.