

SUPREME COURT OF INDIA

State of U.P. (Now Uttarakhand)

Vs.

Rabindra Singh

C.A.No.2831 of 2009

(Markandey Katju and V.S. Sirpurkar JJ.)

27.04.2009

JUDGEMENT

V.S. Sirpurkar, J.

1. Leave granted.

2. This judgment will dispose of the SLP (C) 11653 of 2008 as also SLP (C) 25729 of 2008 since both the appeals involve identical points regarding the applicability of *UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972* to the land possessed by the respondents, more particularly, the lands vested in or entrusted to the management of the Gaon Sabha and or any other local authority under any law relating to land tenures.

3. By way of the present appeal the State of Uttar Pradesh, now State of Uttarakhand challenges the judgment of the High Court whereby the High Court has allowed the Writ Petition filed by the respondent herein Shri Rabindra Singh.

4. Factual scenario is as follows:

“The dispute relates to a land measuring 4.10 bighas in Khasra Plot No.1371/24/1 situated in village Saran. The said land was in possession of the respondent since 1384 Fasli. The High Court has allowed the Writ Petitions by these two judgments holding that such lands would not be covered within the definition of "public premises" under the *UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972* (hereinafter called the 'Public Premises Act', for short). Basically the question boils down as to whether the lands which are covered by the definition in Section 3(14) of the UP Zamindari Abolition and Land Reforms Act, 1950 can be said to be public premises and, therefore, covered under the Public Premises Act.”

5. We shall take up the facts in this appeal arising out of SLP (C) 11653 of 2008. The respondent Rabindra Singh possessed aforementioned land since the year 1384 Fasli. He claimed to be in cultivating possession like other respondents. He was served with notice

under Section 4 (1) of the Public Premises Act directing him to show cause as to why he should not be evicted from the land Khasra plot no. 1371/24/1, measuring 4.10 bighas situated in village Saran, Tehsil Bazpur as he was in unauthorized occupation of the land. He filed his written statements before the prescribed authority, namely, Sub-Divisional Magistrate, Kashipur contending that he was also in possession of land measuring 26.13 bighas and the said land and the disputed land became a compact plot and that he was in possession of the said plot since 1960, and, therefore, he was prepared to get it regularized. Along with the writ statement, he also filed the map and Khatauni of the land. In the evidence led before the authority he supported his case by showing that the disputed land was earlier in the shape of a drain and he had improved it and made it capable of cultivation. There are two witnesses examined by him to support his case of continuous possession. As against this, in his evidence the Patwari of the village stated that the respondent was in unauthorized possession since 1384 Fasli and was for public utility.

“Without giving any reasons, the Sub Divisional Magistrate, Nainital straightway recorded that the possession of Rabindra Singh was unauthorized and, therefore, in exercise of the power under sub Section 1 of Section 5 of the Public Premises Act he directed to evict the writ- petitioner within 30 days.”

6. Writ petitioner filed an appeal before the District Judge Nainital wherein the District Judge without any discussion recorded that the disputed land was public premise and the occupant of the appellant was under Class IV and since the appellant did not have any authority to occupy he could not resist his eviction. The appeal was dismissed.

7. The matter was taken up before the Allahabad High Court by way of a writ petition. Eventually since the land was in newly created State of Uttarakhand the matter was transferred to the Uttarakhand High court. It is contended that the High Court also noted the contentions raised on behalf of the writ petitioner (respondent herein) that no notice could be issued in respect of the land over eviction as the land was in cultivating possession of the concerned cultivator. It was contended in the counter affidavit on behalf of the State (appellant herein) that the land in dispute was not allotted to the writ petitioner and, therefore, his occupation was unauthorized and he was recorded as Class IV tenant since 1384 Fasli. It was also pointed out that the writ petitioner had no right to regularization in respect of the land of which he was in possession. The High Court, however, relied on the earlier judgment dated 25.05.2006 passed in Writ Petition No. 3235 of 2001, namely, Krishnakant v/ First Additional District Judge, Nainital which was disposed of along with 41 other writ petitions. There the Court had held that the agricultural land which was occupied by a tenure holder hence the proceedings under the Public Premises Act were not applicable and the said unauthorized occupant could be evicted only under the provisions of the *UP Zamindari Abolition and Land Reforms Act, 1950*. It was further noted by the High Court that such a view was taken by the Allahabad High Court in *Baldeo Raj V. State of UP & Ors.*¹ and *Kripal Singh V. DJ Nainital & Ors.*². The High Court further took note of the definition of the term `public premises' as well as the term `land' as defined in *UP Jamindari Abolition and Land Reforms Act, 1950* covered by Section 3 (14) of the Act. The High Court also took note that it was never denied by the State that the land in question was in

cultivating possession of the writ petitioners. The High Court further noted that the land vested in or entrusted to the Gaon Sabha and local authority or under any other law relating to the land tenure was excluded from the operation of the Public Premises Act and, therefore, the agricultural land belonging to the Gaon Sabha could not be said to be the land covered under the Public Premises.

“The High Court, therefore, chose to follow the aforementioned decisions in Baldeo Raj's case (cited supra) and Kripal Singh's case (cited supra).”

8. In the other case the judgment in Krishnakant's case (cited supra) with which as many as 41 other cases were decided and disposed of is challenged. In Krishnakant's case (cited supra) also the learned Single Judge after discussing the provisions of both the Act referred to by us earlier as also the definition of the term `premises' in the Public Premises Act came to the similar conclusion. The learned single Judge of the Uttarankhand High Court, hence, relied upon the Baldeo Raj's case (cited supra) as also Kripal Singh's case (cited supra). It is on that basis that in both the cases the Writ Petitions filed by the cultivating possessors were allowed. Both these judgments have fallen for our consideration.

9. Smt. Pinki Anand, learned Senior Advocate along with Shri P.N. Gupta and Shri Vaibhav Jain assailed the impugned judgments. We had a specific query to the learned Senior counsel as to whether the aforementioned relied upon judgments in Baldeo Raj's case (cited supra) and Kripal Singh's case (cited supra) were challenged by the said judgment. The learned Senior counsel was unable to answer as to what happened to these judgments. We, therefore, presume that those judgments are still held good law and have been accepted as such by at least the State of Uttar Pradesh. It must be noted that Baldev Raj's case (cited supra) continues to be dominating the scene since 1984 while Kripal Singh's case (cited supra) continues to be in the field from 1988.

“It, therefore, goes without saying that the interpretation put forward by the Allahabad High Court on these premises holds good for about 25 years on the legal scenario. We must, therefore, take this factor also into account as to whether it would be proper for us to disturb the settled law which is ruling the field for last 25 years.”

10. We have seen both the aforementioned decisions of the Allahabad High Court in Baldeo Raj's case as well as in Kripal Singh's case (cited supra). The factual situation regarding the position of the respondents is absolutely identical. Therefore, the High Court was right in holding that the law laid down in both these cases squarely apply to the facts of the present case.

11. We will now proceed to decide upon the correctness of these two judgments. In Baldeo Raj's case the learned Single Judge considered the expression "public premises" in Section 2(e) of the Act as was amended by the U.P. Act No.28 of 1976. It was found that the definition as amended excluded the land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures. This the learned Judge found on the basis of clause (i) of the definition in that Section. The learned Judge then

straightaway came to the conclusion that the provisions contained in Section 4/6, U.P. Zamindari Abolition and Land Reforms Act provided that the right, title or interest of the intermediaries came to be vested in the State and State thereby also acquired right, title or interest over the land held as `Talab' or `Jheel'. The learned Judge further rightly found that Section 117, U.P. Zamindari Abolition and Land Reforms Act made it clear that the superintendence, management and control of such land was vested in Gaon Sabha. It was also noted that the State Government was empowered to transfer this superintendence, management and control from Gaon Sabha to some other local authority or vice versa. Relying on the Khatauni in 1383-85 fasli the learned Judge found that the land in question was recorded as Talab/Jheel. The learned Judge further noted that the names of the petitioners in that cases were recorded in the Khasra of 1386 fasli under class 4 of the Khatauni. The learned Judge then proceeded to consider the provisions of Section 122-B which provided for the eviction against those who were in unauthorized occupation over such land. On that basis the learned Judge correctly came to the conclusion that the definition of "public premises" in the Public Premises Act deliberately excluded from its purview the land vesting in Gaon Sabha or some other local authority for which provisions existed in the law relating to land tenures and the provisions of Public Premises Act could not be pressed in service for ousting the tenure holder. More or less the same conclusion has been reached in Kripal Singh's case where the learned Judge specifically referred to the pleadings of the parties and came to the conclusion that the tenure holder therein was classified as Sirdar and had become a Bhumidar. The definition of "premises" in the Public Premises Act given under Section 2(b) came to be considered which is as under:

“2(b) "Premises means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building and includes:

i) the garden, grounds, and out-houses, if any appertaining to such building or part of a building, and ii) any fitting or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof: but does not include any land which for the time is held by a tenureholder under any law relating to land-tenure (emphasis supplied) i) is vested in or entrusted to the management, of Gaon Sabha or any other local authority or ii) is held by a tenure holder under the *United Provinces Tenancy Act, 1939*, the *Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950*, the *Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956*, the *Jaunsar-Bawar Zmindari Abolition and Land Reforms Act, 1956*, the *Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960*, the *Uttar Pradesh Consolidation of Holdings Act, 1953*, or the *Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960*;"

Section 2(e) was also considered which is as under:

"2(e) Public premises means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government and includes any premises

belonging to or taken on lease by or on behalf of i) any company defined ii) any local authority;

iii) any corporation (not being a company as defined in Section 3 of the *Companies Act, 1956*, or a local authority) owned or controlled by the State Government, or iv) any society.....

And also includes i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to the local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenure);

ii) any premises acquired under the *Land Acquisition Act, 1894* with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that providing for re-entry by the State Government in certain conditions."

Section 2(a) and 2(e) excluded the operation of Public Premises Act in respect of the lands covered by *U.P. Zamindari Abolition and Land Reforms Act, 1950*. The learned Judge has further given a detailed explanation as to why the said exclusion became clearer. The learned Judge states:

"To me, it appears that the provision for excluding land of such tenure holders has a special purpose. For a tenure holder this land is generally a source of his and his family's livelihood particularly in our State of Uttar Pradesh where the majority of citizens consists of Agriculturist. Needless to say, the Act has a drastic method of ejection. Though a trespasser can certainly be ejected under the common law - whether it be civil or revenue, the Act, however, sets aside those procedures and instead empowers the prescribed authority to proceed in a manner which lays down a much quicker and faster method of ejecting a trespasser. In the U.P. Z.A. and L.R. Act we find sufficient safeguards for the Gaon Sabha and other authorities to eject a trespasser, if the land can be claimed to have vested in them (see Section 122B) (Emphasis supplied by us). Thus the land of such tenure holders as the petitioner should not be governed by the provisions of the Act, appears to be one of the main objectives, to attain which the exception has been carved out in the definition clause by the legislature. Even from the other provisions of the Act it is clear that the possession alone whether of the original Adhivasi or of the transferee Adhivasi has to be seen by the Prescribed Authority and attempt to trace his title will be futile in the present proceedings under the Act. Under the circumstances it must be held that but for the stop which may be available under the land tenure laws, the provisions of the Act will be wholly inapplicable for the ejection of the petitioner."

12. We have very carefully considered the judgments as well as the provisions and we are in no doubt that the view taken by the Allahabad High Court was a correct view of the matter.

We fully agree with the reasons given by the Allahabad High Court in both Baldeo Raj and Kripal Singh's cases and, therefore, hold that the land covered under the *U.P. Zamindari Abolition and Land Reforms Act, 1950* would not be governed by the Public Premises Act, more particularly in view of the specific exclusion as provided in Sections 2(b) and 2(e) thereof. Even if Section 2(e) is broadly read, the land held by Tenure holder is not covered. It is axiomatic that if the land held by a tenure-holder under any law relating to land tenure is not "premise", then it cannot become "public premises" under Section 2(e) of the Act. We are satisfied with the impugned judgments which wholly rely on the above mentioned two decisions of the Allahabad High Court.

13. Both the appeals filed by the State of Uttarakhand deserve to be dismissed and they are accordingly dismissed. There shall be no orders as to costs.

¹1984 AWC 568

²1988 RD 188