

SUPREME COURT OF INDIA

Santosh Sood

Vs.

Gajendra Singh

C.A.Nos.3601-3602 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

15.05.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.
2. The extent of jurisdiction of the High Court to pass an order of demolition of property, ownership whereof is claimed by the appellant without giving him an opportunity of hearing is the question involved herein.
3. The said question arises in the following factual matrix :

“This appeal is directed against the impugned judgment and order dated 14.3.2007 passed by the High Court of Judicature for Madhya Pradesh, Jabalpur Bench, Gwalior in Writ Petition No.5429 of 2006 directing the respondents for taking steps for dispossessing the petitioner from the disputed land; as also the order dated 28.09.2007 of the said Court dismissing the review petition being No. MCC 254 of 2007 filed for review of the said order dated 14.3.2007.

The petitioner had obtained a loan of Rs.9 lakhs from Respondent No.8, namely, the State Bank of Indore, Sheopur for construction of a building which was to be let out to the bank upon completion of construction. The Respondent-bank had duly verified the title of the appellant by obtaining a search report through its panel lawyer Mr. Mahendra Kumar Jain. It furthermore obtained legal opinion from the aforesaid panel lawyer who certified in regard to his title vide letters dated 24.11.2005 and 7.04.2006. Once the property was ready upon construction, it was let out on rent by the petitioner and was duly furnished for use of the bank. Since it involved a substantial expenditure and also public money, it had serious apprehensions of being dispossessed when the writ petition (PIL) was entertained by the High Court. In the said writ proceedings, it was submitted by the respondent-bank that it was ready to pay the rent either to respondent Nos.6 and 7 or to the present petitioner not to both the parties. It was

apprehended by the bank that if an order is passed by the High Court with regard to dispossession of the answering respondent, it would involve a huge loss pertaining to the furnishing and shifting of the premises besides loss of business due to shifting. In those circumstances, permission was sought by the bank to deposit the rent with the present appellant till liquidation of loan amount due to the bank and it was also submitted that the bank was ready and willing to deposit the amount of rent as per the direction of the court by making an application for recall of the order dated 14.03.2007 in Writ Petition No.5429 of 2006 (PIL). The High Court, however, dismissed the aforesaid application of the respondent bank.

It was furthermore submitted by the petitioner that the High Court had dismissed the writ petition and the subsequent review petition merely on the basis of oral submissions made by the petitioner. The petitioner had not been served with a notice of the original writ petition as a result whereof, no reply could be filed. It was also submitted that the High Court relied upon a statement of the respondents wherein it was stated that earlier a title suit had been filed by the petitioner which has already been decided in favour of the Nagar Palika and the same was affirmed by the High Court in FA No.77 of 1998 against the petitioner. The High Court failed to consider that the said Civil Suit No.1-A of 1986 on which the court had relied upon was filed by the petitioner in respect of a different property and not the land in dispute in the present case.

A Civil Suit being No.178-A of 2006 is pending before the Civil Judge Class II, Sheopur with regard to the property involved in the present case in which the Nagar Palika, one of the parties in the instant appeal had filed a reply and written statement on 12.10.2006. In the said suit, the petitioners herein had obtained an injunction in their favour and the same is in operation till the pendency of the suit.

A Public Interest Litigation (PIL) was filed by the first respondent before the High Court praying, inter alia, for the following reliefs:

"(i) That the concerned authorities may kindly be directed to take immediate possession of the property in question from respondent No.7 and cancel the order of transfer in the records of Municipal Council, Sheopur.

(ii) That the authorities may kindly be directed to take strict disciplinary and criminal action against the officers who have indulged in the illegal act causing loss to the Government as well as Municipal Council, Sheopur.

(iii) That the loss which has been caused may kindly be ordered to be recovered from the officers and other persons who are liable for the same."

The First Respondent contended that despite unsuccessful attempts on the part of the appellant to establish ownership over the land which, in fact, is vested in the

respondent No.6, Nagar Palika; the appellant in collusion with its officers, managed to see that it does not take steps for her eviction.

In the said public interest litigation, the appellant was arrayed as respondent No.7.”

4. Indisputably, appellant had entered into an agreement of loan with the respondent No.6-Bank pursuant where to or in furtherance whereof, constructions were raised as per the Bank's requirements. The monthly installments payable in terms of the said loan agreement to the bank were adjusted from the rent stipulated for occupation of the said building.

5. Before the High Court, the Nagar Palika appeared. The counsel for the Bank entered appearance. A statement was made by them that the title suit filed by the appellant against the Municipal Council has been dismissed and an appeal preferred thereagainst has also been dismissed. It was furthermore contended that the Nagar Palika had cancelled the mutation entry made in her favour and steps were being taken to obtain actual possession of the property. A statement was also made by the counsel of the Bank that it would be ready to pay rent to the Nagar Palika. The High Court, relying on or on the basis of the said statements, directed:

"In view of this statement, this petition is disposed of with the liberty to respondents No.5 and 6 to take steps in accordance with law for dispossessing the respondent No.7 and 8. They can also accept the rent as tendered by respondent No.8.

With the aforesaid observation, petition stands disposed of."

6. Appellant filed an application for recalling of the said order, inter alia, on the premise that before the passing of the same, she was not heard.

By reason of a judgment and order dated 28.9.2007, the said review application was dismissed, stating:

"After perusing the order passed by this Court in the writ petition, we find that this Court has disposed of the said writ petition merely on the statements of the parties and has not decided any controversy. Hence, there is no mistake apparent on the face of the record to call for review."

7. Mr. Sushil Kumar Jain, learned counsel appearing on behalf of the appellant would contend:

- 1) A Public Interest Litigation involving a complicated question of title by and between the appellant and the Nagar Palika was not maintainable.
- 2) In any event, no order and/or observation could have passed/made without giving an opportunity of hearing to the appellant.

8. Learned counsel appearing on behalf of the bank would support the case of the appellant.

9. Mr. Ashok Mathur, learned counsel appearing on behalf of respondent No.6 and 7, would contend that by reason of the impugned judgment, they having merely been permitted to take steps for eviction of the appellant to which it was otherwise entitled to no interference with the impugned judgment is warranted. Our attention has furthermore been drawn to the fact that the appellant, despite having lost in two suits, has filed another suit in the court of Civil Judge, Sheopur being suit No.178-A of 2006 as a result whereof the Municipal Council is hesitant to take steps for demolition of the building and/or evicting the appellant and/or the Bank.

10. Learned counsel for respondent No.1 urged that the Public Interest Litigation had to be filed as the officers of the Municipal Council, despite passing of the decree by the Civil Court, in collusion and in conspiracy with the appellant, had not been taking steps for her eviction from a public property.

11. Admittedly, the appellant was not given any notice in the PIL.

“According to her, the dispute between the appellant and the Nagar Palika is only in respect of the boundary wall and not for the entire building. Had an opportunity of hearing been given to the appellant, it could have shown that the public interest litigation was uncalled for, particularly having regard to the admission made by the Nagar Palika in its written statement filed in the earlier suits.”

12. It is beyond any doubt or dispute that the parties are on litigating terms. Two rounds of litigation have come to an end. Admittedly, another suit has been filed by the appellant in the court of Civil Judge, Sheopur.

“Whether such a suit is maintainable or not or whether in effect and substance it is an abuse of the process of the court will have to be determined by the Civil Court itself.”

13. The High Court, unfortunately, even on its own showing disposed of the public interest litigation on the basis of the statements made at the Bar without entering into the merit of the matter and, thus, without resolving the 9 controversy between the party. There cannot, however, be any doubt whatsoever that subject to an order passed by a competent court of law, the Nagar Palika would be entitled to take steps either to execute the decree passed in its favour and/or in terms of the provisions of the Act. For the said purpose, no order of a court of law was necessary. Before us, a detailed counter affidavit has been filed wherein it has been projected that the land in question belongs to the Nagar Palika. The State of Madhya Pradesh also in its counter affidavit raised similar contentions.

“If a Civil Suit was pending which may or may not be frivolous, ordinarily the High Court should not have entertained a public interest litigation. On the other hand, if it was found that the civil court was not proceeding with the matter as expeditiously as it should have, appropriate directions could have issued in that behalf. It is trite that

save and except cogent reasons, the High Court, in a public interest litigation, would not interfere with the due process of law. If an abuse of process of court was undertaken by a party, some finding of fact was required to be arrived at and even a proceeding under the Contempt of Courts Act could have been initiated. [See *The Advocate General, State of Bihar v. Madhya Pradesh Khair Industries & Anr.*¹].

The parameters of a public interest litigation is well known in view of a series of decisions of this Court . {[see for example *Guruvayoor Devaswom Managing Committee & Anr. v. C.K. Rajan & Ors.*²].

We need not enter into the said question, particularly, in view of the order proposed to be passed by us.”

14. In the peculiar facts and circumstances of the case, we are, therefore, of the opinion that interest of justice would be subserved, if this appeals are disposed of with the following directions:

“1) The Civil Judge, Sheopur must take up the hearing of Suit No.178-A of 2006 immediately and dispose of the same as expeditiously as possible and not later than three months from the date of communication of this order. It shall not grant any adjournment in the suit save and except for sufficient and cogent reasons.

2) If no order of injunction has been passed against the Nagar Palika, it would be open to it to take such steps as is permissible in law. Parties shall, however, be at liberty to pray for interim order or direction if found to be necessary.

3) The Bank shall deposit the amount of rent in the said suit which would be disbursed by the Court to the successful party subject to the result thereof and subject to any other and further order which may be passed by the learned Civil Judge.”

15. The appeals are accordingly disposed of with the above directions.
No costs.

¹[AIR 1980 SC 946

²[(2003 (7) SCC 546]