

SUPREME COURT OF INDIA

Syndicate Bank

Vs.

Ramachandran Pillai

C.A.No.50 of 2011

(R.V. Raveendran and A.K.Patnaik ,JJ.,)

04.01.2011

JUDGMENT

R.V. Raveendran,J.,

1. Heard. Leave granted.

2. The Appellant-Bank is the owner of a shop premises forming part of a property purchased by its predecessor on 24.7.1961. One Ramakrishna Pillai (of whom the Respondents are the legal representatives) was the tenant in occupation of the said premises and he regularly paid the rent for the shop till the year 1997. In the year 1998, the Appellant issued a notice terminating the monthly tenancy and called upon the said Ramakrishna Pillai to vacate the premises. As the said Ramkrishna Pillai failed to vacate, action was initiated in the year 2002, under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('Public Premises Act' for short) for evicting him. The said Ramakrishna Pillai died and the Respondents who are his legal representatives, contested the proceedings. The Estate Officer by order dated 3.10.2005 directed eviction. The order of eviction was affirmed by the Appellate Authority by order dated 19.8.2006. On further challenge by way of a revision petition by the Respondents, the High Court passed the impugned order dated 16.12.2009 allowing the revision and setting aside the order of eviction. The High Court directed the Bank to reconsider and review the case of Respondents as required by the guidelines issued by the Central Government (in regard to initiation of proceedings for eviction under the Public Premises Act), and if on such review, the Bank came to the conclusion that the Respondents were not entitled to the benefits of the guidelines, then initiate fresh action for eviction. The said order is under challenge in this appeal by special leave.

3. The Central Government has issued "Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of public sector undertakings/financial institutions" vide resolution dated 30.5.2002 (gazetted on 8.6.2002). The guidelines read as under:

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under Section 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (P.P. (E) Act, 1971) should be used primarily to evict totally unauthorized occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the P.P.(E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the PP(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the PP(E) Act, 1971 should be used henceforth only in accordance with these guidelines.”

4. If any executive instructions are to have the force of statutory rules, it must be shown that they were issued either under the authority conferred on the Central Government or a State Government or other authority by some Statute or the Constitution. Guidelines or executive instructions which are not statutory in character, are not 'laws', and compliance thereof can

not be enforced through courts. Even if there has been any violation or breach of such non-statutory guidelines, it will not confer any right on any member of the public, to seek a direction in a court of law, for compliance with such guidelines. An order validly made in accordance with a statute (as in this case, the Public Premises Act), cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or malafide or in violation of any statutory provision. These are well settled principles (See: *Union of India v. S.L. Abbas*¹: *Chief Commercial Manager, South Central Railway, Secundrabad v. G. Ratnam*²: and *State of U.P. v. Gobardhan Lal*³:

5. As the guidelines relied upon in this case were not issued in exercise of any statutory power under the Public Premises Act or any other statute, even if there was violation or non-compliance with the aforesaid guidelines by the Appellant, relief to the Appellant could not be denied by relying upon the guidelines. To do so would amount to reading the guidelines into the statute, which is impermissible? The only 'remedy' of any person complaining of noncompliance with such guidelines, is to bring such violation, to the notice of a higher authority. We therefore hold that the enforcement of any right or exercise of any power by the Appellant, under the Public Premises Act cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government.

6. In this case Ramakrishna Pillai was in occupation of the shop in 1961 when the premises was purchased and he continued in such occupation and paid the rents regularly till 1997. The bank issued a notice on 5.2.1998 demanding him to vacate the premises as it required the property for demolition and reconstructions. As the demand was not met proceedings were initiated for eviction of the unauthorized occupant by the Estate Officer in the year 2002. The petition was resisted by the legal heirs of Ramakrishna Pillai, by the Respondents by contending that (i) the premises was not a public premises; and (ii) that they had become absolute owners under the provisions of Kerala Land Reforms Act, 1963. Considerable evidence was placed before the Estate Officer and ultimately an order of eviction was passed by the Estate Officer after negating the contentions of Respondents. The said order of eviction was affirmed by the Appellate Authority. The Respondents did not raise the ground of violation of guidelines either before the Estate Officer or before the Appellate Authority. It was not even raised in the grounds of revision filed before the High Court. Reliance was placed on the guidelines for the first time during arguments in the year 2009 and the High Court proceeded to grant relief to the Respondents as if the guidelines created a right in the Respondents to claim review by the Appellant in regard to its decision to evict them. The High Court has set aside the order of eviction affirmed by the Appellate Authority solely on the ground that the bank had not reviewed the pending case as per Para (v) of the guidelines to find out whether it should be withdrawn, and therefore the order of eviction should be set aside. The order of the High Court being contrary to the well settled principles relating to the enforceability of guidelines, is not sustainable. Even if the High Court felt that a review under para (v) of the guidelines was necessary, it could have directed the Appellant to undertake the exercise pending consideration of the revision petition instead of allowing the revision and setting aside the order of eviction. At all events, the very fact that the Respondents claimed ownership in themselves and denied their relationship and status,

should have been sufficient to hold that the Respondents did not deserve any benefit under the guidelines, even if they were enforceable.

7. We may however add that this order should not be construed as laying down a proposition that the public sector undertakings and financial institutions to whom the guidelines were addressed, could willfully ignore or violate the same. Whenever any action is proposed to be taken under the Public Premises Act, the authorities concerned are bound to keep the said guidelines in view, to the extent possible on the facts and circumstances of the respective case. If any public sector undertaking or financial institution is of the view that any of the guidelines are contrary to the provisions of the Act or otherwise unworkable or impractical, they can also seek modification of the guidelines or have their own internal guidelines. What is held in this case is that an unauthorized occupant or tenant against whom action is initiated under the Public Premises Act, cannot resist the proceedings on the ground of noncompliance with the said guidelines.

8. In view of the foregoing, we allow this appeal and set aside the order of the High Court and restore the order of eviction of the Estate Officer. On the facts and circumstances, we grant time to the Respondents to vacate the premises till 31.12.2011 subject to Respondents filing an undertaking within four weeks to vacate the premises voluntarily on or before that date, and also pay the rents/damages as may be found due.