

ALLAHABAD HIGH COURT

Brigade Commander

Vs.

Ganga Prasad

Special Appeal No. 201 of 1954. against order of Mehrotra, J.
(Agarwala and V. Bhargava, JJ.)

01.11.1954. 07.02.1956

JUDGMENT

Agarwala, J.

1. This is a special appeal against an order of Mehrotra, J., allowing a writ petition and quashing a notice issued by the Brigade Commander, Meerut Sub Area, dated 29-9-1952, requiring the respondent Ganga Prasad Dubey to vacate a certain place of land after demolition of the construction thereon, under Section 3 of the Government Premises (Eviction) Act, 1950.

2. The facts, briefly stated, are as follows. In the year 1923 one Kesho Prasad who was in authorised possession of 798 Sq. feet of land within the limits of the Cantonment Board, Meerut sold the land with the constructions thereon to one Babu Lal. In 1929 Babu Lal applied to the Cantonment Board for being permitted to make constructions over a portion of the land. The Cantonment Board sanctioned the constructions. In making the constructions Babu Lal is alleged to have encroached upon certain land belonging to the Government. Thereupon, on 28-4-1936 a suit was filed on behalf of the Secretary of State by the Military Estates Officer for possession over the land so alleged to have been encroached upon. During the pendency of these proceedings Babu Lal sold the land in his possession and the constructions to one Sri Ram Gopal on 9-6-1936. On 19-11-1936 the suit was decreed ex parte against Babu Lal. On 18-5-1937 Sri Ram Gopal sold the land and the constructions to Ganga Prasad Dubey respondent. In execution proceedings on behalf of the Secretary of State an application was made to implead Ganga Prasad Dubey as a judgment-debtor and for permission for execution of the decree against him. The application was refused by the execution court but was allowed by the appellate court. The decree was then executed on 14-1-1938 and according to the respondent a portion of a platform covering an area of 131 Sq. feet was demolished.

3. Ganga Prasad Dubey then filed a suit for a declaration that the land should be regarded as an area held by an authorized person for the reason that the encroachment, even if there was one, must be deemed to have been condoned in the events that had happened. In that suit it was held that the disputed land had become private occupied land, but the suit was dismissed on the

ground that it was barred by time.

4. On 18-1-1952, and on 19-9-1952, the Board Committee of the Cantonment Board passed two resolutions the effect of which according to Ganga Prasad Dubey was that the Cantonment Board condoned his unauthorized possession over the land.

5. On 29-9-1952, Sri P.N. Kripal, Brigade Commander, Head Quarters, Meerut, issued a notice under Section 3 of the Government Premises (Eviction) Act calling upon Ganga Prasad Dubey respondent to vacate the land on the ground that he was in unauthorized occupation thereof. Thereupon Ganga Prasad Dubey filed the writ petition, which has given rise to this appeal, challenging the order passed by the Brigade Commander on the grounds firstly that the possession of the respondent was not unauthorized and secondly that even if it was initially unauthorized the encroachment had been condoned by the Cantonment authorities. The respondent alleged that in view of the above grounds the notice issued by the Brigade Commander was 'ultra vires' and liable to be quashed.

6. On behalf of the Brigade Commander it was contended that the occupation of the respondent was unauthorized and that the Cantonment Board had not condoned his unauthorized occupation and even if it had done so its action was not binding on the military authorities.

7. At the hearing before the learned single Judge a further ground was taken on behalf of the respondent that the notice in question was invalid because it was in respect of an open piece of land and not in respect of any building and that such an open piece of land did not fall within the definition of the word "premises" which were defined in the aforesaid Act as "a building or a part of a building".

8. The learned single Judge came to the conclusion that a notice under Section 3 of the Government Premises (Eviction) Act could only be issued in respect of what was described in the Act as premises which meant 'a building or a part of a building' and that since the land in question was an open piece of land and not any part of a building, the notice in question was invalid. On this ground alone the learned Single Judge quashed the notice issued by the appellant.

9. Against this judgment the Brigade Commander has come up in special appeal and on his behalf it has been urged that the learned single Judge failed to consider the amendment of the definition of the words "government premises" in the Government Premises (Eviction Act) which amendment was made by Section 25(2)(b) of Act 30 of 1952 and an open piece of land was also included in the definition of "government premises".

10. It appears that the contention raised on behalf of the appellant is correct. Under the original Act the competent authority was authorized after issuing notice to order that the person

concerned shall vacate "government premises" within 15 days of the service of the notice, and .if such person refused to comply with such order the competent authority was authorized to evict such person by use of force. The expression "government premises" was defined in Section 2(b) as meaning "any premises belonging to, or taken on lease or requisitioned by, the Central Government", and then the word "premises" was defined in Section 2(c) as meaning "any building or part of a building" including a garden, grounds and outhouses appertaining to such building or part of the building and any fittings affixed to such building or part of the building for the more beneficial enjoyment thereof. Under this definition undoubtedly an open piece of land which was not appurtenant to any building was not "premises" and therefore was not "government premises" and therefore notice under Section 3 of the Act could not be issued in respect of it. But Section 25(2)(b) of the Requisitioning and Acquisition of Immovable Property Act (Act No. 30 of 1952) amended Act 27 of 1950, and the expression "Government premises" was defined to mean-

"any premises or land belonging to, or taken on lease, or requisitioned by the Central Government or requisitioned by the competent authority under the Requisitioning and Acquisition of Immovable Property Act, 1952, and, in relation to the State of Delhi, includes any premises or land belonging to any municipality in Delhi or any land belonging to the Improvement Trust, Delhi, whether such land is in the possession of, or leased out by, the Improvement Trust." And, in Section 3 for the words "the premises" the phrase "the Government premises" was substituted. It is therefore clear that after the coming into force of the amendment, the competent authority was authorized to issue notice for the eviction of any person not only from a building or part of a building but also from an open piece of land.

11. On behalf of the respondent however a fresh point was urged before us that the Government Premises (Eviction) Act No. 27 of 1950 was contrary to the provisions of Articles 14, 19 and 31 of the Constitution and ultra vires and no notice could be validly issued against him. As this point went to the root of the matter we allowed it to be taken for the first time in this appeal and after hearing the learned counsel we have come to the conclusion that the Act in question contravenes the provisions of Article 14 of the Constitution and is consequently void and of no legal effect under Article 13 of the Constitution.

12. Article 14 of the Constitution provides : "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This is one of the fundamental rights of the people of India and the State is prohibited from making any law which deprives any person of such right and any law made in contravention of this Article is to the extent of the contravention void.

13. The Article has been the subject of interpretation in several cases by the Supreme Court. It has been held that the Article does not prevent classification of persons or things for the purposes

of law, provided that the classification is not arbitrary. The Article prohibits discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. In the words of Mukherjea, J., as he then was, the classification

"must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid,"

Vide '*Charanjit Lal v. Union of India*¹, Thus in order to determine whether a law violates Article 14 of the Constitution it is necessary to see whether (1) the classification made by it is based on some intelligible differentia and (2) whether a rational nexus between the objective of the law and the differentia exists see - '*State of Bombay v. P.N. Balsara*²', With these principles in mind we have now to see whether the provisions of the impugned Act contravene the provisions of Article 14. The preamble of the Act is not very helpful in determining the object of the Act. The preamble merely says : "An Act to provide for the eviction of certain persons from Government Premises and for certain matters connected therewith." The Statement of Objects and Reasons which accompanied the Bill which later on was passed as the Act showed that the Act was being passed because the Government was faced with the difficulty that many of its properties came to be in the occupation of unauthorized persons and it was found that if the ordinary legal remedies were pursued there would be inordinate delay and the Government would be put to serious loss. The Statement of Objects and Reasons is not relevant for the purpose of construing the provisions of the Act but it can certainly be looked into in order to see what object the Legislature had in enacting the Statute. The object of the Legislature thus was to provide a speedy remedy for the eviction of persons in unauthorized occupation of Government premises. This object also appears from the various provisions of the Act itself. "Competent authority" has been defined in the Act to mean "any person authorized by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority under the Act for such area as may be specified in the notification." Section 3 of the Act then authorizes the 'competent authority 'if he is satisfied-

"(a) that the person authorized to occupy any Government premises has, whether before or after the commencement of the Act -

(i) sublet, without the permission of the Central Government or of the competent authority, the whole or any part of such premises, or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such premises, or

(b) that any person is in unauthorized occupation of any Government premises," after issuing notice, to order that the person as well as any other person who may be in occupation of the whole or any part of the premises to vacate the premises within 15 days of the service of the notice. Sub-Section (2) of Section 3 then provided :

"If any person, refuses or fails to comply with an order made under Sub-Section (1), the

competent authority may evict that person from, and take possession of, the premises, and may for that purpose use such force as may be necessary."

¹ AIR 1951 SC 41 pp. 57 and 58

² AIR 1951 SC 318

14. Under Section 4 the competent authority may in the prescribed manner assess damages on account of the use and occupation of the government premises as it may deem fit and then may recover such damages by serving notice on the person and if the person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered as arrears of land revenue.

15. Under Section 5 any person aggrieved by an order of the competent authority under Section 3 or 4 may, within 10 days of the date of the service of the notice under Section 3 or 4 prefer an appeal to the Central Government. The Central Government may then after calling for a report from the competent authority and after making such further enquiry if any as may be necessary pass such orders in the appeal as it thinks fit and the order of the Central Government shall be final.

16. Under Section 6 no order made by the Central Government or the competent authority may be called in question in any court and no injunction is to 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 the Act.

17. Under Section 9 any contravention of the provisions of the Act or obstruction of the lawful exercise of any power conferred by or under the Act shall be punishable with fine which may extend to one thousand rupees.

18. Thus it is obvious that the whole object of the Act was to provide for the eviction of persons who are in unauthorized occupation of Government premises in a speedy and effective manner. The object is laudable and there can be no doubt that the Government does at times stand in need of speedy recovery of possession over its property. This necessity offers an intelligible basis of differentiation between occupants of Government premises and occupants of private premises. But then the question is whether the differential treatment accorded to a person in possession of Government premises is reasonably related to the objective of the Act.

19. For the purpose of getting possession over a property in the unauthorized possession of some one the ordinary remedy is by a suit in the civil court. The defendant in the suit has a right to show firstly that the land does not belong to the Government and secondly that he is not in unauthorized occupation thereof. He has also a right to take various other pleas. The court judicially determines the plaintiff's claim. The burden of proving that he is the owner of the land

or is otherwise entitled to evict the defendant is on the plaintiff. If he fails to prove his case the suit fails. Further, the defendant in the suit has full opportunity of producing evidence in support of his pleas. If he fails in the trial court, he has a right of appeal. Under the impugned Act, however, we find that it has been left to the sweet discretion of the 'competent authority' to determine firstly that the premises are Government premises and secondly that the occupation of the person in possession is unauthorized, or that he has sublet without the permission of the Central Government the whole or part of the premises or otherwise acted in contravention of any other terms, express or implied, under which he was authorized to occupy the premises.

All these points are to be determined by the 'competent authority' without hearing the person concerned. Then, again, the 'competent authority' can be any person irrespective of whether he has qualifications for evaluating title to the property or not. These provisions give such wide power to the competent authority that the competent authority may even evict a person who may not in truth be occupying government premises at all or who may not, if occupying Government premises, be in unauthorized occupation thereof. All that the competent authority has to do is subjectively to satisfy himself about these matters and then to issue a notice to the person concerned and if he does not vacate the premises within 15 days of the service of notice, to forcibly evict him without giving him a hearing at all as to his right to remain in occupation of the property. Such drastic provisions cannot by any stretch of imagination be called reasonable. It passes comprehension why it could not be provided that a person to be appointed as 'competent authority' should possess the qualifications for determining questions of title. It also passes, comprehension why some sort of opportunity could not have been provided for the person in occupation to satisfy the competent authority about the 'bona fides' his claim.

20. The Act no doubt makes a provision for appeal to the Central Government, but this is merely an eye-wash because here again there is no provision for an opportunity being given to the aggrieved person of being heard in support of his case. The Central Government may call for a report from the competent authority. Such a report is not expected to be of any help to the aggrieved person as the report is bound to be in support of the action taken by the competent authority. The Central Government may also make further enquiry but this again is absolutely discretionary with the Central Government; and then the Central Government may pass such orders as it thinks fit. It does not appear that the Central Government is bound to pass the orders upon the merits of the case because the aggrieved person has been given no opportunity of placing his case before the Central Government. The order of the Central Government may be merely arbitrary. Then again the order of the Central Government and, in the absence of any appeal to the Central Government, the orders of the competent authority have been made final barring the jurisdiction of the civil court. The result of all these provisions is that the title to the property of a person is to be decided according to the subjective satisfaction of a person who may have no qualifications to do so and without giving any opportunity to the person concerned for the vindication of his rights. The civil court is debarred from restraining the proceedings of the competent authority. The net result of the provisions of the Act is that a person may even lose his own property and may not even complain about it to any civil court. He cannot even, move the

civil court to restrain the competent authority to proceed under the Act. The provisions of the impugned Act are so harsh and unjust that they cannot possibly be said to have any reasonable relation with the objective of the Legislature. The objective of speedy and effective eviction of unauthorized persons from Government premises could very well have been achieved without unjustifiably denying to persons in occupation of Government premises rights which are considered fundamental in all civilized societies.

21. In *'Ram Prasad v. The State of Bihar'*³, Patanjali Sastri, C.J., observed that the Constitution prohibits by Article 14 the State from denying the protection of

³ AIR 1953 SC 215

adjudication of a dispute by observing the well established procedural safeguards which include the right to be heard, the right to produce witnesses and so on.

22. It was urged that Section 6 which bars the jurisdiction of the civil court may alone be held to be invalid and the rest of the Act may be declared to be valid. This is not possible, as the provisions of Section 3 themselves are bad as not bearing a rational relationship between the objective of the Act and the basis of the classification. The whole Act therefore must be declared to be invalid.

23. It was also urged that the State is not a person and therefore Article 14 does not apply to a differential treatment of the State on the one hand and a private person on the other. Without deciding whether the State is a person or not within the meaning of Article 14 it may be pointed out that the classification here is not between the State on the one hand and a private individual on the other but between a private individual occupying Government premises on one hand and another private individual occupying private premises on the other. Thus the classification here sought to be made by the Act is between two private individuals one of whom happens to occupy private land and the other Government land. Article 14, therefore, applies with full force to such a situation as the person occupying Government premises is not afforded the same protection of law as is afforded to a person occupying private land and the differential treatment meted out to the former person has no reasonable connection with the objects sought to be achieved. It may further be pointed out that under this Act an occupant of Government lands is liable to ejection by a notice only on the subjective satisfaction of the competent authority and is denied the remedy of having the rights claimed by him adjudicated by a Court of law and at the sweet will of such authority he can be subjected to this disability whereas another person in exactly the same situation can have the benefit of a decision by a court of law if the same authority in exercise of his unfettered discretion chooses to proceed against him by a regular suit for ejection instead of taking recourse of the provisions of this Act. This unguided and unfettered discretion of a non-judicial authority to relegate persons similarly situated to different remedies clearly violates the principle of equality before the law guaranteed by Article 14 of the Constitution so that the provisions of this Act must be held to be void under Article 13 of the Constitution.

24. In this view of the matter, it is not necessary to consider whether the Act contravenes, the provisions of Article 19(1)(f) and of Article 31 as well.

25. In '*Jagu Singh v. Shaukat Ali*', the Act was declared to be invalid,, though the ground of the decision was that the Act contravened the provisions of Article 19(1)(f) on of the Constitution.

26. As the Government Premises (Eviction) Act itself is invalid the notice issued under its provisions must also be held to be invalid. We, therefore, agree with the order of the learned single Judge though for different reasons.

27. There is no force in this appeal. It is dismissed with costs.

Appeal dismissed.

⁴⁵³ Cal WN 1066