PATNA HIGH COURT

Bhartiya Hotel

Vs

Union of India

Civil Writ Jurisdiction Case No. 222 of 1966

(R.L. Narasimham, C.J. and B.N. Jha, J.)

21.12.1967

JUDGMENT

R.L. Narasimham, C.J.

1. This is an application under Article 226 of the Constitution to quash the order dated the 16th March, 1966 passed by the Estate Officer purporting to act under the provisions of the Public Premises (Eviction of Unauthorised Occupants). Act, 1958 (32 of 1958) (hereinafter referred to as the Act) holding that he had jurisdiction to take appropriate steps under that Act for the eviction of the petitioners from plot No. 6046 in mahalla Ratanpura of Chapra Town. The railway authorities claimed the plot to be railway property, and hence applied to the Estate Officer appointed under the Act for taking necessary steps for the eviction of the petitioners, who were alleged to be unauthorised occupants of the same. The petitioners, however, objected to the jurisdiction of the Estate Officer to continue the proceeding for eviction on the ground that there was a previous proceeding before the Revenue authorities under the provisions of the Bihar Public Land Encroachment Act, 1956 (Bihar Act 15 of 1956) (hereinafter referred to as the Bihar Act), which was fought by the parties concerned up to the Court of the Commissioner of the Division. All the three Revenue authorities, viz.. the S.D.O., the appellate authority, viz., the Collector, and the revisional authority, viz., the Commissioner held that it was not a fit case for taking action under the Bihar Land Encroachment Act, and that the appropriate course for the Railway administration was to bring a civil suit for that purpose. The S.D.O.'s order (Annexure-B) shows that he was not inclined to take action under the Bihar Act for the following reasons :-

> "It will not be proper to decide the question of title in a summary proceeding under this Act. The parties may get the title decided by competent Civil Court."

On appeal also, the Collector endorsed this view (Annexure-C) with the following observations (see paragraph 10) :

> "Under the circumstances, I find that the respondents (meaning the petitioners here) are in possession of the disputed land since 1946 by virtue of a lease from the Saran District

> Board. There is no evidence to show that this land was in possession of the Railway Administration. In a summary proceeding like this in which complicated issue of title and possession are involved, it would not be fail to pass a summary order under the Bihar Land Encroachment Act especially when the District Board, which is also a public body, is involved. In the circumstances, I agree with the learned lower court that this is not a fit case for decision under Bihar Land Encroachment Act. The appellants should seek their remedy in Civil Court."

When the matter was taken up in revision before the Commissioner, he observed as follows :- (Annexure-D).

> "I have carefully considered the arguments advanced on behalf of the Railway Administration. As I have said above, there is a good deal of force in the same, but I am reluctant to upset the findings of the learned Collector in this case, I am also inclined to the view that, in a case like this, the remedy should be sought not through the Bihar Land Encroachment Act but through the appropriate Civil Court."

2. Having thus lost the case in the three Revenue Courts the Railway administration thought it advisable to proceed under the provisions of the Act for the purpose of evicting the petitioners, and the Estate Officer decided the preliminary question of jurisdiction in favor of the Railway administration.

3. This writ petition was admitted on the 13th April 1966, and one of the most important grounds urged in the writ petition was that the decision of the Revenue authorities in the proceedings under the Bihar Act would operate as res judicata in the sub-sequent proceeding for eviction under the provisions of the Act. But, when the writ petition became ready for hearing, Mr. Basudeva Prasad for the petitioners relied on a very recent judgement of their Lordships of the Supreme Court in *Northern India Caterers (Private) Ltd. v. State of Punjab*[1], and urged that the provisions of the Act should be struck down as unconstitutional and violative of Article 14 of the Constitution. Special notice was issued to the Attorney General as required by the Rules, and the constitutional question was also fully argued by Mr. Lalnarayan Sinha, Advocate General, on the one hand and the Counsel for the petitioners on the other.

4. The principle of res judicata can hardly apply for the very simple reason that the three Revenue authorities viz, the S.D.O., the Collector and the Commissioner, did not finally decide any question. (Annexures B, C and D). Even on the question of actual possession, though the Collector found the petitioners to be in actual possession from 1946, he weakened the effect of the finding by saying in the next sentence that, where complicated issues of title and possession are involved, it will not be fair to pass a summary order under the provisions of the Act. The Commissioner also has not come to a clear finding that the petitioners were in possession: he merely held that this was not a fit case for taking action for eviction under the provisions of the Bihar Act. The only final decision of the Revenue Courts is that this was not a lit case for taking action for eviction under the provisions of the Bihar Act. That may operate as res judicata and the Railway administration will not be entitled to file a fresh petition for eviction of the petitioners under the provisions of the Bihar Act; but the principle of res judicata cannot be carried further,

and it cannot be held that proceedings for eviction under same Acts also would be impliedly barred if they are otherwise maintainable.

5. A close scrutiny of the provisions of the Bihar Act will also support this conclusion. Section 8 of that Act says that all proceedings shall be disposed of in a summary manner. Section 19 says : The provisions in this Act for the removal of any encroachment on a public land shall be in addition to, and not in derogation of, any remedy available under any other law for the time being in force for the removal of such encroachment." Mr. Basudeva Prasad, however, contended that the effect of Section 19 was that there was no implied repeal of the provisions of the Act but that, once the authority concerned has taken recourse to the provisions of the Bihar Act for the removal of the encroachment and has failed in his efforts, he has no right to seek the same remedy under the provisions of the Act. I am, however, uneble to accept this argument. The words "in addition to, and not in derogation of" occurring in Section 19, seem to indicate that, if under any other taw in force, remedy is provided for removal of encroachment, that remedy would not be barred merely because a party unsuccessfully sought the aid of the Bihar Act for the same purpose. The principle of election may not also apply because of the language of Section 19 of the Bihar Act.

6. Now, I take up the constitutional question which is the main question for consideration. In AIR 1967 SC 1581, their Lordships (by a majority) struck down as unconstitutional the main provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. It was urged by Mr. Basudeva Prasad that the provisions of the Act were almost identical with the provisions of the Punjab Act, that we are bound by the decision of the majority, and that, consequently following the decision of the majority in the aforesaid Supreme Court case, we should also strike down the Act as unconstitutional.

7. It is true that most of the provisions of the Act are almost identical with the provisions of the Punjab Act; but there is one very important difference. In the Punjab Act, though the first authority to take steps for eviction of unauthorized occupants of public land was an executive officer, the appellate authority provided in the Act was also an executive officer, viz, the Commissioner. On the contrary, in the Act, though the first authority for taking steps for eviction may be an executive officer, viz. "an Estate Officer" appointed by the Central Government, the appellate authority (vide Section 9) is the District Judge. The learned Advocate General emphasized this distinction and urged that, on account of the same, the majority judgments of the Supreme Court will not apply here.

8. In the aforesaid judgments, the important points decided by their Lordships may be summarized as follows :

(i) The classification of occupiers of public property and premises as a separate class from occupants of other property was based on a justifiable reason, and such classification has a rational nexus with the object end policy of the Act (paragraph 9).
(ii) The Punjab Act did not, by necessary implication, take away the right of suit in the Civil Court for the purpose of eviction of unauthorized occupants, and it only provided an additional remedy in that Act (Paragraph 6).
(iii) The procedure for eviction of unauthorised occupants under the Punjab Act is more

prejudicial and drastic when compared with the procedure under the ordinary law of the land (paragraph 12).

(iv) The Punjab Act leaves it to the unguided discretion of the Collector to pick and choose some of those in occupation of the public properties and premises for the application of the more drastic procedure under Section 5 of that Act (paragraph 12).

Hence, Section 5 was violative of Article 14 of the Constitution, and must be declared void.

9. Points (i) and (ii) in the previous paragraph would equally apply to the Act. There may be a reasonable basis for classification of "public premises" in Section 2(1) (b) of the Act for the purpose of special treatment. Similarly, notwithstanding the finality given to orders made under the Act by Section 10, the ordinary remedy of eviction through Civil Court will not be barred because, in the Punjab Act also, there was a similar provision in Section 10 - see *Northern Indian Caterers Private Ltd. v. State of Punjab*[2], where the main provisions of the Punjab Act were quoted. But the crucial question for decision here is whether it can be reasonably held that the provisions of the Act are more drastic and prejudicial to a party than the procedure prescribed by the ordinary law of the land for eviction of an unauthorized person. It is true that the primary purpose of the Act appears to be to provide a speedy remedy for eviction of unauthorized occupants from public premises. This is made clear in paragraph 2 of the Statement of Objects and Reasons, which may be quoted in full :

> "The above decisions have made it impossible for Government to take speedy action even in flagrant case of unauthorized occupation of public premises and the only way in which such persons may be evicted is by the ordinary process of law which often involves considerable delay. It has, therefore, become necessary to provide a speedy machinery for the eviction of persons who are in unauthorized occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution."

The decisions referred to in the said preamble are *Jagu Singh v. Shaukat Ali*[3], *Brigade Commander, Meerut Sub-Area v. Ganga Prasad*[4], and *Ch. Moinuddin v. Deputy Director, Military Lands and Cantonments, Eastern Command*[5], But, merely because a speedier remedy is provided by a special Act, it cannot be said that that Act is prejudicial to a person. On the contrary, it is well known that the inordinate delay in Civil Courts has made litigants almost despair of getting any relief under the normal procedure, and, if a speedier remedy is provided, it may, in a sense, be held to be beneficial to all concerned. It is true that, if valuable rights to property of a person are
left for adjudication by executive officers, prejudice may be caused. But here, the Legislature has been wisar, and though the original authority may be an executive officer described as the Estate Officer, an appeal is provided to the District Judge. This is also made clear in the Statement of Objects and Reasons :

> "Provision has also been made for an appeal against every order of the estate officer to an independent judicial officer who will be the District Judge of the district in which the public premises are situated or such other judicial officer of not less than ten years' standing as the District Judge may nominate in this behalf. The provision for a fair

> hearing before estate officers and that of an appeal against their orders to an independent judicial officer will be a safeguard against any arbitrary exercise of powers by the estate officer."

Section 4 requires the Estate Officer to give a show cause notice to the person concerned before ordering eviction. Section 5 requires him to take the evidence that may be adduced by the parties concerned, give them a reasonable opportunity of being heard, and then pass an order in which reasons, should be recorded in writing. Thirty days' time is required before the order of eviction could be enforced. The appellate authority's powers are not circumscribed in any way by Section 9. On the other hand, Sub-Section (4) of Section 9 requires the appellate authority to dispose of the appeal as expeditiously as possible. Under the ordinary law, the appellate authority's power to take additional evidence is somewhat restricted by Order 41 Rule 27, Civil Procedure Code. There is no such restriction on the power of the District Judge in appeal under Section 9 to direct the taking of additional evidence. His powers are very wide indeed. It is true that the procedure to be followed either by the Estate Officer or by the District Judge, while hearing the appeal, is not provided in the Act but is required to be provided in the rules made by the Central Government under Section 13 of the Act. A copy of the rules was produced before us, which shows that, while taking evidence, the Estate Officer is not bound to record the evidence verbatim but may record a mere summary of the evidence. It was argued that this provision in the rules would operate prejudicially against a person alleged to be in unauthorized occupation. I am, however, unable to accept this contention. Though the rules confer power on the Estate Officer to record a mere summary of the evidence, it is always open to the party to require him to record evidence verbatim in special circumstances. Even if the Estate Officer rejects such a prayer, the District Judge, as appellate authority, can cure the defect. Thus, by requiring a speedy hearing of the dispute by the Estate Officer and providing an appeal to a senior judicial officer like a District Judge and making adequate provisions for fair hearing for all parties, the Act confers a distinct benefit, and cannot be said to be prejudicial to the occupants.

10. One of the main reasons for their Lordships striking down the Punjab Act in the aforesaid Supreme Court case was the provision for an appeal before the Commissioner. Their Lordships at page 1587 (paragraph 12) adversely commented on this aspect in the following words :

> "The case of a person proceeded against under Section 5 of the Act would be disposed of by an executive officer of the Government, whose decision rests on his mere satisfaction subject no doubt to an appeal but before another executive officer, viz., the Commissioner."

I do very much doubt it their Lordships would have struck down the Punjab Act if that Act provided for an appeal before the District Judge and not before the Commissioner.

11. There are some earlier decisions of their Lordships of the Supreme Court under Article 19(1)(f) of the Constitution, which offer a useful guide in *Sadasib Prakash Brahmchari v. State of Orissa*[6], where some of the provisions of the Orissa Hindu Religious Endowments Act were challenged as violative of Article 19(1)(f), their Lordships at page 437 observed as follows :

> "It is undoubtedly true that from a litigant's point of view an appeal to the High Court from the Commissioner's order is not the same as an independent right of suit and an appeal to the higher Courts from the result of that suit. But in order to judge whether the provisions in the present Act operate by way of unreasonable restriction for constitutional purposes what is to be seen is whether the person affected gets a reasonable chance of presenting his entire case before the original tribunal which has to determine judicially the questions raised and whether he has a regular appeal to the ordinarily constituted Court or Courts to correct the errors, if any of the tribunal of first instance."

The provisions of the Act fully comply with the requirements of the aforesaid observations. The Estate Officer though an executive officer, is required to decide the matter judicially after giving the person affected a reasonable chance of presenting his entire case, and the appeal is provided to the ordinarily constituted Court of the District Judge. Though the said observations were made while considering Article 19(1)(f) nevertheless the portion underlined, viz., "for constitutional purposes", would show that the same reasonings would apply for the purposes of Article 14 also.

12. Mr. Basudeva Prosad, nowhere, distinguished the Supreme Court case by pointing out that under the Orissa Act, the original Court, viz. the Commissioner of Endowments, is required to be 3 member of the judicial service, who can be reasonably expected to act judicially whereas in the Act, the original authority may be an executive Officer. This distinction, however, cannot be given much importance because in *S.P. Jinadathappa v. R.P. Sharma*[7], their Lordships upheld the constitutional validity of the Mysore House Rent and Accommodation Control Act, 1951, even though the original authority was an executive officer, viz., the Controller, on the main ground that in appeal was provided in that Act to the District Judge, with a right of revision to the High Court. This decision, therefore would support the view that, even where a person is deprived of his rights to property by an authority, who may not be a judicial officer, nevertheless, if an appeal is provided to the District Judge, the impugned Act could not be struck down as violative of Article 19(1)(f) of the Constitution. That a right of revision to the High Court will not be barred notwithstanding the finality conferred on the appellate order by Section 10 of the Act may be taken as well settled, so far as this Court is concerned, by the Full Bench decision in *Arjun Rautara v. Krishna Chandra Gajpati Narayan Deo*[8], Apart from that decision, the right of the High Court to interfere under Articles 226 and 227 of the Constitution against the appellate order of the District Judge is always there. The power of the High Court in revision under Section 115, Civil Procedure Code, is not in any way wider than the power of the High Court under Articles 226 and 227 of the Constitution. Thus, whatever may be the reasonable apprehension as regards the mode of trial before the original authority, viz., the Estate Officer, no such apprehension can exist when the matter is taken up on appeal before the District Judge, subject to correction by the High Court either in exercise of its revisional jurisdiction under Section 115, Civil Procedure Code or under Articles 226 and 227 of the Constitution.

13. It was then urged that the aforesaid Supreme Court judgement laying down the standard of reasonableness for the purpose of Article 19 cannot be applied for the purpuse of Article 14. This argument also is not tenable. In the *Collector of Customs, Madras v. Sampathu Chetty*[9]. their Lordships pointed out that "there are situations when the points regarding a violation of Article 14 and an objection that a restriction is not reasonable so as to conform to the requirements of

Article 19(5) or (6) may converge and appear merely as presenting the same question viewed from different angles". But their Lordships took care to point out that, in some instances, the test for deciding reasonableness of classification for the purpose of Article 14 may not by itself suffice to show that the restrictions imposed by the impugned statute are reasonable for the purpose of Article 19 This paragraph seems to suggest that the standard of reasonableness for the purpose of Article 19 is somewhat stricter than the standard for the purpose of Article 14. Hence, when their Lordships of the Supreme Court in the aforesaid judgments have held that the mere provision of an appeal to the District Judge with a right of revision to the High Court would save the impugned Act from Article 19(1)(f) it may be held that, for the same reason, the Act must be held to be saved from the vice of discrimination for the purpose of Article 14. In other words, it must be held that there is a reasonable and rational nexus between the object sought to be achieved by the impugned Act on the one hand and the differentia on the basis of which unauthorised occupants of public premises are grouped together from other unauthorized occupants on the other.

14. Merely because the original authority is conferred power to avoid the dilatory procedure of trial in a Civil Court under the provisions of the Civil Procedure Code, it cannot be said that the procedure provided in the Act is prejudicial in any way to the party concerned than the procedure under the ordinary law. On the other hand, in some respects, the procedure conferred by the Act is beneficial without in any way affecting the well-known rules of natural justice. Hence there can be no question of discrimination merely because there are two modes of procedure for eviction of unauthorized occupants in the absence of a further finding that one of them is more prejudicial than the other. The existence of prejudice between two modes of procedure was the main basis for the decision of their Lordships in AIR 1967 SC

1581, and that element is totally lacking in the present case. I must, therefore, reject the argument that the provisions of the Act are violative of Article 14.

15. Lastly, it was contended that the Estate Officer misdirected himself by saying in the impugned order (Annexure-K) that he can decide questions of title to the land also. This portion of his observation must be held to be of an incidental nature. Even if he commits an error in deciding the question of title, the District Judge would correct it in appeal. His primary jurisdiction is to decide whether it is a fit case for ordering eviction, and questions of title and possession will have to be gone into for that purpose. There is no error of law apparent on the face of the record in this portion of the order of the Estate Officer.

16. For these reasons, I would dismiss this application but without costs.

B.N. Jha, J.

17. I entirely agree.

Petition dismissed.

Cases Referred.

[1] AIR 1967 SC 1581
[2] AIR 1963 Pun 290
[3](1954) 58 Cal WN 1066
[4] AIR 1956 All 507
[5] AIR 1936 All 684
[6] AIR 1956 SC 432
[7] AIR 1961 SC 1523
[8] AIR 1942 Pat 1
[9] AIR 1962 SC 316 at p. 325 (Paragraph 16)