

(1987) 09 MP CK 0051
In the Madhya Pradesh High Court
Case No : M.P. No. 2421 of 1987

Ataullah Khan Gaffoor

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 01-09-1987

Acts Referred:

Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 — Section 4, 5, 5(1)

Citation : (1988) J LJ 294 : (1988) MPLJ 99

Hon'ble Judges : N.D. Ojha, C.J.; K.K. Adhikari, J

Bench : Division Bench

Advocate : Fakhruddin, for the Appellant; S.L. Saxena, A.A.G. for State, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

This order shall govern disposal of M.P. No. 2422/87 (Ramesh Kumar Sahu s/o Shri Babulal Sahu vs. The State of M.P. and others); M.P. No. 2423/87 (Karodimal s/o Deloomal and. another vs. The State of M.P. and. others) and M.P. No. 2467/87 (Yogendra Kumar Sharma s/o Shri Ramdayal Sharma vs. The State of M.P. and others., also.

Orders under sub-section (1) of Section 5 of the M.P. Lok Parisar (Bedakhali), Adhiniyam, 1974, (hereinafter referred to as "the Adhiniyam") have been passed against the petitioners of these four writ petitions by the competent authority. Sections 4 and 5 of the Adhiniyam were substituted by Section 4 of the Amendment Act No. 18 of 1981, whereas Section 9 of the Adhiniyam was substituted by Section 7 of the Amendment Act 18 of 1981.

The first prayer contained in these writ petitions is for declaration of sections 4 and 5 of the Amendment Act No. 18 of 1981 as ultra vires. Subsequently an application for amendment was made whereby the further prayer was made for declaring Section 7 of the Amendment Act No. 18 of 1981 as ultra vires. The

other prayer contained in the writ petitions is for quashing of the order of eviction passed against the petitioners u/s 5(1) of the Adhiniyam.

As regards the prayer for declaring Section 7 of the Amendment Act No. 18 of 1981 as ultra vires, learned counsel for the petitioners made a statement before us that the said prayer is not pressed.

The effect of challenging the validity of Sections 4 and 7 of the Amendment Act No. 18 of 1981 is that the petitioners in substance challenge the Constitutional validity of Sections 4, 5 and 9 of the Adhiniyam as substituted by the Amendment Act No. 18 of 1981. Section 4 of the Adhiniyam as substituted by the M.P. Amendment Act No. 18 of 1981 contains the procedure for passing an order of eviction by the competent authority, whereas Section 5 deals with the eviction of unauthorised occupants of public premises. Section 9 on the other hand is the provision in regard to appeals against the orders passed by the competent authority u/s 5 or 7 of the Adhiniyam. In support of the submission that Sections 4, 5 and 9 of the Adhiniyam as substituted by the M.P. Amendment Act No. 18 of 1981 are ultra vires, it has been urged by the learned counsel for the petitioners that similar amendments were made in the Adhiniyam by M.P. Amendment Act No. 9 of 1978 and they were held to be ultra vires by a Division Bench of this Court in *Munnawar Ahmad and others. vs. State of M.P. and others.* 1980 M.P.L.J. 577. According to the learned counsel for the petitioners, the reasons which weighed with the learned Judges in the case of *Munnawar Ahmad (supra)* for declaring Sections 4, 5 and 9 as amended by the M.P. Amendment Act No. 9 of 1978 ultra vires, apply to the substituted Sections 4, 5 and 9 by M.P. Amendment Act No. 18 of 1981.

Having heard the learned counsel for the petitioners and Shri S.L. Saxena, learned Additional Advocate General appearing for the respondents, we are of the opinion that the reasons which weighed with the learned Judges for striking out sections 4, 5 and 9 as amended by M.P. Amendment Act No. 19 of 1978 are not at all applicable to Sections 4, 5 and 9 as substituted by the M.P. Amendment Act No. 18 of 1981. The reasons for which the change as introduced by the Amendment Act No. 9 of 1978 in Sections 4, 5 and 9 of the Adhiniyam was held to be ultra vires are to be found in paragraphs 4 and 5 of the report in the case of *Munnawar Ahmad (supra)*. For the sake of convenience, these two paragraphs are reproduced hereunder:

4. A look at new sections 4 and 5 would show that the competent authority is now empowered to pass an order of eviction only on information received from the allotment officer that a person is in unauthorised occupation of public premises. The competent authority is not now required to give any notice to the occupant before passing the order of eviction. The occupant has no right to show cause against eviction or to produce evidence in support of his right to remain in possession or to be heard before the passing of the order of eviction. The procedure consistent with the principles of natural justice which was contained in Section 4 of the Act before the amendment is completely absent in the new

section 4. If the person against whom such an order of eviction is passed u/s 4 refuses to vacate, he can be pushed out by force u/s 5. The person against whom an order is passed has, no doubt, still a right of appeal u/s 9 but the appeal now does not lie to the District Judge or to a judicial officer but to an officer not below the rank of Collector. Further, the new proviso to sub-section (1-A) of Section 9 makes the appeal a useless formality because it provides that no appeal shall lie against an order passed u/s 4 challenging the legality of the order or correctness of the information on which the order is based. It is difficult to comprehend that if in an appeal filed u/s 9(1-A) the appellant cannot challenge the legality of the order or correctness of the information on which the eviction was ordered, what also he can usefully urge in the appeal. The changes introduced in Section 9 thus make the appeal an exercise in futility. It is in this background that one has to see whether the changes introduced by the amending Act in Sections 4, 5 and 9 of the parent Act are violative of Article 14 of the Constitution.

Now it cannot be disputed that it is necessary in public interest that persons in unauthorised occupation of public premises should be evicted expeditiously. There is the element of public interest involved in early eviction of unauthorised occupants from public premises which is wanting in case of occupants of premises belonging to private parties. It is, therefore, open to the State Legislature to make a law for expeditious recovery of public premises from unauthorised occupants. Such a law, if it provides a reasonable procedure, would not be discriminatory but the Legislature has no power to make a law to confer arbitrary power of eviction of persons in occupation of public premises in the garb of a law providing for expeditious eviction of such persons. The classification of public premises and a separate procedural law for eviction of persons in occupation of such premises can be sustained only when the law bears a just and reasonable relation to the object of Legislature. If the law bears no reasonable nexus with the object in view, the classification would be invalid. The Amending Act makes the provision for eviction so drastic and onerous that virtually there is no due procedure at all as the competent authority on getting the information from the allotment officer can evict any person in occupation. The person evicted has no say in the matter. He is not heard. He has no effective right of appeal to challenge the order of eviction. Under the colour of making a reasonable classification in favour of the Government and Corporation with the object of expeditious eviction of persons in occupation of public premises, the Legislature has conferred an arbitrary power of eviction on the competent authority. Such a law, in our opinion, is violative of Article 14 of the Constitution. It is true that the persons in occupation of public premises can be classified separately and they are not entitled to contend that the detailed procedure applicable to trial of suits against persons in occupation of private premises should be applied by the law which treats them separately, but they are certainly entitled to contend that the law treating them separately must provide a fair procedure consistent with natural justice and their eviction should not be merely left on a sweet will of the

executive officer designated as competent authority. If the law relating to eviction of occupants from public premises does not provide a fair procedure it would be discriminatory and invalid for that reason. We are, therefore, clearly of opinion that Sections 4 and 5 introduced by Section 4 of the amending Act and the amendments made in section 9 by section 5 of the amending Act are constitutionally invalid.

Sections 4, 5 and 9 as substituted by the Amendment Act No. 18 of 1981, in our opinion do not suffer from any of the vices pointed out in the case of *Munnawar Ahmad* (supra). A perusal of Section 4 would indicate that sub-section (1) of Section 4 contemplates issue of notice to show cause against order of eviction. Sub-section (2) provides for the contents of notice to be issued under sub-section (1). Sub-section (3) on the other hand contemplates that the competent authority shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and that it shall also be published in such other manner as may be prescribed. Sub-section (4) provides that where the competent authority knows or has reason to believe that any persons are in occupation of the public premises then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to the persons or in such manner as may be prescribed. Sub-section (1) of Section 5 on the other hand makes it obligatory on the competent authority to take all such evidence as may be produced in support of the cause to be shown by the person against whom a notice under sub-section (1) of Section 4 has been issued, and it is only if after considering the cause shown and giving reasonable opportunity of being heard to the person concerned that an order for eviction of the said person is to be passed. Sub-section (2) of Section 5 provides that the competent authority may, on an application by the person against whom an order is passed under sub-section (1), grant such time for vacating the premises as it deems fit subject to such conditions as may be imposed. In those cases where the person concerned fails to comply with the order of eviction before the date specified in sub-section (1) or where time is granted under sub-section (2) within the time as granted, such a person has to be actually evicted. Sections 4 and 5 as substituted by M.P. Amendment Act No. 18 of 1981, therefore, contain complete safeguard against an arbitrary eviction. The defects which were pointed out in the case of *Munnawar Ahmad* (supra) with regard to the right of appeal conferred by section 9 of the Act as amended by M.P. Amendment Act No. 9 of 1978 are not to be found in Section 9 of the Act as substituted by M.P. Amendment Act No. 18 of 1981. Sub-section (1) of Section 9 contemplates that the State Government may, by notification, appoint such person being an officer not below the rank of Collector as appellate authority for the purposes of this Act in respect of such areas as may be specified in the notification. Sub-section (2) provides that an appeal shall lie against every order of the competent authority made in respect of any public premises u/s 5 or Section 7 to the appellate authority appointed under sub-section (1). Sub-section (3) of Section 9 provides for the

limitation within which the appeal has to be preferred. This sub-section contains a proviso which confers power on the appellate authority to entertain an appeal even after the expiry of limitation prescribed in sub-section (3) of Section 9, if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Sub-section,(4) also entitles the appellate authority to stay the enforcement of the order appealed against for a total period not exceeding sixty days and on such conditions as it may deem fit. The appeal preferred u/s 9 is required to be disposed of as expeditiously as possible. Section 9 of the Adhiniyam as it stood after its amendment by Amendment Act No. 9 of 1978 was challenged in the case of Munnawar Ahmad (supra). It was pointed out in that case that Section 9 makes the appeal useless formality because it provides that no appeal shall lie against an order passed u/s 4 challenging the legality of the order or correctness of the information on which the order was based. It was further pointed out that it is difficult to comprehend that if in an appeal filed u/s 9(1-A) the appellant cannot challenge the legality of the order or correctness of the information on which the eviction was ordered, what also he can usefully urge in the appeal. According to the learned Judges the changes introduced in Section 9 made the appeal an exercise in futility.

This, however, is not so in Section 9 of the Adhiniyam as substituted by M.P. Amendment Act No. 18 of 1981. It contains no such restriction as was to be found in Section 9 of the Adhiniyam which was struck down in the case of Munnawar Ahmad (supra). Here the appeal now lies to an officer not below the rank of Collector and in the appeal the person aggrieved can raise all pleas which are found to be necessary to support the challenge to the order appealed against. The right of appeal as conferred by Section 9, as it now stands, is on the face of it an effective right and not a useless formality as it was in this section which was struck down in Munnawar Ahmad's case (supra). It was urged in this case by the learned counsel for the petitioners that earlier the appeal lay to the District Judge, but now the appeal as prescribed in said sub-section (1) of Section 9 lies to an officer not below the rank of Collector. According to the learned counsel for the petitioners this circumstance was also noticed in the case of Munnawar Ahmad (supra). The manner in which this circumstance was noticed in the aforesaid case is to be found in paragraph 4 of report which has already been quoted above. It is however, apparent that the changes introduced in sections 4,5 and 9 of the Adhiniyam by the Amendment Act No. 9 of 1978 were not held to be ultra vires on the ground that the appellate authority had been substituted by an officer not below the rank of Collector, for the District Judge. The amendments were struck down for the reasons which are to be found in paragraphs 4 and 5 of the report. Even, apart from this circumstance, it may be pointed out that nothing has been brought to our notice on the basis of which it can be said that Section 9 of the Adhiniyam is ultra vires only because in place of the District Judge, an officer not below the rank of Collector has been substituted as the appellate authority.

In the result the challenge to sections 4,5 and 9 of the Adhiniyam substituted by

M.P. Amendment Act No. 18 of 1981 fails.

As regards the challenge to the orders of eviction which have been passed against the petitioners u/s 5(1) of the Act, as seen above, an appeal lies against such an order u/s 9 of the Adhiniyam. At an earlier date it was urged by the learned counsel for the petitioners that the State Government had not issued any notification appointing the appellate authority as contemplated by Section 9 of the Adhiniyam as substituted by M.P. Amendment Act No. 18 of 1981. Consequently, it was not possible for the petitioners to have preferred any appeal under the said section. In so far as this contention is concerned, suffice it to say that Shri S.L. Saxena, learned Addl. Advocate General has today produced before us a copy of notification dated 12-6-1981 issued by the State Government and published in M.P. Gazette dated 24-7-1981 which indicates that in exercise of the powers conferred by sub-section (1) of Section 9 of the Adhiniyam, the State Government had appointed the Commissioners of the Divisions as the appellate authority of their respective revenue divisions. That being so, it is now open to the petitioners to prefer an appeal against the orders of eviction passed against them by the competent authority u/s 5(1) of the Adhiniyam. Since the petitioners have an effective statutory alternative remedy we do not find it expedient to entertain these writ petitions in so far as the relief for quashing the orders of the competent authority on merits is concerned. In this connection we may refer to certain observations made by the Supreme Court in the case of *S. Jagadeesan Vs. Ayya Nadar Janaki Ammal College and Another*, . In this case a writ petition was filed challenging a resolution of the syndicate of the Madurai Kamraj University. The writ petition was allowed. The matter was taken up by the aggrieved party to the Supreme Court on the ground that since an appeal was maintainable u/s 37 of the Tamil Nadu Private Colleges (Regulations) Act, 1976, against the order which had been challenged before the High Court in the writ petition, the High Court committed an error in entertaining the writ petition and quashing the resolution. This plea found favour with the Supreme Court and the judgment of the High Court was set aside and the writ petition was dismissed. However, it was observed that:

We set aside the judgment of the High Court and dismiss the writ petition filed by respondent No. 1 with a direction that respondent No. 1 may prefer an appeal to the prescribed authority u/s 37 of the Act, if so advised. If such an appeal is preferred within 30 days of the passing of this order, the prescribed authority shall entertain and decide the appeal on merits without any objection as to limitation.

In the instant case, the period of limitation prescribed by Section 9 of the Adhiniyam is 15 days. Keeping that in mind we issue a similar direction as was issued in the case of *S. Jagadeesan* (supra) that in case the petitioners of these writ petitions prefer an appeal against the impugned orders passed by the competent authority u/s 5(1) of the Adhiniyam within fifteen days from today, the appellate authority shall entertain and decide the appeals on merits without

any objection as to limitation.

In view of the aforesaid discussion, subject to the direction made above, these writ petitions are dismissed.

Certified copy of the impugned order passed by the Competent Authority in each of these writ petitions may be returned to the learned counsel for the petitioners on his furnishing true copies of those orders.

Certified copy of this order be supplied on payment of usual charges.