

(1987) 02 DEL CK 0059
In the Delhi High Court
Case No : Civil Writ No. 719 of 1981

Baij Nath

APPELLANT

Vs

Bank of Maharashtra and another

RESPONDENT

Date of Decision : 09-02-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2(e),
2(e)(2)(i), 2(g), 4

Citation : AIR 1987 Delhi 231

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : N.S. Sistani, with P.K. Seth and C.L. Sachdeva, for the Appellant;
S.S. Rana, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Kirpal, J.—This judgment will dispose of Civil Writ Petitions Nos. 719 to 722 of 1981.

2. The challenge in these writ petitions under Article 226 of the Constitution is to the proceedings which have been initiated against the petitioners under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the said Act").

3. Briefly stated the facts are that the petitioners, who are closely related to each other, along with their three sisters, were owners of property No. B-29, Connaught Place, New Delhi.

4. There were negotiations for the sale of the said property between the petitioners and the respondent-Bank. On 26th February, 1973 an agreement for sale of the said property was entered into between the parties. In the said agreement it was, inter alia, stated that Baij Nath and Joginder Nath, petitioners in C. W. Nos. 719 and 720 of 1981, were the tenants of the ground floor of the

said premises at a rent of Rs. 100/- per month while Jeet Lal and Sham Lal, petitioners in C. W. 722 and 721 of 1981, were tenants in a portion of the ground floor at a monthly rent of Rs. 50/-. The said property was agreed to be sold to respondent No. 1 for a total sum of Rs. 8,25,000/-. On that very day other agreements of tenancy dated 26th February, 1973 were also entered into between the respondent-Bank and Baij Nath, Joginder Nath, Jeet Lal and Sham Lal. These agreements were to come into effect only on the completion of the sale. As per these agreements the Bank accepted these persons as tenants. The agreements further provided that the tenancy was heritable and that it was for a period of 11 months from the date of execution of the agreements but thereafter the tenants could extend the tenancy for another period at their will on the same terms and conditions. It is not necessary to refer, in any great detail, to the other clauses in the said agreements except to notice that clause i 2 provided that if the tenants failed to comply with any of the terms of the said agreement, (hen the tenancy could be terminated by giving one month"s notice in writing.

5. It is an admitted fact that on 6th February, 1974 sale deed was executed. In the said Deed there was a reference to the fact that ground floor premises were on rent with Baij Nath, Joginder Nath, Jeet Lal and Sham Lal and that they had become the tenants.

6. The petitioners were served with a notice dated 25th September, 1976 sent by the counsel for the respondent No. 1. By this notice the petitioners" tenancy was terminated. It was, inter alia, stated in the said notice that the petitioners had made unauthorised construction of the mezzanine floor in the premises and had failed to regularise or remove the breaches and, further, that the petitioners had caused substantial damage to the premises by carrying out major alterations and constructions in the said premises without obtaining prior permission in writing from the respondent-owner. The aforesaid notice terminating the tenancy was then followed by a notice dated 3rd December, 1976 issued u/s 4 of the said Act.

7. According to the petitioners, some talks took place between them and the respondent-Bank and on 10th April 1978 the agreement was entered into and as a result thereof proceedings for their eviction were dropped. However, on 23rd March, 1981 a notice was sent to the petitioners fixing the case for evidence before the Estate Officer. The petitioners then filed the present writ petitions in which not only the provisions of the said Act but also the proceedings which were initiated under the Act were challenged. During the course of the proceedings, notice u/s 7 was received by the petitioners dated 28th July, 1983. On an application being made, the writ petitions were allowed to be amended and there is now a challenge to this notice also. One further fact which may be noted is that after the receipt of the notice dated 3rd December, 1976 u/s 4 of the said Act, the petitioners filed a suit for declaration in this Court being Suit No. 557 of 1977. The declaration sought for was that the sale deed dated 6th February, 1974 was null and void. Decree for possession of the portion which was with the respondent-Bank was also sought for.

8. The first contention which is raised before me by Mr. Sistani, the Learned Counsel for the petitioners, is that section 2(e)(2)(i) and (ii) of the Act is ultra vires Articles 14 and 19(1)(g) of the Constitution. Section 2(e) defines public premises and it includes those premises which are owned by any Corporation or Local Authority established by or under the Central Act and owned or controlled by the Central Government. By virtue of the aforesaid provisions, the provisions of Rent Control Act become inapplicable to the said premises. The grievance of the petitioner is that these premises owned by the Bank cannot be regarded as public premises and the provisions of the said Act are ultra vires.

9. The question as to whether the aforesaid provisions of the said Act are valid or not is no longer res integra. The validity of the said provisions has been upheld by the Supreme Court in the case of Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, . Before this decision, A division Bench of this Court in the case of G. L. Mirchandani v. Life Insurance Corporation, ILR (1980) Del 329 had also upheld the validity of section 2(e) of the said Act. It is true that the Supreme Court has referred a similar question to the Larger Bench but as far as this Court is concerned, the question stands concluded by the decision of the Supreme Court in Jain Ink Mfg. Co. and of the Division Bench of this Court in Mirchandani's case. Reference may also be invited to the decision in Civil Writ Petn. No. 1296 of 1986, decided by the Division Bench on 30th May, 1986 and Civil Writ No. 783 of 1986 decided on 7th August, 1986 where again this Court, following the earlier decision in Mirchandani's case, held that the provisions of section 2(e) of the said Act were intra vires.

10. It was then sought to be submitted by the Learned Counsel for the petitioners that the petitioners were not in unauthorized occupation of the premises in question. It was contended that the notice terminating the tenancy was not valid as none of the provisions of the lease agreement had been violated. A further submission of the Learned Counsel for the petitioners was, while relying on the decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and other cases, that the principles of promissory estoppel are applicable to the present case and, therefore, the proceedings for eviction which have been initiated by the respondent are not valid.

11. The provisions of the Rent Control Act are not applicable in case of public premises. The procedure for eviction of a tenant of public premises is governed by the provisions of the said Act. The authorities under the said Act get jurisdiction to initiate proceedings in respect of public premises only if the person is in unauthorised occupation thereof. If public premises have been allotted to a person and the allotment is cancelled or in respect of premises which have been let, the lease has been validly terminated, then the occupant thereof would become an unauthorised occupant and an Estate Officer would then have jurisdiction to take action under the said Act. Where however, the occupant is in lawful occupation of the public premises, no proceedings can be initiated against

the occupant for his eviction under the said Act.

12. In the present case, the contention of the petitioners is that they are in lawful occupation of the said premises. It was vehemently urged that by reason of the provisions of clause 6 of the lease agreement, the tenants had the option to extend the tenancy at their will and this has been done. It was conceded by the Learned Counsel for the petitioners that the tenancy could be terminated by the respondent but, it was submitted, this termination could be effected only if any of the terms of the lease agreement had been violated. The Learned Counsel, therefore, sought to submit that in the present case the clauses of the lease agreement had not been violated by the petitioners and, therefore, the alleged termination thereof was bad in law.

13. If the petitioners' tenancy still subsists, in the eye of law, then there can be little doubt as to the outcome of the proceedings intended against the petitioners. If the petitioners are in lawful possession of the premises in question then no valid order of eviction u/s 5 of the said Act can be passed against them. The question as to whether the petitioners continue to be in lawful occupation or not is, however, essentially a question of fact. In the present case, it will have to be seen, after examining all the evidence, whether the tenants had exercised their option under clause 6 of the lease agreement. Furthermore, if such an option had been exercised, the next question which will arise for consideration is whether any of the terms of the agreement have been violated by the tenants which alone would give the respondent jurisdiction to terminate the lease agreement. In the notice terminating the lease two infringements of the lease agreement are alleged against the petitioners. Whether these two infringements exist or not is again a question of fact. In my view, therefore, Mr. Rana is right in submitting that these questions of fact ought not to be determined in these proceedings under Article 226 of the Constitution. In support of his contention, he has relied on certain observations of the Division Bench of this Court in *Mirchandani's case* ILR (1980) Del 329. In that case also it was sought to be contended that the tenant was in lawful occupation of the premises. While declining to adjudicate on this issue, this Court observed as follows :

These contentions have been traversed in the counter-affidavit where reference is also made to the merits of the case as to whether the tenant-petitioner has or has not contravened the terms of the lease and the prohibition contained in the lease of the land held by respondent No. 1 from the lessor. We have entertained the writ petition only because of the constitutional and legal contentions urged by the petitioner as set out above. As for the merits of the question, whether on the proper interpretation of the lease between the parties the tenant has been guilty of such contravention of the lease as would entitle the landlord to re-enter, the proper procedure is for the tenant to show cause against the notice issued to him by the landlord and then contest the proceedings for eviction before the Estate Officer with the benefit of a right of appeal to the Additional District Judge. It would not be proper for us to deal with the merits of the question in

this writ petition and we have informed the parties that we would not do so. It is in this context that only the legal contentions raised by the Learned Counsel for the petitioner are dealt with below.

For these reasons the three contentions urged before us fail. As for the merits of the question are concerned as to whether a cause of action has arisen for Respondent No. 1 to terminate the lease of the petitioner and thereby render the petitioner as unauthorised occupant within the definition of "unauthorized occupant" in section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the "proper forum is the Estate Officer and the appellate authority is the District Judge. It would not be right for us to consider that question because that would be depriving the petitioner opportunity of adducing the necessary evidence and also the benefit of an appeal under the Act. After all, Article 226 of the Constitution is available to the petitioner after final orders under the Act are passed. We are, therefore, not making any observations as to the merits of the case. The writ petition is dismissed on the legal grounds alone without any other as to costs.

To the same effect is the decision of the single Bench of this Court in the case of M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another, and M/s. Indo Imex Agencies (Pvt.) Ltd. v. Life Insurance Corporation of India, AIR 1983 Del 409. The question in issue in the present case, therefore, whether the petitioners are in lawful occupation of the premises or not, is one which can be raised before the Estate Officer and, it may be even by initiating an independent action in a court of competent jurisdiction. Mr. Rana, of course, submits that by virtue of section 15 of the said Act such an action would not be maintainable but it is not necessary for me to go into this contention because no such suit has been filed so far. If such a suit is filed the court will, if called upon, adjudicate on the point in issue. One thing, however, is clear that as far as this Court is concerned, the consistent view has been that the question as to whether the occupant is an unauthorised occupant or not is a question of fact which will not be adjudicated upon in proceedings under Article 226 of the Constitution. In view of the aforesaid, the question of my determining this question of fact would, therefore, not arise.

14. With regard to the submission of the Learned Counsel for the petitioners that the principles of promissory estoppel are applicable to the present case, in my opinion this plea again ought to be raised before the Estate Officer. The Estate Officer is competent to decide all questions of fact and law. Against his decision there is a right of appeal provided by the Act before a judicial authority. If the petitioners are still aggrieved by the decision of the appellate authority, they can, if so advised, file a petition under Article 226 of the Constitution. Though a plea of promissory estoppel can be raised in a petition under Article 226 of the Constitution but in the present case it would be better and more appropriate that such a plea is raised before the authority which is competent to determine questions of fact and law. All the points which are raised by the petitioners

should be decided at one instance and before the same authority. As a writ court would not interfere on questions of fact, and as the competent authority under the Act is in a position to decide questions of fact and law. therefore, the question as to whether the principles of promissory estoppel are applicable and attracted to the present case is a question which should be decided by the competent authority.

15. For the aforesaid reasons these writ petitions fail and are dismissed but the parties will bear their own costs.