

(2011) 05 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal No. 1957 of 2003

Cantonment Board and Another

APPELLANT

Vs

Church of North India

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Cantonments Act, 1924 — Section 116, 116A, 280
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 2(1), 2(2), 4, 5
Transfer of Property Act, 1882 — Section 106, 106(1), 107

Citation : AIR 2011 SC 2339 : (2011) AIRSCW 3437 : (2011) 3 AWC 3161 : (2011) 4 BomCR 66 : (2011) 6 JT 49 : (2011) 3 RCR(Civil) 426 : (2011) 1 RCR(Rent) 448 : (2011) 6 SCALE 229 : (2011) 3 UJ 2064

Hon'ble Judges : P. Sathasivam, J;H. L. Gokhale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—This appeal by Special Leave seeks to challenge the order passed by a Division Bench of High Court of Rajasthan in D.B Civil Special Appeal (Writ) No. 753 of 1993 dated 17.5.2002 whereby the appeal filed by the Appellants herein against the order passed by a Single Judge of that High Court dated 13.8.1993 in Writ Petition No. 5281 of 1991 filed by the first Respondent came to be dismissed. The Single Judge had allowed Respondent's writ petition.

2. The facts leading to this appeal are as follows:

The Respondent herein is running a Mission Hospital at Nasirabad in the State of Rajasthan. The Hospital building initially belonged to the East India Company. Later on, it belonged to the Government of India and it is under the management of the Nasirabad Cantonment which is a cantonment governed under the Cantonment Act, 1924. The case of the Appellants is that the Respondent was given the concerned premises under a lease deed dated 1.4.1982 which expired on 31.3.1984. The rent for the premises was fixed at Rs. 75 per month. The

lease deed provided in Clause 2 (iii) that the lessee shall vacate the premises before the expiry of the lease as and when required by the Cantonment Board provided seven days' notice to this effect is given in writing.

3. The case of the Appellants is that the premises were not being utilized fully and that the Respondent had taken some other premises also. The Appellants needed the premises. After the expiry of the lease on 31.3.1984, the Estate Officer of the Cantonment Board stopped accepting the rent.

4. The Appellants served a notice of seven days as required u/s 4 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'Public Premises Act') on 14.3.1984 and again on 27.3.1984. The Respondent filed a Civil Suit No. 10/1985 in the Court of the Additional Civil Judge No. 1 at Ajmer to challenge the notice. The Respondent filed an application to deposit the rent in Civil Court but that was not entertained. The Civil Suit came to be dismissed on 31.7.1987 and the Respondent applied for six months time to vacate which was accepted by the Appellant. The order passed by the Additional Civil Judge, Ajmer in that matter on 31.7.1987 reads as follows:

31.07.1987: Present, Counsel for the parties. The learned Counsel for the applicant seeks six months time to vacant the disputed property, the learned Counsel for the no applicant is agreeable for this request. Hence, it is directed that non-applicant will not dispossess the applicant from the disputed premises, and he will be at liberty to initiate proceedings for the same thereafter. This application is disposed of with this order, and the file to be consigned to record along with this decision.

5. The Respondent, however, did not vacate the premises as assured, and therefore, the Appellant filed a fresh application u/s 4 of the Public Premises Act before the Estate Officer. The Estate Officer considered the objections filed by the Respondent and then passed an order of eviction u/s 5 of that Act on 26.6.1991. The order passed by the Estate Officer in para 7 thereof, notes that the Respondent did raise the question of jurisdiction of the Estate Officer but only on the ground that the jurisdiction to evict was with the Civil Court and the action should be taken under the Transfer of Property Rules. The Estate Officer rejected that submission holding that the Public Premises Act was a special Act and it will override the provisions of the Rent Control Act. The appeal against the order of the Estate Officer filed u/s 9 of the Public Premises Act was dismissed by the District Judge and hence, the Respondent filed a Writ Petition No. 5281 of 1991 before a Single Judge of the Rajasthan High Court.

6. The Learned Single Judge who heard the writ petition took the view that the provisions of the Transfer of Property Act, 1882 applied to the Cantonments Boards. The particular lease deed was not a registered lease deed as was necessary as per Section 107 of the Transfer of Property Act, since the period of lease was more than one year, and it was a lease for an immovable property. The Learned Judge held the particular lease to be a lease from month to month, and

therefore, there must be a 15 days' notice to terminate it as required by Section 106(1) of the Transfer of Property Act 1882. He held that the 7 days' notice of termination will not be a valid one. He further held that since such termination had not taken place, the Respondent could not be held to be an unauthorized occupant. The Learned Judge also took the view that the order dated 31.7.1987 could not be read as an undertaking to vacate after the expiry of six months. Therefore, the Learned Single Judge allowed the Writ Petition filed by the Respondent and set aside the order passed under the Public Premises Act. The Appellants herein preferred an Appeal numbered as 753 of 1993 to the Division Bench. The Division Bench also took the same view as the Learned Single Judge and dismissed the Appeal filed by the Appellants herein. The Division Bench held that the premises may be taken to be public premises but the Respondent cannot be taken to be an unauthorised occupant since his right to occupy was not terminated by a 15 days' notice.

7. Being aggrieved by this judgment and order the present appeal has been filed. The learned Counsel appearing for the Appellant submitted that the premises belonged to Union of India and were being managed by the Appellant administratively under the Public Premises Act. Section 4 of that Act permitted a notice of seven days, which had been given in the instant case. Even the lease document also provided for a termination of the lease by a notice of seven days, and in any case, the action was being taken after the expiry of the lease period. The lease had not been extended. That being so, the Respondent was in unauthorized occupation within the definition of 'unauthorized occupation' u/s 2(g) of the Public Premises Act. He relied upon a number of decisions to contend that the position of a lessee holding on under an unregistered deed which is compulsorily registrable is that of a mere tenant at will, and a mere demand for possession is sufficient to determine the lease, and no notice u/s 106 of the Transfer of Property Act was necessary. We are not required to go into this submission for reasons which are stated herein after.

8. The Learned Counsel for the Respondent tried to refute these submissions by maintaining the submissions which were canvassed before the Court below. The submissions of the Respondent are untenable on the face of it, in as much as the period for which the premises were let out was over and obviously the Respondent was in unauthorized occupation thereafter. The Appellants were therefore entitled to take recourse to law and take possession of the premises. The only question is whether they had taken the correct course of action as permissible in law.

9. Mr. Singla, learned Counsel for the Respondent however, lastly submitted that the Respondent was owner of the premises and secondly, the Public Premises Act did not apply to these premises also for the reason that the Cantonment Boards have come to be covered under the Public Premises Act only by Amendment Act of 1993 which came into force on 7.1.1994. That is how Clause (viii) 'governing any Cantonment Board constituted under the Cantonment Act, 1924 (2 of 1924)'

has come to be included in the definition of "public premises" u/s 2(e)(2)(viii) of the Public Premises Act. He therefore, submitted that at the time when the proceedings were initiated and the order was passed under the Public Premises Act, the Estate Officer did not have jurisdiction to proceed under this Act and therefore, for this reason alone the eviction proceedings will have to be held as bad in law for want of jurisdiction and the appeal will have to be dismissed. He submitted that this was an issue with respect to having jurisdiction to deal with the subject-matter and the submission can be raised at any stage of proceedings.

10. Mr. Venkataramani, learned Counsel appearing for the Appellant pointed out in his rejoinder that neither of these two submissions were advanced any time in the past. In any case, as far as the ownership of the premises by the Respondent is concerned, no document has ever been produced in this behalf. With respect to the second submission he pointed out that the case of the Appellant was that the premises belonged to Union of India and the Appellants were entrusted with the management thereof. The Public Premises Act, therefore, applied to the concerned premises.

11. The submission of Mr. Venkataramani that the question of jurisdiction was not raised any time earlier is not fully correct in as much as, pointed out earlier, para 7 of the estate officer's order records the objection to the jurisdiction of the estate officer raised by the Respondent though in a different manner. The counsel for the Respondent submitted that the issue which he had raised now in this Court disputing the jurisdiction of the Estate Officer was a question of law and the matter went to the root of jurisdiction of the authority to pass the eviction order. If the authority did not have the jurisdiction to proceed under the Public Premises Act, the eviction order could not be upheld. A point about the jurisdiction can be raised even in this Court even if it was not raised any time earlier.

12. We have considered the submission of both the counsel. As far the first submission of Mr. Singla viz. that the premises belong to the Respondent is concerned, the same has never been raised any time before. On the record of the present Civil Appeal, we have the objection filed by the Respondent before the Estate Officer, and a copy of the Writ Petition filed by the Respondent. Nowhere have they claimed that they own the premises. On the contrary, in paragraph 3 of their objections before the Estate Officer, they have stated that the Executive Officer of the Cantonment Board is the Secretary and the Custodian of the property. In Paragraph 4 of Writ Petition No. 5281/1991, filed before the Single Judge, they have clearly stated that the hospital building initially belonged to the East India Company and later on had belonged to the Government of India. They are not disputing the fact that a lease-deed was executed between the parties on 1.4.1982 whereby they were in occupation of the Hospital building. In the second recital of the lease deed, it is clearly stated that the lessor is the owner of the premises, and the premises were being let out to the hospital run by the Respondent on the terms contained therein. The

Respondent had nowhere claimed that they own the land or they constructed the building thereon. This being so, it is not possible to accept the first objection of Mr. Singla.

13. As far as, the second submission of Mr. Singla is concerned, it is submitted by him that the Cantonment Boards were covered under the Public Premises Act only with effect from 1.6.1994 by an amendment introducing Sub-section (viii) in Section 2(e)(2) of the Public Premises Act. He has, therefore, contended that the Estate Officer had no jurisdiction to pass eviction order on 26.6.1991 and hence, on this ground alone, the present appeal must be dismissed. As far as this submission of Mr. Singla is concerned, Mr. Venkaramani submitted that this objection ought to have been raised at the earliest opportunity so that Appellant could have met the same earlier. It is undoubtedly true that objection to the maintainability of a proceeding must be raised at the earliest but an objection that the authority did not have the jurisdiction to entertain the proceedings over the subject matter goes to the root of the proceeding. In a number of judgments, this Court has held that a defect, with respect to the lack of inherent jurisdiction is basic and fundamental and validity of such an order can be challenged at any stage, even in execution or in collateral proceedings (for reference see a judgment of a bench of three judges of this Court in Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, .

14. However, such an eventuality does not arise in this case for the reason that the case of the Appellant has been that the hospital premises of the Respondent belong to the Union of India and are only under the management of the Appellant, and therefore, are the "public premises", u/s 2(e) of the Public Premises Act 1971. Thus, in the first paragraph containing the reasons of his order dated 26.6.1991, the Estate Officer states as follows:

1. That the CNI Mission Hospital, Nasirabad which is situated on and land thereon, belongs to the Union of India and lies under the management of Cantt. Board, Nasirabad is a public premises as defined under 2(e) of the P.P. Act, 1971.

It is this order of eviction which was challenged in appeal to the District Court and thereafter in writ petition.

15. Section 2(e) of the Public Premises Act defines "public premises." This section is split into two Sub-sections. Sub-section (1) covers there under any premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government. Sub-section (2) deals with premises belonging to or taken on lease or on behalf of various entities such as Government Companies, Universities, Major Ports etc. which are mentioned in that Sub-section, and Cantonment Boards have come to be covered under Sub-section (viii) by amendment with effect from 1.6.1994. The case of the Respondent has been that the premises belong to Union of India, and, therefore, are public premises. The Estate Officer did have the jurisdiction over such premises. It is another matter that the premises of Cantonment Boards have also come under the definition of

public premises since 1.6.1994. It cannot mean that the premises of Union of India which were always under the Public Premises Act, but under the Management of a Cantonment Board, since prior to this amendment, would not be covered under the Public Premises Act. This has been the plea of the Appellants right from the beginning. Section 116A of the Cantonment Act 1924, gives the power to the Cantonment Board to manage any property entrusted to it by the Central Government. It is under this Section that the present premises are under the management of the Appellant Board. Section 116A reads as follows:

Section 116A. Power to manage property.- A [Board] may, subject to any conditions imposed by the Central Government, manage any property entrusted to its management by the Central Government on such terms as to the sharing of rents and profits accruing from such property as may be determined by rule made u/s 280.

16. The Government has the power to make rules concerning the management of these properties. This power is contained in Section 116 of the Act. Mr. Venkaramani has drawn our attention to the Cantonment Land Administration Rules, 1937 under which the properties under their management are classified into three categories 'A', 'B' & 'C'. The present premises fall in category 'C'. He has also shown us the receipt issued by the Defence Estate Officer to the Appellant for the payment of rent of the land on which the hospital building is situated. We have also been shown the relevant notification issued by the Central Government authorizing the concerned Officer as the Estate Officer for the premises under the control of the Ministry of Defence.

17. This being the position, there is no substance in the objection raised by and on behalf of the Respondent. The Estate Officer did have jurisdiction to take action against the Respondent under the Public Premises Act. The period of authorization of the Respondent to occupy the premises was over on 31.3.1984. Therefore, the Respondent was in an unauthorized occupation thereafter u/s 2(g) of the Act. Notice as required, u/s 4 of the Public Premises Act was given. The Respondent had no acceptable defence. The premises were no longer being used properly. That being so, the order of eviction was fully justified as also the order passed by the District Judge dismissing the appeal.

18. The Single Judge of the Rajasthan High Court, therefore, clearly erred in holding that a notice of 15 days ought to have been given in the present case to terminate the authority of the Respondent on the concerned premises. The provisions of Sections 106 and 107 of Transfer of Property Act could not be applied to the present case on that count since the premises were covered under a special act which will prevail as against a general enactment. The Division Bench also having accepted that the Respondent was in an unauthorized occupation, erred in insisting that a 15 days' notice was necessary.

19. In the circumstances, this Civil Appeal is allowed. The orders passed by the

Division Bench of the Rajasthan High Court dated 17.5.2002 in Civil Special Appeal (Writ) No. 753/1993 as well as the order dated 13.8.1991 passed by the Single Judge in Writ Petition No. 5281/1991 are set aside. Appeal No. 753/1993 filed before the Division Bench will stand allowed and Writ Petition No. 5281/1991 filed by the Respondent before the Single Judge will stand dismissed. The order passed by the Estate Officer dated 26.6.1991 as upheld by the District Judge, Ajmer is hereby confirmed.

20. The appeal is allowed accordingly, though, without any order as to costs.