

(1964) 09 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 15 of 1963

Dila	Vs	APPELLANT
The Union of India (UOI) and Others		RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1965 HP 53

Hon'ble Judges : Om Parkash, J.C.

Bench : Single Bench

Advocate : Daulat Ram Chowdhary, for the Appellant; Jai Chand, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Om Parkash, J.C.

1. This petition, under Article 226 of the Constitution of India, for the issue of a writ of mandamus, is directed, against the Union of India and the District Medical Officer of Health, Mandi District. The petition is founded on the following allegations :

2. The petitioner was in peaceful, actual and physical possession of land, measuring 2-10-17 bighas, comprised in khasra No. 2, situated in village Raghunath Bag, Tehsil Mandi. In the last week of the month of December, 1962, a Government contractor, under the orders, instructions and authority of the respondents, had come on the aforesaid land, and had, in spite of the petitioner's protests, commenced laying the foundations of a building and had destroyed the Rabi crop, sown by the petitioner. This act of the contractor resulted in the illegal and forcible dispossession of the petitioner, from the land. The petitioner served a notice, u/s 80, C. P. C., on the respondents, on the 3rd January, 1963, demanding restoration of possession of the land, and compensation, but the notice went unheeded. Hence the petitioner has filed the

present petition, for the issue of a writ of mandamus, for the restoration of possession of the land, after the removal of the structures, built thereupon.

3. The petition is contested by the respondents. It is denied that the petitioner was ever in lawful possession of the land, in dispute. It is pleaded that the possession of the land, which belongs to Government, was transferred in favour of the Medical Department, and that the petitioner had, voluntarily, given up, even his unlawful possession on the 17th January, 1959. It is, further, pleaded that a building had been constructed on the land, after the petitioner had voluntarily given up possession and that he was estopped from claiming back possession and the demolition of the building. A preliminary objection, against the maintainability of the petition, has also been taken up, on behalf of the respondents. It is pleaded that disputed questions of fact are involved in the petition, and that such questions cannot be decided in a summary proceeding, like the present petition, and that the petitioner should seek his remedy, about the alleged infringement of his right, by filing a regular suit.

4. The preliminary objection, raised by the respondents, appears to have force. The land, in dispute, admittedly, belongs to Government. The claim of the petitioner, for the issue of a writ of mandamus, for the restoration of possession, is based on the allegation that he was in peaceful possession of the land and was illegally dispossessed. This allegation is vehemently denied, on behalf of the respondents. Their plea is that the petitioner was never in lawful possession of the land, and that he had relinquished, even his unlawful possession, voluntarily, on the 17th January, 1959. The respondents have produced a copy, purporting to be a copy of the statement, made, by the petitioner, on the 17th January, 1959, agreeing to relinquish possession of the land, required by the Government, for construction, of the building. The petitioner denies that he had made any such statement. The respondents have also produced a copy of an order, dated the 26th June, 1948, of the Chief Revenue Officer, Mandi. It is stated, in this order, that the term of lease of the land had expired and that the Medical Department should be put in possession of the land. It appears that, in view of this order, and the alleged statement of the petitioner, agreeing to relinquish possession of the land, his name was struck off from the revenue records and the land was shown as in possession of the Medical Department. The petitioner went up in appeal to the Collector, against the striking off his name from the revenue records. The Collector allowed the appeal, on the ground, that the change in the entry regarding possession should have been Drought about by entering a regular mutation and that the striking off the name of the petitioner without entering a mutation, was incorrect.

5. In view of what has been said above, it is clear that there is a serious dispute, between the parties, about the claim of the petitioner, that he was in lawful possession of the land, on the date, when foundations of the building were laid, and that the parties are also at variance on the point whether, the petitioner had given up his possession of the land voluntarily for the construction of the

building. The determination of these disputed questions of fact will require the holding of an enquiry and the taking of evidence.

6. The determination of another question, which is likely to arise in the petition, will also require the examination of evidence. That question is whether it will be equitable, in the circumstances of the case, to order demolition of the building. According to the petitioner, the cause of action, for the present petition, was furnished by the laying of the foundations of the building on the land and thereby dispossessing him under the orders of the respondents. The building has, now, been completed, at a considerable cost, and is being used as Lepers' Asylum. The petitioner did not adopt any measures to get the construction of the building stopped. It will be a matter for serious consideration whether it will not be more equitable to award compensation to the petitioner, for the infringement of his right of possession, if any, than to order the demolition of the building, built by the Government, on its own land. The decision of this matter will depend on various facts, to be proved by the parties.

7. It follows from the above that the right of the petitioner to be restored to the possession of the land is not clear and undisputable. He has to establish that right by producing evidence. It is well-settled that the object of Art. 226 of the Constitution is the enforcement of fundamental rights and other legal rights and not their establishment and that if the right, which is intended to be enforced, is in substantial dispute and its determination demands an elaborate examination of evidence, it would not be proper for the High Court to exercise the extraordinary powers, under the aforesaid Article, for the enforcement of the right and that the aggrieved party, who alleges the infringement of such a right, should be directed to seek his remedy, under the ordinary law, vide *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, and Tejraj Chhogalal Gandhi and Another Vs. State of Madhya Bharat and Others*, The petitioner, whose right to possession of the land, is in substantial dispute, and its determination depends on the taking and examination of evidence, should seek his remedy under the ordinary law.

8. There is another aspect of the matter. Though, in the petition, it is not stated in what capacity the petitioner was in possession of the land, yet in the *jamabandi*, filed along with the petition, the petitioner is recorded as a tenant at-will of the land. The respondents challenge the correctness of the entry, about the tenancy of the petitioner. If the entry is taken, as correct, its implication will be that relationship of landlord and tenant existed, between the Government, the proprietor of the land, and the petitioner. In this view of the matter, the case of the petitioner that he was forcibly dispossessed, from the land, by the Government will amount to this: a tenant-at-will was illegally evicted from his tenancy, by the proprietor-landlord. A tenant, who has been illegally evicted from his tenancy, has his remedy, under the ordinary law and cannot invoke the powers of the High Court, under Article 226 of the Constitution, against the proprietor-landlord. This position is not affected by the fact that the proprietor

landlord, in a particular case, happens to be the Government; the reason being that the act of dispossession is attributable to the powers of the Government as owner of the property and not to its sovereign powers.

It was held in *Dhirendra Kumar Vs. State of West Bengal and Another*, that where the State holds property and purports to exercise its own right of property, the ordinary law applies and the remedy of a high prerogative writ is not available. In *Mahomed Hanif v. State of Assam* AIR 1961 Gau 20 it was held that:

"Where the State Government as lessor of certain land resumes the land in terms of the lease itself such action of the Government is not subject to the writ jurisdiction of the High Court under Art. 226 inasmuch as the rights which the State exercises in such a case spring from contractual obligations as per the lease. Though the right of a lessee must be held to be a right of property and one of the fundamental rights under the Constitution, the provisions of Art. 226 are not attracted for the simple reason that this particular right of the lessee is not affected or taken away by the State Government exercising its power of sovereignty, or in other words, the right of Eminent Domain. If the State Government is acting as a lessor under a contract, then the State Government stands on the same footing as any private lessor and the High Court cannot possibly interfere with the rights of two individuals, even though that right may be the right of property."

9. The authorities, *State of Patiala and E.P. State Union, Patiala Vs. Mohinder Singh Natha Singh*, and *Waryam Singh Fateh Singh and Others Vs. The State of Punjab and Another*, cited by the learned counsel for the petitioner, are not applicable to the facts of the present case and are distinguishable. In neither of the two cases, the right of the petitioners, who had applied for the issue of a writ, to the possession of the lands, was in dispute. In AIR 1958 Punj 325, even a suit for possession, filed against the petitioner, had been dismissed, though in default in appearance, prior to the putting in possession, by the State, some members of backward classes, and thereby dispossessing the petitioner. In *Waryam Singh Fateh Singh and Others Vs. The State of Punjab and Another*, the lands, belonged to and were in possession of the petitioners, but had gone to Pakistan under the Radcliff Award. As already stated, in the present case, there is a serious dispute, on the point, whether the petitioner had a right to the possession of the land, in dispute.

10. For the reasons stated above, I am of the view that it will not be proper for this Court to exercise its extraordinary powers, under Article 226 of the Constitution, in the present case, and that the petitioner should seek his remedy under the ordinary law. The petition is, therefore, dismissed; but in the circumstances of the case, the parties are directed to bear their own casts of the petition.