

(2016) 09 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 756 of 2006.

**Dr. Ashwini S/o Shri Shreeram Jaiswal - Petitioner @HASH Estate
Officer, Mhow Circle**

Date of Decision : 19-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, Section 5-B(1)

Citation : (2016) 2 RCRRent 567

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Amit Agrawal Learned Counsel, for the Petitioner; Deepak Rawal along with Shri A. Nimgaonkar, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J. - By this petition the petitioner has challenged the order dated 31/1/2005 passed by the Estate Officer under Section 5-B(1) of Public Premises (Eviction of Unauthorized occupants) Act, 1971 (for short Act 1971), requiring the petitioner to remove/demolish the unauthorized construction as also the appellate order dated 27/1/2006 by which the order of Estate Officer has been confirmed.

2. In brief the case of petitioner is that Bungalow No. 70 situated in mall Road Mhow was under the old grant a Class B-3 land managed by Defence Estate Officer and was given under occupancy right to one Jabarchand Moolchand about 100 years back. After the death of original owner, Kesharimal Shah had succeeded him and he had adopted Prakashchandra Shah. The notice dated 2/12/1986 was given by Government of India for resumption of old grant and Prakashchandra Shah had filed the suit for declaration and injunction against Union of India and others being COS No. 369-A/91 (New no. 2-A/2003). On 26/7/2005 the suit was dismissed and first appeal No. 4/05 was filed. The appeal was allowed on 12/2/2009 and matter was remitted back to the trial court. Against this order Union of India has preferred Misc.Appeal which is pending for

consideration before this court and further proceedings before trial court have been stayed. On 13/5/04 sale deed was executed by Prakashchandra Shah in favour of petitioner and on 8/7/04 Prakashchandra Shah had applied to the Executive Officer of the Cantonment Board to carry out the repair work in the house in question. On 23/7/04 the notice under Section 5-B(1) under the Act of 1971 was issued to the petitioner alleging the unauthorised construction and requiring him to demolish it. On 27/7/04 the respondent had directed to stop the construction under Section 5-B(2) of the Act. The petitioner had filed the reply on 9/11/2004 and thereafter the impugned order dated 31/1/05 was passed by the Estate Officer under the provisions of Public Premises Act requiring the petitioner to demolish/remove the construction. The appeal against the said order was dismissed by the impugned order dated 27/1/2006. It has also been stated by petitioner that in the meanwhile the order dated 11/2/04 under Section 185 of the Cantonment Act, 1924 (for short Act, 1924) was passed directing demolition of the construction of the suit house by the Cantonment board against which an appeal under Section 276 of the Act, 1924 was preferred before the General Officer, Commanding-in-Chief Central Command Lucknow which is pending.

3. A reply has been filed by respondent taking the stand that since the petitioner has raised unauthorized construction, therefore, the respondents have rightly passed the order under the Act 1971 requiring the petitioner to demolish it and that no permission was granted for carrying out the repair by Cantonment Board. A further plea has been raised that the petitioner has purchased the disputed land with open eyes and the civil suit is pending.

4. Though the orders passed by the Estate Officer dated 31/1/05 and the appellate order dated 27/1/06 have been challenged on several grounds but the main ground which has been urged by counsel for petitioner is that Defence Estate Officer was the complainant in the matter and he himself has passed the impugned order as Estate Officer under the Public Premises Act, hence the impugned order is not sustainable since no one can be judge in his own cause.

5. As against this learned counsel for respondent has supported the impugned order.

6. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that petitioner in paragraph 6.2 of the writ petition has raised the specific ground that the Estate Officer under Public Premises Act was simultaneously holding post of DEO Mhow and he himself was the complainant and has himself decided the said complaint by passing the impugned order as Estate Officer under Public Premises Act. The respondent's reply to this ground is vague and there is no specific denial of petitioner's plea. In paragraph 3 of rejoinder, the said plea has been reiterated but there is no denial to the said plea nor during course of arguments learned counsel for respondent had disputed the fact that Defence Estate Officer on whose complaint the proceedings were initiated himself was acting as Estate Officer under Public Premises Act. Hence it

is clear that defence Estate Officer had made a complaint about the unauthorized construction by petitioner and on the said complaint proceedings were initiated by Defence Estate Officer himself acting as Estate Officer under Public Premises Act and during course of the proceedings, the Defence Estate Officer has presented another complaint about enlarge area of unauthorized construction before himself as the Estate Officer under the Public Premises Act and had passed the impugned order accepting his own complaint.

7. Since the Estate Officer is statutorily appointed under Section 3 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 therefore, merely because an officer of department does the adjudication as Estate Officer, it is not enough to conclude that he is the judge in his own cause, unless it is shown that such an officer has personal interest or has himself already done some act or taken a decision in the matter concerned. To successfully challenge the order of Estate Officer on this ground, it is required to be established that Estate Officer has a personal bias or connection or a personal interest or has personally acted in the matter concerned or has already taken a decision one way or the other which he may be interested in supporting. Hence the allegation of petitioner that Estate Officer was judge in his own cause is to be examined on the touch stone of the above parameters.

8. Supreme court in the matter of Delhi Financial Corporation and another v. Rajiv Anand and others reported in (2004) 11 SCC 625 while examining the similar issue in respect of appointment of Managing Director or any other official of financial corporation as specified authority under Section 32-G of State Financial Corporation Act, 1951 has held as under:-

9. Faced with this authority, it was submitted that the observations made by the Constitution Bench are per incuriam inasmuch as this authority has not taken note of the Judgment in Gullapalli Nageswara Rao's case (supra). We are unable to accept this submission. It is to be seen that there is a big difference in the facts of the two cases. The doctrine that "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a Corporation is named to be the authority, does not by itself bring into the operation the doctrine "no man can be a judge in his own cause". Of course in individual cases bias may be shown against a particular officer but in the absence of any proof of personal bias or connection merely because officers of a particular Corporation is named as the authority does not mean that those officers would be biased. As has been held by the Constitution Bench a Managing Director is a high ranking officer. He is not personally interested in the transaction. There is no question of any bias or conflict between his interest and his duty. In Gullapalli Nageswar Rao's case (supra) the Secretary who had framed the scheme then proceeded to hear the objections and advise the Chief Minister. It is because of the personal involvement of the Secretary that the majority took the view. Even then two

Judges held that it did not follow that he was an improper person to hear the objections.

10. At this stage it must also be mentioned that the control of the State Financial Corporation Act, by virtue of Section 9, vests in a Board of Directors. Of course the Board of Directors would take the assistance of the Executive Committee and the Managing Director. But the control remains that of the Board of Directors and therefore there is no question of presuming that there was any conflict of duty or that the Managing Director would not act fairly.

11. Reliance was also placed upon the decision of another Constitution Bench of this Court in the case of A.K. Kraipak and Ors. v. Union of India and Ors., 1969(2) S.C.C. 262. In this case the Acting Inspector General of Forest of Jammu & Kashmir State was himself a candidate for selection to the Indian Forest Service. Even though he was a candidate he became a Member of the Selection Board constituted under Regulation 5 for preparing a list of officers of State Forest Service. In the list which was prepared his name was shown as No. 1. It was pointed out that the Acting Inspector General of Forest did not sit in the Selection Board at the time when his name was considered by the Selection Board. This Court held even though he may not have sat in the Selection Board at the time his name was considered but he did participate when the names of his rivals were being considered. It was held that he was bound to have influenced the other members whilst the names of his rivals were being considered. Here also, the facts were completely different. It was shown that the Acting Inspector General had a personal interest in seeing that he got selected.

12. Reliance was also placed upon the case of Krishna Bus Service Pvt. Ltd. v. State of Haryana and Ors., 1985(3) S.C.C. 711 In this case the General Manager Haryana Roadways was given powers under the Punjab Motor Vehicles Act and the Rules framed thereunder which could be exercisable by a Deputy Superintendent of Police. The Court noted that the General Manager of the Haryana Roadways was personally responsible for proper management of the activities of the Haryana Roadways. The Court noted that prosperity and profitability of Haryana Roadways would depend upon competition from private operators. The Court noted that the powers given to the General Manager would cast a duty to ensure compliance of the provisions of the Act and that this would include checking, inspection, search and seizure of offending Motor vehicles. It was held that even vehicles belonging to the Haryana Roadways may have to be checked, inspected, searched and/or seized. It was noted that he would have to take steps to prosecute the officers and this might include officers of his own department and may even include himself. On these facts it was held that, with the duties entrusted to him as a General Manager, he could not be expected to discharge the above mentioned functions fairly and reasonably as an unobstructed operation of motor vehicles by private owners would affect the earnings of the Haryana Roadways. It was held that there was every likelihood that he would be over zealous in stopping, searching and/or seizing motor

vehicles belonging to others and at the same time be lenient to the vehicles belonging to the Haryana Roadways. It was held that if he was too lenient in inspecting vehicles, the interests of the travelling public at large would be in peril. It was held that either way there was a conflict between his duty on the one hand and his interest on the other.

13. In the case of Accountant and Secretarial Services Pvt. Ltd. and Anr. v. Union of India and Ors., 1988(4) SCC 324 the appointment of an officer of the Respondent Bank as an Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, was challenged on the ground that it was violative of Article 14 of the Constitution of India. This Court held that in the very nature of things, only an officer or an appointee of the Government, statutory authority or Corporation can be thought of for implementing the provisions of the Act. This Court held that personal bias cannot be attributed to such officers either in favour of the bank or against any occupant who is being proceeded against, merely because he happens to be an officer.

14. Thus, the authorities disclose that mere appointment of an officer of the Corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the concerned officer has a personal bias or a personal interest or has personally acted in the concerned matter and/or has already taken a decision one way or the other which may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will therefore have to be held that Managing Director of a Financial Corporation can be appointed as an Authority under Section 32G of the Act.

9. Following the aforesaid judgment in the matter of Crawford Bayley & Co. and others v. Union of India and others reported in (2006) 6 SCC 25 in a case where the issue of applicability of principle that "no man can be a judge of his own cause" arose in reference to the statutory authority appointed as Estate Officer under Public Premises (Eviction of Unauthorized Occupants) Act, 1971, Supreme court has held as under:-

"18. In this connection, a reference was made in Delhi Financial Corpn. v. Rajiv Anand with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their persona bias. However, this court in the aforesaid case held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting.

19. In view of the aforesaid observation made by this court that "no man can be a judge in his own cause" certain parameters have to be observed i.e. a personal bias of the person concerned or personal interest or (sic) person acted in the matter concerned and has already taken a decision which he may be interested in supporting the same. These parameters have to be observed before coming to the conclusion that "no man can be a judge in his own cause". This is a matter of factual inquiry. Be that as it may. Mr. Gopal Subramaniam, learned Additional Solicitor General of India with his usual fairness has submitted that the officer who has been appointed as an Estate Officer though alleged to have been associated as an officer dealing with the eviction matters will not be presiding over as an Estate Officer. Therefore, in view of this submission made by Mr. Subramaniam we do not think that the matter is required to be prosecuted further."

10. By examining the present case on touch stone of the above parameters it is found that the Defence Estate Officer has the personal interest in the matter since he himself was the complainant. As a complainant he was prosecuting the complaint before the Estate Officer under Public Premises Act and as the Estate Officer under Public Premises Act he was deciding his own cause. The Defence Estate Officer was producing the material in the proceedings to establish his complaint and on the basis of said material he himself has decided the complaint as Estate Officer under Public Premises Act. Hence it can safely be concluded that he has personal interest as complainant in the matter and he was interested in supporting the allegation made in the complaint, therefore, the Estate Officer was the judge in his own cause.

11. The impugned order dated 31/1/2005 has been passed by the Estate Officer in violation of the principle that "no-one should be judge in his own cause", therefore, the same cannot be sustained and is hereby set aside. Consequently the appellate order dated 27/1/06 is also set aside. However with liberty to the respondent to initiate fresh proceedings in accordance with law.