

(2020) 01 GUJ CK 0142
In the Gujarat High Court

Case No : R/Special Civil Application No. 18793, 18794, 18795, 18796, 18797, 18798, 18799, 18800, 18801, 18802, 18803, 18804, 18805, 18806, 18808, 18809, 18811 Of 2018

Estate Officer And Division Engineer

APPELLANT

Vs

Shankarbhai Rajeshbhai Soni

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4(2)(1)(b) (ii), 4(2)(1)(b)(ii)(2), 9

Citation : (2020) 01 GUJ CK 0142

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Archana U Amin, Sangeeta Pahwa, Thakkar And Pahwa

Final Decision : Partly Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned Advocate Ms.Sangeeta Pahwa waives service of Rule on behalf of the respondents.

2. This group of petitions is filed by the Railway authorities in the proceedings initiated under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("the PPE Act" for short). The dispute pertains to unauthorized construction of shops and encroachment on the land belonging to Railways and around the area of Netrang Railway Station. The alleged illegal occupants were issued with notice under the PPE Act. The Estate Officer passed order of eviction. The order of eviction was challenged by the alleged unauthorized occupants before the District Court and the District Court in appeal proceedings passed the impugned order dated 12.04.2018, setting aside the eviction order of Estate Officer dated 11.06.2015. It is this order in the respective petitions passed by the District Court in appeal proceedings, which is the subject matter of challenge in this group of petitions.

3. As the facts in each of these petitions are identical and contentions raised by both the sides are also similar, with consent of both the sides, the petitions are taken up for joint hearing and disposal. The facts are recorded from lead matter, i.e. Special Civil Application No.18793 of 2018.

4. The petitioner-Railway authorities alleged encroachment on the railway land within Netrang Railway Station, whereby the respondent has allegedly constructed shop admeasuring 67.50 mtrs. abutting into the railway land of Netrang Railway Station. In exercise of powers under sub-section (1)(b)(ii) of sub-section (2) of Section 4 of the PPE Act, show cause notice was issued on 09.02.2015, calling upon the respondent-illegal occupant to produce material in support of his claim and to remain present on 26.02.2015. It appears that the respondent chose not to appear in response to the notice dated 09.02.2015. However, to enable such respondent to appear before the Estate Officer for personal hearing, case was adjourned from time to time till 15.05.2015 and as nobody responded to the show cause notice even on such adjourned dates, the Estate Officer proceeded to pass order dated 11.06.2015 considering documents on record, holding the respondent as unauthorized occupant and ordered eviction.

4.1 The respondent herein preferred appeal under Section 9 of the PPE Act before the Court of Additional District Judge at Ankleshwar. The Additional District Judge allowed the appeal by impugned order dated 12.04.2018 and set aside eviction order of 11.06.2015.

5. Learned Advocate for the petitioners submitted that the Additional District Judge has fallen in error in allowing the appeal without considering the facts on record especially revenue entries with regard to land in question which indicate that the land was acquired by the Railways way back in the year 1953 and the effect of acquisition was also given by mutation in the revenue record on 20.11.1953. It is submitted that the respondents are malafide agitating the issue as the eviction proceedings were initiated against total 143 persons, of which only 17 persons have objected to eviction proceedings by filing appeal whereas rest of the unauthorized occupants have accepted the decision of Estate Officer and have vacated the railway land of Netrang Railway Station.

5.1 It is submitted that the Additional District Judge has committed an error by relying upon order dated 27.02.1978 passed by the Inquiry Officer to hold against ownership of Railways. The Inquiry Officer had rejected the application of the Railways requesting for marking new boundary, covering land abutting the railway land and that was with regard to easementary rights of the villagers and according to the petitioners, cannot be held to be a conclusive finding with regard to rights over the land as well as title and ownership of the railway land. It is also submitted that the Additional District Judge ought to have taken into consideration the fact that Netrang Gram Panchayat had taken up cause of villagers insofar as the land in question is concerned and filed Civil Suit for declaration and permanent injunction before the Civil Court. The subject matter was the same land. However, an application came to be filed under O-7 R-11 by

the Railway authorities and by a detailed order, application Exh.53 under O-7 R-11D came to be allowed and the Civil Suit came to be dismissed.

The appeal proceedings initiated by Netrang GramPanchayat did not succeed as at the state of delay itself, the appeal came to be dismissed.

6. Learned Advocate for the respondents contested the petitions on the basis of findings recorded in the impugned order. It is inter alia contended that the Railways have, in the original proceedings, failed to produce any document to substantiate their ownership of the land, where shop of the respondent has abutted the railway land. It is submitted that the show cause notice under the PPE Act has not been duly served upon the respondents and in fact, format of the notice is also not in a prescribed manner and hence, there is no notice of proceedings under the PPE Act. It is also submitted that in the proceedings in the form of CTS Appeal before the Revenue authority between Netrang Gram Panchayat and the Railway authorities, an order came to be passed on 27.06.1980, wherein finding is given that Railways are unable to prove its ownership or occupation over the land in question and therefore, in the impugned order, Additional District Judge has rightly relied upon order dated 27.06.1980 passed in CTS Appeal.

7. Having heard learned Advocates for the parties and having perused documents on record, it appears that the dispute pertains to 67.50 sq. mtrs. of land unauthorizedly occupied by the respondent, who apparently constructed shop on the road which was the land belonging to Netrang Gram Panchayat, but part of the shop had abutted into the land belonging to Railway authorities, for which show cause notice came to be issued. From village form No.7/12, the land in question is of old survey No.8 /new survey No.479, whereupon portion of the shop is found constructed. In village form No.6, entry No.79 mutated on 27.11.1953 goes on to indicate that new survey No.479 of village Netrang is part of the land acquired by the Railways in the year 1935. From the record, it appears that cognate issue was the subject matter in a suit being Regular Civil Suit NO.428 of 2003 before the Civil Judge (SD), Bharuch. This suit was filed by Netrang Gram Panchayat with the prayers as under:-

"1. The Gamtal lands and land surrounding to the Jawahar Gandhibazar Road (Dediyapada-Rajpardi Road) situated within the village limit of and which are owned and possessed by the plaintiff Netrang Gram Panchayat were earmarked as the properties within railway limits by the respondent no.1,2,3, railway authority. Fencing of railway tracks are from east to west. It is situated immediate on north side of fencing. Please pass an order in favour of plaintiff and against respondent no.1, 2 and 3 that the respondent no.1, 2 and 3 do not usurp the properties of the plaintiff and do not occupy the properties of plaintiff gram panchayat from northern side of fencing and do not prevent or stop the plaintiff panchayat or its persons from working on Jawahar Bazar - Gandhi Bazaar or from carrying out business with cabin, carts and baskets and the civilians of plaintiff panchayat do not stop, prevent or drive out the persons earning

livelihood with help of building, cabin, handcart or basket in the gamtal properties and on the road immediate to the northern side of east-west fencing of railway and the respondent no.1, 2 and 3, themselves or through their persons do not intervene the possession of the road and gamtal properties of the plaintiff panchayat. Moreover, please pass permanent injunction order against the respondent that respondent no.1, 2 and 3 do not trespass in the limits of plaintiff panchayat at Gandhi - Jawahar Bazaar Road (Dediapada - Rajpardi Road) and do not interrupt the easement rights and rights to access the roads of the peoples of Netrang Village and surrounding village."

8. This apparently is the land which is the subject matter of eviction proceedings as well. In the said Civil Suit, where Railway authorities were party respondent, an application Exh.53 under O-7 R-11D was filed. By order dated 27.03.2014, application Exh.53 came to be allowed and the suit filed by the plaintiff, i.e. Netrang Gram Panchayat came to be rejected (page No.100). From the record, it appears that an attempt was made by Netrang Gram Panchayat by filing appeal along with delay application being Civil Misc.Appeal NO.55 of 2015 (Annexure-J), which also came to be rejected by a reasoned order dated 19.06.2017 and hence, claim of the Gram Panchayat on the land in question ended there. The revenue record on one hand indicates the land on which the shop of the applicant had abutted falls on the land of the Railways and therefore, it is sufficient evidence on record to justify claim of the Railway authorities to claim such portion of land to be that of Railways. To counter this, the Additional District Judge in the impugned order has relied upon the proceedings of inquiry officer who passed order dated 27.02.1978. However, scope of such inquiry was with regard to demarcating of the boundaries of railway land viz-a-viz easementary rights of the villagers. Therefore, weightage attached to such proceedings by the Inquiry Officer was not justified by the Additional District Judge. In view of the existing record indicating acquisition proceedings and the mutation entries in the revenue record, it was not open for the Additional District Judge to conclude that the Railway authorities have failed to establish their ownership regarding land in question.

9. The basis of CTS Appeal and its decision to hold that the Railways have not established ownership of the land in question, clearly is unwarranted. It was exercise undertaken by the Public Premises Eviction Officer, where sufficient opportunity was provided to the alleged illegal occupant to produce any document to establish their any right to be in occupation of the land in question and where, before the original proceedings, the alleged illegal occupant has not discharged his burden in response to the show cause notice, the Additional District Judge has clearly fallen in error by shifting the burden on the Railway authorities to establish their legal right to initiate eviction proceedings.

10. When the respondent has preferred appeal, it was first the burden of the respective appellant to establish by leading of evidence in the form of documents, the nature and right of occupant and not the other way round. In the

impugned order, the Additional District Judge has fallen in error by calling upon the Railway authorities to establish their right and thereafter, by disregarding the revenue record, considered the findings in CTS Appeal to hold that the Railway authorities have not conclusively established their ownership rights of the land in question.

11. In view of the aforesaid, the Court is of the opinion that the impugned order dated 12.04.2018 passed by the Additional District Judge, Ankleshwar in Public Premises Appeal No.12 of 2015 is required to be quashed and set aside. It is accordingly quashed and set aside.

However, considering passage of time in-between, it will be appropriate to relegate the matter back to the Additional District Judge for a fresh decision after considering the observations made hereinabove. Considering the length of period that has lapsed from initiation of proceedings by the Inquiry Officer, it will be appropriate to direct the Additional District Judge to conclude the case within a period of six months from the date of receipt of this order.

12. The petitions are partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Direct service is permitted.