

(1989) 02 GUJ CK 0020

In the Gujarat High Court

Case No : Letters Patent Appeal No. 14 of 1989 and Civil Application No. 38 of 1989

Gujarat Housing Board, Vijayanagar, Ahmedabad

APPELLANT

Vs

Rameshbhai T. Bhatt and Another

RESPONDENT

Date of Decision : 16-02-1989

Acts Referred:

Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 4(3), 5, 9

Citation : AIR 1990 Guj 30 : (1989) 2 GLR 253

Hon'ble Judges : P.R. Gokulakrishnan, J;P.M. Chauhan, J

Bench : Division Bench

Advocate : K.A. Mehta, for the Appellant; Kiran G. Pandit and A.J. Patel, for the Respondent

Judgement

Chauhan, J.—Admit.

By consent of the learned Advocates for the respective parties heard and finally decided.

2. This Letters Patent Appeal is directed against the order cit. Dec. 29, 1988 by the learned single Judge of this Court, in Spl. Civil Application No.7361/88 filed by respondent No. 1 Rameshbhai T. Bhatt, under Art. 226 of the Constitution of India, directing the appellant Gujarat Housing Board to restore possession of the premises bearing No.78/343 situated at Sector 24, Gandhinagar, to the respondent No. 1, as the possession is unauthorisedly taken away from the respondent No. 1 by the appellant. The learned Judge also directed the respondent No.1 to deposit the entire amount of instalments due and payable to the Board by respondent No. 3, in this Court, on or before Jan. 10, 1989 and on the said amount being deposited in this Court, the Board is at liberty to withdraw the said amount and credit towards the dues in respect of the premises in question.

3. The undisputed facts are that the respondent No. 3 - P. N. Trivedi is the allottee of the premises in question and was in arrears of instalments for the period up to Sept. 1988 and in arrears of rent for more than seven months. Therefore, notice was served as required under S. 4 of the Gujarat Public Premises (Eviction of Unauthorised Occupants), Act, 1972, (hereinafter referred to as the Public Premises Act) and that notice was affixed on the conspicuous part of the premises. Respondent No. 3 did not appear before the competent authority and the competent authority passed the eviction order dt. Aug. 11, 1988, under S. 5 of the Public Premises Act and directed the respondent No. 3, who was the only party to the proceedings, to hand over the possession on or before Sept. 13, 1988. It transpires that the eviction order was affixed on the conspicuous part of the premises as the respondent No. 3 was not available. As the possession was not handed over by the respondent No. 3, possession warrant was issued by the competent authority and the possession was taken from the respondent No.1 on Oct. 25, 1988. It is clear from the Panchnama that the respondent No. 1 was in possession of the premises and his households were removed from the premises and the possession was taken from him. According to the respondent No. 1, appellant herein and the respondent No. 3 were in collusion to take possession from him even though he was residing in the said premises right from 1978 and used to pay rent at the rate of Rs. 100/- per month from March 1978 and then Rs. 150/per month from April 1988, though the amount of the instalment was Rs. 66/- per month. The respondent No. 1, petitioner in the Special Civil Application, contended that the possession of the said premises is unauthorisedly taken away from him and the notice dt. Oct. 7, 1988 was served to him by the competent authority to show cause within 30 days as to why possession of the premises should not be taken from him and before the expiry of the 30 days the possession of the premises is taken away from him on Oct. 25, 1988.

4. Mr. M. C. Shah, Estate Manager, Division No. III of the Gujarat Housing Board, respondent No. 2 -present appellant, in the affidavit deposed that the respondent No. 3 P. N. Trivedi was the allottee of the said premises and the respondent No. 1 was the sub-lessee and as per the agreement entered into between the Gujarat Housing Board and the allottee and as per the Disposal of Property Regulations framed by the Gujarat Housing Board, no transfer is allowed by the allottee who is holding the premises on hirepurchase and it is only after full price of the premises are paid by the allottee and after holding the premises for three years and that too, by the consent of the Board, the transfer is allowed. The respondent No. 3 allottee has not paid full price of the premises and was the tenant of the appellant Gujarat Housing Board and was in arrears of rent for more than seven months and also in arrears of instalments. Therefore, proceedings were started against him u/s 4 of the Public Premises Act and as he did not appear before the Competent Authority eviction order was passed against him. It is, therefore, clear that even according to the appellant-Gujarat Housing Board, the respondent No. 3 was a tenant and the respondent No.1 was a sub-

tenant of the premises but no proceedings were started for taking possession on the ground of sublease or unauthorised sub-letting, but proceedings were started only for non-payment of the rent for the period of about 7 months and the respondent No. 1 was not a party to the proceedings and even then possession was taken away from him in the execution of the warrant.

5. Mrs. K. A. Mehta, learned Counsel for the appellant - Gujarat Housing Board, submitted that under S. 4 of the Public Premises Act the person in arrears of rent for more than two months is required to be served notice and can be evicted u/s 5 of the said Act and that the notice can be served by affixing it on the conspicuous part of the premises. In the submissions of Mrs. Mehta, even though the notice was addressed to the respondent No. 3 it should be held to be the notice to respondent No. 1 also as it was affixed at the premises occupied by the respondent No. 1. Learned Counsel in support of the contention referred to the provisions of Section 4 of the Public Premises Act. That submission cannot be accepted as the notice was admittedly not addressed to the respondent No. 1, but was addressed to the respondent No. 3 only. As provided in Section 4 of the Public Premises Act, the competent authority can issue the notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made on any of the ground of sub-letting unauthorised, etc. specified in sub-section (1) of Section 4. It is obligatory to specify the ground on which the eviction is proposed to be made. It is specifically provided in subsection (2) of Section 4 of the Public Premises Act that the notice shall (a) specify the grounds on which the order of eviction is proposed to be made; and (b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as may be specified in the notice, being a date not earlier than ten days from the date of issue thereof. It is, therefore, obligatory to call upon the person in actual possession of the premises to show cause. Admittedly the respondent No. 1 was occupying the premises. According to the respondent No. 1, he was in possession thereof right from Mar. 1978 and that fact is not denied. He was not called upon by the notice to show cause as to why the eviction order, should not be passed against him.

Referring to Sub-section (3) of Section 4, which provides that the competent officer shall cause the notice to be served by post or by having it affixed on the outer door or some other conspicuous part of the public premises, and in such others manner as may be prescribed where up on the notice shall be deemed to have been duly given to all persons concerned. Mrs. Mehta submitted that the notice was affixed at the premises and, therefore, it should be held that the respondent No.1 was also duly served with the notice. This submission of Mrs. Mehta cannot be accepted as sub-section (3) of Section 4 provides for the mode of service of notice. In case the notice is affixed on the outer door or some other conspicuous part of the premises, it shall be deemed to have been duly given to all persons concerned, but that does not necessarily mean that the notice was served to the person to whom the notice was not addressed. As discussed above,

the notice is to be directed against the person in occupation of the premises also and such person should be called upon to show cause as to why the proposed order should not be passed against him. Notice is, therefore, required to be directed and addressed to such person in occupation of the premises and the service of such notice may be by either of the modes as provided in sub-section (3) of Section 4 of the Public Premises Act.

6. Mrs. Mehta, learned Counsel for the Appellant submitted that the eviction was not sought on the ground of subletting and was only sought on the ground of non-payment of rent and, therefore, it was not necessary to address notice to the respondent No.1 or to make him party to the proceedings and even then the notice shall be deemed to have been served to him as the notice was affixed on the conspicuous part of the premises and the respondent No. 1 is bound by the order by the competent authority. If such an interpretation of Section 4 of the Public Premises Act is accepted, it would lead to drastic result as the order of the competent authority would be binding to any person who is not made a party to the proceedings. The purpose of enacting the Public Premises Act is to provide the speedy remedy for the eviction of the unauthorised occupants from the public premises, but the provisions of Section 4 of the Public Premises Act can never be interpreted so as to, provide that the order of the competent authority, which is virtually decree of the Court, is binding to the person who is not the party to the proceedings. If such an interpretation is accepted, it would offend the very principles of natural justice. Such a submission, therefore, cannot be accepted.

7. It is urged by Mrs. Mehta that the respondent No. 1 should have preferred an Appeal as provided under S. 9 of the Public Premises Act and without exhausting all the available remedies, the order should not have been passed by the learned Judge in Writ Petition under Art. 226 of the Constitution of India. As the Writ Petition is still pending before the learned single, Judge we would not like to express any view on it. However, as such a submission is made, for the purpose a this Appeal, we would like to observe that the respondent No. 1 was not the party to the proceedings and the eviction order is not passed against him and, therefore, it is doubtful as to whether he could have preferred an, appeal against such an order.

8. It is clear that the Notice dt. Oct. 7, 1988 was served to the respondent No.1 by the Estate Manager and he was called upon to show cause within the period of 30 days and before the expiry of 30 days possession was taken over from the respondent No. 1 on Oct. 25, 1988. Mrs. Mehta, learned Counsel for the appellant submitted that the Estate Manager, who had served the notice to the respondent No.1, had no right to serve such a notice and, therefore, it should be considered as nullity. As the Appeal is preferred against the interlocutory order passed by the learned single Judge, that aspect will be considered by the learned Judge at the time of hearing of the Writ Petition. However, it is clear that the possession is unauthorisedly taken away from the respondent No.1 for two

reasons, viz. the period of notice was not over and that he was not party to the eviction proceedings and the order was not binding to him. Admittedly, respondent No. 1 was in possession of the premises when the eviction order was sought to be executed. As the possession was unauthorisedly taken away by the Officers of the Board, which is a Corporation, the learned single Judge has rightly directed to put the respondent No.1 in possession of the premises. Such high handed act by the Corporation can never be appreciated or encouraged. Apart from that, it is specific contention of the respondent No.1 that he was in possession of the said premises right from Mar. 1978. It is also clear that under the Rules, the premises can be transferred by the allottee to other person after the period of three years and on payment of all instalments. It means that the transfer is not totally prohibited. It is subject to certain terms and conditions.

9. The Appeal is preferred against the interlocutory orders and, therefore, we do not interfere with such an order.

10. It is submitted by the learned Counsel for the appellant and the respondent No. 3 that by directing to put the respondent No. 1 in possession of the said premises, it would virtually amount to finally deciding the writ petition. The learned Judge at the final hearing of the writ petition will consider all the relevant contentions and in case the writ petition is dismissed or not allowed, the possession may be restored. Therefore, it cannot be accepted that it would amount to finally deciding the writ petition.

11. Mrs. Mehta, learned counsel for the appellant also submitted that by directing to deposit the amount of instalments due and to give liberty to the appellant to withdraw the amount deposited, the learned single judge has created the situation of accepting the instalments from the unauthorised person, even though the respondent No. 1 is not a Tenant of the Appellant. It appears that the learned Judge while directing the possession to be restored, was also conscious of the fact that the interest of the appellant should not also be affected and the respondent No. 1 should not enjoy the possession of the premises without payment of the instalments and, therefore, directed to deposit the amount due. The learned Judge has not directed the appellant to withdraw the amount deposited and only liberty is given to the appellant to withdraw the amount deposited. If the appellant does not desire to withdraw the amount deposited, it is not under such compulsion and, therefore, it cannot be accepted that the appellant is obligated to accept the respondent No. 1 as a tenant.

12. Mrs. Mehta, learned Counsel for the appellant and Mr. A. J. Patel, learned counsel for the respondent No. 3 made a grievance that the learned single Judge heard the learned counsel for the respective parties for the final disposal of the Special Civil Application and even then instead of disposing of the writ petition finally, passed the interim mandatory order. If at all they have any grievance in that regard, they may approach the learned Judge and request him for final hearing of the writ petition, but that by itself would not affect the merits of the order passed by the learned Judge.

13. In view of the above, this Letters Patent Appeal is dismissed with no order as to costs. Ad interim relief is vacated. Civil Application also accordingly stands disposed of.

14. Order accordingly.