
(2006) 04 RAJ CK 0039
In the Rajasthan High Court
Case No : Civil Writ Petition No. 525 of 2006

Indian Red Cross Society

APPELLANT

Vs

Manohar Jaswani

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1964 — Section 10, 18, 2
Rajasthan Rent Control Act, 2001 — Section 3, 3(8)(5)
Red Cross Society Act, 1920 — Section 12, 2, 4, 4A, 5

Citation : (2006) 2 RLW 1683 : (2006) 3 WLC 513

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; S.K. Sakshena, for the Respondent

Judgement

K.S. Rathore, J.—Brief facts of the case are that the non- applicant (respondent) moved an application u/s 3(8)(5) of the Rajasthan Rent Control Act, 2001 (for short, the Act of 2001 stating therein that since the applicant Red Cross Society was a corporate body under the Central Act and as such provisions of the Act of 2001 were not attracted and the learned Tribunal was having no jurisdiction by virtue of Section 3 of the Act of 2001.

2. The petitioner submitted that the Indian Red Cross Society is a body corporate and was established under Indian Red Cross Society Act, 1920 (for short, the Act of 1920). As per Section 2 of the Act of 1920, the first members of the society were to be nominated by the persons who immediately before the commencement of the Act were the members of the Joint War Committee, Indian Branch of the order of St. John of Jeru Salem in England and the British Red Cross Society. Section 3 authorized the Committee to appoint the Managing Body of the Society.

Section 4 of the Act of 1920 is reproduced hereunder:-

The First members of the society and all the persons may hereafter become members thereof so long as they continue so to be, are hereby constituted a body corporate-under the name of the Indian Red Cross Society, and the said body shall have perpetual succession and a common seal with power to hold and acquire property, movable and immovable, and shall sue and be sued by the said name.

3. As per Section 4-A, the President of Indian shall be the President of the Society. Section 4 further provides that Chairman of the Managing Committee is to be nominated by the President along with six other members. 12 members of the Managing Body are to be elected by the State Branch Committee.

4. As per Section 5, the Managing Committee Committee may with the approval of the President make Rules for the management, proceedings, control and the procedure of the society including the matter pertaining to the Constitution of finance, Medical and other Committee and delegation of powers to them.

5. Section 8 provides for Constitution of the Branch Committees. Section 12 lays down that subject to the provisions of the Rules made u/s 5 and the powers of supervision exercisable by the Managing Body thereunder, each Branch Committee shall have all the powers to receive gifts and expend all the moneys received by it for its purposes either directly or through other societies or bodies.

6. After referring the aforesaid provisions, learned Counsel for the petitioner submitted that the Red Cross Society is a creation of the Central Govt. and it is neither controlled nor owned either by the Central Govt. or the State Govt. None of the Govt. has direct or indirect control over the affairs of the Society. The provisions of the Act of 1964 are applicable for eviction of unauthorized occupants from "Public Premises". The Public Premises has been defined u/s 2(b) of the Act of 1964. Section 2(b)(10)(x) speaks that a body corporate established or constituted by a Central Act or a Rajasthan Act and owned or controlled by the State Govt. Thus, for the application of provisions of the Act of 1964, it is mandatory that such body corporate should be owned or controlled by the State Govt.

7. The Rent Appellate Tribunal vide its judgment dated 18.4.05 accepted the appeal and dismissed the application filed by the petitioner-applicant on the premise that the suit shop fell within the definition of public premises under the act of 1964 and the provisions of the Act of 2001 are not applicable.

8. Per contra, learned Counsel for the respondents submitted that the petitioner applicant had illegally invoked the provisions of Rajasthan Rent Control Act, 2001 as the premises under tenancy, is a public premises to which the Rajasthan Rent Control Act, 2001 is not applicable and the Rent Tribunal had no jurisdiction to entertain the application as such the Appellate Tribunal has rightly accepted the appeal and set aside the order dated 10.12.2004 passed by the Rent Tribunal.

9. Learned Counsel for the respondent also referred Section 18 of Rajasthan

Public Premises Act which speaks about the jurisdiction of Rent Tribunal and stipulates as under: -

Only the Rent Tribunal and no Civil Court shall have jurisdiction to hear and decide the petition relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto.

Provided that nothing contained in this Act shall be deemed to empower the Rent Tribunal to entertain a petition involving such dispute between landlord and tenant to which provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 and Rajasthan Premises (Requisition & Eviction) Ordinance, 1949 apply.

10. According to the definition given by Halsbury's Laws England, Body corporate a Corporation or Corporate Body is a legal person. It is a collection of individual united into one body under the special denomination having perpetual succession under an artificial form.

11. And the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 shall apply to the instant case having over- rides the provisions of Rent Control Act.

12. In support of his submissions, learned Counsel for the respondents placed reliance on the judgment rendered by Hon"ble the Supreme Court in the case Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, wherein Hon"ble the Supreme Court held that-

Section 3(a) of the Rent Act is of no avail because once the Premises Act becomes a special Act dealing with premises belonging to Central Government, Corporations and other statutory Bodies, the Rent Act stands superseded.

13. He also referred the judgment of Hon"ble Supreme Court in the case Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, wherein Hon"ble the Supreme Court has held that -

Public Premises belonging to nationalized bank are public premises and Nationalized Bank is Corporation established by Central Act. And while construing the expression "corporation in Section 2(e) 2(ii) of the Public Premises Act it cannot be ignored that the object of the legislation in enlarging the definition of "public premises" in Section 2(e) is to make available the machinery of the act for evicting unauthorized occupants not only from the premises belonging to the Central Government but also from premises belonging to Companies, Corporations and statutory bodies in which the Central Government has a substantial interest.

14. Also referred a judgment of this Court in the case Maya Devi Keswani v. The Estate Officer (Addl. District Magistrate), Jaipur reported in DNJ (Raj.) 2002 (1) 204 wherein this Court held as under: -

Respondent Indian Red Cross Society seeking eviction of petitioner from premises situated in Red Cross Campus-Estate Officer declared the petitioner to

be unauthorized occupant- Petitioner challenging the order of Estate Officer by filing an appeal-Additional District Judge dismissed the appeal-Order of appellate authority attained finality in view of Section 10 of 1964 Act.

This court also considered the aspect that Indian Red Cross Society Act, 1920 is an Act to constitute Indian Red Cross Society. According to Section 4-A of the 1920 Act, the President of India is the President of the Society and u/s 5(1)(f), the Managing Body with the approval of the President, can exercise the powers in supervising the activities of State Branch Committees. Section 4 of 1920 Act provides that first Members of the Society and all persons who became members, shall constitute a Body corporate under the name of the Indian Red Cross Society, and the Body shall have perpetual succession and common seal with power to hold and acquire property, movable and immovable and shall sue and be sued by the said name. It is thus evident that IRCS is a body corporate constituted under 1920 Act and the premises in question belonging to IRCS, is controlled by the State Government. The premises in question therefore is public premises within the purview of Section 2(b)(x) of 1964 Act which provides that public premises include any premises belonging to a body corporate established or constituted by a Central Act or a Rajasthan Act and owned and controlled by the State Government.

15. Having considered the rival submissions of the respective parties and upon perusal of relevant provisions of Rent Control Act and Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the judgments referred before me, so far constitution of Indian Red cross Society it is not disputed that it is constituted under the Indian Red Cross Society Act, 1920 and as held by Hon"ble the Supreme Court, the premises owned by the Indian Red Cross Society is a public premises under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and thus for the purpose of filing eviction suit, the provision of the Act of 1971 prevails over the State Act and the legal objections which are raised before the appellate authority can be raised at any stage and the respondents have rightly raised the objection and the appellate authority has rightly considered the same in view of the ratio decided by Hon"ble the Supreme Court and this Court and as such the petitioner is not able to make out any case in his favour which requires any interfere by this Court with the judgment dated 18.11.05 passed by the Rent Appellate Tribunal in Rent Appeal No. 94/05 and only submits that the judgment referred by the Tribunal is per incurium.

16. Consequently, the writ petition fails being devoid of merit and same is hereby dismissed with no orders as to cost.