
(2015) 05 AHC CK 0189

In the Allahabad High Court

Case No : C.M.W.P. Nos. 55989, 68296, 68300, 68301, 68304, 68305 and
68299 of 2014

Irshad Ahmad Siddiqui

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 7

Citation : (2015) 5 ADJ 574 : (2015) 5 ALJ 603 : (2015) 111 ALR 428 : (2015)
3 AWC 3052 : (2015) 128 RD 779

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : P.N. Saxena, Nawal Kishore Mishra and A.C. Misra, for the Appellant;
Ravi Kant, Manish Goyal and Bushra Maryam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J—Orders for eviction and damages as well as its affirmance in appeal, passed against the petitioners, are under challenge in these bunch of writ petitions, which have been heard together, and are being decided by this common judgment. Proceedings under sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as "Act of 1971") were initiated on behalf of State of U.P. through Registrar of the High Court, Allahabad, against the petitioners on 5.2.1988, in leading writ petition No. 55989 of 2014, with the allegation that plot Nos. 232/2 and 278/1 had been acquired in the year 1913 for establishment of Civil Court compound at Varanasi and continues to remain in possession of the District Judge, Varanasi, ever since then. Licence on the basis of auction was granted for establishment of shops. It was alleged that for the year 1982-83, such licence was granted in favour of the petitioner, on basis of his highest bid, but petitioner remained in unauthorized occupations of the premises beyond 31st March, 1983. It was

stated that orders for eviction of petitioner be passed and yearly damages of Rs. 5,000/- was liable to be recovered w.e.f. 1.4.1983. An application dated 4.5.1988 was also filed in the proceedings by the petitioner through his Counsel Sri Vijay Bahadur Singh, seeking two months further time for filing of an objection in the matter.

2. Ultimately, an objection dated 19.12.1988 was filed, which was kept on record of the authorities on 6.1.1989. It would be relevant to note that in all these bunch of writ petitions, similar objections were filed with identical stand, taken therein. It was submitted that petitioner remained in possession, pursuant to allotment, and was informed that fresh licence in his favour would be granted, and that petitioner is not an unauthorized occupant. It was stated that since no reasons for eviction have been shown in the application, therefore, notice under section 4 was illegal, particularly, as exact description of the premises was not mentioned therein. It was stated that licence was pursuant to petitioner's bid and as this is the only source of livelihood for the petitioner, therefore, proceedings for eviction be dropped, and he is prepared to pay reasonable higher amount as licence fee/rent for subsequent years.

3. In proceedings before the prescribed authority evidence, in the form of land revenue record, was produced to show that plot Nos. 232/2 and 278/1 were recorded in the name of Civil Court, in the category of land belonging to State. Other records, with regard to acquisition etc., details of auction bid, and application of the petitioner, on the basis of which his bid was accepted by the District Judge and he was permitted to deposit the bid amount etc. were brought on record.

4. While proceedings were pending, an application was moved by the petitioner on 14.8.2002, stating that he had no knowledge of the proceedings and that he has come to know of the proceedings for the first time from one Ram Kumar of his locality, whereafter he made necessary inquiry through his lawyer Sri Rajesh Mishra and prior to it he had neither any knowledge of these proceedings, nor any objection was filed on his behalf. It was stated that he was in Saudi Arabia from 11.12.1986 to 19.2.1989 and question of filing his objection on 19.12.1988 did not arise and also that objection filed earlier did not bear his signatures. It was stated that since proceedings of nine similar suits were tried collectively, as such, signatures of the petitioner were not verified, therefore, prayer was made that he be permitted to file a fresh objection, which may be taken on record and be treated to be the objection on his behalf. An objection to this was filed on behalf of the respondents stating that proceedings were being contested by the petitioner, throughout and filing of the application, after the proceedings have remained pending for about 15 years is merely an abuse of the process of law. This application of the petitioner was rejected, whereafter fresh application with similar contents was filed on 27.8.2002, which also met the same fate. Thereafter evidence was led in the matter and ultimately, proceeding were concluded with order of eviction, passed against the petitioner, by prescribed

authority on 20.2.2003. An appeal thereafter was filed, which remained pending and ultimately was rejected on 17.9.2014.

5. Sri P.N. Saxena, learned Senior Advocate, appearing for petitioners submits that fact of the writ petition No. 55989 of 2014 are somewhat distinct, inasmuch as petitioner has disowned the objection filed by him before the prescribed authority and his application to bring written statement, containing his correct stand in the matter, was rejected. He submitted that so far as other connected writ petitions are concerned, identical objections were filed through same Counsel on behalf of other petitioners, which, however, had been pressed. Learned Senior Counsel for petitioner, therefore, submitted that there was complete denial of opportunity to the petitioner in writ petition No. 55989 of 2014, as he had been prevented from bringing on record his correct stand, and therefore, the orders impugned are liable to be set aside.

6. This bunch of cases were listed on 10.4.2015, 15.4.2015, 20.4.2015, and 23.4.2015 and lastly on 27.4.2015 when judgment was reserved in the matter. During course of hearing, learned Counsel for petitioner was permitted to bring on record the objection, which petitioner intended to file so that claim of petitioner's on merits could be examined. Though the matter was adjourned from time to time, but ultimately Sri P.N. Saxena, learned Senior Counsel, fairly, submitted that no other objection was actually available, and therefore, it is not possible to place the same on record. Learned Senior Counsel, therefore, submitted that this bunch of petitions be decided on the submissions advanced by him, with reference to the materials available on record and no other material in support of petitioner's claim on merits is available.

7. Sri P.N. Saxena, learned Senior Counsel, appearing for petitioner has urged following submissions:

"(i) The proceedings conducted before the authorities concerned was in teeth of principles of natural justice, as fair opportunity of bringing correct stand and objection of petitioner was not afforded.

(ii) It is contended that no notice under sections 4 and 7 of the Act of 1971 had been issued, and therefore, proceedings are bad in law.

(iii) It was submitted that State of U.P. could not have been represented through Registrar, High Court, Allahabad, and therefore, very initiation of proceedings was bad in law and was liable to be quashed."

8. Sri Ravi Kant, learned Senior Counsel, assisted by Sri Ms. Bushra Mariam, appearing for respondents, submits that all these matters were being heard together and similar objection on behalf of petitioner in writ petition No. 55989 of 2014 has been filed through the same Counsel and it is incorrect to state that petitioner had not filed objection dated 19.12.1988. It is further contended that proceedings for eviction are summary in nature, which have already been dragged for inordinate length of nearly 27 years and at no stage, petitioner has

disclosed as to what is his objection on merits in the matter nor petitioner has clarified his stand even before this Court. Submission is that principles of natural justice are not an empty formality, and unless prejudice is shown, such a plea cannot be entertained. He further submits that no objection was raised before the authorities with regard to competence of Registrar General to represent the State, and if such an objection was raised, necessary amendment could have been incorporated by virtue of Order I, Rule 10, C.P.C. and any error in description of the parties cannot invalidate the proceedings itself.

9. Having considered the submissions advanced on behalf of both the parties, I find that proceedings for eviction had been initiated on 5.2.1988 and objection therein on behalf of the petitioner through his lawyer Sri Vijay Bahadur Singh had been filed on 19.2.1988. Similar objection on behalf of other petitioners has also been filed, taking similar plea. The objection has been owned by all other petitioners, except petitioner in writ petition No. 55989 of 2014, who states that he had not authorized filing of objection nor had he engaged Sri Vijay Bahadur Singh as an Advocate. This plea of petitioner has been disbelieved by both the Courts below on the ground that such a plea was an after thought, inasmuch as there was no reason why a Counsel would appear on behalf of petitioner and file an objection, unless he has been so authorized by his client. However, during course of hearing before this Court, much emphasis was led on the aspect of denial of opportunity to the petitioner. It was submitted that petitioner was not in India as he had gone to Saudi Arabia, pursuant to a visa granted on 11.12.1986, and returned on 19.2.1989, whereafter he again returned to Saudi Arabia, and therefore, he had no knowledge of the proceedings.

10. It has, however, not been denied that petitioner's possession over the shop remained uninterpreted from 1.4.1982 onwards, including the period between 11.12.1986 to 19.2.1989. Even if it is accepted that petitioner was not in India during 11.12.1986 to 19.2.1989, someone on his behalf was running the shop. It is difficult to believe that while all other petitioners having similar shops were contesting the proceedings since 1988, petitioner had no knowledge of it. Nevertheless in order to offer an opportunity of effective contest in the matter, this Court permitted the petitioner to place his stand on merits before this Court. Sri P.N. Saxena, learned Counsel specifically got the proceedings adjourned so as to place petitioner's case on merit, but no such objection was brought on record. Even in the writ petition apart from contending that opportunity of hearing has been denied to the petitioner, nothing has been stated on merits. In para 6 of the counter-affidavit it has been specifically stated that shop in question situates upon plot Nos. 232/2 and 278/1, which are recorded in the name of Civil Court, as belonging to State. In the rejoinder affidavit, petitioner has stated that upon which other plot the shop in question situates, if it is not upon such plots. Petitioner has not disclosed his right over the land upon which shop in question exists. No other right over the suit property has been pleaded or established. Specific opportunity granted by this Court, in this regard, has not been availed. In its absence, petitioner cannot be permitted to complain on account of violation

of principles of natural justice.

11. This Court finds substance in the contention raised by Sri Ravi Kant, learned Senior Counsel for respondents, that in fact all such matters were being contested collectively and the petitioner was also a party to it and the plea of denial of opportunity was set up as an after thought in order to make out a case, whereas it did not exist in fact. Reliance has been placed upon various judgments of the Hon"ble Supreme Court, including the judgments, in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, AIR 2000 SC 2783 : (2001) 91 FLR 28 : (2000) 9 JT 502 : (2000) 6 SCALE 125 : (2000) 7 SCC 529 : (2000) SCC(L&S) 965 : (2000) 2 SCR 684 Supp : (2000) AIRSCW 2976 : (2000) 6 Supreme 1 followed in Vijay S. Sathaye Vs. Indian Airlines Ltd. and Others, (2014) 8 AD 164 : (2013) 139 FLR 988 : (2014) LabIC 1505 : (2014) 3 LLN 40 : (2013) 11 SCALE 386 : (2013) 10 SCC 253 : (2014) 1 SCC(L&S) 760 : (2014) 1 SCT 659 : (2013) 3 SLJ 508 Panchmahal Vadodara Gramin Bank and Others Vs. D.M. Parmar, (2011) 131 FLR 1019 : (2011) 3 JT 170 : (2012) LLR 172 : (2011) 11 SCALE 17 : (2011) 12 SCR 690 , Nirma Industries Ltd. and Another Vs. Securities and Exchange Board of India, (2013) 6 AD 349 : AIR 2013 SC 2360 : (2013) 115 CLA 13 : (2013) 178 CompCas 423 : (2013) 3 CompLJ 275 : (2013) 7 JT 185 : (2013) 7 SCALE 261 : (2013) 8 SCC 20 : (2013) 121 SCL 149 : (2013) AIRSCW 3489 , wherein it has been held that unless prejudice is shown to have been caused, a case for denial of opportunity cannot be made out. Specific opportunity was granted by this Court in proceedings under Article 226 of the Constitution of India, which has not been availed. In such circumstances, petitioner"s plea for denial of opportunity cannot be sustained.

12. So far as submission of the petitioner that State of U.P. cannot be represented through Registrar, High Court, Allahabad is concerned, it would be relevant to notice that land had been acquired in the year 1913 by the State for construction of Civil Court compound and in the revenue records also Civil Court is mentioned as owner of the land belonging to the State. Proceedings for eviction had been initiated by filing of application on behalf of State by Registrar, High Court, Allahabad. No objection was raised before the Courts below that such an application was not maintainable. This Court finds force in the submission advanced by Sri Ravi Kant, learned Senior Counsel for respondent that in case such an objection was raised, any error in description of State could have been corrected under Order I, Rule 10, C.P.C. Since no objection was taken in proceedings before the prescribed authority, as such, there was no occasion to deal with such an objection now, before this Court. Even otherwise, proceedings cannot be invalidated merely on the ground of incorrect description of State. It is not in dispute that land in question is owned by State Government and is in possession of the District Judge, Varanasi, and in such circumstances, if application has been filed by Registrar, High Court, Allahabad, on behalf of State, no exception can be taken to it.

13. Submission of the petitioner that no notices under sections 4 and 7 of the Act

of 1971 was given to the petitioner, therefore, proceedings are bad in law, also cannot be sustained. It is relevant to point out that no such objection was taken in proceedings before the prescribed authority. Similar question, urged on behalf of one of the other licensee, in *Parvez Ahmad v. State of U.P.*, Writ Petition No. 67212 of 2014 was considered by this Court in following words:

"Learned Counsel for the petitioner has impeached the order impugned firstly on the ground that no notices under sections 4 and 7 of the Act have been issued and, therefore, the orders impugned are not in accordance with law. The question as to whether notices under sections 4 and 7 of the Act have been issued or not, is essentially a question of fact. In proceedings initiated under section 4 of the Act, the petitioner had an opportunity to file an objection and in fact, an objection has been filed by him. In the objection, no defence has been set up by the petitioner that notices under sections 4 and 7 of the Act have not been issued. In the absence of any such plea having been raised in the objection, no issues were framed, in this regard, before authority concerned with regard to service of notices under sections 4 and 7 of the Act. In the absence of any such plea having been raised and pressed before the authorities below, no finding in this regard was required to be returned by the authorities. The arguments advanced by Sri Srivastava that notices under sections 4 and 7 of the Act have not been served, though appear attractive at the threshold, but a deeper examination of it shows that such a plea cannot be permitted to be raised, for the first time, in the writ petition when such a plea has not been taken in the objection. Sri Srivastava further submits that such plea has been taken in appeal. However, the memo of appeal has not been filed alongwith the writ petition and, therefore, the submission raised in this regard, cannot be accepted. Even otherwise, this Court is satisfied that once in respect to the proceedings initiated in the Act, the petitioner has chosen not to take any such objection, with regard to non service of notices under sections 4 and 7 of the Act, such an objection cannot be allowed to be urged in proceedings under Article 226 of the Constitution of India for the first time."

14. This Court also took note of the fact that proceedings for eviction are summary in nature and it is disturbing to note that such proceedings hence taken more than 27 years to conclude. Following observation made, in this regard, in the judgment passed in *Parvez Ahmad (supra)* is reproduced:

"This Court further finds that the licence granted in favour of the petitioner was not extended beyond March, 1983, as per the admitted case of the petitioner himself. This Court finds that the proceedings for eviction, which are essentially summary in nature have already dragged for an unusually period of almost 28 years. In such circumstances, this Court would, otherwise, not be justified in interfering with the order passed in the present proceeding, particularly in view of the discussions made above, Since the petitioner has remained in possession of the shop, therefore, it would be appropriate to allow him time till 28.2.2015 to vacate the premises."

15. In view of the aforesaid discussions, this Court finds no good ground to interfere with the orders impugned and petition is liable to be dismissed. Since petitioner has remained in unauthorized occupation of the public premises for last more than 28 years, it would be appropriate to grant time upto 31st May, 2015, to them to vacate the premises in question, failing which orders or eviction would be implemented, in accordance with law. Petitions, accordingly, fails and are consigned to record. There shall, however, be no order as to costs.