
(1990) 02 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.P. No. 621 of 1987

Ishwarlal Vyas

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Easements Act, 1882 — Section 52
Transfer of Property Act, 1882 — Section 105

Citation : (1990) 35 MPLJ 579 : (1990) MPLJ 579

Hon'ble Judges : Y.B. Suryavanshi, J; A.G. Qureshi, J

Bench : Division Bench

Advocate : S.M. Sanyal, for the Appellant; Surjitsingh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Y.B. Suryavanshi, J.

This is a petition under Articles 226/227 of the Constitution of India challenging the order dated 7-5-1987, and even earlier orders passed by the respondent No. 1, District and Sessions Judge, Indore, asking the petitioner to vacate the Gumti, premises previously allotted to the petitioner's father, an erstwhile Notary, late Shri Bhanwarlal Vyas. The petitioner has also prayed that the premises, which are now in occupation of respondent No. 2, G. N. Vyas, Advocate/Notary be allotted to the petitioner and the possession status quo ante be restored."

It is not in dispute that the petitioner's father, (late) Shri Bhanwarlal Vyas was allotted a licence for land measuring 8" X10" in the District Court compound at Indore, vide allotment order dated 5-1-1979, passed by then District Judge. It was further stated in the allotment order that the allottee could construct a hutment for gumti temporarily for the use at a rate fixed by the P.W.D., which shall be regularly paid by the allottee. It was also stated that the extension work in the Court premises is in progress, and if required, those premises, which have

been given "temporarily" and "till further orders," will be required to be vacated. Towards the north and south of those premises are gumtis in occupation of Shri B. L. Sisodia and Shri Fatehchand, respectively the Notary and the Stamp Vendor. On the western side, there is Court compound wall about 9 feet high. Shri B. L. Vyas was an Advocate and also a Notary, to whom the land was allotted. He died on 20-7-1986 at Indore.

According to the petitioner, after the demise of his father, he came into possession of the said Gumti and occupied the same in accordance with the wishes of his father; that the said open land was a lease given by the M. P. State P.W.D., Indore on allotment being made by respondent No. 1 (District Judge Indore) and is, therefore, public premises as defined in the M. P. Lok Parisar (Bedakhali) Adhiniyam, 1974 and he can be evicted only in accordance with the provisions of the said Act and the rules framed thereunder and not otherwise; that the petitioner obtained the Stamp Vendor's Licence from the Collector of Stamps, Indore District to sell the stamps within the District Court Compound; that the petitioner applied for permission from the respondent District Judge on 17-12-1986 (Annexure P-4) but the same was rejected by order dated 20-1-1987 (Annexure P-5). Still another application dated 2-2-1987 made by the petitioner was rejected on 3-4-1987 vide order Annexure P-6 and it was further stated therein that the District Judge, after the death of Shri Bhanwarlal Vyas, has not granted any permission and the petitioner's occupation is unauthorised; and the petitioner was asked to remove the structure by 7-4-1987 else at his own risk; it would be removed by the office; that there is yet another memo dated 7-5-1987 addressed to the Nazir directing him that if the said Gumti is not removed, then action be taken for removing it by 8-5-1987; that the petitioner filed an application dated 7-5-1987 (Annexure P-8) asking to stop action for removal of the Gumti dated 25-6-1987 and a similar request was made vide Ex.P-8A dated 22-5-1987; that the respondent, vide memo Ex.P-9 dated 11-5-1987, rejected the application.

According to the petitioner, respondent No. 1 cannot pass an order of eviction under administrative powers affecting the rights of the occupier of the premises; that the petitioner not being a subordinate of the respondent No. 1, the impugned order is even otherwise apparently illegal and without jurisdiction; that the order does not disclose under what legal provision, action was taken; that the respondent No. 1 is merely a recommending authority for grant of permission to allotment of land by the State P.W.D. within the District Court compound, Indore or even assuming the respondent No. 1 to be the allotment authority, it could have been passed only after taking action as required under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 (for short, "the Act"); that no opportunity of hearing whatsoever was afforded to the petitioner, hence the prayer that the respondent No. 1 be directed to withdraw the impugned orders/or those be set aside.

In reply to the show-cause notice, respondent No. 1 stated that the petitioner

had no surviving right or interest in the said land after the demise of his father, to whom the land was allotted for carrying on his function and work as a Notary on his specific application Annexure R-1 dated 22-8-1978; that the Notary can function only on grant of a specific licence, which automatically terminated on his death on 20-7-1987; that thereafter several letters, reminders and notices were issued to the petitioner for removing the structure on the land since it was demanded by several other Notaries including the allottee Shri G. N. Vyas (respondent No. 2) who had been requesting for the allotment right from the year 1982 (Annexure R-2); that the petition is incompetent because the erstwhile late Shri B. L. Vyas had not executed any deed or document establishing any relationship between him and the respondent No. 1 and that he was only permitted to make use of the piece of land, which is in possession of the respondent No. 1, which purpose ceased to exist with his demise; and the petitioner being his Legal Representative, was requested to immediately take away the Gumti from the respondent No. 1's land. Since the petitioner did not pay any heed towards repeated letters, reminders and notices, the said Gumti was shifted and kept in Nazir's custody and those facts do not warrant any exercise of jurisdiction under Article 226; that the petitioner does not even hold any valid licence for sale of stamps as is claimed by him and on this ground of suppression of material facts alone, the petition is liable to be dismissed; that the mere fact, alternatively, assuming that the person is stamp vendor, he does not become entitled to sell stamps in the Court compound without the prior consent and concurrence of the District Judge in accordance with the memo of Licensing Authority and the provisions of the Stamps Manual; that no concurrence or consent by respondent No. 1 had been obtained for grant of licence by the licensing authority to sell stamps in the Court compound; that the entire land in the District Court compound is in the exclusive control and possession of the respondent No. 1, which was initially allotted to the erstwhile notary late Shri B. L. Vyas, which was later allotted to respondent No. 2 Shri G. N. Vyas, Notary, with the approval and consent of the Registrar, M. P. High Court; that the allotment order in favour of respondent No. 2 dated 20-7-1986 was confirmed by the Registrar ex-post-facto by order dated 7-5-1987 (Annexure R-4); that according to the letter dated 9-9-1983 of the High Court, it has been directed that no such allotment of land under the administrative control of the District Judge may be made without approval of the High Court, which has powers of superintendence; that the petitioner had never applied for allotment of land prior to allotment in favour of respondent No. 2 Notary, who was in queue from the year 1982 and was suffering inconvenience for want of availability of proper place in the Court compound and (till the reply is filed) there are three Notaries, who are working in open and have no fixed place or Gumti or structure to accommodate them; that the petitioner not being a licensee, has no right or need to hold premises; that the ground raised by the petitioner regarding absence of a show cause notice is baseless because series of letters, reminders and notices are sent to him requesting to remove the Gumti from land in the respondent No. 1's possession because after the demise of his late father, who was a Notary, the

petitioner had no right; that the provisions of the act do not apply to the land in question since it was allotted to the petitioner's late father Shri B. L. Vyas for a specific purpose of facilitating his functions as a Notary on the respondent No. 1's land, possession whereof never passed to the petitioner at any point of time and the land could not be used by any other person for purposes other than that as is now desired by the petitioner.

The petitioner filed a rejoinder to the reply by respondent No. 1 and besides reiterating the facts averred in the petition, he contended that the lease in favour of allottee late Shri B. L. Vyas did not terminate automatically on his death; that the allotment in favour of Shri G. N. Vyas itself was without jurisdiction because the petitioner was in possession and he was not evicted by due process of law; that the action of respondent No. 1 was high-handed; the petitioner further averred that he was granted a stamp vendor's licence but it appears that the then District Judge wrote to the Stamp Collector calling his explanation as to how he granted a licence for selling stamps in the District Court compound and according to the petitioner, in view of the said letter of the then District Judge, the normal renewal of the stamp vending licence had been stayed and this action of the District Judge also shows malafides; that the said action also violates the Government's policy of allowing employment to the children of the deceased Government servants and the present petitioner being a jobless person, should have been granted the lease of the said land so that he could get employment by way of getting stamp vendor's licence; that the land belongs to the State and is in control of the P.W.D. As such, the eviction could have been done only under the provisions of the Act and, therefore, the respondent No. 1's action is without jurisdiction.

The respondent No. 1 filed a reply to the said rejoinder reiterating that the land in question was throughout in possession of respondent No. 1 and the permission to late Shri B. L. Vyas was only to raise a structure in the form of a removable Gumti; that, neither the petitioner nor his father paid any lease or licence fees and had no right to continue to occupy the land. This is further clarified from a memo received from the P.W.D. (Annexure R-5 dated 26-9-1987) viz. that the respondent No. 1 never wrote any letter to the Stamps Collector as alleged in the rejoinder and that allegation is baseless and unfounded; that the petition is misconceived. The petitioner further submitted a reply to the additional reply/return filed by the respondent No.

The learned counsel for the petitioner, Shri Sanyal, the learned Government Advocate Shri Surjeet Singh for respondent No. 1, and Shri G. N. Vyas, Advocate, respondent No. 2 in person, heard. Record perused. The crux of the controversy veers around the question; whether this is a case of a LICENCE or a LEASE?

The intention of the applicant/allottee Shri B. L. Vyas is crystal clear from Annexure R-I dated 22-8-1978, which is his application addressed to the District Judge stating that he has been appointed as Public Notary for district Indore and

had paid licence fees and for functioning as a Public Notary, land 10" X 10" in the Court campus be given to him on LICENCE, as has been given for some other Gumtis. On this annexure R-1, the then District Judge passed orders dated 5-1-1979 and in paragraph 3 thereof, which relates to late Shri Vyas, it was specifically mentioned in response to his application that for Gumti, land 10" X 8" is being given TEMPORARILY UNTIL FURTHER ORDERS. It was further stated that as the extension of the Court building is in progress, if necessary, those allottees, who have been given land temporarily for their own use, will have to vacate. It was also mentioned that before a Gumti is raised, space would be specified by the District Judge on the basis of a site plans of the proposed gumti, which has to be furnished by the applicants. Thus, we are of the view that the applicant allottee Shri B. L. Vyas, on his own showing, had asked for a LICENCE and the permission was granted by the District Judge temporarily until further orders, as stated in Ex, P-1 dated 5-1-1979. Thus, on petitioner's own showing, the temporary permission to erect the Gumti was granted by the District Judge who, being the District Judge of the apex District Court was in over all control of the Court campus.

The distinction between Lease (under section 105, T. P. Act) and Licence is that if any interest in immovable property is transferred under certain circumstances, it would be a "lease" but in case of a "licence", only permission is granted for the use of land. This is the broad distinction. (Refer Section 52, Indian Easements Act) A licence only gives the use of the property in a proper way on certain terms while it remains in the possession and control of the owner. In this case also, the District Judge has the possession and control over the Court campus. In case of a lease, there must be a power and intention to hold the property to the exclusion of the grantor. For instance, a lodger is only a licensee even if he has a separate apartment. If the terms of letting show that the landlord retains control in one way or the other, it will be a case of "licence" and not "lease". A good example of "licence" is that of an occupier of an apartment in an hotel, as the hotelkeeper retains general control of the hotel, including the apartment. A guest in an inn or an occupier in a Boarding House are other instances of licences. In the instant case, late Shri B. L. Vyas held a licence for Notary work and temporary permission till further orders was granted for facilitating his work in the Court compound (Refer - B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others, but only as a Notary. The work he did in the Court campus was for the benefit of litigant public also. The other important incidents of a licence are that it was personal, granted to late Shri B. L. Vyas as a Notary. Such a licence is not assignable though the petitioner says that according to his father's wishes, he occupied the same (Refer para 4 of the petition). Moreover, the licence being personal, at any event, it terminated on his death. It is not a case of lease or tenancy, which is heritable. The licence was for such duration as could have been determined by the District Judge as and when contingency arose. It was revocable by the grantor. Whether an instrument operates as a lease or as a licence is not a matter of words but of substance. But in the instant case, the

intention, as could be easily gathered from the documents and other facts and circumstances, clearly spelled out that it is a case of licence. If it was a licence granted to late Shri B. L. Vyas ab initio, how the petitioner could convert it into a lease in his favour? That is beyond our comprehension. The licence terminated on the date of the late Shri B. L. Vyas and no right survived.

There is much more than meets the eye. The respondent No. 1 had given licences to others also including late Shri B. L. Vyas. And only because they held licences to carry out their profession as Notary or Stamp Vendor, they have been permitted to do so. The petitioner alleges that he obtained a stamp vendor's licence from the Collector of Stamps, Indore. In para 3 of the Rejoinder, it is averred that he was granted Stamp Vendor's Licence "but it appears" that on District Judge's intimation, the renewal was stayed. Obviously, no licence has been granted in favour of the petitioner. Moreover, in view of emphatic denial by respondent No. 1, nothing has been placed on record to show that on account of District Judge's letter, the renewal or issuance of licence has been stayed by the Collector of Stamps. In fact, there was no question of renewal because the licence was of Late Shri B. L. Vyas. Be that as it may, there is absolutely no material placed before us for laying down the foundation for this contention.

It follows that when there was no licence from the Licensing Authority, the petitioner did not have even the "Locus standi" to apply for granting a licence for Gumti. And in view of our aforesaid view that it is not a case of tenancy/lease, which is heritable, the petitioner had absolutely no case. According to the learned Government Advocate, Shri Surjeet Singh, in paragraph 8, there is a specific averment that the petitioner had obtained a Stamp Vendor's licence to sell stamps within the Court compound from the Collector of Stamps, Indore and in pursuance of the same, applied for granting permission. Furthermore, in the application dated 17-12-1986 Annexure P-4, para 2, it was reiterated that the Collector of Stamps had issued on 10-12-1986 a licence in favour of the petitioner. The numbers of the licence were also given but this stand has been further shifted after the reply and it is stated that in view of the District Judge's letter to the Collector of Stamps the normal renewal of his application was stayed. Those facts are denied and are disputed facts and as there is absolutely no material for laying foundation for this averment, it is submitted by the learned Government Advocate that in view of the false representation/false averment itself, the petitioner is disentitled for any equitable relief and the conduct and behaviour of the petitioner deserves to be deprecated (Refer Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, From the record placed before us, there is no material for any foundation for the petitioner's averments stated above.

Similarly, there is no force in the contention that the State P.W.D., within the District Court compound, has such authority to grant permission and the District Judge was only a recommending authority. Annexure R-5 dated 26-9-1987 is a letter from the Executive Engineer, P.W.D., Division No. 1, Indore, denying that

any land or Gumti was given on lease by the P.W.D. It seems that when a licence was given to late Shri B. L. Vyas to erect a Gumti, the matter of licence fees was ordered by the respondent No. 1 to be determined by the P.W.D, as is mentioned in Annexure P-1 dated 5-1-1979. To reiterate, licence in this case was an authority i.e. permission given by respondent No. 1 justifying the doing of official work, namely sale by stamp vendors in the Gumti. In other words, it was permission to do something specified, leave to do a thing, which the licensor would otherwise have right to prevent in Court campus. It was in the nature of grant of permission to grant certain privilege to carry on a profession for a period of occupation. To conclude, we are of the view that this apparently is a case of licence granted for official work to late Shri B. L. Vyas, and was not a lease.

The next limb of contention is that the action taken by the respondent No. 1 was arbitrary and illegal. To recall, several notices and reminders were sent after the death of the licensee to remove the structure-hutment. So, it cannot be said that the action taken by the Nazir was surreptitious. It was contended that the possession would have been obtained only through the provisions of law and the respondent No. 1 could not take the law in his own hands. In support of this contention, *Krishnaram Mahalay v. Shobha Venkatarayya* 1989 MPLJ 767, was strongly relied upon. But the facts of that case are quite distinguishable. Therein, the High Court had found that it was a case of sub-lease and, therefore, the possession of the plaintiff, even after the period, of so called licence, was not in any way unlawful or without authority of law. On the other hand, the observations from *Ram Rattan and Others Vs. State of Uttar Pradesh*, have been referred in para 9 at page 771 observing that a true owner has every right to dispossess or throw away a trespasser while he is in the act or process of trespassing. But this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law require that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the decision relied upon (*supra*), there was no question of the plaintiff entering upon the premises as a trespasser at all. In the case before us, the possession of the erstwhile Notary was on the basis of a licence, which had come to an end after his death. Similarly, in *State of Patiala and E.P. State Union, Patiala Vs. Mohinder Singh Natha Singh*, the respondent was in actual physical possession of the land for several years and the dispute was whether he had a right to remain in possession thereof. It was in that context and on facts of that case that it was held that the general purpose of the law is that regardless of the actual condition of the title, to, or the right of possession of the property, the party actually in peaceable and quiet possession, shall not be dispossessed by strong hand, violence or terror. Still another decision *Chandra and Co. Vs. State of Rajasthan and Others*, is a case, in which a cinema theatre was given on lease. It was also not a case of licence. In the case before us, the petitioner absolutely has no right or "locus standi" as stated earlier. In fact, when he had no licence, there was absolutely no justification for applying or occupying the Gumti and his possession

was virtually that of a trespasser. Though the following decisions relate to injunction, the ratio is that a party seeking the assistance of the Court has to be at any time in lawful possession of the property (*Gangubai v. Sitaram Bhalchandra* AIR 1986 SC 742; and *Kamalsingh s/o Jairamsingh* 1986 (1) M.P.W.N. 116). Similarly, in *Kaushalyabai v. Pannalal* 1985 C.C.L.J. 212, the Court declined to interfere where the plaintiffs "thela" on nazul land was removed treating him as an encroacher and the land was given to a third person and the plaintiff was unable to show any right in the disputed land. Nazir's report (Annexure R-7) dated 27-5-1987 shows that the Gumti was found open and the petitioner had already removed the furniture earlier. Therefore, the Gumti having two photos from the structure, which was open, was deposited in Malkhana for custody. In exercise of extraordinary jurisdiction, this Court would not protect the possession of the trespasser, who had no right, "locus standi" or justification for remaining in possession of the Gumti, which was allotted to his father under a licence. It is not necessary in this case to consider, whether or not, the respondent No. 1 should have resorted to the provisions of the Act because in the factual matrix, which we have stated earlier, the petitioner is not entitled to any equitable relief by this Court, in exercise of our extraordinary jurisdiction.

In the result, this petition fails and is dismissed with no order as to costs. Security amount, as due, be refunded to the petitioner.