
(1998) 03 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P.No. 10292 of 1981

Jagdish Singh

APPELLANT

Vs

District Judge, Nainital and others

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 2

Citation : (1998) 1 AWC 789

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Case No. 22/250 of 1977-78 under the provisions of U. P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act) was decided against by the petitioner by an order dated 7.11.1979. Appeal No. 888 of 1979 preferred by the petitioner was dismissed by order dated 19.8.1981. These two orders are being challenged in the present writ petition.

2. Mr. G. N. Verma, learned counsel for the petitioner assails the Impugned orders on four grounds. His first contention was that the premises being a land held by hereditary tenure-holder does not come within the definition of public premises. Secondly, he contended that the petitioner having been holding the land derived from hereditary tenure-holder, his occupation does not come within the definition of unauthorised occupation. Thirdly, he contended that the prescribed authority cannot assume jurisdiction In respect of the land which is excluded from operation of the Act by virtue of definition of premises in Section 2(b) of the Act providing that the premises does not include land for the lime being held by tenure-holder under any law relating to tenure. Inasmuch as the petitioner has been holding the land under a law relating to land tenure. His fourth contention was that the prescribed authority and the appellate authority

had not taken into consideration the materials and evidence produced by the petitioner in the proceedings itself. On these grounds, according to the learned counsel, the Impugned orders are liable to be quashed.

3. Mr. A. Upadhyaya, learned standing counsel, contended that from the Khatauni it appears that the land belonged to the Government and occupation of the petitioner being without title, he cannot claim any right as a tenure-holder. He further contended that predecessor of the petitioner being unauthorised occupants as held by both the authorities, the petitioner cannot claim title and that he is not in occupation of the Government premises. He further contended that after decision of the appellate authority, the petitioner having asked for time to vacate the premises, he had accepted the order and could not have challenged the same. According to him, the petitioner cannot be allowed to approbate and reprobate in the same breath.

4. I have heard Mr. Verma and Mr. Upadhyaya at length. A perusal of the order of appellate authority shows that it has come to the finding to the effect that "the fact that the land in question is public premises and the appellant is an unauthorised occupant thereof, is proved from the extract of Khatauni for 1387 Fasli in which the land in question is recorded to be under category W. The name of the appellant is also recorded in the same Khatauni from 1382 Fasli. It may be observed that the appellant on his part has not produced any patta etc. on the basis of which his title over the land in question may be established. The appellant has, however, examined himself and has tried to depose that he was in possession over the land in question from the last 14-15 years and that prior to him Gopal Dass Nahar Ram and Lal Chand were In possession thereof. He has also examined the said three persons in support. In my opinion, even if said Gopal Dass, etc. were in unauthorised occupation of the land in question prior to the appellant, the same does not make the possession of the appellant over the said land authorised or legal."

5. Now question arises whether category IV as mentioned in the Khatauni could confer any right on the petitioner or as to whether such possession recorded in category IV could be permitted to be holding of the petitioner as that of tenure-holder. As pointed out by Mr. Verma from the Land Records Manual, Chapter VIII, Part I, category IV means land held as occupier without title when there is no one already recorded In column 4 of the Khasra. Thus, the petitioner having been recorded in category IV is only an occupier without title since no one was recorded as in occupation in column 4 of the Khasra. This itself does not postulate that the petitioner could have claimed any title in respect of the said property. There was no material to show that the names of Gopal Dass, Nahar Ram and Lal Chand had any title in respect of the said land or that they were tenure-holders. It is also not on record to show that the land was held by hereditary tenure-holder. The petitioner has not claimed as to how he came into possession of the said land. He has also not claimed that he has inherited the land from the said Gopal Dass, Nahar Ram and Lal Chand. He is not claiming to

be an hereditary tenure-holder, though he had been claiming that the land was held by said three persons as hereditary tenure-holders. But there is nothing on record to prove the same. The petitioner though claims to be holding the land for the last 14-15 years, but from the Khatauni it appears he held the land for last five years. Admittedly, the petitioner has not been able to prove his title to the property or manner in which he had come into possession of the said land. When a question arose that the petitioner had no title and he is not in authorised occupation, it was for the petitioner to prove that he is not an unauthorised occupant of the said premises. The petitioner having not been able to show that the land was held by him as a tenure-holder under any law relating to land, he cannot claim that the said land does not come within the definition of premises as defined in Section 2 (b) of the Act. There is nothing to show that how the land could be excluded from the definition of public premises. On the other hand, none of the aforesaid three persons had any title in respect of the said land. Since the land was held without any authorisation by the petitioner, therefore, his occupation cannot be taken out of the definition of unauthorised occupation as defined in clause (g) of Section 2.

6. The question of evidence as has been raised by Mr. Verma cannot be sustained in view of the fact that the appellate authority had discussed the evidence which were before him to the effect that from the Khatauni, it appears that his name was recorded under category IV and that no patta was produced and that the petitioner was unable to establish his title through any proof. Evidence of Gopal Dass, Nahar Ram and Lal Chand were also mentioned and nowhere it has been said that there was any iota of evidence to hold that there was any title in their favour. In the writ petition also, nothing has been pleaded to assert that Gopal Dass, Nahar Ram and Lal Chand had any title. It has also not been pointed out that as to how these three persons had inherited the property from each other or how the petitioner could have inherited the same from them. The only pleading was that because of long occupation they had become hereditary tenure-holder cannot lead to the conclusion that there was any ground available to the petitioner.

7. For all these reasons, I am unable to agree with the contentions of Mr. Verma though very eruditely argued. The writ petition consequently falls and is accordingly dismissed. Interim order, if any, stands discharged.

8. Though much stress was laid by Mr. Upadhyaya on the maintainability of the writ petition that after the petitioner had asked for time to vacate the land before the appellate authority, but it was not necessary to record any discussion with regard thereto. But at this stage Mr. Verma again submits that his client may be given some time to vacate. Therefore, the petitioner is given 15 days' time to give an undertaking before the prescribed authority to the effect that he will vacate the land within three months. If he does so, in that event the petitioner may be allowed time for a period of three months as undertaken by him. In default on expiry of 15 days from today, the order of the prescribed authority

shall be executable at once.