
(2008) 08 MP CK 0055
In the Madhya Pradesh High Court

Karan Singh and Others

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) ILR (MP) 1235 : (2010) 1 JLJ 48 : (2009) 1 MPHT 155 :
(2008) 4 MPLJ 338

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.

Original plaintiff/petitioner Kamal Singh died during the pendency of this petition and hence the names of his legal representatives have been substituted as petitioners.

This petition, under Article 227 of the Constitution, is directed against the order dated 9-9-2005 passed in Miscellaneous Civil Appeal No. 17/2005 by the District Judge, Chhatarpur, whereby he has dismissed the plaintiff's appeal confirming the order of rejecting the application for grant of temporary injunction as passed by the Trial Court.

The case of plaintiff Kamal Singh in his suit before the Trial Court is that the premises in question (land, house and well) belonged to the erstwhile Maharaja Bhawani Singh of Chhatarpur who, on being pleased with the services rendered by his parents, gifted the same to him by a gift deed 12-7-1946. According to Kamal Singh, on 1-3-1958 he joined the services of the State Forest Department and was posted at Chhatarpur on 24-11-1976 whereupon respondent No. 6, without his request, allotted the premises to him and started deducting its rent from salary. Kamal Singh has also averred that he even filed an appeal on 25-8-1978 against the deduction of rent but to no avail and the respondents

continued to deduct the rent upto 1-10-1999 though he retired from service on 30-11-1995. According to Kamal Singh, respondent No. 5, the Sub-Divisional Officer served him with a show-cause notice dated 5-12-1995 under the provisions of the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 (in short, "the Act") in Revenue Case No. 54-B/21/99-00 to which he replied and sought documents. Thereafter, respondent No. 5 by order dated 10-2-2000 held that the occupation of the premises by him was unauthorized and directed him to immediately vacate the same. In passing the eviction order respondent No. 5 acted as Competent Authority under the Act. Aggrieved with the order, Kamal Singh filed the suit from which this petition arises claiming the relief of permanent injunction and declaration that the order dated 10-2-2000 is void and without jurisdiction. He also filed an application for grant of temporary injunction.

The respondents have averred that the premises belongs to the State Government and is maintained by it. According to the respondents, Kamal Singh, after his posting at Chhatarpur in the year 1976, applied for the allotment of the premises on rent but as it was not vacant the same could not be allotted to him. Kamal Singh thereafter again applied for the allotment of the premises by filing applications dated 7-11-1977 and 29-6-1978 pursuant to which it was allotted to him by order dated 3-8-1978 and after allotment Kamal Singh, on his own, continued to deposit the rent upto September, 1999. The respondents also took the plea that the suit of Kamal Singh was not maintainable and the order, having been passed by a Competent Authority, no injunction can be granted against it in view of the bar u/s 10 of the Act.

The Trial Court rejected the application of Kamal Singh for grant of temporary injunction against which he filed an appeal which too was dismissed by the impugned order. The Trial Court as well as the Appellate Court agreed with the finding of respondent No. 5 that Kamal Singh was an unauthorised occupant of the premises as the same was allotted to him by the Forest Department on his request after he was posted at Chhatarpur. Both the Courts have also found the document of gift deed relied upon by Kamal Singh as unreliable and held that no injunction can be granted against the order dated 10-2-2000 passed by respondent No. 5 who was the Competent Authority under the Act.

The Act provides for the eviction of unauthorised occupants from public premises and Section 10 excludes the jurisdiction of Civil Courts with regard to every order made by a Competent Authority under the Act. It reads as under:

10. Finality of orders.- Save as otherwise expressly provided in this act, every order made by a Competent Authority or Appellate Authority under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The submission of learned Senior Counsel for the petitioners is that Section 10 of

the Act is not applicable because respondent No. 5 was not validly appointed as Competent Authority and hence his order dated 10-2-2000 was a nullity. This is the only point that the learned Senior Counsel has argued in support of the petition. A reading of Section 10 makes it clear that every order made by Competent Authority or Appellate Authority under the Act shall be final and shall not be called in question in any original suit and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of powers conferred by or under the Act. It is well settled that such an exclusionary provision in the Act which forbids a challenge to "a determination or order made under the Act" in a Civil Court contemplates cases of a real determination or order and does not protect a determination or order which is a nullity or void. It is trite law that an order passed without jurisdiction is a nullity. Thus, it is desirable to first examine whether the order dated 10-2-2000 is a nullity.

The argument that respondent No. 5 was not validly appointed as Competent Authority requires examination of Sections 17 and 3 of the Act which read as under:

17. Delegation of powers.- The State Government, may by notification in the Official Gazette, direct that any power exercisable by it under this Act shall subject to such conditions, if any, as may be specified in the notification be exercisable also by an officer of the State Government."

3. Appointment of Competent Authority.- The State Government may, by notification in the Official Gazette,-

(a) appoint such person being an officer not below the rank of Assistant Collector or Deputy Collector as Competent Authority for the purposes of this Act; and

(b) define the local limits within which, or the categories of public premises in respect of which, the Competent Authority shall exercise the powers conferred, and perform the duties imposed on Competent Authority by or under this Act.

Section 17 of the Act authorises the State Government to delegate its powers whereby the State Government may, by notification in the Official Gazette, direct that any power exercisable by it under the Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer of the State Government, by a notification in the Official Gazette, may appoint certain persons, not below the rank of Assistant Collector or Deputy Collector, as Competent Authority for the purposes of the Act. Thus, the powers, which vested in the State Government u/s 3 if delegated to the Collectors by a notification in the Official Gazette, can also be exercised by the Collectors within their respective jurisdiction.

The State Government, in exercise of the powers conferred by Section 17 of the Act, issued a notification dated 5-2-1975, which was published in the Official Gazette on 13-2-1976. The Notification is as under:

Home Department Bhopal, dated 5th February, 1975

No. F. 13-1-75-II-A (3).- In exercise of the powers conferred by Section 17 of the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 (No. 46 of 1974), the State Government hereby directs that the powers exercisable by it u/s 3 of the said Adhiniyam shall also be exercisable by all Collectors within their respective jurisdictions.

Pursuant to the delegation of powers Collector, Chhatarpur, by a notification dated 26-8-1975 which was published in the Official Gazette on 19-9-1975, appointed all Sub-Divisional Officers, including respondent No. 5, as Competent Authority of their respective Tehsils.

It is to be noted that although the notification u/s 17 was issued on 5-2-1975, it was published in the Official Gazette on 16-4-1976 whereas the notification dated 26-8-1975 issued by the Collector appointing Sub-Divisional Officers was published in the Official Gazette on 19-9-1975. The learned Senior Counsel for petitioners has, therefore, argued that delegation of powers by the State Government u/s 17 of the Act became effective from the date 16-4-1976 when the notification was published in the Official Gazette and the Collector, Chhatarpur, had no authority to appoint Sub-Divisional Officers as Competent Authority u/s 3 before that date. The learned Counsel, in support of his argument that when the requirement of the notification is publication in Official Gazette the date of the notification is the date of its publication, has relied upon the decisions of Supreme Court in *Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, ; *Union of India and Others Vs. M/s. Ganesh Das Bhojraj, and Subhash Ramkumar Bind @ Vakil and Another Vs. State of Maharashtra*, . From these cases, it can be taken as well settled that when an order is to be made by notification in the Official Gazette, the order comes into force and becomes operative from the date of issuance of notification in the Official Gazette. But there was no bar for taking action in anticipation that the order of delegation made by the State Government in favour of Collectors u/s 17 of the Act would be published in the Official Gazette and become operative. The Collector, Chhatarpur, issued the order dated 26-8-1975 appointing all Sub-Divisional Officers, including respondent No. 5, as Competent Authority of their respective Tehsils and sent it for publication which was published in the Official Gazette on 19-9-1975. These actions taken by the Collector were in anticipation of the order of delegation issued u/s 17 by the State Government becoming operative and were not immediately effective but they became effective when the order of the State Government delegating the powers to Collectors was published in the Official Gazette on 16-4-1976. The order of the Collector, Chhatarpur, appointing all Sub-Divisional Officers, including respondent No. 5, as Competent Authority, thus, also became operative from 16-4-1976. Respondent No. 5 was, therefore, a Competent Authority within the meaning of Section 3 when he passed the order dated 10-2-2000.

It is also interesting to note that in the case of *Municipal Board, Pushkar* (supra), the bus operators were aggrieved by the order dated 4-12-1959 of fixation of the

new bus stand and discontinuance of old bus stand but even before that order was notified on 28-6-1960 and became operative a revision was filed. The Supreme Court in that case held that revision was made before the date of notification in anticipation of the notification and did not reject the revision on the ground that it was premature and incompetent.

There is yet another way of looking into the matter. Section 22 of the Madhya Pradesh General Clauses Act, 1957 (in short "the 1957 Act") permits making of rules or bye-laws and issuing of orders between publication and commencement of a Madhya Pradesh Act but the Rules etc. so made before commencement of the Act come into operation from the date, the Act comes into force. Section 31 (b) of the 1957 Act applies all the provisions of the 1957 Act, including Section 22, for the construction of rules, regulations, bye-laws, orders, notifications, schemes or forms made or issued under any Madhya Pradesh Act. Therefore, the principle of anticipatory action behind Section 22 of the 1957 Act can also be applied to an order of delegation made by the State Government u/s 3 of the Act. Applying this principle, the Collector's order appointing Sub-Divisional Officers including respondent No. 5 as Competent Authority though made earlier and published earlier to the date when the delegation u/s 17 of the Act became operative by publication in the Official Gazette was valid. The order, however, became operative from the date delegation became operative by publication of the notification in the Official Gazette.

For these reasons, I find that respondent No. 5 was validly appointed as Competent Authority and the order dated 10-2-2000 passed by him is not a nullity. The order is thus not open to question in an original suit and the Civil Court is clearly forbidden from passing any injunction in respect of any action taken pursuant to or to be taken pursuant to the said order.

The learned Government Advocate has argued that even if there was some illegality in the appointment of respondent No. 5 as Competent Authority, he at least functioned as a de facto authority and his orders cannot be called in question on the ground of illegality in his appointment.

As I have already held that respondent No. 5 was validly appointed as Competent Authority, I do not find it necessary to consider this argument.

The petition fails and is dismissed with a cost of Rs. 1000/-.