
(2007) 06 UK CK 0050

In the Uttarakhand High Court

Case No : Writ Petition No. 297 of 2007 (M/B)

Km. Anju Rekhi

APPELLANT

Vs

Cantonment Executive Officer, Cantonment Board

RESPONDENT

Date of Decision : 13-06-2007

Acts Referred:

Cantonments Act, 1924 — Section 210
Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 21, 226, 227

Citation : (2007) 3 UC 1771

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Arvind Vashistha, for the Appellant; Puja Banga, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri Arvind Vashistha, Advocate for the Petitioner.

Km. Puja Banga, Advocate for Respondent.

They are heard.

2. Petitioner Anju Rekhi has filed this writ petition for the following reliefs:

(a) A writ, order or direction in the nature of certiorari quashing the impugned order/ show cause notice dated 20-12-06 passed by Cantonment Officer, Ranikhet and proceedings in pursuant to notice dated 22-2-2007 issued by on behalf of Cantonment Executive Officer, Ranikhet and its consequential proceedings.

(b) A writ, order or direction in the nature of mandamus commanding the Respondent not to disturb the running of Petitioner's hotel or to interfere in the possession of the Petitioner over the property in dispute in any manner.

(c) Any other writ order, or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(d) Award cost of writ petition to the Petitioner.

3. The disputed land, on which the hotel West View was constructed, was demised in favour of Mr. M.M. Lindsley for 66 years" lease with an option of renewal for another 66 years vide lease deed dated 10-01-1918 by the Union of India. The first term of the lease was to expire in the year 1984. Therefore, an application for renewal was moved on 03-11 -1982, which was pending before the Competent Authority. The Competent Authority neither renewed the lease nor rejected the renewal application. Thereafter, the Petitioner's predecessors in interest and the Petitioner, after the sale deed was executed in favour of the Petitioner, are holding over the property. As per the requirement of the lease deed, a permission to transfer the lease hold rights to Late Rahamatullah was sought and the same was granted in the year 1936 and thereafter, a partition took place among the heirs and legal representatives of Late Rahamatullah on 30-04-1966. Thereafter, mutation applications were moved on behalf of the persons holding the rights byway of partition before the Military Estate Officer. The said mutation applications were not decided by the Competent Authority. In the meantime, notices were issued alleging therein that the buildings are unauthorised constructions. The Petitioner has further alleged in her petition that the transfer made in favour of the Petitioner was in accordance with law as the lease deed provides the transferable and heritable rights to the lessee over the property in dispute. The approval of the transfer in favour of the Petitioner was sought, which was never decided. Now, the Respondent Authority is threatening to demolish the hotel of the Petitioner and the impugned notice dated 20-12-2006 has been issued by the Cantonment Executive Officer, Ranikhet and another notice dated 22-02-2007 has been issued by a Lawyer on behalf of the Cantonment Executive Officer, Ranikhet. Hence, this writ petition has been filed.

4. Respondent Cantonment Board has filed its counter affidavit in which it has been admitted that the said building, where the Hotel is being run known as West View Hotel, Ranikhet along with appurtenant land, was leased out for a period of 66 years, which was to expire on 09-01-1984, by the Government of India in the year 1918 to the following persons:

1. Mst. Akhtar Jahan W/o Sri Abdul Salam.

2. Sri Khalid Masood Salam.

3. Sri Saeed Anwar Salam.

4. Sri Qumar Salam

All S/o Mst. Mehar Nigar Begam

5. Mst. Tahira Begam

6. Mst. Naseema Begam.

5. The said lease expired on 09-01-1984 and thereafter, it has not been renewed by the Government of India. The original lessees have divested all their rights

after the expiry of the lease in the year 1984. The Petitioner is neither the original lessee nor she can claim rights on the basis of the lease granted earlier. The Petitioner has purchased the 2/3rd share of the said land from the shareholder of the lessee in the year 1991, after the expiry of the lease deed. The present Petitioner applied for mutation to the Defence Estate Officer, Bareilly for mutating the said property in her favour on 27-05-1998. The said permission was subsequently refused by the Defence Estate Officer, Bareilly.

6. We have heard the learned Counsel for the parties and perused the record.

7. A perusal of the writ petition and the counter affidavit reveals that the Petitioner is claiming her rights through a sale deed executed in her favour by a shareholder of the said property in the year 1991 and she is also claiming the rights of the lessee over the disputed property, whereas the Respondent is claiming that the Petitioner has no right and title over the property and the said lease had expired on 09-01-1984. The Petitioner herself has stated in paras 17 & 18 of the writ petition as to how she is claiming the rights over the property. The Petitioner has further pleaded in the writ petition that an approval of the transfer to the Petitioner was sought, which was neither rejected nor allowed and, as such, the lease hold rights were rightly transferred in favour of the Petitioner. The Respondent has denied the said fact. Relevant paras 17 & 18 of the writ petition are quoted below:

17. That it will not be out of place to mention here that as per the lease deed the lease were transferable and heritable and the transfers have been made in accordance with the terms and conditions of the grant. Even an approval of transfer to the Petitioner was sought which were not vetoed and thus the lease hold-rights were rightly conveyed in Petitioner favour.

18. That before execution of sale deed in favour of Petitioner and Sunit Rekhi furnished an information as required for permission of sale/ purchase of property on 8-5-1991 to Defence State Officer and after purchase of land the Petitioners moved application for mutation of their names, before Military Estate Officer vide application dated 25-7-2001 and 27-7-2001 which is still pending for disposal. True copies of the information dated 8-5-1991 and applications for mutation dated 27-6-2001 are being filed herewith collectively and marked as Annexure No. 6& 7 to this writ petition.

8. The Respondent has mentioned in its counter affidavit that the lease granted by the Government of India in favour of the original lessee has expired in the year 1984 and the original lessees have divested every rights which they were holding over the property after the expiry of the lease deed in 1984. It was further stated in the counter affidavit that the original lessees had no right to transfer the said property without the permission of the Respondent or the Government of India to the Petitioner. The relevant paras 10 to 13 of the counter affidavit read as follows:

10. That the aforesaid lease, as referred above, has expired on 09-01-1984 and

since then has not been renewed.

11. That after the expiry of lease deed on 09-01-1984 the original lessees are divested every right they had on the said property. Much less the rights to transfer the said property, that too without permission of Respondents or Government of India to the third person.

12. That the Petitioner before this Hon"ble Court is neither original lessee nor is he claiming rights on the basis of lease granted to him earlier. His claim is that he has purchased the said land from the 2/3 sharers of the lessee in the year 1991. He has deliberately and willfully not stated before this Hon"ble Court that the lease deed was expired in the year 1984 and firstly the lessee had no right to transfer the lease in favour of third person. Moreover, admittedly the transfer itself is of deed, which had expired before 7 years. Therefore, in any view of the matter the said transfer or sale of property is not valid in the eyes of law presently applicable in the state of Uttarakhand and the country. The fact that the sale of property is not valid is also evident from the letter dated 02-06-2006 written by Defence Estate Officer, Bareilly. A true copy of letter dated 02-06-2006 is being filed herewith and marked as Annexure No. CA-1 to this Counter Affidavit.

13. That in fact the present Petitioner had applied to the Defence Estate Officer, Bareilly for mutating the said property in his favour on 27-05-1998. All the same the said permission was subsequently refused by an order of Defence Estates Officer, Bareilly. Therefore the present Petitioner has got absolutely no right, nor can he claim any right to stay in that property much less to run the business and hotel in the said property. The business being run by the Petitioner in the said property allegedly as West View Hotel is totally unauthorized. The Petitioner is occupying the public property and is liable to be evicted from the same. It is therefore most respectfully prayed that the stay order granted in favour of the Petitioner by this Hon"ble Court may kindly be vacated so that Respondents may proceed against the Petitioner in accordance with law and take suitable action against the Petitioner which are permissible and just under the Act presently enforce in Uttarakhand.

9. Thus, it is apparent that the writ petition involves serious disputed questions of fact, which cannot be decided by the High Court in a writ petition filed under Article 226 and 227 of the Constitution of India, as the parties would be required to lead evidence in support of their claim, which course is not permissible in the proceedings under Article 226 and 227 of the Constitution of India. In our opinion, the Petitioner should seek the appropriate remedy before the Civil Court.

10. The Petitioner has also challenged the two notices dated 20-12-2006 and 22-02-2007. The first notice dated 20-12-2006 pertains to the unauthorised constructions made by the Petitioner in the already existing building. It was stated in the said notice that the erection of the said building should be stopped and the erection completed by the Petitioner should be demolished. The

specification for demolition of the building has been mentioned in the notice itself. The Petitioner, in Ground No. E of the writ petition, has alleged with regard to the said structures. The said para E is quoted below:

E. Because, by the impugned order the Respondents are proceeding against some construction which are not permanent in nature and are fabrication of iron pipes. As per the impugned order itself some of the structures viz buffet counter (fibre sheet roofed pipe structure) and bar counter, sitting hall are open air structures and in view of the fact that not permanent ceiling is there, no proceedings for demolition thereof can be initiated.

11. From the above-quoted para E, it is clear that the Petitioner has not categorically stated that the structures are not of permanent nature. According to the Respondent, these structures are unauthorized permanent constructions. It is also a disputed question of fact as to whether the structures are of permanent nature or they are of temporary nature, which cannot be decided in the writ petition.

12. The Petitioner has further challenged the notice dated 22-02-2007 issued by a Lawyer on behalf of the Respondent, in which it has been stated that the Petitioner has developed certain structures over the disputed property after the expiry of the lease. This notice was issued pursuant to the notice dated 20-12-2006 issued by the Respondent Executive Officer, Cantonment Board.

13. The Apex Court, in the case of P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, , while sounding a note of caution to the High Courts, observed in para 12 & 17:

12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the CPC stare on his face. He, therefore, could not have filed a writ petition forgetting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required adduction of oral evidence as well. Such evidence was necessary for the

purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading Applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first Respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

17. A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ Petitioner cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ Petitioner, was deliberately flouting that decree or order and in spite of the Petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ Petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

14. The Hon''ble Supreme Court in the case of The President, Poornathrayisha Seva Sangham, Thripunithura Vs. K. Thilakan Kavenal and Others, has held as under:

9. Above being the position, we feel that nothing further remains to be done in this appeal except noticing that certain observations made, as regards the functioning of the Appellant Society and its credibility were unnecessary. For the purpose of adjudication of the dispute before the High Court which only related to the permission granted to use the Oottupura, other observations and views expressed by the Division Bench are, therefore, treated as inoperative. Since disputed facts were involved, the High Court should not have gone into them even in respect of the primary grievances of the writ Petitioner.

15. By second notice dated 20-12-2006, the Board has sought clarification regarding NOC issued by the lease holders by 31-12-2006. It was further indicated in the notice that if the clarification is not submitted within the stipulated period, legal action would be initiated by the Board. The relevant portions of the notice dated 20-12-2006 are as under:

2. The said lease is expired on 9-1-1984.

3. As lease holder has raised objection against running the hotel business in the property of West View and as vide this office letter mentioned above certain clarification were sought from Mr. Sumit Rekhi & Anju Rekhi regarding the NOC from the lease holders and as till date the same clarification are not received by this office, the matter regarding renewal of licence for running hotel business is pending with Board. In this connection please note that you are running the hotel business without obtaining proper licence u/s 210 of Cantt. Act 1924 and the violation of the said section is punishable offence.

4. As no reply is received by this office on the subject matter it was put up before the Board in its meeting held on 5-12-2006. The Board has decided to obtain clarification from you regarding NOC issued by the lease holders by 31-12-06, failing which legal action will be initiated by the Board.

It is apparent from the perusal of this notice that it is a show-cause notice issued by the Respondent.

16. The law is well settled that writ petition against a show-cause notice, ordinarily, is not to be entertained. The Hon"ble Apex Court in several decisions has held that writ petition should not be entertained against a show-cause notice and at that stage, the writ petition may be held to be premature. The writ jurisdiction is a discretionary jurisdiction and hence, such discretion, under Article 226 of the Constitution of India, should not be exercised by quashing a show-cause notice.

17. The Apex Court in the case of The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, observed in para 5:

5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ Petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court....

18. The Apex Court in the case of Trade Tax Officer, Saharanpur v. Royal Trading Company reported in (2005) 11 SCC 518, reiterating the same view, observed in para 1:

1. These appeals are against the judgment of the Allahabad High Court dated 21-1 -2000. The Respondent Company were clearing their goods on the basis

that they were leather sheets within the meaning of Section 14 of the Central Sales Tax Act. A show-cause notice was issued to them claiming that the items cleared by them were not leather sheets and that a higher duty was required to be paid. The Respondents filed a writ petition challenging the issuance of the show-cause notice. The High Court ignoring the well-settled law that against a mere issuance of a show-cause notice a court should be reluctant to interfere, purported to go into the facts and quashed the show-cause notice in a mechanical way. In our view the approach of the High Court was entirely wrong. All that had been done was that a show cause was issued. After the Respondents filed their reply, the notice may have been dropped or if the reply was not satisfactory based on the reply further inquiries could have been made by the Appellants. Adjudication proceedings must not be stalled in the manner done by the High Court.

19. In our opinion, the writ petition is premature as the Petitioner, instead of filing reply to the show-cause notice, has rushed to the High Court by filing this writ petition in undue haste.

20. We, therefore, decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India, The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

21. Consequently, the interim order dated 23-03-2007 stands vacated automatically.

22. No order as to costs.