

(1990) 03 GUJ CK 0018
In the Gujarat High Court

Kumar Gangaram

APPELLANT

Vs

Estate Officer, Gujarat Housing Board

RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 12, 13

Constitution of India, 1950 — Article 227

Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 5, 7, 9

Citation : (1990) 2 GLR 1006

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated 20-9-1989 passed by the Joint District Judge, Rajkot in an appeal filed u/s 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "the Act"), the petitioner has filed this Special Civil Application under Article 227 of the Constitution of India.

2. Mr. Shah, learned Advocate appearing on behalf of the petitioner, vehemently submitted as under:

(1) Notice u/s 4 of the Act is vague because it is not specifically stated that the petitioner was in possession of a particular room of the specified premises.

(2) Eviction order is passed only against the petitioner and not against the original allottee - Prabhakar Badheka and the petitioner is a tenant of the original allottee - Prabhakar Badheka. The order passed against him is collusive.

(3) In December, 1988 the premises ceased to be a public premises. As per the scheme of hire purchase the premises were allotted in the year 1968 and all the installments were required to be paid on or before December, 1988. Hence, after December, 1988, the premises cease to be a public premises and, therefore, the order is without jurisdiction.

(4) That the Joint District Judge had no jurisdiction to decide the Appeal u/s 9 of the Act as he was not a designated Judge as provided in the said section.

3. It is admitted fact that one Prabhakar Badheka was allotted the premises in dispute by the Gujarat Housing Board. It seems that he had inducted the petitioner in the premises. On 26-2-1979 the Gujarat Housing Board recovered the possession of the said flat (premises in dispute) on the ground of nonpayment of installements. On the basis of the order passed by the Competent Officer under the provisions of the Act, the Gujarat Housing Board has taken possession from the allottee-Prabhakar Badheka and put the said flat in lock and key on 26-2-1979. It is the say of the Gujarat Housing Board that on 27-2-1979 the petitioner broke open the lock and key of the Gujarat Housing Board and entered into the flat. As against this, it is the say of the petitioner that as no order was passed against him, he approached the higher officers and the higher officers of the Gujarat Housing Board permitted him to occupy the said premises. Alongwith the affidavit in reply, the Gujarat Housing Board has produced on record the order passed below Ex. 5 in Regular Civil Suit No. 37 of 1979 wherein the trial Court has held as under:

Thus, the plaintiff has failed to prove that after the recovery by defendant No. 1, his possession was restored by the officer concerned and, therefore, there is no prima facie case in favour of the plaintiff, and therefore, the observation of the XI GLR 971 is not applicable to the facts of the present case. The plaintiff will not cause any irreparable loss as he was not in the possession of the premises at the time of the suit and no greater hardship will cause to the plaintiff. So, I decide that there is no prima facie case in favour of the plaintiff and decide issued No. 1 in the negative and pass the following order.

4. The respondent has also produced on record the order passed by this Court in Appeal from Order No. 360 of 1980 wherein it has been stated that the Gujarat Housing Board will not dispossess the petitioner except by process of law. Thereafter proceedings u/s 4 of the Act were initiated against the present petitioner.

5. Notice u/s 4 of the Act was served upon the petitioner and after giving opportunity of hearing to the petitioner, the competent authority passed an order dated 30-11-1983 to evict the petitioner from the disputed premises. Against that order the petitioner preferred appeal before the District Judge u/s 9 of the Act.

6. The appeal came up for hearing before the Joint District Judge. Before the Joint District Judge, the learned Advocate for the petitioner has raised all the contentions stated above except the last contention. The learned Judge considered the said contentions in detail and rejected them. I broadly agree with the reasons given by the Joint District Judge. Therefore, it is not necessary for me to discuss the reasons given by the learned Joint District Judge in dealing with the contentions of the learned Advocate for the petitioner. As such, it is

difficult to hold that the show cause notice is in any way vague. Further, there is no question of evicting the original allottee - Prabhakar Badheka as it cannot be said that he is in unauthorised occupation of the premises. As the petitioner was inducted in the premises in violation of the terms and conditions, his possession of some part of the disputed premises allotted to Badheka is unauthorised one. The appellate Court has rightly arrived at the conclusion that the petitioner has failed to prove that he was a tenant of Badheka as there was no evidence on record to substantiate the said contention.

7. However, it is clarified that with regard to the contention of the learned Advocate for the petitioner that Badheka has become owner of the disputed premises in the year 1988, it should be noted that at present there is no evidence on record to prove that in the year 1988 the Gujarat Housing Board has executed any sale deed in favour of the original allottee-Badheka. Whatever may be the position, it cannot be said that the order passed by the learned Joint District Judge is in any way illegal or erroneous on this ground because the competent authority has passed the order in the year 1983 and at the relevant time admittedly the premises were public premises. At present there is nothing on record to show that the original allottee has paid all the installments and the sale deed is executed by the Gujarat Housing Board in his favour. Hence, this contention is without any foundation or basis. In this view of the matter, the reasons given by the learned Joint District Judge are not discussed in detail in this order.

8. The last contention which requires consideration is whether the Joint District Judge had jurisdiction to hear the appeal or not. Alongwith the affidavit in rejoinder the petitioner has produced on record the rojnama at Annexure III which reveals that on 7-3-1984 the appeal was transferred to Joint District Judge, Rajkot as per order No. A. On 23-3-1985 by order No. A/646, the Appeal was transferred to the Court of Extra Assistant Judge for disposal. On 4-5-1985 it was again transferred to Assistant Judge. On 10-8-1987 it seems that it was pending for hearing before the Second Joint District Judge. On 27-4-1989 the Joint District Judge fixed the hearing in view of the letter received from the District Judge stating that the High Court has directed that the appeal should be disposed of within three months. He has fixed the hearing on 2-5-1989 after informing the Advocates for the parties.

9. From the aforesaid facts, it seems that with the consent of the learned Advocates for the parties, the matter was fixed for hearing by the Joint District Judge. It should also be noted that before the Joint District Judge it was not contended by the learned Advocate for the petitioner that the Joint District Judge had no jurisdiction to hear the appeal u/s 9 of the Act. There is nothing on record to show that the District Judge has not designated the Joint District Judge to hear the appeal as provided u/s 9 of the Act.

10. Apart from this aspect, it cannot be said that the Joint District Judge has no jurisdiction to hear the appeal u/s 9 of the Act. The relevant Sub-section (1) of

Section 9 of the Act reads as under:

9. (1) An appeal shall lie from every order of the competent officer made in respect of any public premises u/s 5 or Section 7 to an appellate officer who shall be the District Judge of the District in which the public premises are situated or such other Judicial Officer in that District who has for atleast ten years held a Judicial Office in the State as the District Judge may designate in this behalf.

11. This section specifically provides that appeal can be decided by the District Judge of the District in which the public premises are situated. It could also be decided by such other Judicial Officer in that District who has for atleast ten years held a Judicial Office in the State as the District Judge may designate in this behalf. Therefore, if the District Judge has specifically directed that the appeal shall be heard and decided by the Joint District Judge then it can be said that the District Judge has designated the Joint District Judge to hear the appeal. Therefore, it cannot be said that the Joint District Judge had no jurisdiction to dispose of the appeal.

12. Further, Section 12 of the Bombay Civil Courts Act, 1869, empowers the State Government to appoint in any district a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge. The relevant sections are Sections 12 and 13 and they are as under:

12. The (State) Government may appoint in any District a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court.

13. All Regulations and Acts now or hereafter in force and applying to a District Judge shall be deemed to apply also to the Joint Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge.

13. From bare reading of the aforesaid two sections it is abundantly clear that the Joint District Judge is invested with co-extensive powers and is having concurrent jurisdiction alongwith the District Judge except for a limited purpose as provided Section 12. u/s 13 all Regulations and Acts applying to a District Judge also apply to the Joint District Judge. In view of these provisions the Joint District Judge also has jurisdiction to hear appeals u/s 9 of the Act. Hence, there is no substance in the contention of the learned Advocate for the petitioner that the order passed by the Joint District Judge is without jurisdiction.

14. In the result, this petition is rejected. Ad interim relief stands vacated. Mr. Shah, learned Advocate appearing on behalf of the petitioner, prays that ad interim relief granted by this Court may be continued for some time. Taking into consideration the facts and circumstances of the case, ad interim relief granted by this Court shall continue for a period of four weeks from today.