
(2010) 01 MP CK 0083
In the Madhya Pradesh High Court
Case No : C.R. No. 494 of 2006

Lakhanlal Rawat

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Companies Act, 1913 — Section 186
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7, 9
Railway Services (Pension) Rules, 1993 — Rule 16(6)

Citation : (2010) ILR (MP) 699 : (2010) 2 MPHT 14 : (2010) 2 MPLJ 426

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Aradhe, J.

In this revision filed u/s 115 of the Code of Civil Procedure, applicant has called in question the legality and validity of the order dated 27.9.2004 passed in Civil Appeal No. 26-A/2004 by which Additional District Judge, Khurai, District Sagar has upheld the order dated 26.2.2004 passed by the Estate Officer in proceedings u/s 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereinafter referred to as the "Act" for sake of brevity.

Applicant is retired Station Master, who superannuated on 31.3.1985. While the applicant was posted at Bina, he was allotted a Railway Quarter. As per the version of the applicant, on his transfer to another Railway Station namely Baad, he vacated the quarter on 28.4.1982. After a period of 19 years from the date of applicant's superannuation, Senior Divisional Personnel Officer, Jhansi issued a direction on 30.8.2001 to the Manager, State Bank of India, Biriato. recover an amount of Rs. 2,24,879/- from the dearness allowance of the applicant, as damages on account of illegal occupation of the quarter from 1.4.1985 to 29.6.1997 by the applicant. Aforesaid order formed subject matter of challenge

in Original Application No. 656/01 before the Central Administrative Tribunal. Central Administrative Tribunal by order dated 5.3.2003 issued a direction to appropriate authority to refer the dispute to Estate Officer and to proceed with the matter in accordance with Section 7 of the Act.

Accordingly, proceedings were initiated against the applicant u/s 7 of the Act and a show-cause notice dated 22nd May, 2003 was issued to the applicant by which he was asked to deposit a sum of Rs. 2,24,879/- as damages for illegal occupation of the quarter. The applicant filed reply to the aforesaid show-cause notice in which it was pointed out that he had vacated the premises on 28.4.1992, on his transfer and proceedings initiated against him were barred by time.

During the course of proceedings before the Estate Officer, the non-applicant produced four witnesses and adduced documentary evidence. The proceedings were fixed for 13.8.2003 and 29.8.2003 for cross-examination of the witnesses produced by the non-applicant. The applicant did not cross-examine the witnesses of the non-applicant and sought time. Accordingly, right of the applicant to cross-examine the witnesses produced on behalf of the non-applicant was closed on 15.9.2003. Thereafter, on 6.10.2003, the applicant moved an application for permission to cross-examine the witnesses of the non-applicant. However, the same was rejected by the Estate Officer vide order dated 21.10.2003.

The Estate Officer vide order dated 26.2.2004 held that from perusal of the order passed by the Divisional Railway Manager (Personnel) dated 24.3.2003, it is apparent that proceedings were initiated within time. Application was filed on 9.5.2003, therefore, the same cannot be treated as barred by limitation. On the basis of material adduced by the non-applicant, the Estate Officer recorded a finding that applicant was in unauthorized occupation of the premises for a period from 26.3.1982 to 26.3.1997. The documents filed by the applicant were discarded by the Estate Officer on the ground that the applicant had neither proved the genuineness of the documents nor its content. The Estate Officer did not take into consideration the documents filed by the applicant also on the ground that the applicant had filed the photocopies of the same. Accordingly, the Estate Officer directed the applicant to make payment of an amount of Rs. 2,24,879/- within a period of one month from the date of order failing which, it was directed that the amount shall carry interest w.e.f. 1.4.2004 at the rate of 8%. It was further directed that in case the applicant does not deposit the amount, the non-applicant would be at liberty to recover the same under Rule 16(6) of the Railway Service (Pension) Rules, 1993.

Being aggrieved by the aforesaid order, the applicant preferred an -appeal u/s 9 of the Act before the appellate officer i.e. in the Court of Additional District Judge, Khurai. The learned Additional District Judge vide impugned order dated 27.9.2004 partly allowed the appeal preferred by the applicant. The learned Additional District Judge discussed the material available on record in

paragraphs 12 and 13 and recorded a finding in paragraph 14 of the order to the effect that applicant has been in illegal occupation of the premises for a period from 1.4.1985 to 29.6.1997. Though learned Additional District Judge noted the contention of the applicant that proceedings are barred by limitation yet, no finding was recorded on the issue of limitation. However, learned appellate Court held that from the computation sheet, it appears that damages have been computed for different periods at different rates. The non-applicant herein has not produced any material to show the basis of calculation of damages. Accordingly, it was directed that damages be calculated at the rate fixed by the Collector and interest be levied at the rate of 6% instead of 8%.

Against the Aforesaid portion of the order by which the appellate officer modified the quantum of damages and rate of interest, the non-applicant has filed a revision before this Court, which is registered as Civil Revision No. 158/08. In the aforesaid revision, challenge has been made to the order on the ground that non-applicant is bound by the orders issued by the Railway Board and, therefore, the appellate officer committed an error in interfering with the quantum of damages and the rate of interest.

From the facts as stated supra, it is apparent that proceedings u/s 7 of the Act in respect of unauthorized occupation of the quarter by the applicant for a period from 26.3.1982 to 26.3.1997 were initiated on 22.5.2003 when show-cause notice u/s 7 of the Act was issued to the applicant i.e. after a period of 6 years approximately.

Mr. Pranay Verma, learned Counsel for the applicant has made many a submission. It has been contended by him that proceedings initiated on 22.5.2003 u/s 7 of the Act in respect of the rent due for a period from 1.4.1985 to 29.6.1997 were barred by limitation. In support of the aforesaid submission, learned Counsel for the applicant has placed reliance on a decision of the Supreme Court in the case of New Delhi Municipal Committee Vs. Kalu Ram and Another,

Ms. Amrit Ruprah, learned Counsel appearing on behalf of the non-applicant inter-alia has contended that Estate Officer in paragraph 3 of the order dated 26.2.2004 has recorded a finding that the proceedings have been initiated within limitation. Learned Counsel for the non-applicant has placed reliance on a decision in the case of L.S. Nair Vs. Hindustan Steel Ltd., Bhilai and Others, in support of her contention that provisions of Limitation Act does not apply to proceedings before the Estate Officer u/s 7 of the Act.

Thus, the issue which arises for consideration before me in the instant revision is whether damages for illegal occupation of the quarter for a period from 1.4.1985 to 29.6.1997 are legally recoverable in proceedings initiated on 22.5.2003 u/s 7 of the Act.

While construing the expression "any money due" u/s 186 of the Indian Companies Act, 1913 the Privy Council in Hans Raj Gupta v. Official Liquidators of

the Dehradun-Mussoorie Electric Tramway Company Ltd. AIR 1993 PC 63 has held that Section 186 of the Indian Companies Act creates a special procedure for obtaining payment of moneys and is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights.

In New Delhi Municipal Committee (supra), the Supreme Court while considering the scope and ambit of expression "payable", appearing in Section 7 of the Act held that Section 7 of the Act only provides of special procedure for realization of rent in arrears and does not constitute a source or foundation of a right to claim debt otherwise time barred. It was further held that when a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. It was held that the word "payable" in Section 7 of the Act in the context in which it occurs means legally recoverable.

The aforesaid decision of the Supreme Court in the matter of New Delhi Municipal Committee referred to supra was quoted with approval in State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr,

Thus, the issue involved in the instant revision is" squarely covered by the decision of the Supreme Court in New Delhi Municipal Committee"s case supra. Therefore, it is held that damages for the period from 1.4.1985 to 29.6.1997 on account of illegal occupation of quarter were irrecoverable in proceedings initiated on 22.5.2003. Since, this Court has dealt with the question of limitation only, therefore, it is not necessary to refer to the other contentions raised by the learned Counsel for the parties.

For the reasons aforementioned, the revision filed by the applicant succeeds and is hereby allowed. Consequently, the order dated 27.9.2004 passed by Additional District Judge, Khurai in Civil Appeal No. 26-A/04 and order dated 26.2.2004 passed by the Estate Officer, West Central Railway Division, Bhopal, are hereby set aside. In the facts and circumstances of the case, there shall be no order as to costs.