

(1998) 03 AHC CK 0004
In the Allahabad High Court
Case No : C.M.W.P. No. 3346 of 1979

Lalta Prasad Agarwal (Decd.) through L.Rs. and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 2
Uttar Pradesh Tenancy Act, 1939 — Section 172, 39

Citation : (1998) 3 AWC 1910

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

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

D.K. Seth, J.—A proceeding was initiated against the petitioner for eviction under the U. P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred as the Act). By an order dated 18.6.1977, the said proceeding was decided. There was another proceeding and both the proceedings were decided by a common judgment passed in Case Nos. 241 and 342 of 1976-77. The State Government preferred appeals being Appeal Nos. 648 and 649 of 1977 respectively. Both the appeals were disposed of by a common judgment dated 5.3.1979. This is under challenge in the present writ petition.

2. Mr. Ajai Banout learned counsel holding brief for Shri Ashok Khare, learned counsel for the petitioner ably argues that the premises being held by the petitioners as an occupancy tenant, their holdings are that of tenure-holders under a law relating to land tenure and, therefore, the premises held by the petitioners are excluded from the definition of "premises" contained in Section 2(b) of the said Act. In support of his contention he relies on the order dated 8.3.1965 in Case No. 19 of 1964 u/s 33/39 of the U, P. Land Revenue Act between the petitioner and one Shri Sushil Kumar Banerjee where the name was recorded as occupancy tenant in respect of the disputed property after

expunging the name of Sushil Kumar Banerjee whose name was so recorded. He also relies on a copy of the plaint in Suit No. 2 of 1968 u/s 172 of the U. P. Tenancy Act wherein he pointed out that the Collector had admitted the claim of the petitioner that he had acquired occupancy tenancy right by virtue of decree u/s 39 of the U. P. Tenancy Act, 1939. Therefore, according to him after such admission, the State Government cannot go back of its own admission. He relies on the decision in Revision No. 108 arising out of an order dated 10.11.1972 rejecting the said Case No. 2 of 1968 where it has been held that the name of the petitioner having been recorded as occupancy tenant and he having acquired the occupancy tenancy right and the same having been admitted, the suit was not maintainable. Secondly, he contends that the premises cannot be termed as a public premises and, therefore, the present Act has no manner of application. He elaborates his argument relying on the definition contained in Section 2 (e) of the Act relating to public premises. His third contention is that in the facts and circumstances of the case, he is not unauthorised occupant as defined in Section 2 (g) of the Act in respect of the said premises and therefore the proceeding is not maintainable. His fourth contention is that the question of title to the premises having been decided in the proceedings mentioned by him, the principle of res judicata is attracted and the question can no more be opened in the present proceedings.

3. Mr. Upadhyaya, learned standing counsel on the other hand contends that the proceeding between the petitioner and Sushil Kumar Banerjee does not bind the Government since the Government is not party to the said proceeding. According to him, the property is a part of the Government Estate which was leased out to one Shri Sushil Kumar Ghosh without any right to sub-let. Sushil Kumar Ghosh was not made party in the proceedings between the petitioner and Sushil Kumar Banerjee. Therefore, the decision is not binding on the State. He contends that Suit No. 2 of 1968 was wholly misconceived. Since u/s 172 of the U. P. Tenancy Act, it was Shri Ghosh who can be evicted. Admission that the defendant had acquired tenancy on the basis of the alleged decree cannot be taken to be an admission of fact. Inasmuch as it was only an opinion of the Estate Officer on interpreting the effect of the said decree. If the said decree appears to be void, in that event the opinion given on the basis thereof cannot be, sustained. Therefore, it cannot be said that it was an admission on the part of the Government. Then again the question of title of the petitioner had never been decided. As it appears from the judgment in the revision it was dismissed on the ground of alleged admission and as well as on the ground that the question cannot be decided in a summary proceedings for the correction of the record. Therefore, in fact the question was never adjudicated upon and the right of the petitioner had never been established. On that ground, according to him the principle of res judicata is not attracted. Neither the admission can stand in the way particularly when the decision in the revision and the Suit No. 2 of 1968 proceeds on the basis of the decision in the Case No. 19 of 1964 which itself is not binding on the State and is void. Therefore, the proceeding is very much

maintainable. Earlier, the Court having wrongly decided the same, the same was rightly set aside by the appellate court. He also relies on the decision given in the appeal itself and points out that the same is a reasoned one and there is no infirmity in the order.

4. I have heard Shri Ajai Banout, learned counsel appearing for the petitioner and Shri Upadhyaya, learned standing counsel at length.

5. It appears that the land held by a tenure-holder under a law relating to such tenure-holder is excluded from the definition of "premises" defined in Section 2 (b) of the Act. In the present case, the petitioner was not holding the land as a tenure-holder. Admittedly, the land was held by one Sushil Kumar Ghosh as tenure-holder under a lease without any right to sub-let. The petitioner has not been able to establish how he could step into the shoes of the said Shri Sushil Kumar Ghosh. On the other hand, it appears that the said proceeding in Case No. 19 of 1964 was between the petitioner and one Shri Sushil Kumar Banerjee. The petitioner has not been able to show that how said Sushil Kumar Banerjee had stepped into the shoes of the said Sushil Kumar Ghosh and on what right and how the said Sushil Kumar Banerjee had acquired occupancy right. Then again the said Sushil Kumar Banerjee did not transfer his right through any registered deed through which he could acquire the interest of Sushil Kumar Banerjee. Then again in the proceedings neither said Sushil Kumar Ghosh nor the Collector representing the Estate were made parties. Therefore, the said decision being intra parties cannot bind either said Ghosh or the Estate represented by the Collector. The principle of res judicata cannot apply in a case where it was not in issue between the same parties.

6. It is stated that name of Sushil Kumar Banerjee was a clerical mistake . which should be Sushil Kumar Ghosh. But then there is no material to decide such question on the basis of the dispute raised by the Government. It was incumbent on the petitioner to get it corrected properly ; unless it is so corrected, the Court is to go on the basis of the record. It cannot undertake the exercise of deciding such disputed factual question itself when there was no material before it to do the same.

7. The proceedings u/s 172 of the U. P. Tenancy Act had proceeded on the basis that the petitioner had acquired occupancy tenancy right by virtue of the said decree and the same was decided as referred to above while recording the contention on behalf of the State. Thus it appears that the admission made in the plaint in Case No. 2 of 1968 was based on the Interpretation of the decree in Case No. 19 of 1964 and, therefore, it is not an admission of fact and in fact, it is an opinion based on interpretation of the said decree which cannot be treated to be an admission on fact. Therefore, the said alleged admission does not bind the State. Then again, since the said decree is not binding on the State, even no amount of admission can make it binding on the State when it was not party to the said proceedings. There cannot be any estopped against law. If the law does not make the decision binding on the State, simply by alleged admission, the

State is not estopped from challenging the same on the ground that the said admission was incorrect in law and fact.

8. Then again, the decision, in the Case No. 2 of 1968 appears to have been proceeded on the basis that the said proceeding is not maintainable in respect of the said recording by virtue of admission. Since the admission cannot be accepted and it having been proceeded on the basis of interpretation of the said decree and having not decided the right of the petitioner and there being no finding with regard to tenure-holder under the law relating to tenure-holder, therefore, it does not have any binding effect of attracting the principle of res judicata. Thus in the absence of any finding that the petitioners are tenure-holders under any law relating to tenure-holder, it cannot be said that the premises is not covered under the definition of premises u/s 2 (b) of the Act. Admittedly, the land having been part of the Government Estate, it comes within the meaning of premises under the definition of Section 2 (b) of the Act. Therefore, I have been unable to agree with the contention of Shri Banout, though strenuously argued by him, to bring away the premises from the definition of Public Premises which Includes the Government Estate.

9. The submission of Mr. Banout with regard to interpretation of unauthorised occupant u/s 2 (g) of the Act, though seems very attractive but having considered on the basis of the fact of the said decree as discussed above, the same cannot stand the test of reasonableness. If the land is a part of the Government Estate and if the petitioner is holding the land without any authority and his occupation squarely comes within the meaning of unauthorised occupant u/s 2 (g) of the Act.

10. The question of adverse possession has since been raised, the same demolishes the contention of the petitioner that he was holding the land as tenure-holder under a law relating to tenure-holder. The adverse possession means adverse possession to the real owner or without the authority of the owner and thus an unauthorised occupation. Therefore, the moment the adverse possession is pleaded, the petitioner himself has demolished his own case to take away from the definition of "premises" u/s 2 (b) of the Act.

11. Even if the petitioner alleges having adverse possession, in that event, it was for him to prove. It appears that he got the land in his name as occupancy tenancy claiming through one Shri Sushil Kumar Banerjee. Therefore, he cannot claim that he had been possessing adversely. Then again it was in 1965 when it was so recorded. In the pleadings, no such occupation has been made. The present proceedings have been Initiated in 1976, namely, before 12 years which is the period of limitation of adverse possession against a private Individual whereas the period of adverse possession against the State is 30 years. Then again the State has sought to evict him even in 1967, therefore, it cannot say that the State had acceded to the possession of the petitioner through adverse possession. Even on facts, the adverse possession does not materialise.

12. The present Act is a special statute creating special provision whereby it is incumbent on the persons to defend his case but it was for him to prove that he has sufficient defence to defend the cause. In the present case, he has been unable to do so. He cannot succeed on the basis of the above argument. So far as the decisions cited by Mr. Banout, namely, in the case of Kripal Singh v. District Judge. Nainital. 1988 AWC 666 ; State of U. P. v. District Judge, Bahraich 1988 AWC 1229 and Baideo Raj v. State of U. P. 1984 AWC 568, are concerned, the same propounds the settled principle of law that if the land is held by a tenure-holder under a law relating to the tenure-holder, in that event, the present provision of the Act is not applicable. But in the present case, as I have found that the petitioner is not a tenure-holder holding land under a law relating to land-holding, the said decisions cannot be attracted in the present case.

13. For all these reasons, the writ petition fails and is accordingly dismissed.

14. However, there will be no order as to cost.