(1980) 01 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 574 of 1975

L.S. Nair APPELLANT

Vs

Hindustan Steel Ltd., Bhilai and Others RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 246, 254(2)
Limitation Act, 1963 — Article 52, 55
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2, 5, 7

Citation : AIR 1980 MP 106 : (1980) JLJ 183 : (1980) MPLJ 429

Hon'ble Judges : G.P. Singh, C.J;R.C. Shrivastava, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; A.P. Tare, for the Respondent

Final Decision : Dismissed

Judgement

Singh, C.J.

The petitioner was employed as a Recorder in Blooming and Billet Mill section of the Bhilai Steel Plant, owned by the Hindustan Steel Limited, a Government company. The petitioner as an employee was allotted a quarter by the management''s order dated 3rd August 1966. The petitioner''s services were terminated on 8th April 1967 with effect from 10th April 1967 on payment of one month''s salary. The allotment of the quarter was subject to the petitioner''s agreeing to pay rent at the rate fixed by the company and to abide by the rules and regulations governing the allotment of company''s property. One of the rules relating to the allotment of quarters is that an employee who resigns or retires from service or is terminated or transferred, shall not be allowed to retain the quarter for a period exceeding one month from the date of the occurrence of the event and that an employee who retains the quarter beyond this period, except with the permission of the management, will be treated as an unauthorised occupant and eviction proceedings would be taken against him. The company filed an application on 30th June 1973 before the Estate Officer appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, claiming eviction of the petitioner. The company also claimed Rs. 3,788.89 comprising of standard rent as damages at the rate of Rs. 46/- per month and electricity and other charges for the period from 10th April 1967 to 30th June 1973. Further damages at the rate of Rs. 46/-per month and electricity and other charges from 1st July 1973 til) the delivery of vacant possession were also claimed. The company''s application was allowed by the Estate Officer by order dated 24th October 1973. The petitioner then preferred an appeal which was dismissed by the District Judge, Durg, on 28th April 1975. The petitioner thereafter filed this petition under Article 226 of the Constitution.

It may be mentioned at the outset that the petitioner challenged the order of termination of his services by an application u/s 31 of the Madhya Pradesh Industrial Relations Act, 1960. The Labour Court by order dated 31st May 1975 dismissed the petitioner''s application. The order of the Labour Court was upheld in revision by the Industrial Court by order dated 11th November 1975. The petitioner then filed Misc. Petn. No. 487 of 1976 challenging the orders of the Industrial Court and the Labour Court. By order delivered by us on 15th December, 1979, we allowed that petition and remanded the case to the Labour Court on the ground that the order of termination was passed by an authority lower in rank to the appointing authority and that it is open to the Labour Court, in the light of the decision in R. K. Nair v. G. M., Bhilai Steel Plant 1977 MPLJ 497 : (1977 Lab IC 1079) to see whether on the material produced in the domestic enquiry the charges of misconduct were proved against the petitioner and whether the punishment was justified on the charges.

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is an Act to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. Section 2(e), which defines the expression "public premises", reads as follows:

"2 (e) "Public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes --

(1) any premises belonging to, or taken on lease by, or on behalf of --

(i) any company as denned in Section 3 of the Companies Act, 1956, in which not less than 51%, of the paid-up share capital is held by the Central Government; and

(ii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956, or a local authority) established by or under a Central Act and owned or controlled by the Central Government."

The expression "unauthorised occupation", in relation to any public premises, means the occupation by person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant, or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. Section 3 of the Act deals with appointment of Estate Officers. If the Estate Officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, he issues a notice u/s 4 calling upon the person concerned to show cause against eviction. If, after considering the cause and any evidence produced, in support of the same and after giving a reasonable opportunity of being heard the Estate Officer is satisfied that the public premises are in unauthorised occupation, he makes an order of eviction u/s 5 Section confers upon the Estate Officer power to require payment of rent and damages. Section 9 provides for an appeal against the order of the Estate Officer to the District Judge. Section 15 bars the jurisdiction of Civil Court in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of arrears of rent or damages payable by such person.

The first contention raised by the learned counsel for the petitioner in that the Act in so far as it includes in the definition of public premises "any premises belonging to or taken on lease by or on behalf of any company as defined in Section 3 of the Company Act,. 1956, in which not less than 51%; of the paid-up share capital is held by the Central Government," is ultra vires and void, as to that extent the Act is beyond the legislative competence of Parliament. The argument of the learned counsel is that the Act was enacted under Entry 32, List I of the VII Schedule to the Constitution, which relates to "property of the Union and the revenue therefrom", and that this entry cannot be construed to include the property of a Government company which is a different and distinct legal entity from the Union. It may be conceded that the ''expression "property of the Union" as Used in Entry 32, List I, cannot be construed to include the property of a Government company. But if Entry 32 gives jurisdiction to Parliament to enact the Act in respect of Government premises, as contended by the learned counsel for the petitioner, Entry 43 which relates to incorporation, regulation and winding up of trading jurisdictions read with Entry 95 which relates to jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in List I, can be construed to confer power on Parliament to enact the ''Act in respect of premises belonging to a Government company. It seems, however, more appropriate that in so far as the Act deals with a lessee or licensee of premises belonging to a Government company, the subject-matter of the Act would be covered by Entries 6, 7 and 46 of List III. These entries broadly deal with transfer of property, contracts and jurisdiction and powers of Courts with respect to any of the matters in List III. Taking either view, in our opinion, it is not correct to say that the Act in so far as it relates to premises belonging to a Government company suffers from Want of legislative competence.

It is next contended that the eviction of a tenant of a Government company whose tenancy has expired is governed by the Madhya Pradesh Accommodation Control Act, 1961, and that the Public Premises Act cannot be applied in such cases. In this connection it is argued that the Accommodation Control Act is a law under Entry 18 of List II and even if it be a law under any entry in the Concurrent List, it will prevail over the Central Act as it was assented to by the President.

The Accommodation Control Act was enacted by the State Legislature of Madhya Pradesh and received the assent of the President on 2fith December, 1961. Section 3 of the Act makes the Act inapplicable to an accommodation which is the property of the Government. The Act, however, does not contain any exception in respect of an accommodation which is the property of a Government company. Section 12 of the Act contains restrictions on eviction of tenants. The section provides that no suit for eviction of a tenant can be filed in a Civil Court except on the grounds mentioned therein. One of the grounds for ejectment in this section is that the accommodation was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased to be in such service or employment. Sub-section (8) of Section 12 in this context provides that no order for the eviction of a tenant shall be made on this ground if any dispute as to whether the tenant has ceased to be in the service or employment of the landlord is pending before any authority competent to decide such dispute.

The argument of the learned counsel for the petitioner that the M.P. Accommodation Control Act, 1961, was passed by the State Legislature in the exercise of its legislative power under Entry 18 of List II is not correct. Entry 18 of List II relates to land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. As explained by the Supreme Court in Indu Bhushan Bose Vs. Rama Sundari Debi and Another, "the relation of landlord and tenant", as mentioned in this Entry, is with reference to land tenures which would not appropriately cover tenancy of buildings or of house accommodation and that the expression is only used with reference to relationship between landlord and tenant in respect of vacant lands. As further explained by the Supreme Court, leases in respect of non-agricultural property are dealt with in the Transfer of Property Act and would more appropriately fall within the scope of Entry 6 read with Entry 7 of List III. The Supreme Court in the same case observed that non-agricultural leases of all kinds, and rights governed by such leases, including the termination of leases and eviction from property leased, would be covered by the topics of transfer of property and contracts. In the light of the ruling of the Supreme Court in Indu Bhushan''s case, the Accommodation Control Act will fall within Entries 6 and 7 read with Entry 46 of the Concurrent List. Similarly, the Public Premises Act, in so far as it deals with the eviction of lessees or licencees from premises belonging to a Government company would also fall within these entries. The Public Premises Act was enacted in 1971 and seeing a law later to the Accommodation Control Act will prevail over it in view of the proviso to Article 254(2) of the Constitution, in spite of the fact that the Accommodation Control Act had received the assent of the President. The effect of the Public Premises Act is that accommodations belonging to Government companies are taken out from the operation of the Accommodation Control Act and are exclusively governed by the former because the two Acts in this respect cannot stand together. The submission of the learned counsel for the petitioner in this behalf is that the Public Premises Act though enacted on 23rd August 1971, was given retrospective effect from 1958 and, therefore, it should be deemed to be a law enacted earlier to the Madhya Pradesh Accommodation Control Act, 1161. The Public Premises Act, 1971, by S. 20 was given retrospective effect to save the actions taken under the Public Premises Act, 1958; but it cannot be held that the 1971 Act was enacted in 1958. As earlier stated, this Act was enacted on 23rd August, 1971 and is a law which falls within the proviso to Article 254(2) and, therefore, it must prevail against the M. P. Accommodation Control Act, 1961, which is an earlier law made by the State Legislature.

It was then contended by the learned counsel that the definition of the expression "unauthorised occupation" as contained in the Public Premises Act must be so construed as not to cover a person, the validity of the order of termination of whose employment is pending adjudication in the Labour Court. We have already stated that the petitioner was allotted the quarter being an employee of the company. The petitioner''s employment was terminated. According to the rules relating to the allotment of quarters, the petitioner ceased to have any right to occupy the quarter from the date of the termination of his employment. The order of termination passed against an employee has to be treated as valid until it is set aside by the Labour Court. The Estate Officer functioning under the Public Premises Act has no jurisdiction to decide upon the validity of the termination of service of an employee. He has to proceed upon the footing that the termination of service is valid until set aside by the Labour Court. There is nothing in the definition of "unauthorised occupation" to which reference has already been made which may indicate that in such cases the Estate Officer will have no jurisdiction to evict a person from a quarter until the dispute relating to termination of service is finally decided by the Labour Court. We have already stated that the order of termination of service passed against the petitioner suffered from the defect that it was passed by an authority lower in rank to the appointing authority and thereby contravened the requirement of certified Standing Orders. Even so it would be open to the Labour Court to uphold the order if it is justified on the material collected in the domestic enquiry; R. K. Nair v. G. M., Bhilai Steel Plant (1977 Lab IC 1079 (Madh; Pra)) (supra). The order of termination cannot, therefore, be ignored as void and inoperative. As earlier stated by us, the termination is to be treated as valid and effective until it is set aside The petitioner has, therefore, no authority to occupy the quarter till that order of termination is in force.

It was next submitted by the learned counsel that the order of the Estate Officer in so far as it relates to the recovery of standard rent from the date of termination of service is bad and the petitioner can be made liable to pay only the rent agreed. The standard rent which the Estate Officer has directed the petitioner to pay from the date of termination is nothing but damages for use and occupation, As the petitioner ceased to have any right to continue in occupation of the quarter from the date of termination, he is liable to pay damages. The rate of damages was not challenged before the District Judge and for that reason cannot be challenged before us under Article 226.

It was also submitted that the recovery of damages for a period beyond 3 years was time barred. The Limitation Act has no application to proceedings before the Estate Officer who is not a Court. Learned counsel for the petitioner relied upon the case of Kalu Ram v. New Delhi Municipal Committee (1965) 67 Pun LR 1190 in support of his submission. There is nothing in Section 7(2) which authorises the Estate Officer to assess the damages on account of the use and occupation of the premises and by order require the person to pay the damages, to show that there is any rule of limitation by which the Estate Officer is governed. As the Limitation Act has no application to proceedings before the Estate Officer and as the jurisdiction of Civil Court is entirely barred in matters governed by the Public Premises Act, it is difficult to accept the argument that there is any period of limitation for recovery of damages. The Punjab case on which reliance was placed, construed the words "rent payable" as they occurred in Section 7 (i) of the Public Premises Act, 1958, and construed them to mean "rent legally recoverable by a suit." The case has no application for construing Section 7(2) of the Public Premises Act, 1971, which deals with the power to assess and order payment of damages and where the language used is entirely different. Further, Section 15 of the 1971 Act now bars a suit and the remedy under the Act is the only remedy which can be availed of. In such a situation, the Limitation Act cannot be inferentially applied to proceedings before the Estate Officer.

It was lastly submitted that if would be wholly unjust for the petitioner to be evicted when the proceedings relating to the validity of termination are still pending before the Labour Court. If the petitioner is ultimately granted reinstatement in the proceedings before the Labour Court and if in the meantime the petitioner is evicted and required to pay damages, the Labour Court will have jurisdiction to give proper relief to the petitioner in the same manner as it is competent to award back wages. Just as the petitioner is not entitled to wages for the period the dispute relating to termination is pending adjudication until the termination is set aside and award of back wages is made by the Labour Court, the petitioner is also not entitled to continue in occupation of the quarter which was allotted to him as an employee. As already expressed, in case of injustice, the Labour Court will have jurisdiction to grant appropriate relief if the termination ia set aside and reinstatement is ordered,

The petition fails and is dismissed, but without any order as to costs. The security amount be refunded to the petitioner.