
(1996) 07 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.P. No. 647 of 1986 (J)

Maresh Lal Agrawal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-07-1996

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1)

Citation : (1997) 2 MPJR 180

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : R.P. Agarwal, for the Appellant; S.K. Mukharjee, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

This petition has been preferred against an order passed by the Estate Officer, which order was confirmed by the Appellate Authority constituted under the Public Premises Eviction of Unauthorised Occupants Act, 1971. The brief facts which have given rise to the present petition be noticed as under:

It is pleaded that there was a co-operative society by the name of Southeastern Railway Men's Co-operative Stores Ltd., Bilaspur. The society was incorporated under the relevant co-operative society laws then in force. It is said that the above society was given a piece of land on licence. The duration of this licence is said to be about 100 years. This society went into liquidation. It is through this licences, the present petitioner claims the right to remain in possession. He submits that there was a proposal made by the Railway Administration for making a regular lease in his favour. But the record as it obtains today contains no order in favour of the respondent Railway. The position before the Appellate Authority was no better. There is no approval of the railways brought on the record. The net result is that there is no letter of allotment and no written permission from the Railway Administration in favour of this present petitioner

which may indicate that Railway Administration treated the present petitioner as an authorised occupant of its land. As such notice u/s 4(1) of the aforementioned Act was issued. The Estate Officer came to the conclusion that an order of eviction is required to be passed against the petitioner. This order was accordingly passed. An appeal was preferred. This appeal came to be dismissed on 13th August 1985. Copy of this order has been placed on record, Annexure-1. It is this order which is the subject matter of this Writ Petition.

The case which is sought to be put across by the Writ Petitioner is that the Appellate Authority had no jurisdiction to decide the appeal. According to him the appeal could be decided by the District Judge and not be the Additional District Judge.

On merits it is contended that the petitioner could not be treated as unauthorised occupant. He submits that he has been paying the licence fee and therefore he is an authorised occupant.

I am of the view that the grounds taken by the petitioner cannot be accepted. The question whether the Addl. District Judge could hear the appeal, be examined. This precise question was considered by the Jammu & Kashmir High Court in Badri Nath Gupta Vs. The Estate Officer (Controller of Aerodromes), , Dr. A. S. Anand J. (now Judge of the Supreme Court of India) held in categorical terms. Addl. District Judge could hear the appeal. All that is required is that such officer should have ten years standing. It is not the case of the petitioner that Addl. District Judge who decided the matter was not of 10 years standing. In the above case it was observed that Addl. District Judge can hear appeal. I respectfully follow the view expressed by J & K High Court. Even otherwise on the reading of section 9 of the Act, it becomes apparent that the objection taken by the petitioner is without merit.

Again the appellate authority has committed no error in recording a finding as to the status of the petitioner. The petitioner had no right to continue on the premises in question. He has not been able to place on record any documents which may indicate that the petitioner was permitted to take possession of the site in question. There is no communication placed on record which may lead to the conclusion that the petitioner was allowed to occupy the piece of land in question. It is a settled law that if any contract is entered into on behalf of the Government then there has to be compliance of Article 299 of the Constitution of India. No such contract has been placed on the record. Mere payment of some amount does not bring about relationship of landlord to tenant. See. Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, . As such it could not be said that the findings recorded by the appellate authority or by the Estate Officer holding that petitioner is unauthorised occupant calls for any interference.

The last submission made by the petitioner is that persons similarly situated, have been allowed to remain in possession. Some representation is said to be pending. It is also stated that Railway Administration is ultimately going to allot

this price of land to some other person. He submits that the petitioner is ready and willing to abide by the terms and conditions which may now be imposed. This according to the counsel would save the petitioner from starvation as this is said to be his only source of livelihood. As such a direction is given to the Railway Administration to consider the above matters and also representation if any preferred or to be preferred by the petitioner.

The petitioner is granted three months time to vacate the premises during which period the representation if any preferred shall be decided. There would be no order as to cost. Security if paid be refused as per rules. The petition is otherwise found to be without merit and is dismissed.