
(1974) 03 J&K CK 0013
In the Jammu And Kashmir High Court

Mangat Ram

APPELLANT

Vs

Honble Revenue Minister and others

RESPONDENT

Date of Decision : 07-03-1974

Acts Referred:

Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1988
— Section 5

Citation : (1974) JKLR 511 : (1975) KashLJ 28

Hon'ble Judges : D.D.Thakur, J

Bench : Single Bench

Advocate : R.N.Bhalgotra, D.N.Mahajan, Amar Chand , A.D.Singh, Advocates
appearing for the Parties

Judgement

(1) This writ petition arised in the following circumstances :

Quarter No. 190 was originally allotted to one Mst. Nanki. Mst. Nanki died On her death respondent No. 3 claim d that he was the sole heir of

Mst. Nanki and was thus entitled to inherit the allottee's right in respect of the said quarter. The petitioner, Mangat Ram, on the other hand claimed

an allotment in respect of the quarter on the ground that he was a displaced person from Pakheld area of the State of Jammu and Kashmir. An

allotment order was parsed in favour of the petitioner as early as 2641961 in respect of the quarter, With a view to implement this order of

allotment passed in favour, of the petitioner, the Provincial Rehabilitation Officer, Jammu, passed an order dated 351961 directing that the

possession of the quarter aforesaid may be handed over to the petitioner. This order was resisted by respondent No. 3, Ganga Ram, by means of

a suit filed in the Civil Court. The suit was ultimately dismissed on 31M96i. An appeal was thereafter brought to the District Judge, Jammu, who by

his judgment dated 951961 reversed the decree passed by the trial court. A second appeal was brought to this court. This court vide its judgment

dated 1281966 allowed the appeal, set aside the judgment and the decree of the District Judge and restored those of the trial court. A Letters

Patent appeal was also thereafter dismissed by the Division Bench by its judgment dated 27121966.

(2) On the conclusion of these proceedings the Provincial Rehabilitation Officer issued an order dated 1851967 to the Estates Officer that the

ejectment proceedings under Section 5 of the Public Premises (Eviction of unauthorised Occupants) Act may be initiated against respondent No. 3

and the possession of the quarter may be handed over to the petitioner after evicting the respondent No 3 Thus the eviction proceedings against

respondent No. 3 came to be initiated. The Estates officer after holding an enquiry under the aforesaid Act passed an order dated 1481967 under

section 5 of the Act evicting respondent No. 3 from the quarter in question. Against this order an appeal was filed before the District Judge,

Jammu, who dismissed the appeal vide his judgment dated 7121967. A writ petition against the order of the District Judge was then filed in this

court. The petition was founded on the ground that Section 5 of the Act was ultra vires of Article 14 of the Constitution of India The plea prevailed

and this court struck down Section 5 of the Act, allowed the petition and quashed the order of the District Judge. The order of eviction having thus

been set aside, fresh proceedings were commenced against respondent No 3 by the Estates Officer in accordance with the amended Act for his

eviction from the quarter. This time again the proceeding culminated in an order of eviction. Against this order respondent No. 3 again filed an

appeal before the District Judge, Jammu, A revision application before the Hon'ble Revenue Minister was also filed simultaneously The appeal

before the District Judge is still pending but the revision before the Hon'ble Revenue Minister has been dismissed with the observation that

respondent No. 3 may not be dispossessed till the case is finally decided by the Government. The learned Revenue Minister passed the impugned

order on 2881971, the operative portion where of reads as under:

Till final decision of the case, Shri Ganga Ram be allowed to stay on in quarter No. 190. The ejectment proceedings against him from the said

quarter be stayed.

(3) The contention of the learned counsel for the petitioner is that the Revenue Minister had no jurisdiction to pass such an order as the Revenue

Minister was not an authority under the Eviction Act:

(4) Mr. Amar Chand, the Additional Advocate General, on behalf of the respondent has, however contended that the Revenue Minister being a

delegate of the Government had overall authority on behalf of the Government to direct the Provincial Rehabilitation Officer to stay the

implementation of the order passed by the Estates Officer under Section 5 of the Act.

(5) The simple and short question therefore which requires adjudication is whether the Revenue Minister can be said to be possessed of

jurisdiction to stay the eviction of respondent No. 3 when the subject matter of proceeding under the Eviction Act as it stands after amendment

reads thus:

5. Eviction of Unauthorised Occupants. (1) When in pursuance of the notice under section 4 no objection is filed, or If an objection, not under

section 5 A, is filed, then after giving the parties reasonable opportunity of producing evidence if any and of being heard the Estates Officer shall,

on being satisfied that the public premises or part thereof is in unauthorised occupation make an order of eviction, for reasons to be recorded in

writing, directing that the public premises or part there of shall be vacated by the person in occupation there of, and cause a copy of the order to

be affixed on the outer door or some other conspicuous part of such premises.

(6) A bare perusal of this section would show that once an Estates Officer finds on enquiry that a person is in unauthorised occupation of public

premises, the Estates Officer has no option but to pass an order of eviction. It is not disputed that the quarter in question is Govt. property and thus

is a public premises as defined in the Act. What is contended by Mr Amar Chand is that, the Govt being the owner of the property and the

Provincial Rehabilitation Officer subordinate to the Govt a direction could have been issued by the Revenue Minister on behalf of the Government

to the Provincial Rehabilitation Officer not to give effect to the order of eviction which may be passed by the Estates Officer under Section 5 of the

Act. It is further contended that the command contained in Section 5 of the Act is

only to pass an order of eviction. An order passed by the Estates Officer evicting the unauthorised occupant, it is contended, can well be stayed by the Government or by the Revenue Minister on behalf of the Government if the circumstances otherwise warrant such stay. The argument is subtle but the subtlety borders fallacy.

(7) To allow an unauthorised occupant to continue to remain in such occupation may be possible as undoubtedly the power of the Executive would surely extend to such a horizon. In fact under Section 5 of the Constitution of Jammu and Kashmir the Executive power of the State extends to all matters except those with respect to which the Parliament has power to make laws under the Constitution of India. This Executive power however can be exercised only over a field over which the legislature of the State has not expressed itself. The principle that the Executive is responsible and answerable to the legislature makes the legislature supreme vis-à-vis the Executive. The Executive cannot provide an affront to the will of the legislature expressed in the form of a legislative enactment such as Public Premises (Eviction of unauthorised occupants Act). The Executive owes its existence and authority to the legislature. It can therefore ill afford to act in a manner which has the effect of whittling down or negating the command of the legislature. If the Estates Officer appointed under the Act is commanded by the Act to pass an order of eviction against the unauthorised occupant, the Revenue Minister as a limb of the Executive cannot issue a direction which tends to render ineffective the dictate of the legislature. The plain reading of sec. 5 of the Act suggests in an unmistakeable accent that in the event of a person being declared an unauthorised occupant, he could not be allowed to continue in possession whatever may be the consideration. It is a different thing if after the order of eviction, the Government passes an order creating a lease or a license or an allotment, in favour of such person for in such an event the possession would cease to be unauthorised and the order of eviction would lose excitability and efficacy. In the present case, however, there is no dispute that the allotment of the quarter in favour of the petitioner has been made absolute. The revision filed by respondent No. 3 has since been dismissed it cannot therefore be said that the respondent had ceased or would cease to be an unauthorised occupant so as to result in the excitability of the

eviction order being lost.

(8) Mr. Amar Chand, the Additional Advocate General lastly contended that the petitioner had by fraudulent means and misrepresentations

obtained the allotment of three quarters whereas respondent No. 3 even though he was a displaced person has remained without a quarter. He has

submitted that recommendation has been made by the Provincial Rehabilitation Officer to the Revenue Minister for cancellation of the allotment in

respect of one of three quarters allotted in favour of the petitioner.

(9) I have, not however to consider the question of fraud or misrepresentation in this petition. Before me, there is an order of the Revenue Minister

finally setting at rest the controversy of the allotment in favour of the petitioner in respect of quarter No. 190. The eviction proceedings also relate

to quarter No. 190. It is open to the Revenue Minister to pass any order on the question of fraud or misrepresentation alleged to have been

perpetrated by the petitioner and pass such orders as he deems fit in the circumstances of the case. That matter, however is wholly extraneous to

the question of the validity of the order already passed by him.

(10) The option to uphold the validity of the order impugned in the petition therefore ceases to be available.

(11) In the result the petition succeeds and is accordingly allowed. The order dated 2881971 passed by the Revenue Minister impugned in this

petition is quashed. The parties shall, however, bear their own costs.