
(2002) 06 BOM CK 0129
In the Bombay High Court
Case No : C.R.A. No. 488 of 1995

Mine Manager, Manganese Ore (India) Ltd. and Another	APPELLANT
Vs	
Shyam Yadav	RESPONDENT

Date of Decision : 18-06-2002

Acts Referred:

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

Citation : (2002) 3 BOMLR 874 : (2002) 3 MhLj 917

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : G.G. Modak, for the Appellant; K.V. Sirpurkar, for the Respondent

Judgement

D.Y. Chandrachud, J.—The applicant before the Court is a Government Company within the meaning of Section 617 of the Companies Act, 1956, in which 81.57% of the share capital is stated to be held by the Central Government, whereas, the balance 18.05% has been held by the Governments of the State of Madhya Pradesh and Maharashtra. The applicant, it has been stated, was formed for the purpose of taking over a company incorporated in the U.K. by the name of CPMO. CPMO held mining leases which were also taken over by the applicant.

2. The dispute in the present case relates to quarter No. 446 situated at Wahitola, Mansar, Tahsil Ramtek, which according to the applicant is in the unauthorised occupation of the respondent. On 29th January, 1982, the applicant moved the Estate Officer, appointed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for an order of eviction against the respondent on the ground that he was in unauthorised occupation of the aforesaid premises. On 20th July, 1982, a notice came to be issued to the respondent to vacate the premises and it would be necessary to note that the basis on which the respondent was called upon to vacate the premises, was that the respondent ought to have handed over vacant possession of the quarter to the company, when he ceased to be in service. Therefore, the foundation of the action which was proposed was that the respondent was at some point of time in

the service of the company and that upon the expiration of the period of his service, he was liable to vacate the quarter. The Estate Officer thereupon issued a notice dated 16th December, 1982 and that notice also, which was issued u/s 4(1) of the Act, specifies as the basis of the proposed action, that the respondent had left the service of the applicant 25 years earlier.

3. The respondent filed his reply to the eviction proceedings on 13th August, 1983 and in that reply, it was stated that neither the respondent nor any of his predecessors had ever served either with the applicant-company or with the predecessor-in-title of the applicant, which as already noted, was a British company, by the name of CPMO. The case of the respondent is that his ancestors had resided since about a hundred years prior thereto in an old house, which was situated in Mouza Parsoda. The erstwhile British Company demolished the house since the area was required for the purpose of a siding and in lieu thereof, the present house was allotted to the family. The respondent claims that in the year 1942, the Mine Manager of the British Company had called upon his father to vacate the earlier house which was required for constructing a siding and alternative premises were offered in lieu of the earlier premises. The occupation of the premises was hence not traceable to employment with the Company.

4. The Estate Officer allowed the application for eviction on 15th November, 1986 and held that the respondent was in unauthorised occupation of the premises. The respondent was ordered to vacate the premises and to pay damages @ Rs. 40 per month w.e.f. 1-8-1982.

5. The respondent thereupon preferred an appeal before the Appellate Authority under the provisions of Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. By the impugned order passed by the learned 9th Additional District Judge, Nagpur on 16th March, 1995, the appeal came to be allowed. The learned Additional District Judge was of the view that it was for the appellant to establish as to what was the mode of allotment of the premises to the respondent and when the term of allotment had expired or was determined. The show cause notice was vague, because it merely stated that the respondent was in unauthorised occupation since over 25 years. The learned Additional District Judge then took notice of the case of the respondent which was that the premises were in the occupation of his father and thereafter of the respondent since the year 1943. The Appellate Court was of the view that this was sufficient to sustain the plea of the respondent on the ground of adverse possession. Finally, it was held that the summary remedy provided by the Act was not appropriate for adjudication of complicated questions of title. On these grounds the appeal came to be allowed.

6. I have heard the learned counsel appearing for the parties, I am of the view that the entire finding which has been arrived at by the learned Additional District Judge on the question of adverse possession, is without any foundation or basis in the pleadings. The reply which was submitted by the respondent to the notice to show cause is completely silent about any plea of adverse

possession. The learned counsel for the respondent urged that the plea of adverse possession was formally taken in the grounds of appeal in the appeal filed against the order of eviction. That, in my view, was not sufficient to discharge the heavy burden which is cast upon a party, which sets up a plea of adverse possession to establish on the basis of evidence that its occupation has been continuous open and hostile to the original owner over the stipulated period required under the law. Therefore, in my view, the reasoning on that aspect of the matter is clearly unsustainable.

7. Having said this, it is equally clear to my mind from a perusal of the notice to show cause that was issued under the Act, that the entire basis of the proceeding was that the respondent had ceased to be in the employment of the appellant 25 years ago and was therefore in unauthorised occupation. The respondent denied that he was at any time in the service of the undertaking or that his father was at any time employed with the appellant or its predecessor. Now it is a common ground between the parties that neither the respondent, his father nor any member of the family has been in the service either of the appellant or the predecessor in interest of the appellant. Therefore, the basis of the show cause notice which was that the respondent was in unauthorised occupation, after the period of his service had come to an end, is completely flawed. The proceedings before the Estate Officer ought to have been quashed on this limited ground. Once it is an accepted position that neither the respondent nor his predecessor was an employee of the appellant or the erstwhile British Company, the basis of eviction proposed in the show cause notice, cannot be sustained. Under the provisions of the Act an order of eviction has to be preceded by the notice to show cause which specifies the grounds on the basis of which the Estate Officer determines that the occupant is in unauthorised occupation and as to why he should be evicted. The issuance of a proper notice to show cause is a mandatory requirement of the statute. The show cause notice is fundamentally flawed in the present case and the eviction proceeding, is, therefore liable to be quashed and set aside on the aforesaid ground. In these circumstances, I am of the view that this civil revision application is liable to be dismissed. However, it is expressly clarified that the observations contained in the impugned order in regard to the plea of adverse possession, are overruled and the eviction proceedings are quashed only on the ground that, as stated earlier, the basis and the foundation of the show cause notice issued u/s 4(1) of the Act is vitiated. This was a matter of prejudice to the respondent because what he was required to meet was whether he had or had not been in the service of the applicant or the erstwhile British Company and whether upon the expiry of the period of service, he should be regarded as a person in unauthorised occupation. However, while disposing of this civil revision application, it would be appropriate to direct that the applicant would be at liberty to pursue such remedies as are open to it in law for the purpose of securing the possession of the premises in question. All the rights and contentions of the parties are expressly kept open.

8. Before concluding, it would be necessary to record that it has been submitted

by the learned counsel for the respondent that since the respondent claims title of the premises, based upon the claim of the respondent that the premises were allotted as far as back in the year 1943 by the erstwhile British company in lieu of the earlier premises which were taken over for the purposes of the railway siding, such issues cannot be properly adjudicated upon in a summary proceedings under the Act. Reliance has been placed on the decision of the Supreme Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, . No opinion is expressed on the correctness of the plea which is raised on behalf of the respondent and it would be open to the respondent to urge such defences, as he may be advised to raise if fresh proceedings are adopted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or otherwise. This civil revision application shall accordingly disposed of in the aforesaid terms.