

(2009) 01 RAJ CK 0049
In the Rajasthan High Court

Mohammed Haroon

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : (2009) 3 RLW 2541

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—Both the above writ petitions involve common controversy arising from identical facts and circumstances. The relief prayed for is identical. Hence, both these writ petitions are decided by this common order, For the sake of convenience, however, facts of S.B. Civil Writ Petition No. 3356/2007, Mohammed Haroon v. State of Rajasthan and Anr. are taken into consideration.

2. This writ petition has been filed by the petitioner for quashing impugned notice Annex. 11 dated 8.2.2007 while praying that the respondents may be restrained to dispossess the petitioner from his commercial shoop situated at plot No. 7 & 8, Shabri Colony, Ayed, Udaipur.

3. The claim of the petitioner is that he is running his shop being tenant on the plot measuring 20" x 100" and the said land was taken on rent by him from Bheel Gameti Cooperative Housing Society Ltd. The said registered society was allotted total 14782 Sq. ft. area of land by the Urban Improvement Trust and, as per petitioner, at the time of taking this land on rent by the petitioner, the territorial jurisdiction of the land was vested in the Urban Improvement Trust, Udaipur and the UIT executed a sale-deed in favour of the Shabri Colony Cooperative Housing Society on 16.1.1968. It is stated in the writ petition by the petitioner that the Shabri Colony Cooperative Housing Society and Bheel Gameti Cooperative Housing Society are two names of one and the same cooperative

society, therefore, the sale-deed was executed in the name of Ayed Shabri Colony Cooperative Housing Society Ltd., Udiapur.

4. As per the assertion of the petitioner, he was peacefully running his business and earning his livelihood for last many years; but, a notice was issued to him earlier on 22.9.1999 and the petitioner was directed to vacate the possession from plots No. 7 & 8, upon which, the petitioner was running his business. Aggrieved by the said notice, a suit was filed by him along with a temporary injunction application. The trial Court registered the case of the petitioner along with another person Lalit Kothari bearing case No, 4/2000 and passed interim order on 8.1.2000 while restraining the Urban Improvement Trust from dispossessing the petitioner. Thereafter, finally the learned Civil Judge (Jr. Dn.), City (North), Udaipur vide judgment dated 22.11.2006 allowed the suit for perpetual injunction filed by the petitioner and Lalit Kothari and vide the aforesaid decree and judgment, the Secretary, Urban Improvement Trust, Udaipur was directed not to dispossess the petitioner except by way of due process of law.

5. The case of the petitioner is that although the suit was decreed in favour of the petitioner and above order was passed on 22.11.2006, he was again given notice by the Commissioner, Municipal Council, Udaipur whereby the petitioner was informed to vacate the possession of the land within 24 hours. The case of the petitioner is that the State Government has issued order dated 18.11.2000 whereby it has been decided to regularize the plots/shops/space which is given to the occupants on rent) lease or use and occupation within the limits of the Municipal Corporation, Council, or Board, as the case may be, therefore, the petitioner applied for regulation of the plot which he had taken on rent from the society. But, ignoring all the facts with regard to regularization, the impugned notice has been issued.

6. In this writ petition, the petitioner is challenging the said notice issued by the Municipal Council, Udaipur dated 8.2.2007 on various grounds.

7. The main contention of learned Counsel for the petitioner is that after passing the decree by the civil Court, even if it is admitted that the petitioner is to be called unauthorized occupant, no such impugned notice can be issued by the Municipal Council, Udaipur because for dispossessing the him from the land in question the procedure laid down in the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 is to be followed. But, the respondents, without following the procedure laid down in the Act has proceeded to disposes the petitioner from the disputed land which is arbitrary and illegal. ,

8. It is further contended that although the civil Court has passed decree in favour of the petitioner that in the event of his dispossession the procedure laid down under the law shall be followed, the respondents have acted arbitrarily which is against the principles of natural justice. It is argued by learned Counsel for the petitioner that the petitioner is in possession for last so many years

though initially on rent from the registered society; but, admittedly, he is in possession of the land, therefore, his case was to be considered for regularization looking to the old possession held by him upon the land but, contrary to law, without following the procedure prescribed under the Act of 1964, the impugned notice has been issued by an incompetent authority of the Municipal Council, Udaipur. The respondents may be directed, therefore, to regularize the old possession of the petitioner in accordance with the government decision Annex. 12.

9. Per contra, by way of filling reply, learned Counsel for the respondents vehemently argued that this writ petition deserves to be dismissed only on the ground of concealment of fact and, so also, on the fact that the writ petition filed by the Bheet Gameti Cooperative Housing Society, Udaipur which was registered as S.B. Civil Writ Petition No. 2655/1987 for the same cause of action was decided vide judgment dated 20.1.1999, by which, an opportunity was given to the respondents to dispossess the petitioner after providing opportunity of hearing; meaning thereby, the society from whom the petitioner took the premises on rent preferred writ petition before this Court because land was rented out in contravention of the terms and conditions of allotment so made by the Urban Improvement Trust in favour of the society, therefore, the petitioner is in the shoes of the said society because he is claiming right as a tenant of the said society which is not permissible under the law.

10. Learned Counsel for the respondents apprised this Court that the petitioner has intentionally and deliberately concealed material fact from this Court that in pursuance of the order passed in the earlier writ petition, notice was given by the Tehsildar, U.I.T., Udaipur to the petitioner and opportunity of hearing was provided. The petitioner filed reply to the said notice and, after considering the matter, the Tehsildar who is competent authority, passed order dated 13.12.1999 of dispossession and, against that order passed against the petitioner, the petitioner preferred appeal before the Divisional Commissioner, Udaipur and the same was dismissed. Learned Counsel for the respondent has placed on record copy of order passed by the Divisional Commissioner vide Annex. R./2/3. Further, the order of the Divisional Commissioner was challenged by the petitioner before the Revenue Board and the Revenue Board also dismissed the revision petition. Thereby meaning, opportunity of hearing was granted to the petitioner and, thereafter, he has available the remedy, available under the law, therefore, it cannot be said that the notice given to the petitioner for dispossession within 24 hours is illegal

11. Learned Counsel for the respondent while refuting the claim of the petitioner on the basis of civil Court's decree submits that the learned civil Court passed order that the petitioner shall not be dispossessed from the land in question without following due procedure of law; but, further, it is clarified in the decree that, if any legal proceedings has been initiated and action is to be taken against the petitioner, then, adjudication so made for not dispossessing the petitioner

without following the procedure of law shall not come in way of the respondents; meaning thereby, the whole contention of the petitioner on the basis of the judgment and decree passed by the civil Court dated 22.11.2006 is baseless and contrary to the facts of the case.

12. Learned Counsel for the respondents vehemently argued that the petitioner has tried to mislead this Court that as per the judgment of the Civil Court he is in unauthorized occupation of the land, therefore, the procedure laid down in the Act of 1964 shall apply. In fact, no such contention was raised by the petitioner in the proceedings initiated against him, therefore, no case is made out for interference.

13. I have considered the rival submissions and perused the entire record of the case.

14. First of all, it is the admitted position of the case that initially the petitioner took the land in his possession as a tenant from the so called society in whose favour the land was allotted by the Urban Improvement Trust, Udaipur for specific purpose with as construction of school, play ground and community ground. But, the said society gave the land on rent in patent contravention of the terms of allotment and allowed illegally commercial activities upon the said land which was allotted to the society from whom the petitioner took the land on rent. It is also admitted position of the case that the purpose of allotment of land to the registered society was restricted to play ground, construction of school building or community hall; but, neither the original allottee nor the petitioner can be permitted to carry out commercial activities upon the land in question because, as per the terms and conditions of allotment, the land was not to be used for any commercial activity. In contravention of the said terms and conditions however, the land was given on rent to the petitioner, therefore, the allotment was cancelled and proceedings was initiated against the society and petitioner was also given notice for dispossession after the judgment Was rendered by this Court in the writ petition filed by the Bheel Gameti Cooperative Housing Society, Ayed Shabri Colony Cooperative Housing Society; and against the said notice, the petitioner availed remedy provided under the law.

15. It is, therefore, obvious from the judgment dated 13.12.1999, decided by the Tehsildar, U.I.T., Udaipur that the petitioner's claim was rejected and, further, it is revealed from the judgment dated 24.5.2003, Annex., R/2/3, that the Divisional Commissioner also rejected the appeal filed by the petitioner vide Annex. R/2/3; meaning thereby, the petitioner was given all the opportunities prior to issuing notice Annex. 11 for his dispossession but all these facts were concealed by the petitioner from the Court in this writ petition.

16. Upon perusal of the Civil Court's decree dated 22.11.2006, it is revealed that following order was passed by the Civil Court;

vr% oknhx.k dk okn fo:) izfroknhx.k fMdzhd;k tdkj ;g O;kns"k fn;k tkrk gS fd izfroknhx.k }kjk fcuk fof/kd izfdz;k viuk;s oknhx.k dks muds vkf/kiR; ds

Hkw[k.Mkas ls csn[ky u fd;k tk;s A izfroknh la[;k 1 }kjk ;fn fof/kd izfdz;k viuk dj dksbZ dk;Zokgh dh xbZ gS ;k dksbZ dk;Zokgh dh tkrh gS rks ml ij bl O;kns"k dk dksbZ izHkko ugh gksxk A izdj.k ds rF;ksa dks ns[krs gq, [kpkZ i{kdku viuk&viuk ogu djsxs A mijksDrkuqlkj fMdzh ipkZ cuk;k tk;sA

Upon perusal of the above adjudication by the civil Court dated 22.11.2006, while deciding the suit filed by the petitioner, it is clear that it has categorically been observed by the Civil Court that if any order has been passed after following the procedure under the law, then, the order restraining from dispossessing shall not come in way of the respondents.

17. Admittedly, Annex. R/1 and Annex. R/2/2 and R/2/3 were concealed by the petitioner while filing this writ petition, and both the above orders loudly speak that before passing the order for dispossession, the proceedings , was initiated and opportunity of hearing was given to the petitioner; and, thereafter, orders were passed for dispossession and, in pursuance of the adjudication made by the Tehsildar and Divisional Commissioner, the impugned notice was issued for dispossession. In my opinion there is no illegality in the notice issued by the respondent Municipal Council for dispossession of the petitioner. In this view of the matter, further, there is no question of passing order of regularization also. There is thus no force in this writ petition.

18. Consequently, both these writ petitions are dismissed.