
(1989) 05 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 941 of 1984

M.S. Husain

APPELLANT

Vs

VII Additional District and Sessions Judge and Others

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 4

Citation : (1989) 1 AWC 692

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Dinesh Dwivedi and Rakesh Dwivedi, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Singh, J.—The present writ petition has been filed against an order dated 12-1-1988 passed by VII Additional District Judge, Kanpur.

2. The facts of the case are that premises No. 104/105, Tilak Marg, Harding Road, Cantonment, Kanpur consisting of two rooms, two covered verandah, one Courtyard, one bath room and one latrine was in possession of the Petitioner. The Petitioner claimed himself to be the tenant whereas according to the Respondent the Petitioner was only a licensee on payment of Rs. 10/- per month with effect from 24-12-1962.

3. The Respondent No. 2 issued a notice u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the "Act") on 4-2-1986 requiring the Petitioner to vacate the premises. Thereafter case No. 1781 of 1986 was instituted against the Petitioner by the Cantonment Board, Kanpur.

4. The Petitioner filed his objections along with an affidavit. It was stated that he was permitted to occupy the accommodation by resolution No. 101 C dated 24-12-1962 on a monthly rent of Rs. 10/-. He was a tenant and has been paying the rent regularly since then. He has filed suit No. 406 of 1986 in the Court of

learned Munsif, City, Kanpur against Cantonment Board and its Engineer Sri. S. Iqbal Singh. In that suit his rights and status regarding the accommodation has to be determined. In suit No. 406 of 1986 a stay order was also granted directing the authorities to maintain status quo regarding the accommodation.

5. The Estate Officer vide his order dated 22-12-1986 found that the possession of the Petitioner was unauthorised. An order of eviction was passed against the Petitioner. The Petitioner filed an appeal. The appeal as also been dismissed on 12-1-1988 against which the present writ petition has been filed.

6. Heard Sri. Dinesh Dwivedi, learned Counsel for the Petitioner and Sri. K.K. Misra, learned Counsel for the Respondents.

7. The only point raised by the learned Counsel for the Petitioner was that the premises in dispute was not public premises within the meaning of Section 2(e) of the Act, hence the proceedings initiated against the Petitioner was illegal.

8. This is an admitted fact that the premises belongs to Cantonment Board, Kanpur.

9. Section 2(e) of the Act defines public premises as under:

2(e)"public premises" means:

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf, the Central Government and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

It makes no mention about the premises belonging to Cantonment Board or any other local authority.

10. It is admitted fact that the accommodation does not belong to, nor has been then on lease or requisitioned by or on behalf of the Central Government. It has been constructed by the Cantonment Board which is only controlled by the Central Government.

11. Clause (2) of Section 2(e) includes any premises belonging to a Corporation established by or under a Central Act and owned or controlled by the Central Government within the definition of "public premises", companies under the Companies Act or local authorities are specially excluded from such Corporation under the clause itself. There can be no question about the Cantonment Board being a local authority within the meaning of the Act and, therefore, even if it is controlled by the Central Government, it cannot be covered by Section 2(e)(1)(i) of the Act. This leads to a conclusion that the premises in dispute is not a public premises within the meaning of the Act.

12. The learned Counsel for the Petitioner, relied upon a decision S.R. Gupta v.

III Additional District, Judge 1980 (2) UPRCC 66 In that case the Petitioner was occupying the premises in the capacity of his being an employee in the office of the Controller of the Defence Account at Meerut. It was a cantonment property. On his retirement the Petitioner was treated to have occupied the premises as an unauthorised occupant and the proceedings under Public Premises (Eviction of Unauthorised Occupants) Act were initiated. This Court held that the Act would not be applicable and the proceedings u/s 4 of the Act was illegal.

13. The learned Counsel appearing on behalf of the Respondents conceded that there was no amendment in 1980 as mentioned in the impugned order. Obviously the lower appellate Court has passed the impugned order without looking into the alleged amendment. The learned Counsel for the Respondent further conceded that the Act will not be applicable to the premises in dispute. It was not a public premises within the meaning of the Act.

14. The contention raised by the learned Counsel for the Petitioner finds support from the words used in the Act itself as well as the authority mentioned above. The proceedings under the Act which had been initiated against the Petitioner were without jurisdiction.

15. For the reasons given above the writ petition succeeds and is allowed with costs. The orders dated 22-12-1986 and 12 1-1988 passed by the Prescribed Authority and VII Additional District Judge, Kanpur respectively are quashed.

16. In paragraph 24 of the writ petition it has been stated by the Petitioner that he was dispossessed on 13-1-1988, the date when the impugned order was passed by the lower appellate Court. This fact has been admitted by the Respondents in paragraph 24 of the counter affidavit. Since both the impugned orders have been quashed, the Petitioner is entitled to regain the possession of the accommodation. The Respondent No. 3 is directed to hand over peaceful possession of the premises to the Petitioner within a period of fortnight from the date of presentation of a certified copy of this order.

17. A copy of this order may be given to the learned Counsel for the Petitioner within a week on payment of usual charges.