
(1994) 08 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Revision Petition No. 15 of 1993

Municipal Council, Barmer

APPELLANT

Vs

Gautam Chand

RESPONDENT

Date of Decision : 19-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32
Rajasthan Municipalities Act, 1959 — Section 203

Citation : AIR 1995 Raj 72 : (1994) 2 RLW 423 : (1995) 1 WLC 461

Hon'ble Judges : G.C. Mittal, C.J

Bench : Single Bench

Advocate : R.L. Jangid, for the Appellant; Pradeep Shah, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mital, C.J.—Gautam Chand obtained a decree for permanent injunction against Municipal Council, Barmer to the effect that Municipal Council, Barmer shall not disturb Gautam Chand's possession over the shop in dispute except in due course of law. Initially Gautam Chand was a licensee of Municipal Council, Barmer for the shop in dispute but since he sub-let the premises, the licence was cancelled and he was declared to be in unauthorised possession.

2. After the decree was passed, Municipal Council, Barmer dispossessed sub-licensee of Gautam Chand and took possession of the shop in dispute. This led to Gautam Chand filing an application under Order 21, Rule 32, C.P.C. The executing court has directed Municipal Council, Barmer to restore the possession of the shop to Gautam Chand, as it was found that no steps were taken by Municipal Council, Barmer to take possession in accordance with law. This is revision by Municipal Council, Barmer.

3. Counsel for the Municipal Council states that the court below relied upon unamended provisions of Section 203 of the Rajasthan Municipalities Act, 1959 (hereinafter will be referred to as "the Act") whereas Section 203(3) of the Act

was amended by the Rajasthan Municipalities (Amendment) Ordinance No. 6 of 1991 and if amended provision is applied then it is to be deemed that the possession is taken by the Municipal Council in due course of law.

4. A reading of Section 203 of the Act shows that this provision applies only when somebody encroaches on public street or public amenities, which are for public use and notice can be given to the defaulter where after he can be prosecuted before a Magistrate and penalty can be imposed and in additional power can or exercised to remove the obstruction or encroachment and recover the ex-penses from the person who caused the obstruction or encroachment. Whether, amended or unamended, Section 203 is not applicable on the facts of this case.

5. Accordingly, the revision is devoid of merit and is dismissed. Since Municipal council, Barmer took law in its own hands to dispossess the occupants, it clearly amounted to violation of the decree passed by the court and the impugned order deserves to be upheld. Accordingly, the order of court below is maintained. Municipal Council, Barmer is directed to restore the possession of the shop to Gautam Chand within a period of one month from today. In case possession is not restored to Gautam Chand within one month from today, the Registry will issue notice to show cause as to why contempt proceedings under the Contempt of Courts Act be not initiated against the Administrator/Executive Officer. Municipal Council, Barmer for not complying with the order of this court within the stipulated time. This show cause notice will be issued after counsel for Gautam Chand informs the Registry that the order has not been complied with.