
(2006) 12 AHC CK 0194
In the Allahabad High Court

Onkar Nath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2, 4, 5A, 5B

Citation : (2007) 1 ADJ 175 : (2007) 2 AWC 1142

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Ramendra Asthana, learned Counsel for the petitioner and Sri Govind Saran appearing for the respondents.

2. By this writ petition the petitioner has prayed for quashing the order dated 24th April, 2006 passed by Estate Officer of Northern Eastern Railway. It has further been prayed that the petition dated 21.9.1995 filed by the respondents u/s 4/7 of Public Premises (Eviction of Unauthorized Occupants for short 1971 Act) Act, 1971 (hereinafter referred to as the Act) be quashed. Petitioner claims to be licensee of a piece of land from the Railway Authority. In this case he has been paying the rent to the respondents regularly. The respondents filed an application u/s 4/7 of 1971 Act for eviction of the petitioner and for realization of damages. The case of the respondents in the application is that the respondents are the owner of land and the petitioner has unauthorisingly occupied the said land, which needs to be vacated. While the proceedings before the Estate Officer were going on, by an application the jurisdiction of the Estate officer was questioned by the petitioner. The case of the respondents before the Estate Officer was that there is no agreement in existence between the parties ; hence the petitioner is an unauthorized occupant within the meaning of Section 2(g) of 1971, Act. The Estate Officer held that since the matter relates to unauthorized occupation of

the public premises the Court has jurisdiction.

3. Aggrieved against the said order, the petitioner has come up in the writ petition.

4. Sri Ramendra Asthana, learned Counsel for the petitioner, in support of the writ petition, contended that the agreement was executed between the petitioner and respondents the copy of which is not with the petitioner. He submits that respondents are withholding the said agreement. He contends that the said agreement contains an arbitration clause and in view of the arbitration clause the matter ought to be resolved through arbitration in accordance with the Arbitration and Conciliation Act, 1996. He submits that there being arbitration clause, the proceedings u/s 4/7 of Public Premises (Eviction of Unauthorized Occupants) 1971 Act cannot be proceeded and are liable to be quashed.

5. Sri Ramendra Asthana, learned Counsel for the petitioner has also placed reliance on a judgment of Apex Court in Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another,

6. The submission of the learned Counsel for the respondents is that there is no agreement between the petitioner and respondents. He has referred to the counter-affidavit, in para Nos. 5, 16, 17, and 19 whereof specific averments have been made that the petitioner did not enter into any agreement about the land in question. He submits that although in para 5 of the C.A. there is specific averment that he did not enter into the agreement with the railway administration, in reply to the said paragraph neither any date of such agreement nor any details have been given. The learned Counsel for the petitioner had already stated that the petitioner does not have any copy of the agreement and the same is only with the respondents. The learned Counsel for the petitioner has further submitted that a proforma of the agreement has already been filed as Annexure-1 to the writ petition, in which the agreements are entered with. Sri Govind Saran further contended that any arbitration clause in agreement does not preclude the respondents in initiating the proceedings u/s 4/7 of the 1971 Act.

7. I have considered the submissions and perused the record. The issue, which was raised and contended by the petitioner before the Estate Officer, was that proceedings u/s 4/7 of 1971 Act are not maintainable, there being arbitration agreement, which submission has been repeated before this Court as noticed above. The copy of the agreement has not been brought on record where as it has been specifically contended by the respondents that no agreement was ever entered. The Estate Officer has also noticed therein that original license agreement is not available on record but only copy of the proforma has been made available by the applicant. There being no agreement available on record, the Estate Officer has rightly held that he has jurisdiction to proceed in the matter.

8. Although there is no original agreement on record nor any details have been

brought on record, but in view of the submissions made by learned Counsel for the petitioner that the arbitration clause in the agreement is similar to Clause 28 of the proforma of the agreement filed as Annexure-1 to the writ petition, the alternate submission made by the learned Counsel needs consideration. The submission precisely is that there being arbitration clause in that agreement that dispute arising between the parties with regard to matter under agreement shall be adjudicated through an arbitrator appointed by General Manager Railways. Sri Asthana submits that in view of the said arbitration clause the proceedings u/s 4/7 of 1971 Act cannot be initiated and proceeded with. Assuming without admitting, although Sri Govind Saran emphatically denies it, that there is an agreement clause, the argument is to be tested presuming existence of arbitration agreement. The 1971 Act is a parliamentary Act enacted to provide for the eviction of unauthorized occupants from public premises and for certain incidental matter. Unauthorized occupation is defined in Section 2(g) of 1971 Act, which is as below:

"unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

9. The Act is a special piece of legislation enacted for the purposes of eviction of unauthorized occupant from public premises. The summary proceeding for eviction of unauthorized occupant and for taking possession of public premises is for beneficial use of public premises in the public interest. Section 15 of the 1971 Act is with regard to power and jurisdiction. Section 15 of 1971 Act is as follows:

15. Bar of Jurisdiction.--No Court shall have jurisdiction to entertain any suit or proceeding in respect of:

(a) the eviction of any person who is in unauthorized occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises u/s 5A, or

(c) the demolition of any building or other structure made, or ordered to be made u/s 5B, or

(cc) the sealing of any erection or work or of any public premises u/s 5C, or

(d) the arrears of rent payable under Sub-section (1) of Section 7 or damages payable under Sub-section (2), or interest payable under Sub-section (2A), of that section, or

(e) the recovery of:

(i) costs of removal of any building, structure or fixture or goods, cattle or other

animal u/s 5A, or

(ii) expenses of demolition u/s 5B, or

(iii) costs awarded to the Central Government or statutory authority under Sub-section (5) of Section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.

10. The scheme of 1971 Act including Section 15 of 1971 Act give a clear indication that 1971 Act was enacted as a Special Act for the special purpose. Section 15 of the 1971 Act clearly confers the jurisdiction on that Court to entertain any suit or proceeding in respect of eviction of any person who is unauthorized occupant of any public premises. The submission of Sri Asthana is that there being an arbitration clause in agreement between the parties, the proceeding under 1971 Act cannot be drawn, is hopelessly devoid of any merit. In the Arbitration and Conciliation Act, 1996 also no provision could be pointed out which precluded jurisdiction of the Special Act u/s 4/7 of 1971 Act for eviction of unauthorized occupant. Section 42 provides for jurisdiction of a limited purpose, with respect to an arbitration agreement in any application under that part. Present is not a case in which Section 42 has any relevance. Sri Asthana has also referred to Section 8(3), which is as follows:

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and arbitral award made.

11. Section 8(1) is an enabling provision providing a judicial authority to refer a party to arbitration when party makes such application not later than submitting his first statement. Sub-section (3) provides that notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the Judicial Authority, an arbitration may be commenced or continued and arbitration award made. Section 8(3) does not create any fetter on the Estate Officer in proceeding with an application filed by respondents u/s 4/7 of 1971 Act. In view of foregoing discussion, I am of the view that the submission raised by the learned Counsel for the respondents has substance that there was no lack of jurisdiction in the proceedings and the Estate Officers did not commit any wrong in proceeding with the matter. The judgment cited by Sri Asthana of Datar's case (supra) also needs consideration. In the said case, the order passed by Chief Justice u/s 11 of the Arbitration and Conciliation Act was under challenge. In para Nos. 20 to 23 on which reliance has been placed by Sri Asthana. The Apex Court held that the Court has to respect the terms of the contract entered into by parties and when the party do not dispute the arbitration clause, he is bound by it and obliged to comply with the procedure. The Apex Court did not lay down any such proposition as canvassed before me by counsel for the petitioner. No such preposition was laid down that in an agreement, if there is an arbitration clause the jurisdiction of an authority under

a Special Act is barred by the said clause.

12. In view of the foregoing discussions the writ petition is dismissed.