
(1988) 01 AHC CK 0050

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 8850 of 1979 and 1101 of 1980

Punni Lai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 16, 17(1), 48, 48(1)
Transfer of Property Act, 1882 — Section 111
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 2, 4, 4(1), 47

Citation : (1988) 1 AWC 393

Hon'ble Judges : K.C. Agarwal, J;B.L. Yadav, J

Bench : Division Bench

Advocate : Radhey Shyam and K.N. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—The two petitions arise out of the same impugned orders and involve similar controversy of fact-and law and hence it is convenient to dispose of them by a common judgment.

2. These petitions, under Article 226 of the Constitution of India, are directed against the orders dated 3-10-1979 passed by the VII Additional District Judge, Allahabad and dated 22-8-1979 passed by the Prescribed Authority (Additional City Magistrate), Allahabad to the extent they are against the petitioners in proceedings u/s 4 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short the Act).

3. The facts of the case lie in a narrow compass and they are these. Bungalow No. 18, Stanley Road, Allahabad including servant quarters, was sought to be acquired by the Nagar Mahapalika, Allahabad. The actual possession is alleged to have been delivered to the Nagar Mahapalika, Allahabad on 25-3-1976, the same day, its possession was given to the Assistant Court Officer of High Court,

Allahabad on behalf of the Registrar, High Court as representative of Judicial Department, U.P. Government.

4. After the possession was delivered, an application u/s 4 of the Act was filed by Respondent No. 1 against petitioners Nos. 1, 2, 4, 8 and 9 (of Writ Petition No. 8850 of 1979) who were occupying the servants quarters as licensee of the petitioners of Writ Petition No. 1101 of 1980, who claimed as the tenants of half of Bungalow No. 18 including the servants quarters. Separate notices were served on Respondents 4 to 8 of Writ Petition No. 1101 of 1980. It was alleged in the application u/s 4 of the Act that the tenancy was created by the Panchayati Akhara, Daraganj in favour of Keshav Dayal, the predecessor-in-interest of petitioners of Writ No. 1101 of 1980. But after possession was delivered to the Respondent No. 1 on 25-3-1976, the possession of the petitioners of Writ Petition No. 8850 of 1979 became unauthorised within the meaning of Section 2(g) of the Act.

5. The petitioners of Writ Petition No. 8850 of 1979 filed objections against the notices challenging their validity before the Prescribed Authority (Additional City Magistrate), Allahabad that the State of U.P. or the High Court Stepped into the shoes of the landlord (i.e. Panchayati Akhara), that their possession was not unauthorised nor notices u/s 4 of the Act were legal. The petitioners of Writ Petition No. 1101 of 1980, however, were claiming as heirs of late Keshav Dayal and hence they became tenants-in-chief and prayed to be made parties in proceedings u/s 4 of the Act. It was further alleged by the petitioners that as soon as they came to know about the proceedings u/s 4(1) of the Act, they made applications on 13-8-1979 in all the cases pending against the Respondents 4 to 8 to be impleaded as necessary parties. The petitioners prayed for an opportunity being given to file their objection as the tenants-in-chief. But ultimately, the Respondent No. 3 without impleading the petitioners, passed the order dated 22-8-1979 allowing the application of Respondent No. 1 u/s 4 and appeals preferred by the petitioners were dismissed by the Additional District Judge, Allahabad by his order dated 3-11--1979. Against these impugned orders, the present two writ petitions have been filed in this Court.

6. Sri Radhey Shyam, the learned Counsel for the petitioners in Writ Petition No. 8850 of 1979 and Sri K. N. Tripathi, the learned Counsel for petitioners in Writ Petition No. 1101 of 1980, urged that as the original tenant was Keshav Dayal, who died and thereafter the petitioners (of Writ Petition No. 1101 of 1980) being heirs and in possession of the accommodation stepped in his shoes. The Respondents 4 to 8 (of Writ Petition No. 1101 of 1980 and petitioners of Writ Petition No. 8850 of 1979) were living in the servant quarters on behalf of the petitioner. In proceedings u/s 4 of the Act the petitioners of Writ Petition No. 1101 of 1980, were necessary parties. It was further urged that possession of petitioners of both the writ petitions were not " unauthorised ", within the meaning of Section 2(g) of the Act.

7. Learned Standing Counsel, on the other hand, urged that as the possession

has been taken by the Collector for Nagar Mahapalika u/s 16 of the Land Acquisition Act, 1894, hence the rights, title and interest of the main tenant or the sub-tenants or the licensees would come to an end ; the land alongwith constructions would vest in the Nagar Mahapalika and thereafter in the High Court of Judicature at Allahabad free from all encumbrances within the meaning of Section 16 of the Land Acquisition Act, 1894. No useful purpose would be served by impleading the petitioners (of Writ Petition No. 1101 of 1980) as parties in the proceedings u/s 4 of the Act started against petitioners of Writ Petition No. 8850 of 1979 inasmuch as only the Respondents 4 to 8 were in actual possession on the spot and all the rights, title and interest of the landlord, or the petitioners as main tenants came to an end u/s 111 of the Transfer of Property Act and thereafter the same was delivered to the High Court. The possession of the petitioners of both the writ petitions became " unauthorised ", within the meaning of Section 2(g) of the Act. The premises, along with the area acquired, was covered within the definition of " Public Premises " as defined in Section 2(e) of the Act. The notices u/s 4 of the Act have correctly been issued to the Respondents 4 to 8 of writ petition No. 1101 of 1980 and petitioners of writ petition No. 8850 of 1979 who were " unauthorised-occupants ", of the public premises. Reliance was placed upon a Division Bench case in Uma Shankar Dixit Vs. State of U.P. and Others, .

8. Having heard learned Counsel for the parties we are of the opinion that" the petitions are devoid of merits. Once the possession has been taken by the Nagar Mahapalika u/s 16 of the Land Acquisition Act, after the award was made u/s 11, the land vested in the Nagar Mahapalika free from all encumbrances and the rights, interest or title of the tenants-in-chief or the sub-tenant come to an end. Thereafter, whosoever remained in possession would be holding the accommodation or the premises not on behalf of the Collector, State of U.P. or Nagar Mahapalika or the High Court but he would continue as an " unauthorised-occupant " within the meaning of Sections 2(g) and 4 of the Act and was liable to ejectment on the basis of notices issued u/s 4 of the Act. That application u/s 4 was allowed against the Respondents 4 to 8 of writ petition No. 1101 of 1980 and petitioners of writ petition No. 8850 of 1979, who were found in actual possession on the spot. The petitioners of writ petition No. 1101 of 1980 are claiming the accommodation as tenant-in-chief and want to be impleaded in those proceedings but no useful purpose would be served by their impleadment as they would also sink or swim alongwith the Respondents 4 to 8.

9. The matter can be viewed from another angle with reference to Section 4 of the Act which provides that on the application or report received on behalf of the State Government or the corporate authority, against the persons who are in unauthorised occupation of any public premises, the prescribed authority would serve a notice and pass an order of eviction. It is, therefore, the State Government or the corporate authority who would decide as to who is in unauthorised occupation. Those who are in unauthorised occupation would be made parties and served with notices and ultimately they would be evicted.

Other persons, as the petitioners in writ petition No. 1101 of 1980 even though they claim to be tenant-in-chief but they are not necessary parties. The person on the spot who were in unauthorised occupation, within the meaning of Section 2(g) and Section 4 of the Act were Respondents 4 to 8 (of writ petition No. 1101 of 1980 or petitioners of writ petition No. 8850 of 1979), hence they were made parties and petitioners (of writ petition No. 1101 of 1980) were not necessary parties. The petitioners have further challenged their ejection and land acquisition proceedings in Writ Petition No. 4652 of 1980 *J. Prakash v. State of U.P.* etc. which is being disposed of by a separate judgment, hence the petitioners, by no propriety or stretch of imagination can be treated to be necessary parties to this petition.

10. Reverting to the next question as to whether petitioners as tenant-in-chief, sub-tenant or licensees can be ejected in pursuance of land acquisition proceedings as the State or High Court stepped in the shoes of the landlord. In *Uma Shankar Dixit v. State of U.P.* (supra) on somewhat similar facts, a Division Bench of this Court held under paragraph 4 as under:

...Section 16 thus requires the Collector to eject everyone who may be in occupation of the land, the contention of the learned Counsel is that the petitioner being a tenant, cannot be ejected. We find no merit in the contention because if the landlord in possession can be ejected u/s 16, we see no reason why a tenant who derives title from the landlord, cannot be ejected. Section 47 of the Act gives ample jurisdiction to the Collector to enforce the surrender of the land to himself.

Under paragraph 6 of the case, it was further held as under:

...Once the proceedings for acquisition under the Land Acquisition Act have been completed, the rights of the landlord get extinct, and once they are extinct, by reasons of Section 111 of the T. P. Act the rights of the tenant also come to an end. No relationship of landlord and tenant exists between the petitioner and the State Government.

11. In *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, considering the scope of Sections 16, 17(1) and 48(1) of the Land Acquisition Act, it was indicated as to how the possession could be taken, actual or symbolic in proceedings u/s 16 of the Land Acquisition Act, 1894. It was further held that it is the nature of the property and the possession, which would indicate as to whether even symbolic possession, would be sufficient. On consideration of the relevant materials placed before the High Court, it has come to the conclusion that actual possession of the land in question was taken and handed over on 3-4-1959 on the spot ; and, even symbolic possession, if land is occupied by a person other than the owner, would be good possession for the purpose of Section 48 of the Act.

12. The possession u/s 16 of the Land Acquisition Act has been taken by the Nagar Mahapalika, Allahabad and the same has been handed over to the High

Court, and the application u/s 4 of the Act has been filed by the Registrar for the ejectment of the petitioners (writ petition No. 8850 of 1979) and some other persons, who were in actual possession on the spot on different portions of the premises in dispute and Respondents Nos. 4 to 8 of Writ Petition No. 1101 of 1980, their possession became unauthorised within the meaning of Section 2(g) and Section 4 of the Act (after the delivery of possession was effected in favour of Nagar Mahapalika, Allahabad hence the notice u/s 4 of the Act was correctly served on them with a view that they may be evicted from the premises in dispute as they were in unauthorised occupation.

13. There are no merits in the submission of Sri Radhey Shyam that the premises in dispute was not covered by the definition of "public premises", as defined u/s 2(g) of the Act nor we are convinced with the submissions that the possession of the petitioners, in both the writ petitions, would not be as unauthorised occupants inasmuch as once possession has been taken u/s 16, it is free from all encumbrances and whosoever thereafter is in possession, his possession would be unauthorised.

14. We are of the considered opinion that once the possession of the land has been taken u/s 16 read with Section 48 of the Land Acquisition Act, 1894, rights, title and interest of the tenants or sub-tenants or any other persons, occupying on behalf of the tenants, along with the landlord would come to an end and would solely vest in the Acquiring Authority. Further, there would be no relationship of landlord and tenant between the authority acquiring the land, namely, Nagar Mahapalika, Allahabad or the High Court and either the tenant-in-chief, or sub-tenant or any persons occupying the premises on behalf of the tenant. To conclude, the concept of landlord and tenant cannot be imported in proceedings under the Land Acquisition Act, 1894, once the possession has been taken u/s 16 read with Section 48 of the Land Acquisition Act. Similarly, we find it just an exercise in futility to implead petitioners of Writ No. 1101 of 1980 in the cases started against the Respondents Nos. 4 to 8 against whom notices u/s 4 of the Act have been served, particularly when they have filed separate writ petition No. 4652 of 1980, challenging their eviction and land acquisition proceedings, which is being disposed of by a separate judgment.

15. In view of the aforesaid premises, we do not find any merit in these writ petitions. Consequently, they are dismissed. But under the circumstances of the case, we refrain from making any order as to costs.