
(2008) 06 SHI CK 0016
In the High Court Of Himachal Pradesh

Rajeev Sood and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 05-06-2008

Acts Referred:

Public Premises (Eviction of Unauthorized Occupants) Act, 1987 — Section 2(g)

Citation : (2008) 3 ShimLC 337

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The present petition has been directed against the judgment of learned Appellate Authority (II), Shimla, in C.M.A. No. 72-S/14 of 1997 decided on 28th November, 2001 whereby order of eviction passed by Rent Controller (I), Shimla in Rent Petition No. 43-2 of 1991 dated 30.9.1997 was set aside and the petition was dismissed on the ground that the premises in question fell within the definition of the "Public Premises".

2. The facts in brief, giving rise to the instant petition may be noted thus. Petitioners herein, are the landlords of five storeyed building, known as "Ramesh Bhawan", situated at Jakhu, Shimla-1, hereinafter to be referred as "suit premises". The landlords let out the suit premises to the respondent-bank in the year 1979 for housing its officers and employees along with their families. It has eight residential sets along with two stores on the ground floor. Monthly rent of the suit premises was fixed at Rs. 5,250/- as alleged by the petitioner. However, no formal rent deed was executed inter se the parties. The petitioners had also sent a notice terminating the tenancy of the respondent and hand over its possession. The respondents did not vacate the suit premises. Thus the petitioners sought eviction of the respondent-bank under the "H.P. Urban Rent Control Act, 1987", in short the "Rent Act" on the ground of bona fide use and occupation, as they did not have any residential house or property within the municipal area of Shimla Town preceding five years from the date of filing, the petition for eviction.

3. The aforesaid petition for eviction was resisted and contested by the respondent-Bank. Though they admitted having received the notice as alleged but it was averred that the suitable reply was sent. However, the respondent-Bank took up the objections that the tenancy of the respondent-bank is composite i.e. partly for residential and partly for commercial purpose and the petition was not properly verified, therefore, eviction by the petitioners could not be sought on the grounds pleaded.

4. The petitioners herein had filed a rejoinder to the above reply whereby they refuted the objections, raised by the respondent-Bank and reiterated even paras of their petition elaborating their stand.

5. On the pleadings of the parties, the learned Rent Controller framed the following issues on 12.11.1993:

1. Whether the petitioners require the premises in question for their own use and occupation, as alleged? OPP

2. Whether the petition is not properly verified? If so its effect? OPR.

3. Relief.

6. The petitioners, to prove their case, examined their evidence. The respondent-Bank did not produce any witness but tendered documents Ex. RA to Ex.RE, mark X and Mark Y in their evidence.

7. After hearing the parties and appreciating their contentions the learned Rent Controller decided issue No. 1 in favour of the petitioners and issue No. 2 against the respondents-Bank. Consequently, he passed the order of eviction, qua the suit premises, which were occupied as residence except two stores on the basement, against the respondent-Bank.

8. Dissatisfied with the eviction order, the respondent bank filed an appeal before the learned Appellate Authority (I), Shimla, on the ground that the learned Rent Controller had wrongly appreciated the evidence on record, therefore, eviction order was unsustainable.

9. The learned Appellate Authority framed the following points for determination:

1. Whether the provisions of H.P. Urban Rent Control Act, 1987 are applicable to the tenanted premises, which" is admittedly taken on lease by the appellant/tenant i.e. State Bank of India Zonal Office, Lakkar Bazar, Shimla?

2. Whether the findings of the learned Rent Controller are liable to be interfered with?

3. Relief.

10. After hearing the parties the learned Appellate Authority held that the entire building was let out under one single composite tenancy for residential purposes to the respondent-Bank. But the respondent-Bank is a body corporate, duly

constituted under the Central Enactment thus the "suit premises" fell within the mischief of Section 2(e) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, to be referred as "Public Premises Act" for the sake of brevity, therefore, the provisions of the "Rent Act" would not apply, as such the learned Appellate Authority, set aside the order of eviction passed by the Rent Controller and ordered to dismiss the petition, filed by the landlords for eviction. Consequently, the appeal was allowed.

11. Feeling aggrieved and dissatisfied by the impugned judgment of the learned Appellate Authority, the landlord-petitioners have filed the present revision petition precisely on the ground firstly, that the learned Appellate Authority had wrongly gone into the question of applicability of the "Public Premises Act" in the absence of the specific ground taken in the reply before the learned Rent Controller and also in appeal by the respondent-Bank and secondly, the "suit premises" did not fall within the purview of "Public Premises" qua the private landlords therefore, the impugned judgment of the learned First Appellate Authority is wrong, which has caused miscarriage of justice.

12. Shri R.L. Sood, learned Senior Advocate, has elaborated the above two points in his arguments whereas, Shri L.C. Sood, learned for the respondent-Bank supported the impugned judgment of the learned Appellate Authority.

13. I have given my thoughtful consideration to the rival contentions and have carefully gone through the facts and the law applicable to it.

Decision on ground No. 1

Legally, it is always open to the Court to see whether it has a jurisdiction in a particular matter or not. It is well established by now that the legal plea can be taken at any stage of the proceedings of the case or appeal, even in the absence of the specific plea taken in the grounds of appeal. [Please see *The State of Rajasthan v. Rao Raja Kalyan Singh* AIR 197 SC 2018], Therefore, this submission made by the learned Counsel for the petitioners is not correct and is, therefore, rejected.

Decision on ground No. 2

As already stated above, learned Appellate Authority has held that the "suit premises" fell within the definition of "Public Premises", as defined u/s 2(e) of the "Public Premises" Act, therefore, "Rent Act" would not apply for the eviction of the respondent-Bank. While taking this view, it referred, to the definition of Section 2(e) of "Public Premises Act", which reads as under:

2(e) "Public Premises" means:

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (61

of 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;

(2) any premises belonging to, or taken on lease by, or on behalf of,:

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company.

(ii) Any corporation (not being a company as Company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) any University established or incorporated by any Central Act;

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted u/s 79 of the Punjab Reorganization Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under Sub-section (6) of Section 80 of the Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the [National Capital Territory of Delhi]

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area Committee;

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;] [and]

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory];

It is an admitted fact that the respondent-Bank is a corporation established under the Central Act i.e. Banking of Companies (Acquisition and Transfer of Undertakings) Act, 1970, owned and controlled by the Central Government within the meaning of Clause (ii) of Sub-section 2 of the Act, aforesaid. The "suit premises" were "taken on lease" by the respondent-bank for housing of their officers and officials, as indicated in their letter(s) Ex. PW-I-A to Ex. PW-I-K. In so

far as the eviction of any "unauthorized occupant" of the suit premises is concerned, for that undisputedly the provisions of "Public Premises Act" would apply but here the question is whether the said act would apply for the eviction of lessee bank, by the private landlords.

14. In *New Bank of India v. Sukhbir Singh Sethi* 1998 (2) CLJ (J.P.) 69, the Learned Single Judge of this Court took the view in the situation aforesaid that the premises fall within the definition of "Public Premises" therefore, "Public Premises Act" would apply and not the "Rent Act". It appears that he failed to take notice of the definition of an "unauthorized occupant" as envisaged u/s 2(g) of the Public Premises Act.

15. In *Amarjeet Singh v. State of H.P.* 2000 (1) Shim.LC.154, the Division Bench of this Court consisting of the then Hon'ble D. Raju, the Chief Justice and Hon'ble Justice Lokeshwar Singh Panta, Judge had considered the relative applicability of provisions of both the Acts i.e. the Public Premises Act and the Rent Act. It was held that in case of conflict of law it will have to be determined on the basis of the statutory interpretation with particular reference and having regard to the purpose policy and legislative intent of the two enactments. Having regard to the purpose, policy and legislative intent that in respect of getting the unauthorized occupant of the public premises evicted expeditiously and summarily, a special procedure is envisaged and enacted under the Public Premises Act. Therefore, it is that law, as a special law, which would prevail and would be applicable to a case concerned and it is only in respect of the matters not covered by the said State law or if at all if there is any vacuum left in the premises of Public Premises Act in respect of any area, the question of falling back on or applying the provisions of the Rent Control Act will arise.

16. In *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, the Hon'ble Apex Court has held:

Interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

17. "Public Premises Act" is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or Companies in which the Central Government has substantial interest or Corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of applying the provisions of "Public Premises Act" over the "Rent Control Act", would be that building belonging to Companies, Corporations and autonomous bodies referred to in Section 2(e) of the Act would be excluded from the ambit of the "Rent Control Act" in the same manner as properties belonging to the Central Government whereas, the Rent Control Act is intended to deal with the general

relationship of landlords and tenants in respect of the premises other than Government premises. Keeping in view the object and purpose, underlying both the enactments viz., the Rent Control Act and the Public Premises Act, there is no dispute that the provisions of "Public Premises Act" has to be construed as overriding the provisions contained in the "Rent Act". The whole genesis of the "Public Premises Act" presupposes that the premises in question are "public premises" belonging to Government/statutory authority; and also that the said premises are in occupation of a person who is or has become "unauthorized occupant" of the premises as defined u/s 2(g) of the Public Premises Act and the Government/statutory authority wants him to be evicted.

18. Section 2(g) of the Act can be usefully reproduced as under:

(g) "unauthorized 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.

19. The above definition "unauthorized occupation" makes it clear that the premises are required to be in unauthorized occupation of a person.

20. In the instant case, the respondent Bank is a lessee of the private landlords. The notice alleged to have been sent by the Landlords to the respondent-bank is absolutely irrelevant.

21. In *Nisha v. Punjab National Bank* 2000 (2) RCR 635 the Division Bench of the Delhi High Court, while faced with a similar question as in this case, considered the scope of the "Public Premises" and held that by no stretch of imagination one can conceive of a situation where the Government/statutory authority itself is an "unauthorized occupation" of the "public premises". Therefore, the Public Premises Act would not govern the proceedings filed by a private landlord owner against the Government/statutory authority as tenant. Thus, these proceedings would be governed by the provisions of Transfer of Property Act or the "Rent Act" as the case may be.

22. In fact, the "Public Premises Act" has conferred a right of speedy recovery of possession of the said premises from the persons, occupying it. It is in this background that the "public premises" as defined in Section 2(2) of the Act is to be understood.

23. The approach adopted by the learned Appellate Authority appears to be that it will lead to absurd results which in other words would even give the private landlords right to evict Government/statutory authority by adopting speedy machinery provided under the "Public Premises Act" and it would result in clearly crossing the boundaries earmarked for the Act *ibid*.

24. In this case the applicability of two separate statutes are involved. As already

stated above both have their respective fields. The players, who have to play in the respective fields, are different. The machinery provided for eviction of the tenant(s) in urban area is different from the machinery provided under the "Public Premises Act" of the "unauthorized occupants" of the premises, owned by the Government/statutory authority. It was never conceived that the forum which has to come to the rescue of the Government/statutory authority would be utilized against the Government/statutory authority itself. The Legislature never visualized the situation that the provision of the Public Premises Act could be utilized by a private landlord to evict the Government or statutory authority.

25. Thus, in my opinion, it is the "Rent Act" and not the "Public Premises Act" which would apply in this case. In New Bank of India's case (supra) the definition of the "unauthorized occupant" defined in Section 2(g) of the Public Premises Act, appears to have lost sight by the learned Single Judge. If the definition aforesaid is seen and interpreted in the light of the object and reasons of the Act, it crystallizes its field for its application.

26. Therefore, for the reasons stated above and the Judicial, pronouncements and rationality behind both the enactments with due deference to the learned Single Judge of this Court in New Bank of India v. Sukhbir Singh Sethi's case, supra I find myself unable to persuade myself to accept the view taken by him.

27. Keeping in view the above reasons, judicial pronouncements, rationale, purpose, intent and policy, the matter is required to be referred to a larger Bench of this Court to resolve the difference of opinion on the following point:

28. Whether the "Public Premises Act" would apply to a private landlord for seeking the vacation of the leased premises in favour of the Government/statutory body, situated in an urban area?

29. Therefore, the Registrar General of this Court is directed to place the matter before the Hon"ble Chief Justice is appropriate orders.