
(1968) 06 CAL CK 0038
In the Calcutta High Court
Case No : C.R. No. 807 (W) of 1963

Rajendra Prosad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-06-1968

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 5

Citation : AIR 1968 Cal 560 : 72 CWN 787 : (1969) 1 ILR (Cal) 337

Hon'ble Judges : D.N. Sinha, C.J.;S.K. Mukherjea, J;A.K. Mukherjea, J

Bench : Full Bench

Advocate : Prasanta Kumar Ghosh, Somendra Chandra Bose and Salil Kumar Dutt, by Spl. leave of the Court with consent of Parties, for the Appellant;
Prafulla Kumar Roy and Ajoy Kumar Basu, for the Respondent

Judgement

Sinha, C.J.—This application and a number of applications have been heard together at) the involve a common question of law, namely the vires of a Central Act, namely the Public Premises (Eviction. of Unauthorised Occupants) Act. 1958 (32 of 1958) (hereinafter referred to as the "said Act"). In this particular case, the facts are as follows. The petitioner holds a plot if land at Garden Reach, belonging to the South Eastern Railway. This plot was used by him for stacking and unloading coal, char-coal, fire wood etc. On 01 about the 19th November 1962 the respondent No. 2, the Deputy Ditector, Rail Movements. Railway Board, Calcutta, for and on behalf of the President of India served a notice to suit on the petitioner asking him to quit and vacate plot No 27 at Garden Reach occupied by the petitioner an area measuring more or less 1250 square feet, and deliver up varaij possession thereof by the 31st day of December 1962. The petitioner, instead of complying with the said notice, made an application before this Court on the 10th December. 1962 under Article 226 of the Constitution and a Rule Nisi was issued The said Rule came up for final hearing on the 10th September 1963 but was discharged on the ground that no steps had vet been taken under the said Act or under any other provision of law. On or about the 11th October 1963 the respondent No. 3 the Estate Officer, South Eastern Railway Garden Reach

purporting to act under the said Act issued notice to show cause upon the petitioner under Subsection (1) of Section 4 thereof. A copy of the notice is set out below:

Whereas 1, the undersigned, am of opinion, on the grounds specified below, that you are in unauthorised occupation of the public premises mentioned in the schedule below and that you should be evicted from the premises.

GROUND.

After termination of the temporary license granted to you in respect of plot No. 27 at Firewood siding, Garden Reach. Calcutta-43 your occupation of the said plot has become unauthorised with effect from 1-1-63 Now, therefore, in pursuance of subsection (1) of Section 4 of the Act, I hereby call upon you to show cause on or before the 2-11-63 at 11 a.m. why such an order of eviction should not be made "

2. Thereupon the petitioner made an application to this Court under Article 226 of the Constitution and a Rule was issued on 20th November, 1963 upon the opposite parties to show cause why a Writ in the nature of Mandamus should not be issued directing the opposite parties to cancel and/or forbear from giving effect to the notice complained of in the petition and for other reliefs. The main ground taken in the petition is that the provisions of the said Act are ultra vires the Constitution of India It may be mentioned here that a number of applications had been made involving this very point of law and they were all referred for being heard by a larger Bench. One of these matters - Standard Literature Co Ltd v Union of India, and a number of other matters were disposed of by us by our judgment dated fifth April 1967 This decision has been reported in Standard Literature Co. Private Ltd. and Others Vs. Union of India (UOI), and the report shows, the particulars of the matters which were disposed of by our common judgment In the said application the following constitutional grounds were urged before us:-

"(1) u/s 4 (1) of the said Act the condition precedent is that the Estate Officer should be of the opinion that persons are in unauthorised occupation of any public premises and that they should be evicted. It was argued that the prescribed qualifications for being appointed as an estate officer under clause (a) of Sub-section (1) of Section 2 of the said Act, does not remedy the objections that were put forward against the 1950 Act A "Gazetted Officer" may even be a humble person like the personal assistant of a minister To make property rights dependent on the subjective satisfaction of such a person was an unreasonable restriction on the fundamental rights of a citizen to hold property under Article 19(1)(f)

(2) The estate officer who forms a subjective opinion on the question of the eviction of a citizen, is himself the person who is to adjudicate upon the objection of the citizen. This was in violation of the rules of natural justice and it was an unreasonable restriction on the fundamental rights of a citizen to hold

property under Article 19(1)(f).

(3) That the Act is violative of the provisions of Article 14 of the Constitution because :-

(a) The provisions of the said Act are more onerous, drastic and prejudicial to the citizen than the provisions contained in the Transfer of Property Act, 1882 and the West Bengal Premises Tenancy Act, 1956 and as such are discriminatory and ultra vires of the Constitution.

(b) There is discrimination violative of Article 14 in making a distinction between persons in occupation of Govt property and persons in occupation of private property, which distinction has no relation to the object of the Act, nor establishes any intelligible differentia."

We decided all the above mentioned points against the petitioner in that application and upheld the vires of the said Act. In course of my judgment, I referred to a Full Bench decision of the Punjab High Court - The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another, . which was cited before us, and relied upon it as it upheld the vires of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), which appeared to be similarly worded as the said Act. This Full Bench decision of the Punjab High Court has now been set aside by a decision of the Supreme Court, which is reported in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . The decision seems to have been delivered on the 4th of April. 1967 but we were unaware of the decision, as were the parties appearing before us. By this decision, section 5 of the Punjab Act mentioned above was held to be discriminatory and violative of the Article 14 of the Constitution and was declared to be void. In the result, the appeal was allowed and the order of the Punjab High Court was set aside and the Rule issued in the writ petition was made absolute with cost. I might mention here that this is the majority verdict of three Judges Hidayatullah J and Bachawat. J. held to the contrary. To start with. It must be noted that the provisions of the Punjab Act which have been set out in the report of the Full Bench decision of the Punjab High Court in The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another, appear to be more or less similar to the provisions of the said Act. In the Punjab Act, section 3 defines "unauthorised occupation," which is similar to the definition contained in Section 2 (e) of the said Act. Section 4 of the Punjab Act deals with the issue of notice. Except for the fact that under the Punjab Act the notice has to be issued by the Collector and under the said Act by the "estate officer," the provisions are similar. In both cases, it is stated that if the person issuing notice was of the opinion that any person was in unauthorised occupation of any public premises and that he should be evicted he shall issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. Such a notice is to specify the ground on which order of eviction was proposed to be made and required all persons concerned to show cause against the proposed order on or before a date specified in the notice, not being earlier than 10 days

from the date of issue thereof. Section 5 of the Punjab Act is similar to section 5 of the said Act and provides that after considering the cause shown by any person in pursuance of a notice u/s 4 and hearing any evidence he may produce in support of the same and after giving him reasonable opportunity of being heard, If the person issuing notice was satisfied that the public premises are in unauthorised occupation, an order of eviction may be made for reasons to be stated in the said order. Section 9 of both the Acts provide for an appeal. In the Punjab Act an appeal lies to the Commissioner and in the said Act the appeal lies to the Appellate Officer who shall be the District Judge of the district in which the public premises are situate or such other Judicial officer in that district of not less than ten years" standing as the District Judge may designate in this behalf. In the Full Bench decision of the Punjab High Court (Supra), it was held that the Punjab Act covered the whole subject matter of the law relating to the viction of tenants from Public premises. It was stated that it could not have been the intention of the legislature that the general law regarding eviction of tenants holding over and the special law (Pun-Jab Act 31 of 1959) to co-exist. It was held that as it was not possible to harmonise the two, both could not be extant simultaneously. From the fact that the latter statute covered the whole subject matter of eviction from Public premises of persons in unauthorised occupation, it was legitimate to conclude that the former law was not intended to subsist side by side with the latter. Accordingly, it was held that the contention that the Punjab Act made discrimination between the occupiers of public premises inter se and therefore was violative of Article 14 as it enabled the Government to pick and choose in singling out a particular tenant being proceeded against under the Punjab Act and others under the ordinary law, was without foundation. The Supreme Court differed with the High Court on this point. The majority decision held as follows: It held that the Punjab Act did not repeal the earlier enactment, namely the provisions of the Transfer of Property Act which permitted a suit to be filed for eviction, as it was not found possible to say that the co-existence of the two sets of provisions relating to eviction lead either to inconvenience or absurdity. Relying on the Objects and Reasons in promulgating the Punjab Act, it was held that the Legislature intended to provide for an additional remedy to the Government, a remedy which it thought was speedier than the one by way of a suit under the ordinary law of eviction. There was nothing in the Punjab Act to warrant the conclusion that it impliedly took away the right of suit by Government or that it was substitutive and not supplemental. It was held that the Punjab High Court was in error in holding that there was an implied repeal. Next, it was pointed out that in section 5 of the Punjab Act which corresponds to Section 5 of the said Act, it is provided that after considering the cause shown by any person in pursuance of a notice u/s 4, if the person issuing the notice was satisfied that the public premises were in unauthorised occupation, he "may" direct that the public premises shall be vacated. Shelat, J. who delivered the majority judgment said as follows :-

"Under section 5, if the Collector is satisfied that the public premises are in

unauthorised occupation he has the power to make an order of eviction giving reasons therefor. The contention is that the Government thus has two remedies open to it, one under the ordinary law and the other a drastic and more prejudicial remedy under the present Act. The words "the Collector may make an order of eviction" in S. 5 show that the section confers discretion to adopt the procedure under Sections 4 and 5 or not. Section 5 has left it to the discretion of the Collector to make such an order in the case of some of the tenants and not to make such an order against others. Section 5 thus enables the Collector to discriminate against some by exercising his power under S. 5 and take proceedings by way of a suit against others, both the remedies being simultaneously available to the Government."

What was held by the majority judgment was that persons in unauthorised occupation of public premises constitute a class, and inasmuch as section 5 of the Punjab Act was more drastic remedy, it followed that there were two remedies open to the Government for eviction of persons in unauthorised occupation of public premises, one being the normal procedure by way of a suit and the other is by the more drastic procedure contemplated under the said Act. It was held that section fi of the Punjab Act did not lay down any guiding principle or policy by which the Collector could decide as to in which cases he should follow the one or the other procedure and therefore the choice was entirely left to his arbitrary will. Consequently, Section 5, by conferring such unguided and absolute discretion violated the right of equality guaranteed by Article 14, as it is provided for differential treatment for per--sons situated in similar circumstances and thereby violated the equality clause of Article 14. It would be pertinent to mention here that Hldayatullah, J. and Bacha-wat, J. did not agree with this finding It was held by them that an unauthorised occupant had no constitutional right to dictate that the Government should not have a choice of proceedings and Article 14 does not require a fanatical approach to the problem of equality before the law. It permits a free choice of remedies for the redress of grievances. The impugned Act did not make any unjust discrimination. The proceedings were not unfair or oppressive. The unauthorised occupant has full opportunity of being heard and the legislation was one which promoted public welfare and was a beneficent measure of legislation. If the Act was struck down, it would give a free charter to unauthorised occupants and to officers squatting on public premises after they had vacated their offices, to continue in occupation for an indefinite time until they are evicted by the dilatory procedure of a title suit. According to the minority decision, the Act was intra vires and should be upheld

3. Before us, the point was not raised in the exact form in which it was raised in the case before the Supreme Court. Be that as it may, since the Supreme Court has held that the Punjab Act was ultra vires, it will have to be seen whether any substantial distinction can be established between the Punjab Act and the said Act, the provisions of each are almost identical. Mr. Roy appearing on behalf of the respondent has tried to make a distinction in the following manner:

4. Mr. Roy argues that the said Act was promulgated under the powers of the legislature contained in Item 32 in List I (Union List) in the 7th Schedule of the Constitution which runs as follows: -

"32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides." He next points out that the Transfer of Property Act, which contains the ordinary remedy by way of a suit, is referable to item 6 in the List III (concurrent List) which runs as follows :-

"Transfer of property other than agricultural land, registration of deed and document."

He next draws our attention to Article 246(1) of the Constitution which lay" down that, notwithstanding anything contained in clauses (2) and (3) of the said Article. Parliament had exclusive power to make laws with respect to any of the matters enumerated in List I in the 7th Schedule. Clause (2) lays down that With regard to matters enumerated in List III, that is to say the concurrent List, the Parliament and Legislature of a State should have concurrent powers, but this power is subject to the provisions of clause (1) which gives to Parliament exclusive power to make laws in respect Of any matter enumerated in List I. Mr Roy argues that the said Act comes under a special item in List I and must, to the extent it is covered by the specific item prevail against the Transfer of Property Act, which comes under the concurrent List. Mr. Roy cited before us State of Orissa Vs. M.A. Tulloch and Co., . In that case it was held that the power of the State to enact legislation on the topics of "mines and minerals development" under entry 23 of List II war plenary, but it was subject to the provisions of List I. To the extent to which the Union of India has taken under its control ""regulation and development of minerals" under entry 54 of List I so much of it was withdrawn from the ambit of the power of the State legislature, under entry 23 of List II. In short. Mr Roy arguet that Union property if a specific subject which exclusively come under Item 32 of List I and therefore, the said Act was paramount and would prevail against the provisions of the Transfer of Property Act. Mr Bose appearing on behalf of the applicant points out that since both the Acts concerned in this case are Central Acts there is no question of repugnancy. He, however, concedes that we must go into the contents of the said Act and find out whether it was the intention of the legislature to cover the whole field of eviction of unauthorised occupants from public premises In other words, if upon a construction of the said Act we feel that it was the intention of the legislature to exclude the ordinary remedy by way of a suit under the Transfer of Property Act, then we might come to the conclusion that the said Act being an enactment on a specific item in List I. should prevail. He points out that in The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another, this aspect has been specifically dealt with, and even although it was a case of a competition between a Central Act and State Act, which having obtained the consent of the President would prevail in the State, it was held that there was

nothing to show that it was Intended by the legislature that the State Act would occupy the whole field, to the exclusion of the Central Act. Mr. rOT does not argue that, if upon a construction of the said Act we are of the opinion that it does not occupy the whole field, then the question of either reputancy or exclusion by paramount legislation will still arise. Mr. Bose has pointed out the following indications in the said Act which show that it was not meant to be exclusive. He first of all draws our attention to Section 4 of the said Act which provides, that if the estate officer is of the opinion that any person is in unauthorised occupation of any public premises and that he should be evicted the estate officer should issue a notice in the prescribed manner calling upon all persons concerned to show cause why an order of eviction should not be made. This, therefore, depends upon the "opinion" of the estate officer, who has been defined as an officer appointed as such by the Central Government u/s 3. Section 3 enables any gazetted officer as the Government thinks fit to be appointed, to act as an estate officer. Mr. Bose argues that, since section 4 is not appealable u/s 9 of the said Act, the mere opinion of an estate officer would be conclusive of the matter. In other words, if the estate officer comes to the conclusion that a person is not in unauthorised occupation then all powers of Government with regard to occupy properties would be gone, a state of things, which may affect its title. It could not have been intended that this should happen in summary proceedings taking away the ordinary remedy of suit. He secondly points out that in Section 5, in contradiction to the provisions of Section 4, it has been provided that if after considering the cause shown the estate officer was of the opinion that the public premises were in unauthorised occupation, the estate officer "may" make an order of eviction. The word that is used in Section 4 is "shall" and the word used here is "may". Mr. Bose argues that this indicates that the alternative method of suit is not taken away. Mr. Roy argues that the word "may" as used in both the Sub-sections (1) and (2) of Section 5 has to mean "must" otherwise sub-section (2) would be reduced to an absurdity. In other words, if the estate officer after cause is shown, makes an order of eviction and the order is not complied with, what would be the sense in saying that the estate officer still has discretion to take possession of the premises as ordered? Mr. Bose has however pointed out that on this point the decision in *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, is decisive. In the Punjab Act also, the position is the same, namely that in Section 4 the word "shall" was used whereas in Section 5 the word "may" was used, and yet in construing it, the majority decision of the Supreme Court has held that the word "may" is discretionary. The paragraph cited from that decision above, shows that this is so. Indeed one of the grounds of the majority decision was that the word "may" granted a discretion to proceed under the Punjab Act or not, and was therefore an additional remedy, and as such did not exclude the remedy by way of a suit.

5. Taking into consideration all the arguments made before us, we are of the opinion that upon a construction of the said Act it must be held that it was not

the intention of the legislature to exclude the power of Government to institute suits altogether. If this be so, then the matter falls within the ambit of the majority decision of the Supreme Court in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, and we are bound by it. I must point out, however, that although this point in its present form was not taken before us in the case of Standard Literature etc. (Supra) paragraph 24 in AIR 1968 Cal 1117) will show that this aspect was not wholly absent from our mind. We have pointed out that the discretion given under the said Act was not unguided. The objects and reasons and the preamble to the said Act made it clear that the object of the legislature was to apply it where speedy recovery of possession was necessary. As the minority judgment has pointed out a person in unauthorised occupation has no right to say that Government cannot choose the procedure to be adopted in each particular case. However, as I have stated above we are bound by the majority judgment of the Supreme Court and consequently must hold that Section 6 of the said Act is violative of the provisions of Article 14 of the Constitution and _therefore void. Consequently, the application must succeed. The Rule must be made absolute and there must be a writ of Mandamus directing the respondents not to give effect to the impugned notices. This will be without prejudice to any other right of action that Government may possess. There will be no order as to costs.

Arun K. Mukherjea, J.

6. I agree.

S.K. Mukherjea, J.

7. I agree