

(1985) 01 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1830 of 1977

Ram Garh Fam and Industries Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 10, 4, 4(1), 4(2), 5
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Rules, 1973 —
Rule 9

Citation : (1985) AWC 458

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition has been directed against the judgment of Shri A.B. Mathur, District Judge, Nainital, dated 20-4-1977 in Eviction Appeal No. 332 of 1975 Ramgarh Farm and Industries Ltd., Kashipur, District Nainital v. State of U.P. and Ors.

2. It appears that Eviction case No. 148 of 1972-73 State of U.P. v. Escorts Farms Ramgarh and Industries Ltd. Kashipur District Nainital was started u/s 5(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972, It has been alleged that notice u/s 4 of the aforesaid Act was served upon the opposite party mentioned in the above noted Eviction case. The present Petitioner being in actual possession over the disputed land had contested the claim of State of U.P. and had asserted that the Petitioner had become sirdar of the disputed land and that his possession was not unauthorised, therefore, the proceeding should be dropped. The prescribed authority through its order dated 16-12-1974 passed the following order:

Now, therefore, in exercise of the powers under Sub-section (1) of Section 5 of U.P. P.P. (B.U.O.), Act, 1972, I hereby order the said Opposite Parties as well as others who are in occupation of the said Public Premises or any part thereof to vacate the said public premises within thirty days of the publication of this order. In the event of refusal or failure to comply with this order within the period specified above, the said O.P. and all other persons concerned are liable to be evicted from the said public premises if need be by the use of such force as may be necessary.

(Emphasis is mine).

3. Against the judgment of the prescribed authority the Petitioner preferred an appeal which has been dismissed by the appellate court through its order dated 20-4-1977. Against the judgment of the appellate court the Petitioner has approached this Court Article 226 of the Constitution of India.

4. The learned Counsel for the Petitioner has contended before me that the appellate court has patently erred in holding that the appeal at the instance of the Petitioner was not a competent appeal and therefore, the same has been rejected.

5. Second contention raised on behalf of the Petitioner is that the subordinate authorities have patently erred in holding the possession of the Petitioner over the disputed land as unauthorised.

6. Last contention raised on behalf of the Petitioner is that a declaratory suit between the parties is pending before the revenue courts, hence the summary proceeding for eviction of the Petitioner is wholly unjustified in the circumstances of the present case.

7. The learned Counsel for the State of U.P. has submitted in reply that the impugned judgments do not suffer from any patent error of law, hence they need not be interfered with by this Court. He has emphasized that the possession of the Petitioner over the disputed land is unauthorised and that he was rightly evicted from the disputed land. It has also been suggested that there is no legal bar for proceeding against the Petitioner in a summary proceeding when the conditions mentioned in the Act are) satisfied and the Petitioner is liable to eviction.

8. I have considered the contentions raised on behalf of the parties. Section 5 of U.P. Act No. 22 of 1972 reads as below-

(1) If after considering the cause, if any, shown by any person in pursuance of a notice u/s 4 and any evidence he may produce, in support of the same and after giving him a reasonable opportunity of being heard, the prescribed authority is satisfied that the public premises are in unauthorised occupation, the prescribed authority may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or

some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under Sub-section (1), the prescribed authority or any other officer duly authorised by the prescribed authority in this behalf may evict that person from, and take possession of the public premises and may for that purpose, use such force as may be necessary.

Section 9 of the U.P. Act No. 22 of 1972 reads as below:

An appeal shall lie from every order of the prescribed authority made in respect of any public premises u/s 5 or Section 7 to an appellate officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer not below the rank of Civil Judge as the District Judge as designate in this behalf.

(The rest of the Section is not material for considering the question involved in the present writ petition).

Section 10 of the aforesaid Act reads below-

Save as otherwise expressly provided in this Act every order made by a prescribed authority or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

9. The bare perusal of the operative portion of the order of the prescribed authority dated 16-12-1974 leads to an inference that the Petitioner shall be evicted from the disputed land even in Eviction Case No. 148 of 1972-73 which was started against the Escorts Farm Ramgarh and Industries Limited, Kashipur, District Nainital because this Petitioner is in actual occupation of the disputed land.

10. To my mind the appellate court has patently erred in holding that the appeal filed by the Petitioner was not competent. The appellate court has expressed itself in paragraph 2 of its judgment as below:

...The present appeal, has, however, been filed not by Escorts Farm, Ramgarh and Industries Ltd. to whom the notice u/s 4(1) of the Act was given and against whom the order of Eviction has been passed but by Ramgarh Farm and Industries Ltd. The evidence would show that the two are separate entities and the difference is not one of name alone.

11. In the last but one paragraph of the impugned judgment also the appellate court has expressed itself as below-

What is most fatal to this appeal, however, is that the notice u/s 4(1) of the Act was issued to the Escort Farm and the order of eviction has also been passed

against the said Escort Farm. The Escorts Farm did not file any objection to this notice and is not before us in appeal either. The Appellant was not entitled to file its objection before the Prescribed Authority, and it is equally that it is not competent to file the present appeal.

12. In my opinion, the approach of the appellate court is patently erroneous to the problems involved in the case. In pursuance of the order of the prescribed authority the Petitioner was liable to be evicted from the disputed premises even by use of force and as every order is appealable u/s 9 of the Act, I think that the Appellant had a right to prefer an appeal and his appeal was erroneously dismissed on the ground that it was not competent. The order passed by the prescribed authority or the appellate court under the Act shall be final and cannot be called in question in any original suit, application or execution proceedings and no injunction can be granted by any court or other authority in respect of action taken or to be taken in pursuance of any power conferred by or under this Act, I think that the appellate authority has patently erred in observing that the appeal at the instance of the Petitioner was not competent. By the order passed by the prescribed authority the Petitioner being in actual occupation of the disputed premises was liable to be evicted. Therefore it had a right to approach the appellate court for redress. The impugned judgment of the appellate court deserves to be quashed on this short ground. Rule 9 under the provisions of U.P. Act No. 22 of 1972 provides that an appeal u/s 9 may be preferred by any person aggrieved by an order u/s 5 or Section 7. In *Bar Council of Maharashtra v. M.V. Dabholkar* AIR 1975 SC 2082 has construed the term "person aggrieved" as below at page 2098 para 27:

Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the word "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him.

13. From the above extract it is apparent that the Petitioner was really aggrieved by the order of the prescribed authority as it was liable to be evicted at the hands of the State of U.P. by use of necessary force. The appellate court has failed to consider this aspect of the matter while observing that the appeal at the instance of the Petitioner was not maintainable. Therefore, the order of the appellate court is patently erroneous and deserves to be quashed.

14. The finding of the appellate court that the possession of the Petitioner over the disputed land was "unauthorised" is also not quite correct in the circumstances of the present case. It has not been seriously disputed before me that the disputed land was intended to be allotted to the Petitioner but finally lease deed has not been executed in favour of the Petitioner for some reason. The question arises as to how and when the possession of the Petitioner over the disputed land became unauthorised. The Petitioner has filed declaratory suit

about its sirdari right in the disputed land before the revenue court and that matter is pending between the parties. Therefore, it has become necessary to direct the appellate court to re-examine the claim of the parties with regard to unauthorised occupation of the Petitioner over the disputed land.

15. Section 4(2)(b) of U.P. Act No. 22 of 1972 requires notice to all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises to show cause, If any, against the proposed order on or before such date as it specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The prescribed authority shall cause the notice to be served either personally on all those persons concerned or by having it affixed on the outer door or some other conspicuous part of the public premise and in any other manner, provided in the Code of Civil Procedure, 1908.

16. It is not very clear whether any notice u/s 4 was served upon the Petitioner and whether the Petitioner could be legally evicted in the case giving rise to the present writ petition. The ends of justice demand that the appellate authority must address itself to the question whether the Petitioner is liable to eviction if no notice contemplated by Section 4 of the Act was served upon the Petitioner.

17. As regards propriety of summary proceeding for eviction of the Petitioner, when title suit between the Petitioner and the State of U.P. is pending before a revenue court, it should also be specifically answered by the appellate court when the matter is taken up by it hereafter.

18. In the result, the writ petition succeeds and the impugned judgment of the appellate authority dated 20-4-1977 in Eviction Appeal No. 332 of 1975 Ramgarh Farms and Industries Ltd. Kashiput v. State of U.P. is hereby quashed and the appellate court is directed to re-examine the claims of the parties in the light of the observations made above, there would be no order as to costs.