

(2011) 09 MP CK 0071
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3290 of 2006

Ramcharan

APPELLANT

Vs

Airport Authority of India and Another

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 4, 9

Citation : (2011) ILR (MP) 2770

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the order-dated 24.12.2005 passed by the Estate Officer, Airport Authority of India, exercising powers under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "Act of 1971"), directing for evicting the petitioners from the property in question and the order-dated 28.2.2006 passed by the District Judge, Bhopal dismissing the appeal, filed by the petitioners u/s 9 of the Act of 1971, both these petitions have been filed.

2. As the facts and question of law involved in both these petitions are common, they are being disposed of by this common order. Pleadings and documents available in Writ Petition No.3290/2006 are being referred to in this order.

3. Petitioner Ramcharan, in Writ Petition No.3290/2006, claims himself to be owner and in possession of land bearing Khasra No.62 measuring 6 Acres, and similarly petitioner Harnarayan, in Writ Petition No.3291/2006, claims to be owner of land bearing Khasra No.62 area 5 Acres. Both these land are situated in village Laukhedi, Tehsil Huzoor, District Bhopal. According to the petitioner Ramcharan in the year 1939, the land belonged to one Mohammed Asgar Sahib. In the land records upto the year 1949 Mohammed Asgar Sahib was shown to be owner of the land. Subsequently, it is stated that Ramcharan's father obtained

the land on "Shikmi" and thereafter he was in possession of the land for various period. Subsequently, after death of Shri Waliram @ Kashiram, petitioner is in possession on the basis of an unregistered will executed in his favour, whereas petitioner Harnarayan claims that he obtained lease of the property from Mohammed Asgar Sahib and since then he is in possession. On the contrary, it is the case of the respondents that the land initially belonged to the Nawab of Bhopal and subsequently, it was taken over by the Government of India, after it came into their ownership and possession, was used as Hawaii Adda by the Government of India and the land is shown entered in the name of this authorities i.e... "Hawaii Adda". Subsequently, it was transferred to the Airport Authority and when the Airport Authority found that the petitioner is in illegal occupation of the land, show cause notice u/s 4 of the Act of 1971 was issued vide Annexure P/1, petitioner submitted his reply and after summary enquiry into the matter, by the impugned order - Annexure P/8 dated 24.12.2005, the Estate Officer directed for eviction of the petitioner, treating the petitioner to be an unauthorized occupant. Being aggrieved by the same, petitioner preferred an appeal and the appeal filed u/s 9 of the Act of 1971 having been dismissed by the District Judge, Bhopal on 28.2.2006 vide Annexure P/12, petitioner has filed this writ petition.

4. Shri R.N. Singh, learned Senior Advocate for the petitioners, taking me through the statement of respondents' witness namely Shri D.K. Saxena recorded before the Estate Officer filed at page 26 of the paper book, argued that in the show cause notice issued to the petitioners and the grounds for eviction, it is shown that the land earlier belonged to the Nawab of Bhopal, thereafter it was recorded in the name of Hawaii Adda, it was under their custody for sometime. Hawaii Adda was functioning under the Central Government and in the year 1994 the Central Government handed over possession to the Airport Authority of India. Accordingly, it is stated that the Airport Authority is claiming their right to the property, but in the revenue records the land is not at all shown in the name of Nawab of Bhopal. It is the case of the petitioners that in the revenue records in the year 1939-49, the land is shown in the name of Mohammed Asgar Ali. In the year 1945, Mohammed Asgar Ali gave "Shikmi" right to the Ramcharan's father Waliram @ Kashiram, who remained in possession and after death of Waliram @ Kashiram, it is stated that the petitioners are in possession. To establish their claim, the petitioners have filed certain Khasra entries of the land for the period 1964-65, 1965-66, 1966-68, 1973-74 to 1976-77 and then from 1976-77 upto 1980-81 and an unregistered will executed by Waliram @ Kashiram. Based on these records petitioners claim their right to the property. According to Shri R.N. Singh, learned Senior Advocate, when the Airport Authority of India is exercising their right to the property and are claiming eviction of the petitioners from the property in question, on the ground that it is a Public Premise owned by the Government of India or its authority, the law mandates the respondents to establish their claim by producing adequate evidence to show that the property is in the ownership of the Government of India or the Airport Authority.

5. Referring to the statement of witness recorded i.e... Shri D.K. Saxena., his answer to many of the questions, Shri R.N. Singh, learned Senior Advocate, tried to emphasize that the respondents have not produced any document to show as to how and on what basis they are claiming their right to the property. Except for producing certain Khasra entries showing the land in the name of Hawaii Adda and subsequently in the name of Airport Authority of India for certain periods, no evidence - oral or documentary in nature, is produced to establish the fact that the premises was owned by the Government of India or its authority. It is emphasized by him that without their being any foundation to show as to how and on what basis the respondents are claiming their right to the property, action initiated under the Act of 1971 is said to be illegal. It was argued by him that in the show-cause notice issued the basis for evicting the petitioner is shown to be that the land belonged to the Nawab of Bhopal and thereafter it came into the possession of Government of India, but in the land records the name of Nawab of Bhopal is not at all available. Instead, in the year 1939 upto 1949 the land is shown to be under the owner of Mohammed Asgar Ali. Accordingly, emphasizing that the respondents have no authority to seek eviction of the petitioners from the property in question as their ownership and the basis or foundation to proceed in the matter is not at all established, petitioners seek for interference into the matter. Contending that the Estate Officer and the District Judge, Bhopal ignoring the basic fact about ownership of the land by the respondents have interfered into the matter for evicting the petitioners, which is illegal, therefore, interference is sought for into the matter.

6. Respondents represented by Shri Rohit Arya, learned Senior Advocate, argued that for a premises to come within the purview of "Public Premises" as defined u/s 2(e) of the Act of 1971, ownership or title is not necessary. Once the material available on record shows that the premises belong to the Government of India or its authorities and their possession over the property is established, action can be taken under the Act of 1971 and in doing so it was argued by him that the respondents have not committed any error.

7. Shri Rohit Arya, learned Senior Advocate, emphasized that a person under occupation and possession of land is entitled to seek eviction and once the Union of India or its authority is shown to be in occupation/possession, the provisions of the Act of 1971 are attracted. It is the case of the respondents that the petitioners have no right to hold the property, except for showing some Khasra entries in their name for certain periods for most of the period the land records shows that the land was under the possession of the Hawaii Adda, an establishment of the Government of India, and thereafter from the year 1973-74 onwards continuously the land is shown to be in possession of the Airport Authority. Accordingly, contending that the possession of the Airport Authority of India on the land is established and further pointing out that petitioners' suit for declaration and injunction has already been dismissed by the Second Civil Judge Class II, Bhopal vide judgment-dated 30.11.2009 ? Annexure R/1, and even the applications for mutation filed by the petitioner have been dismissed, Shri Rohit

Arya submits that the petitioners have no right to seek interference into the matter once it is found that they are not owners and have no right to the property. Contending that concurrent findings recorded by the Estate Officer and the District Judge in the matter of eviction of the petitioner, does not warrant any interference and further submitting that the burden of proving as to how petitioners are claiming their right lies on them once a notice u/s 4 of the Act of 1971 is issued, learned Senior Advocate submits that concurrent findings recorded in the matter does not warrant any interference. In support of his contention, learned counsel invites my attention to two judgments of the Allahabad High Court: Kanpur Development Authority Vs. Banwari Lal and others, and, Janak Singh Yadav and Others Vs. State of U.P. Ministry of Irrigation, U.P. Govt. and Others,

8. Refuting the aforesaid, Shri R.N. Singh, learned Senior Advocate, invited my attention to a judgment of the Supreme Court, in the case of Draupadi Devi and Others Vs. Union of India (UOI) and Others, to contend that in the absence of any document showing that the property by Rule of Accession of territory of the Nawab of Bhopal came to the Government, respondents cannot claim any right to the property.

9. Having heard learned counsel for the parties and on a perusal of the records it is clear that both the parties claim their right to the property mainly on the basis of the entries made in the revenue records. If the orders passed by the Estate Officer and the District Judge in appeal are taken note of, it would be seen that in the Khasra entry for the period 1939-49, the land is shown to be in the name of Mohammed Asgar Ali. According to the petitioners, Waliram @ Kanshiram came into possession thereafter. However, the finding recorded is that the name of Waliram @ Kanshiram is not at all entered in the revenue record at any point of time.

10. Be it as it may be, the moot question that arises for consideration is as to whether for evicting a person under the Act of 1971 and for treating the said person as an "unauthorized occupant", ownership and title of the land with the Central Government or its authority is required to be established or not. A public premise is defined in section 2(e) of the Act of 1971, and an "unauthorized occupation" is defined in section 2(g). If the definition of "public premises" is scrutinized it would be seen that any premise belonging to or taken on lease or on behalf of the Government of India is included within the purview of a "public premises". The word used is "belonging to" and no "ownership". The definition of "public premises" is considered by the District Judge, Bhopal while deciding the appeal and after placing reliance on a judgment of the Bombay High Court in the case of M. Mohammed and Vs. Union of India and Others, , the following principles laid down by the Bombay High Court is taken note:

Assuming we are wrong in our aforesaid conclusions we are of the view that there is no reason why the present premises should not fall within the express "belonging to the Central Government" in the definition of "public premises" in

Section 2(e) of the said Act. There is no doubt that the express "belonging to" does not mean the same as "owned by". The two expressions have two different connotations. The expressions "belonging to" will take within its sweep not only ownership but also rights lesser than that of ownership. It must be remembered in this connection that the expressions used in the statute are to be interpreted and given meaning in the context in which they are used. The present Act has been placed on the statute book to give a summary remedy to the Government to evict persons in occupation of public premises to obviate the long ordeal of trial in a Civil Court and of further proceedings thereafter. Hence a wider meaning will have to be given to the expression used in the Act for defining the concept of "public premises". So viewed there is no reason why the premises of which possession for the time being vests in the Government and which are allotted by the Government to others while so in possession should not be held to be public premises.

(Emphasis supplied)

11. The words "belonging to" as appearing in section 2(e) of the Act of 1971 has been the subject mater of consideration in various cases. Apart from the interpretation given by the Bombay High Court as referred to hereinabove, in another case i.e., Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, Supreme Court was called upon to consider the meaning of the expression "belonging to me" used in relation to certain proceedings held under the Government of India's, Act 26 of 1948, pertaining to rehabilitation of refugees. While commenting upon the meaning of the aforesaid expression, the Supreme Court has indicated so:

..... Though, the words "belonging" no doubt is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word. In Webster, "belong to" is explained as meaning inter alia to be owned by the possession of. The precise sense which the word was meant to convey can, therefore, be gathered only by reading the document as a whole and adverting to the context in which it occurs....

It has been held by the Supreme Court in the aforesaid case that even if a person does not have an absolute right available to be an owner, but once as a user of the property certain rights have accrued to him, the property can be said to be belonging to him. It is observed by the Court in the aforesaid case that the expression "belonging to" does not merely mean or include the right of ownership, but it includes something less than that and if certain rights are vested in a person to use the property, the property is said to be belonging to him. The Supreme Court has held that the words "belonging to" does not mean the same thing as the expression "owned by". The two expressions have two connotations. The expression "belonging?" will take within its sweep not only the right of an ownership, but also certain right lesser than that of an ownership.

12. If the aforesaid is the legal principle with regard to the definition of "public premises" then any premise which is in the possession for the time being with the Government of India or its authority would be a "public premises" and any person who without any authority occupies the said premises would be an "unauthorized occupant", if his possession is shown to be without any legal right not only by way of ownership or title, but also otherwise. That being so, for a premise to come within the purview of "public premises" it is not necessary that ownership of title of the property should be available with the Government of India. It is enough to show that they are in lawful possession as against a person who is claiming illegal possession without any legal right to ownership or possession. In this regard, apart from the findings recorded concurrently by the Estate Officer and the District Judge in the proceedings held under the Act of 1971, if the judgment rendered by the Second Civil Judge, Class II, Bhopal in Civil Suit No.220-A/06 is taken note of, it would be seen that the said suit was filed by the petitioner Shri Harnarayan and he sought a decree for declaration and injunction from restraining the Respondents-Airport Authority of India, from disturbing his possession. The suit has been dismissed and in the judgment rendered by the Civil Court, it is found that the petitioners' right to possession and title over the property is not established. The eight issues framed in the suit have all been answered against the petitioner. The issues framed are as under and the answers to the same are in negative:

On the basis of evidence and material that came on record, the suit in question has been decided. The plaint filed by the petitioner is available on record and is filed by the petitioner himself alongwith I.A.No.7827/2009. The suit was filed by Harnarayan, it was a suit for declaration and injunction and it is for the same property as is indicated from the description of the property given in paragraph 1 of the plaint. In the plaint particulars of the orders passed by the Estate Officer and the District Judge under the Act of 1971 are indicated and pendency of these proceedings are also pointed out. Finally, the relief claimed for in this suit was that a declaratory decree be issued to the effect that the plaintiff be declared as owner and in possession of the suit property. The same has been considered and dismissed as indicated hereinabove and if some of the findings recorded by the learned trial court in its judgment and decree dated 30.11.2009 is taken note of, the following findings are recorded therein. It was the case of the plaintiff in the suit that in the year 1945, the property was owned by Mohammed Asgar Sahib and it was given to Waliram @ Kashiram under "Shikmi", but the plaintiff has not produced any evidence - documentary or oral, in support thereof, Ramcharan, one of the claimant, in his cross-examination admitted that he does not possess any document to substantiate the aforesaid contention. It is held by the Court that if the property was given by Mohammed Asgar Sahib to Waliram @ Kashiram in the year 1945, then there should have been some document or proof of the same. Instead, it is found that right from the year 1945 to 1949 in the revenue records - Exhibits P/12 to P/15, there is no mention about Waliram @ Kashiram being in possession of the suit property. Various judgments of the

High Court and the Supreme Court are referred to and the finding recorded is that the petitioners have not acquired any Bhumiswami rights under the MP Land Revenue Code, 1959 nor had such a right accrued to Waliram @ Kanshiram. The Court has observed that except for oral statement made by witnesses Raees Khan, Mohammed Sharief Khan and Shafiq Mohammed, no documentary evidence is adduced. The only document available on record shows name of the petitioners entered in the land records for about six years between 1973-74 to 1980-81. That apart, there is nothing to show that the plaintiffs are in possession of the suit property. In paragraphs 34 and 35, the entire evidence is analysed and the claim of the petitioners to the effect that they are in peaceful possession of the suit property for more than 50-60 years is found not at all proved and even the claim of adverse possession is held not proved by the learned court below. It is held by the court that none of the witnesses examined by the plaintiff state that the respondents have forcefully dispossessed the petitioners and taken possession of the suit property. Keeping in view all this, the ultimate finding recorded is against the plaintiff, the suit is dismissed and the issues framed are answered in negative against the petitioners, as already indicated hereinabove.

13. Once a Court of competent jurisdiction on the basis of the evidence and material that came on record has come to the conclusion that petitioners are not entitled to Bhumiswami rights or possession and the finding is that they are not in possession. On the contrary when the revenue records of the relevant period show that the respondents are in possession of the property in question, this Court is not required to interfere into the matter. If the judgment rendered by the Civil Judge Class I, Bhopal on 30.11.2009, available on record, is perused, it would be seen that in a judgment running into more than 57 paragraphs, the learned court below has analysed each and every aspect of the matter and has found that the petitioner is not entitled to any decree and the suit has been dismissed. Once the petitioner's right to retain possession of the suit property is dismissed by a court of competent jurisdiction and the possession of the respondents are established then in the light of the concurrent findings recorded by the Estate Officer and the District Judge, showing that the premise is a "public premise", and the petitioner an "unauthorized occupant" on the said premises, interference into the matter by this Court is not warranted.

14. The concurrent findings recorded by the authorities can be interfered with by this Court exercising limited jurisdiction available under Article 226 of the Constitution only if it is found that the findings are perverse, without jurisdiction or there is an error apparent on the face of the record. None of these factors are available and, therefore, it is not a fit case where interference into the matter now in these proceedings under Article 226 is called for.

15. Accordingly, finding no case for interference on the grounds raised, both the petitions are dismissed.