
(1959) 11 MP CK 0012
In the Madhya Pradesh High Court
Case No : L.P.A. No. 91 of 1957

Ramdayal Girdhari Purohit	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 10-11-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) J LJ 437 : (1961) MPLJ 508

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golvalker, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This is a Letters Patent Appeal from an order of Bhutt J. (as he then was) summarily rejecting a petition filed by the appellant under Article 226 of the Constitution of India. By that application the appellant sought the issue of an appropriate writ or direction for restraining the respondents from taking possession of a plot of land adjoining his house situated in Pratap Sagar Ward, Beniganj, Chhatarpur. The appellant claimed that he was in possession of the land as an owner for several years; that in 1945 when the Municipal Board of Chhatarpur, which was a Government Department of the former Chhatarpur State, made an attempt to realise rent from him, the Ruler of Chhatarpur State made an order restraining the Board from recovering any rent from him, and that, therefore, the notice given by the opponents asking him to vacate the piece of land and restore its possession to them and further threatening him with forcible dispossession was without any legal authority.

The learned single Judge rejected the petition observing that the dispute between the appellant and the respondents was "one of civil and of a contentious

nature, for the determination of which the proper forum is the civil Court".

Shri Singh, learned counsel for the appellant, urged everything that could possibly be said in support of this appeal, but none the less we are not persuaded to a different result. The petition filed by the appellant under Article 226 of the Constitution and the various annexures to it, though they show that the appellant has been in possession of the land for some years, do not at all reveal as to how the appellant derived his title to the land. In his application which the petitioner presented to the respondents objecting to the notice given to him it was mentioned by him that he was allowed by the Ruler of Chhatarpur State to park his buses and lorries on the land according to custom. This statement of the appellant himself *prima facie* indicates that his user of the land was not as an owner but merely as a licensee. The appellant's petition thus did not at all show that he had a clear and undisputable right to the possession of the land, and the title he asserted to it was disputed by the opponents.

As pointed out by a Division Bench of this Court in *Tejraj Chhogalal Gandhi and Another Vs. State of Madhya Bharat and Others*, at p. 122, the object of Article 226 of the Constitution is the enforcement of fundamental rights and other rights and not the establishment of a legal right. The purpose of directions, orders or writs under Article 226 of the Constitution is to enforce a right which had already been established and is not to establish a legal right. That being so, the right sought to be enforced under Article 226 must be clear and undisputable. If the right which is intended to be enforced is in substantial dispute or is one which admits of reasonable doubt or controversy and depends on facts which are disputed and which have to be established, then it would not be proper for the High Court to enter into an investigation of facts which have to be established before any writ, direction or order can be issued under Article 226. In a case in which facts have to be established, it would be proper for the High Court to refer the applicant to a suit.

In *Tejraj Chhogalal Gandhi and Another Vs. State of Madhya Bharat and Others*, at p. 122 reliance was placed on the decision of the Supreme Court in *Sohanlal Vs. The Union of India (UOI)*, That was a case in which the Punjab High Court had made an order under Article 226 of the Constitution directing the Union of India and one Sohanlal to forthwith restore possession of a house situated in Delhi to one Jagannath who was a displaced person and a refugee from Pakistan. Against this order of the High Court Sohanlal appealed to the Supreme Court. It was observed by the Supreme Court that before the property in dispute could be restored to Jagannath, it would be necessary to declare that he had title in that property and was entitled to recover possession of it. Their Lordships of the Supreme Court expressed themselves thus:

We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil Court in a properly constituted suit to do rather than for a Court exercising

the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.

On these principles and on the averments made by the appellant in his application under Article 226 of the Constitution, we think that the learned single Judge was right in rejecting the petition summarily on the ground that he did.

Learned counsel for the appellant referred us to Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, where the Supreme Court refused to countenance the proposition that an application under Article 32 of the Constitution could not be entertained if it involved the determination of disputed questions of fact. That case is of no assistance to the petitioner as while making that observation it was made amply clear by the Supreme Court that their observation was confined to the entertainability of a petition under Article 32 and that they were not called upon to enter into a discussion or express any opinion as to the jurisdiction and power of the High Courts to entertain and to deal with applications under Article 226 of the Constitution where disputed questions of fact have to be decided. On the question of entertainability of applications under Article 226 of the Constitution involving disputed questions of fact the view of the Supreme Court is contained in Sohanlal Vs. The Union of India (UOI),

For all these reasons this appeal is dismissed with costs. Counsel's fee Rs. 50, The outstanding amount of the security deposit shall be refunded to the petitioner (appellant).