
(2004) 02 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 15460 of 2003

Ravindra Pratap Yadav alias Mahajan	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 3 AWC 2076

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Jai Singh, for the Appellant; Ravi Kant, Nitin Sharma, N.D. Kesari, Ajit Kumar Singh, S.M. Yadav, Rajeshwar Yadav and Yogesh Agrawal and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondent Nos. 1 to 4 to grant to the petitioner lease of plot No. 22AA Civil Station, Allahabad whereupon the out house and land appurtenant on 23 Stanley Road, Allahabad is situated. The petitioner has also prayed that a mandamus be issued to the respondents not to interfere with the petitioner's possession over the portion of house No. 23 Stanley Road and appurtenant land which is in the petitioner's possession. The petitioner has also prayed for a mandamus directing the respondent Nos. 5, 6 and 7 to desist from registering any deed about transfer or alienation of house No. 23 Stanley Road, Allahabad or its appurtenant land and to declare as inoperative and void the order of the District Magistrate, Allahabad dated 16.6.2000, Annexure 8 to the writ petition by which nazul land of the aforesaid plot was converted into freehold.

2. Heard learned counsel for the parties.

3. The land in Civil Lines, Allahabad was let out on leases for residential purposes during British rule. It is alleged in paragraph 3 of the writ petition that when the

period of the leases expired a popular demand was made to the State Government for evolving a policy providing for accommodation and possessory rights and title to the persons living in the houses in Civil Lines, Allahabad. Consequently the State Government issued orders from time to time including order dated 1.12.1998 and 23.5.2000 vide Annexures-1 and 2 to the writ petition. It is alleged in paragraph 4 of the writ petition that the State Government had issued G.O. dated 29.8.1996 that if an agreement to sell has been made by the lessee of the nazul land and possession over the land has not been transferred to the proposed vendee, the proceedings for converting the nazul land into free hold would be made in favour the person in whose favour of the agreement to sell has been executed. The G.O. further provided that for taking final decision in the matter a proposal was to be sent to the State Government for approval. True copy of the G.O. dated 29.8.1996 is Annexure-3 to the writ petition. In continuation of the aforesaid G.O. the State Government issued a notification dated 1.12.1998 providing that the tenants living in the houses constructed upon the nazul land as well as those persons who are in unauthorised occupation since before 1.1.1992 can apply to get the land converted into freehold vide Annexure-1 to the writ petition. Thereafter the State Government issued notification dated 13.5.2000 directing the Commissioner and District Magistrate to provide details as to how many tenants governed by the Rent Control Act are entitled to get freehold converted in their names vide Annexure-2 to the writ petition, Nazul land bearing plot No. 22AA, Civil Station, Allahabad was originally granted on 23.5.1934 for 50 years in favour of Lt. Albert Alexander Rellington White and Mr. and Mrs. Compbell White. On this land the house bearing No. 23 Stanley Road, Allahabad was constructed. This was subsequently sold on 1.12.1936 to Smt. Chandra Kala Devi (the mother of Sri R.K. Bahadur). Smt. Chandra Kala Devi died in 1986 leaving behind two sons and three daughters including R. K. Bahadur who claims to be the holder of general power of attorney of all his brother and sisters. Photocopy of the lease deed dated 23.5.1934 is Annexure-4 to the writ petition.

4. It is alleged that on 27.9.2000 R.K. Bahadur executed an agreement to sell on his own behalf and on behalf of his brother and sisters in favour of respondents and one Surendra Kumar Jaiswal. True copy of the agreement dated 27.9.2000 is Annexure-5 to the writ petition. It is alleged that after this agreement the freehold rights cannot be granted in favour of R. K. Bahadur and his brother and sisters.

5. In paragraph 12 of the writ petition it is alleged that the petitioner is living in dwelling units built upon the aforesaid house. He is also running a tea stall which also provides meals and snacks and is earning his livelihood from the said shop. It is alleged that the petitioner is in possession over the portion of the land since about last two decades.

6. In paragraph 13 of the writ petition it is stated that the District Magistrate, Allahabad wrongly ordered on 16.6.2000 for converting the nazul land into

freehold, without obtaining prior permission of the State Government.

7. Various other allegations have been made in the writ petition but in our opinion it is not necessary for us to go into same in view of the allegations in the counter-affidavit of the Nagar Nigam, Allahabad, respondent No. 4 to which no rejoinder-affidavit has been filed and hence these allegations in the counter-affidavit have to be treated as correct.

8. It is alleged in paragraph 3 of the said counter-affidavit that the petitioner has made material suppression of facts and misrepresentations and misleading statements. He has deliberately annexed false and fabricated documents to the writ petition and has falsely stated that he is a statutory tenant of the building in question. In paragraph 6 of the counter-affidavit it is stated that the petitioner has neither claimed that he is the owner of the house No. 23 Stanley Road, Allahabad nor has he annexed any order of allotment u/s 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. He has not alleged that he is living in the aforesaid house prior to the commencement of the aforesaid Act on 20.9.1972. Hence he cannot be held to be a deemed tenant u/s 14 of the said Act. In fact the petitioner is a house grabber and by filing this writ petition he has tried to get an interim order from this Court for preventing any illegal action to be taken against him. This Court in *Smt. Chetana Atma Govil v. R.C.E.O. 1995 (26) ALR 114* and *Dr. Sanjai Kumar Singh Vs. State of U.P. and others*, . has condemned the practice of house grabbing.

9. In paragraph 8 it is stated that one Shiv Kumar Vaishya (power of attorney holder for managing the affairs of the aforesaid house) had sent a complaint by fax on 9.4.2003 to the Commissioner and District Magistrate, Allahabad alleging that the petitioner along with his father who is a dismissed police constable have stealthily grabbed a portion of the house in question. Copy of the complaint was sent to various police authorities e.g., Inspector General of Police, Allahabad, D.I.G., S.S.P. Allahabad and S.H.O., police station Civil Lines, Allahabad but nothing was done. Photocopy of the complaint dated 9.4.2003 is Annexure-C.A. 1 to the counter-affidavit. It is alleged that by moving this petition before this Court and raising untenable contentions the petitioner, who is a rank trespasser has successfully prevented any action being taken against him. It is alleged that this is abuse of the process of the Court as held in *Bhagwan Dass Sood Vs. State of Himachal Pradesh and others*, .

10. The respondents have alleged that the petitioner is a rank trespasser and has no right or title over the house in question. He has not explained how he obtained possession of the said property and on what basis he is retaining possession. In paragraph 13 of the counter-affidavit it is stated that the petitioner claimed possession on the basis of the report of the Amin of the Civil Court, Allahabad dated 5.11.2001 but this claim is baseless. The said Amin was appointed as Commissioner by this Court in F.A.F.O. No. 1636 of 2001, *Prem Prakash. Yadav v. Subhash Chandra Kesherwani and Ors.*. This Court appointed the Commissioner for verifying and reporting as to who are in possession over

house No. 23, Stanley Road, Allahabad and land appurtenant thereto. This report of the Commissioner dated 5.11.2001 Annexure-6 to the writ petition does not contain a single word about the petitioner's possession anywhere. True copy of the report is Annexure-6 to the writ petition. Photocopy of the order of this Court dated 1.11.2001 is Annexure-C.A. 3 to the counter-affidavit.

11. In paragraph 14 of the counter-affidavit it is alleged that the petitioner did not make any application to the District Magistrate for depositing the prescribed amount of dues in Government treasury for converting the nazul land to freehold within the specified date. The nazul land upon which the house in dispute is constructed has been converted to freehold land. The freehold deed contains a provision that if anyone wants to raise any claim against this deed he can raise it before the Principal Secretary, Housing Department, U.P. Hence, the petitioner has an alternative remedy which he has not exhausted. In paragraph 16 of the counter-affidavit it is stated that Sri R.K. Bahadur has deposited 1/4th of the amount of dues determined by the District Magistrate and as such, he is entitled to get the land converted into freehold. The agreement to sell dated 27.9.2000 filed by the petitioner as Annexure-5 to the writ petition contains the name of other tenants but there is no mention about the petitioner's possession.

12. In paragraph 17 of the counter-affidavit it is stated that the report of the Amin dated 5.11.2001 does not mention that the petitioner is one of the occupants. In paragraph 20 it is stated that the petitioner is not a statutory tenant of the house in question and his tenancy has never been accepted by any Court.

13. In our opinion the petitioner has no legal right at all. He appears to be a rank trespasser who forcibly occupied a portion of the house in question. He has not been able to show any semblance of title or lessee right or any other kind of right. He forcibly and illegally entered into possession on the night of 8/9.4.2003 as is evident from Annexure-C.A. 1 to the counter-affidavit.

14. A lot of cases of house grabbing have been coming to the notice of this Court and this Court has consistently deprecated this practice as it is against the rule of law. If illegal house grabbing is permitted the Rule of Law and civilized society will totally collapse. Hence, the Court must take a strong stand in such matters.

15. The petitioner never deposited any amount for obtaining freehold rights, and in fact he has nothing to do with the property in dispute. Freehold rights have already been granted in favour of R.K. Bahadur. The petitioner does not have any locus standi in the matter at all. He is a rank trespasser who illegally grabbed the property in the night of 8/9.4.2003, as is evident from Annexure-C.A. 1 to the counter-affidavit.

16. The petitioner has filed this writ petition making false factual averments. He has falsely stated in para 12 of the petition that he is in possession for two decades. He has suppressed material facts and hence in our opinion on this ground itself the petition is liable to be dismissed as writ is discretionary remedy.

A party to obtain a writ must come with clean hands which the petitioner has not done. Hence this petition is liable to be dismissed on this ground alone vide *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, ; *New India Steel Industries Vs. V.D. Steel Industries and Another*, ; *Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others*, ; *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, ; *M/s. Shori Lal and Sons and Another Vs. Delhi Development Authority and Another*, ; *Gulshan Kumar Vs. The Collector, Ghaziabad and others*, ; *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, ; *National Insurance Co. Ltd., Chandigarh Vs. Nicolletha Rohtagi and Others*, and *Asad Ahmad and Others Vs. State of U.P. and Others*, , etc.

17. The petitioner has raised several contentious issues regarding factual matters which cannot be decided in writ jurisdiction, e.g., that the deed was not sufficiently stamped, that the power of attorney at Allahabad on the date of execution of sale deed is fraudulent, etc. Writ jurisdiction is not the appropriate forum for these matters vide *Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others*, and *State of Rajasthan Vs. Bhawani Singh and others*, .

18. In our opinion the intention of the petitioner is clearly dishonest. He has tried to create an impression that there is some genuine dispute. In fact he is a rank trespasser who has forcibly grabbed a portion of the house in question and constructed a temporary thatched construction as a tea stall. He is certainly not a tenant or even licensee as there is no proof of any tenancy or licence. We do not agree that he is in possession of the property since 20 years. He forcibly took possession on 8/9.4.2003 vide Annexure-C.A. 1.

19. In our opinion, the petitioner has no locus standi to maintain this writ petition. He has not sought, and legally he cannot get any relief for grant of freehold rights in his favour as he is a rank trespasser. In our opinion a rank trespasser cannot be granted freehold rights and any G.O. to the contrary is arbitrary and hence violative of Article 14 of the Constitution. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, .

20. To grant freehold rights in favour of a rank trespasser would only encourage criminal minded and antisocial elements to forcibly grab land.

21. Take a case where there is a lessee of nazul land, a tenant of such lessee, and a rank trespasser who has grabbed the land or portion of it. If all three can apply for freehold land rights who will be granted the same? To permit grant of freehold rights to a rank trespasser who has no semblance of title or right of any nature would only encourage criminals to grab the property. Any G.O. therefore which permits grant of freehold rights or any other rights to a rank trespasser has to be held arbitrary as in fact house grabbing is a criminal offence u/s 447/448 and other provisions of the I.P.C. Hence any G.O. which grants any right to a rank trespasser has to be held to be arbitrary, illegal and void.

22. For the reasons given above there is no merit in this petition and it is

dismissed. Interim order if any is vacated. Let the Registrar General of this Court send copy of this judgment to the Chief Secretary and Principal Secretary, Nagar Vikas, U.P. forthwith.