
(1953) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Application No. 6 of 1952

S. Asrar Ahmad

APPELLANT

Vs

State of Ajmer and others

RESPONDENT

Date of Decision : 16-05-1953

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1953) 05 RAJ CK 0003

Hon'ble Judges : B.N. Nigam, J.C.

Bench : Single Bench

Advocate : Daya Shankar Bhargava, for the Appellant; M.M. Kaul, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Nigam, J.C.

1. This is a petition under Article 226 of the Constitution praying for a writ of mandamus against the Additional District Magistrate, State of Ajmer, restraining him from ejecting the petitioner from house no. AMC IX/485 in furtherance of his order, dated 19-11-1951.
2. The petitioner alleges that he has been living in the house as a tenant since a long time on a monthly rental of Rs. 30/4/- that he had certain differences with the Administrator of Durgah who also happens to be the Deputy Commissioner State of Ajmer and that the Administrator made several unsuccessful attempts to oust the applicant from the house in question and has now got a requisition order under U.P. Act, 1947 (Act No. 25 of 1947) as extended to the State of Ajmer. The applicant seeks to challenge this order as being mala fide and also as the requisition is being made not for any public purpose.
3. I have heard the learned counsel for the applicant and the learned Government Pleader.

4. The learned counsel for the applicant has urged that the action of the Additional District Magistrate is mala fide. The learned Government Pleader has referred me to -- Kamalakar Singh and Another Vs. S.K. Gupta and Another, and has urged that it was for the applicant to affirmatively prove that the order was not honestly made. The learned counsel for the applicant has argued that an ejectment was attempted when the applicant ceased to be the Mutwalli in 1944. This attempt failed. Then a regular suit for ejectment was filed. This was also dismissed. In 1949 when the applicant again ceased to be the Mutwalli (having been reappointed in 1947) the Administrator of the Durgah who was also the Deputy Commissioner, Ajmer, obtained orders of the Chief Commissioner u/s 5 of the Durgah Khwaja Sahib (Emergency Provisions) Act, 1950 (Central Act No. XVII of 1950) to the effect that the applicant had no right to remain in possession of the house in suit and should vacate it and subsequently that after 31-5-1951 the applicant would be liable to damages at Rs. 3/- per day and that this amount should be deducted from the sum due to the applicant until such time as he vacated it. The suggestion of the learned counsel is that executive pressure was being put on the applicant to vacate the house. The learned counsel has further contended that no action to get the applicant ejected from the house was taken and the order of the Chief Commissioner, dated 11-5-1951, was not given effect to so far as the ejectment of the applicant is concerned and now the District Magistrate has prevailed upon the Additional District Magistrate to issue this order u/s 3 of U.P. Act No. 25 of 1947. The argument of the learned counsel in brief is that the repeated attempts made to eject the applicant show that the District Magistrate was bent on getting the house vacated by the applicant and that is why he has now prevailed upon the Additional District Magistrate to issue that order.

5. The learned Government Pleader has pointed out that the application for ejectment of Asrar Ahmad filed in 1944 was dismissed on the ground that the application did not satisfy the requirements of the law. He has further pointed out that the Civil Suit was dismissed in 1947 as the applicant having been re-appointed Mutwalli of the Durgah during the pendency of the suit had even on the admission of the Durgah Committee become entitled to remain in occupation of the house. The learned Government Pleader has also pointed out that the present Deputy Commissioner was not an officer in the State of Ajmer in 1944 or 1947. As regards the orders passed by the Chief Commissioner the contention of the learned Government Pleader is that the Chief Commissioner acted within the powers conferred on him by Section 5 of Act 17 of 1950 and that the orders passed by the Chief Commissioner have not been challenged either in the present proceedings or in any previous proceedings in a court of law.

6. I have carefully considered the allegation. I am of opinion that the material on the record is not sufficient to prove the allegation of dishonesty or mala fide action. The previous proceedings appear to have been launched in furtherance of the contention that the house in question could be occupied by the Mutawalli only during the period he held that office. There does not appear to be any evidence

of any personal animosity or grudge. I am, therefore, of opinion that the petitioner has failed affirmatively to prove that the action of the Additional District Magistrate in issuing the requisition order was mala fide.

7. The second point urged by the learned counsel is that the Assistant Administrator of Rurgah is not a public servant. The learned counsel has referred me to -- "Fazal Nabi v. The State", AIR 1952 Ajmer 13 (1) (B) in which this Court held that it was doubtful if the Administrator of the Durgah was a public Officer. The learned counsel has also argued that the Durgah is a religious trust and the purposes of this trust do not amount to a public purpose. I have been referred to -- "Hamabai Framjee v. Secy. of State", AIR 1914 PC 20 (C). The learned counsel relies on the portion in which reference was made to the view expressed by Bachelor, J :

General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purposes" in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interests of the individuals is directly and vitally concerned.

8. The learned Government Pleader has argued that this Court cannot go into the question of "public purpose". The learned Government Pleader has relied on -- Province of Bombay Vs. Kusaldas S. Advani and Others, The majority held that:

The decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow. The decision of the Provincial Government as to the public purpose contains no judicial element in itThe words of Section 3 read with the proviso, and the words of Section 4 taken along with the scheme of the whole Ordinance, do not import into the decision of the public purpose the judicial element required to make the decision judicial or quasi-judicial. The decision of the Provincial Government about public purpose is, therefore, an administrative act, and there is no scope for an application for a writ of certiorari.

Another ruling to which I have been referred to is -- Ram Chandra Vs. The District Magistrate of Aligarh and Others, There it was held:

.....The decision of the District Magistrate both about the purpose and the need for which the house was being requisitioned is, in the absence of any proof of mala fide on his part, a final one, and it is not open to the High Court to substitute its judgment either in regard to the purpose for which the house had been requisitioned being a public purpose or the need for its being requisitioned.

9. Reference has also been made to para 6 of Sardarni Gurdial Kaur Vs. The State, (F).

10. On a consideration of the rulings referred to by the learned Government pleader, I am of opinion that it is not open to this Court to go behind the finding

of the Additional District Magistrate that the house in question was required for a "public purpose".

11. No other point has been pressed before me.

12. Accordingly I see no force in this petitions and dismiss it with costs which I assess at Rs. 100/- only.