
(1987) 11 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 269 of 1979

Sant Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 —
Section 4(1), 5

Transfer of Property Act, 1882 — Section 116

Citation : AIR 1989 HP 15 : (1988) 2 ShimLC 1

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : Kamlesh Sharma, for the Appellant; M.L. Chauhan, Law Officer, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—The petitioner is the occupant of premises described as set No. 37/1-4, Nabha Estate, Shimla (hereinafter referred to as "the premises"). It is not in dispute that Nabha Estate was the property of the erstwhile State of Nabha and that after the merger of the Nabha State with the Union of India it vested in the erstwhile PEPSU State and that the petitioner was inducted as a tenant by the erstwhile PEPSU State. The property then passed hands and was vested successively in the Punjab State, the Union Territory and ultimately in the State of Himachal Pradesh. The petitioner admittedly continued as a tenant of the premises till Mar 31, 1964. The last agreement of lease executed between the Governor of Punjab and the petitioner for a period of one year commencing from April 1, 1963 and ending with Mar. 31, 1964 is on the record. Under the said lease, the rent was payable at the rate of Rs. 18.75 per month inclusive of water tax and excess water charges. Two of the conditions of the lease were that the lessee shall restore to the lessor the possession of the property, on the expiry of the sooner termination of the lease, in the state in which he received it (ordinary

wear and tear in use excepted) and that the premises shall not be used for business purpose save with the special permission of the lessor. There is no agreement of lease for the subsequent period(s), none at least has been placed on the record of the case. However, it is not in dispute that the petitioner has continued to occupy the premises thereafter and that till February 1972, the occupation charges at the, same rate were continued to be paid by him and accepted by the Estate Officer, HP, PWD ? Shimla (third respondent).

2. A notice dt. May 5, 1972, Annexure PB-1, purporting to have been issued under Sub-section (1) of Section 4 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as "the Act"), was served upon the petitioner by registered post by the then Estate Officer (Shri P.N. Nehru) stating that he had been continuing to occupy the premises even after the tenancy had expired long ago and that he was holding over without the authority of law and that, therefore, his possession was unauthorised and calling upon him to show cause why an order of eviction should not be made. The petitioner showed cause vide his reply dt. May 19, 1973, Annexure PB-2, given through Counsel. In para 1 of the said reply, the petitioner contended in substance that the Estate Officer was also the Collector under the provisions of the Act and that the discharge of the functions of Collector on his part was illegal* arbitrary and against natural justice and the rule of law. The precise objection was taken in the following words : --

"The Estate Officer is the Manager and the custodian of the Nabha Estate and the premises in question is a part of the said Estate. His own conduct and his official record is a subject-matter of evidence in the eviction proceedings as being initiated and being tried by his ownself. As such the Estate Officer has no jurisdiction to sit as a judge for his own conduct in his capacity as a Collector under the said Act".

Several other contentions were also of forward, such as, that the proceedings were barred by res judicata, estoppel, acquiescence and limitation, that the original lease had culminated into a perpetual or irrevocable lease by the implied conduct of the parties, that the occupation of the premises in accordance with the terms of such subsisting lease was lawful etc.

3. In the course of the eviction proceedings, which commenced before the Collector (Shri P.N. Nehru), the petitioner was represented by Counsel. The issues were framed on July 4, 1972. The case was then adjourned to Aug. 5, 1972, for recording the evidence on behalf of the Department. Instead of recording the evidence on the said day, the Collector adjourned the case sine die, since the request of the petitioner and of the other alleged unauthorised occupants of the Nabha Estate for the retention of the premises was under consideration of the State. Government. The State Government ultimately rejected the said request and the petitioner's case was thereupon reopened on Mar. 16, 1973. After several adjournments, the evidence of a Departmental witness (Shri M.L. Chauhan) was recorded on July 23, 1973, in the presence of

the petitioner.

4. On Aug. 30, 1973, a list of witnesses was filed under the signature of the Counsel for the petitioner. Two witnesses were cited on his behalf and they were the petitioner himself and Shri P.N. Nehru (Estate Officer).

The purpose of summoning Shri P. N. Nehru was set out in the following words in the Process Fee Form incorporating the said list. :

"Sh. P.N. Nehru, Estate Officer, Himachal Pradesh, with the record pertaining to premises since the commencement of tenancy/lease of the respondent particularly the counterfoils of the rent receipts, tease deed, treasury challans etc. and all other relevant record."

On Sept. 1, 1973, when the proceedings reached hearing before the Collector, the petitioner was represented by his Counsel. The Collector recorded an order on that day in the order sheet which, in the material part reads as follows : --

"The counsel for the respondent has filed a list of witnesses to be summoned as defence witnesses. The list includes the respondent and Shri P.N. Nehru, Estate Officer with the records pertaining to premises since the commencement of tenancy with lease deeds etc. Since the production of records required by the respondent can be done by the plaintiff himself, there is no need to summon the Estate Officer who in the present position is functioning as Collector also. Summons may be issued to the respondent. The case to come up for cross-examination of petitioner's evidence on 20-9-73..... The record of the Estate Office as summoned be produced by the Head Clerk of the Estate Office....."

Be it stated that no application was filed nor any clarification was made at that stage by and on behalf of the petitioner specifying that Shri P.N. Nehru was being summoned to give evidence on the factual background and not merely to produce documents and that, therefore, he was a material witness to prove the facts in issue and not merely a formal witness.

5. On Sept. 20, 1973, the Counsel for the petitioner cross-examined the Departmental witness, Shri M.L. Chauhan, and the Department closed its evidence on the same day. On Oct. 16, 1973, the evidence of the petitioner was recorded and he was cross-examined on behalf of the Department. The evidence of the petitioner was closed on that day. On Dec. 26, 1973, which was the date fixed for hearing the arguments, after notice with respect thereto was directed to issue on Nov. 21, 1973, neither the petitioner nor his counsel was present. Under the circumstances, the Collector heard the arguments advanced on behalf of the Department. The case was then adjourned for further hearing and the counsel for the petitioner was heard on May 1, 1974. The proceedings concluded with the pronouncement of the eviction order on May 28, 1974.

6. The original record of the proceedings before the Collector was produced for the perusal of the Court. The abovementioned facts relating to the material stages of the said proceedings have been taken therefrom.

7. The Collector vide his order dated May 28, 1974, Annexure PC, found that the petitioner was an unauthorised occupant of the premises since the lease which expired on Mar 31, 1964, was not renewed nor any fresh lease was granted in his favour. He accordingly passed an order directing the petitioner to vacate the premises within thirty days of the date of publication of the order and further directing that in the event of refusal or failure on his part to comply with the order within the specified period, he be evicted from the said premises, if need be, by the use of such force as may be necessary. He stated that the only submission which was made on behalf of the petitioner before the Collector was that a proper lease deed having been executed by and between the parties and the said tenancy having not been terminated, the continued occupation of the premises even after the expiry of the terms of the lease by him could not be regarded as unauthorised. No point was urged regarding the alleged violation of natural justice on the ground that the Collector could not become a judge in the cause, especially because he was, as the Estate Officer, a material witness to prove some of the facts in issue.

8. An appeal was carried against the said order to the Divisional Commissioner, Shimla. The memorandum of appeal is at Annexure PD. On a perusal of the said memorandum, the only objection bearing on the question of the competence of the Collector to hear and decide the case is found to have been set out in the following words in para 4 :

"That the learned Shri P.N. Nehru, Estate Officer, should have not proceeded against the appellant in the said matter as the very conduct and the official behaviour of Shri P.N. Nehru was involved in the proceedings held by him. More so the witness PW 1 is his own subordinate and has made his statement under the influence of Shri P.N. Nehru and his statement does not satisfy the requirement of law."

No specific objection was raised even in the memorandum of appeal as to the competence of the Collector to hear and decide the dispute on the ground that he being a material witness in the case he was disqualified from becoming a judge. By means of other grounds, the validity of the order of eviction was challenged on merits.

9. The Divisional Commissioner dismissed the appeal vide order dt. Oct. 4, 1978, Annexure PE. In the course of the said order, he summarised the three submissions . made before him by the Counsel for the petitioner in the following words :

"(i) that since Shri P.N. Nehru Estate Officer had himself been accepting the rent from the appellants, he alone could tell as to why the rent was being accepted from the appellants after determination of their tenancy. He was thus himself a material witness and therefore had no jurisdiction to try the cases. In this connection, he has cited : ILR (1974) HP 1134;

(ii) there was no evidence except the statement of a Clerk subordinate to the

Estate Officer to prove that the appellants were in unauthorised occupation of the said premises;

(iii) the allegation of subletting the premises by Shri Krishan Gopal appellant was wrong as the premises i.e. provision store had been used by the appellant as business premises for the last many years; the allegation of subletting by Shri Sant Ram, was also not correct.

"

It will be seen that before the Appellate Authority for the first time an argument was built up specifically that the Collector, who was also the Estate Officer, was a material witness to prove certain facts stated to be in issue and that therefore, he had no jurisdiction to hear and try the case. The Appellate Authority, in the course of his order, has not dealt with the aforesaid objection although he has noted the submission urged in reply thereto to the effect that the Estate Officer had no personal interest in the property and that in his capacity as Collector he was discharging functions and duties which were distinct and separate.

10. Two submissions were made at the hearing of the writ petition. First, the petitioner was a tenant holding over after the determination of lease and that the continued occupation of the premises on his part could not have been regarded as unauthorised till notice terminating the lease was issued by the competent authority and, secondly, that there was a breach of the rules of natural justice inasmuch as the Collector, who tried the proceedings, was a material witness to prove certain important issues of fact on which the parties were at variance and that as such he was a person interested in the subject matter his continuance with the trial of the eviction proceedings under such circumstances was against the rules of fair play and justice.

11. The petitioner's claim of tenancy based on the doctrine of holding over and the consequential immunity from eviction till the determination of. Lease must be rejected outright. The argument has been built upon the premise that after the determination of the lease on and with effect from April 1, 1964, the petitioner continued to occupy the premises with the implied consent of the lessors and that the rent or an amount equivalent to rent was being paid by and was accepted from him till February, 1972 and that thereby the tenancy was renewed by holding over and that since such tenancy was not determined in accordance with law the petitioner could not be regarded as being in unauthorised occupation and was not liable to be ejected on that ground. Now, the rights of a tenant holding over are dealt with in Section 116 of the Transfer of Property Act. The said Section, in so far as it is material, provides that if a lessee of property remains in possession thereof after the determination of the lease granted to him and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property was leased as specified in Section 106. It is well

settled that if the landlord accepts I rent from the lessee, who continues in possession of the demised premises even after the expiry of the lease or its determination by a notice to quit, or otherwise expresses his assent to the continuance of such possession, a new tenancy as is contemplated by Section 116 comes into existence and that unless there is an agreement to the contrary such tenancy would be regarded as one from year to year or from month to month, as the case may be. The assent of the landlord, which is founded on the acceptance of rent, must be shown to be relatable to the acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. What th"E section contemplates is a bilateral contract between the erstwhile landlord and the erstwhile tenant. On one side there should be an offer of taking a new lease evidenced by the lessee remaining in possession of the demised premises after his term was over and on the other side there must be a definite consent of the landlord to the continuance of possession by the tenant expressed by the acceptance of rent or otherwise. The tenancy which is created by the holding over of lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it by implication and to bring such a new tenancy into existence there mus be a bilateral act: (See AIR 1949 124 (Federal Court) , Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, and Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, . We are herein concerned with a property owned by successive Governments. In order to establish that a new tenancy by holding over came into existence as a result of the continuance in possession of the premises by" the petitioner after the expiry of the lease and by the acceptance of rent, the definite consent of those Governments to such continuance as expressed by the acceptance of the rent as rent and in clear recognition of the tenancy right of the petitioner is required to be proved Neither the mere fact of the petitioner remaining in possession of the premises after his term was over nor the payment of an amount equivalent to rent and the acceptance thereof by the Estate Officer can be regarded as a bilateral act involving those successive Governments on one hand and the petitioner on the other or, to put it differently, as indicative of the definite consent on the pan of the successive Governments to the creator of a new tenancy by the acceptance of rent a rent or a clear recognition of the assertion, if any, of the petitioner of the renewal of his tenancy rights. There is no evidence to show that the Estate Officer, for the time being who was managing the property, was authorised by the successive Governments to give on their behalf such a definite consent so as to create a new tenancy. A bilateral contract between the petitioner and any of the successive Governments creating a new tenancy could not have come into existence except in compliance of the provisions of Article 299 of the Constitution which is not the case here. Under such circumstances, no fresh tenancy in favour of the petitioner as a tenant holding over has come into existence and his plea that he could not be evicted until after the determination of the new (ease in accordance with law has no merit.

12. The submission that there was a breach of rules of natural justice and fair play since the Collector, who was himself a material witness in the capacity of the Estate Officer, was an interested person and that notwithstanding such interest or involvement in the eviction proceedings, he continued to try the same, is equally without merit. The purpose of summoning Shri P.N. Nehru as specified in the Process Fee Form incorporating the list of witnesses would seem to suggest that he was a formal witness summoned for the purposes of the production of documents therein mentioned. There was no clear indication that he was being summoned for the purposes of giving evidence on any of the material facts in controversy between the parties on which proof was required to be adduced by the petitioner. Even though the petitioner was represented by a Counsel, when the request for the issue of summons was being considered by the Collector, no clarification to this effect was made either in writing or orally. No such plea was also put forward and no such objection was raised before the Collector at the outset or during the course of the trial. Even in the memorandum of appeal, no specific ground to that effect was taken. It is only at the stage of arguments, by which time the decision rendered by this Court in the case of *Mrs. Raj Kumari Kharbanda v. State of Himachal Pradesh* v. ILR (1974) HP 1134 was in the hands of the petitioner, that this submission was made before the Appellate Authority. The question for consideration against the aforesaid background is, whether the plea of bias based on the ground that Shri Nehru was a material witness and that, therefore, there was a breach of principles of fair play and justice, in his continuing with the trial, is sustainable in law.

13. The decision in Kharbanda's case ILR 1974 HP 1134 is clearly distinguishable. In that case, which also arose out of the initiation of separate eviction proceedings under the Act against six alleged unauthorised occupants of the Nabha Estate, they had objected at the outset against the taking of the cognizance of the proceedings against them by Mr. P.N. Nehru as the Collector, in specific terms. The objection was founded on the ground that they proposed to examine him as their witness in the course of the proceedings to prove certain material facts, such as, the source of his authority to issue the receipts of rent as license fee and to establish that they had been in occupation of their respective premises against the payment of rent etc. and that, therefore, he could not be a judge in the cause. Since the objection was raised at the outset, a preliminary issue on the point of jurisdiction was raised by the Collector and it was tried and decided against the petitioners. The said decision on the preliminary issue was the subject-matter of challenge in Kharbanda's case on the ground that the Collector was a material witness to be examined by them to prove certain facts directly and substantially in issue in the proceedings and, as such, he could not sit as a judge in the cause. It was held that although there could be no dispute that no contractor agreement can be entered into by any person not authorised in that behalf by the government and that such contract, if any, by an unauthorised person cannot operate as an estoppel against the Government, it was for the petitioners to decide still as to how Shri Nehru was a material

witness. It was held further that although he could not create any tenancy in the Government premises unless he was specially authorised in that behalf as envisaged in Article 299 of the Constitution, it appeared to be necessary for the petitioners to examine him to elicit all the relevant facts including as to how he exercised the authority to receive rent or license fee and that he was, therefore, a material witness. The ultimate conclusion of the Court was recorded in the following words :

"There is nothing to show that respondent No. 2 who is trying the cases is in any way interested, but the thing is that the petitioners contend that they want to produce and examine Shri Nehru as their own witness in the case. The circumstances that they have disclosed show that Shri Nehru is a material witness in the case. Therefore, in these circumstances, I am of the view that respondent No. 2, i.e. the Estate Officer should not proceed with the trial of the case."

14. It will be seen that in that case the dispute on the question of jurisdiction of the Collector to try and decide the eviction proceedings was raised at the outset and that a preliminary issue covering the said controversy was raised and decided by him against the petitioners. Besides, the petitioners had clearly specified the purpose for which they intended to summon and examine him as a witness in his capacity as the Estate Officer and it was shown by them to the satisfaction of the Court that, on the facts and in the circumstances of the case, he was a material witness, although he was not in any way interested in the cause. In the present case, as earlier pointed out, no such purpose " was specified and no clarification to that effect was made at the material stage(s) and no such objection as to jurisdiction was raised at the outset or during the course of the trial before the Collector or even the memorandum of appeal. The point was raised, for the first time, before the Appellate Authority after the decision in Kharbanda's case ILR (1974) HP 1134 was rendered. On the facts and in the circumstances of the case, the petitioner's plea of bias cannot be sustained, since it has been raised clearly as an after thought and to take advantage of an apparently similar but a really different facts situation.

15. It would not be out of place to mention, while this point is under consideration, that the Departmental witness (Shri M.L. Chauhan), who was the Head Clerk in the Estate Office, produced all the relevant documents in connection with the occupancy of the premises by the petitioner. He testified on all the material aspects of the case while under examination-in-chief as well as under cross-examination. The petitioner having examined himself as a witness had also ample opportunity to place on record all the material facts and circumstances of the case bearing upon his continued occupation of the premises after the expiry of the lease. These circumstances have their own significance in judging the validity of the plea as to Shri P.N. Nehru being a material witness.

16. True it is that the principle of natural justice, *Nemo Judex in Causa Sua*, (no one should be made a judge in his own cause), is applicable as much to quasi-

judicial proceedings as to judicial proceedings. However, it is settled law that the requirements of natural justice are not cast in a strait-jacket formula and that their applicability varies from case to case and depends upon the circumstances of each case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with and so on and so forth. A mere departmental or official bias does not necessarily disqualify an officer from acting as an adjudicator unless it constitutes a legal bias in the true sense of the word. There is here neither any allegation nor any proof that Shri Nehru was actuated with personal malice or bias against the petitioner. The ground on which the bias is sought to be alleged against him is, as earlier found, clear afterthought. On the facts and in the circumstances of the case, therefore, there is no substance in the submission advanced on behalf of the petitioner with respect to the breach of rules of natural justice.

17. These were the only two submissions urged at the hearing of the writ petition and since there is no merit in any of them the writ petition fails and it is dismissed with no order as to costs.

18. At this stage, Miss Kamlesh Sharma requests that the petitioner be granted some time to vacate the premises. The request is reasonable and it is granted. It is directed that the eviction order shall not be executed till Jan. 31, 1988.