

(2022) 11 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2404 Of 2013

Shaila Devi @ Shaila Kumar And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Public Premises (Eviction Of Unauthorised Occupants) Rules, 1971 — Rule 3

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 2(e), 2(g),
3, 3(a), 3(ii), 4, 4(1), 5, 5(1), 9

Citation : (2022) 11 JH CK 0043

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : V.P. Singh, Bhैया Vishwajeet Kumar, Ranjeet Kumar, Vikash Kumar

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. This writ petition is filed under Article 227 of the Constitution of India for quashing of the order dated 29.09.2011 passed by the Estate Officer, S.E. Railway, Chakardharpur in EC No.66/1978 holding the petitioners unauthorized occupants of a total area measuring 3740 Sq. Ft. (68 Sq. Ft x 55 Sq. Ft) of the land in Plot No.1, Khata No.14, Thana No.1162 in Mouza Susnigaria, which is of South Eastern Railway and thereby, the ordered to vacate the said premises within 15 days from the date of publication of the order. Further, prayer has been made for quashing of the order dated 2nd April, 2013 passed by the District Judge-III, East Singhbhum at Jamshedpur in Misc. Appeal No.17/2011, by which, the order passed by the Estate Officer dated 29.09.2011 in EC No.66/1978 has been affirmed.

2. The brief facts of the case, as per the pleading made in the petition, which required to be enumerated read as under:-

It is the case of the petitioners that one Akhilesh Prasad Singh, deceased husband of the petitioner no.1 and father of petitioner no.2 was served with a notice dated 06.05.1978 under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as the Act, 1971) in Eviction Case No.66/1978 alleging therein that the land measuring 1890 Sq. Ft. (675 Sq. Ft. + 1215 Sq. Ft) with specific boundary belonged to Union of India represented by South Eastern Railway Administration. The said proceeding commenced, however, an ex-parte order was passed on 18.05.1979 and in the meanwhile, the said Akhilesh Prasad Singh died.

However, the petitioners filed Misc. Appeal No.14/1979 against the order dated 18.05.1979 before the appellate authority, as per the provision as contained under the Act, 1971 but the said ex-parte order was confirmed by the Appellate Court vide order dated 25.05.1985.

The petitioners preferred CWJC No.1173 of 1985(R) before the Ranchi Bench of the Patna High Court and the order passed by the Original as also the Appellate Authority were quashed by the Division Bench vide order dated 07.11.1990 and the matter was remitted back to the Estate Officer to decide the matter afresh after giving opportunity of hearing to the petitioners. The Estate Officer again has passed order afresh on 02.09.1993, which was again confirmed by the Appellate Court by dismissing the appeal of the petitioners vide order dated 13.04.2004. The petitioners again filed writ petition being W.P.(C) No.3475 of 2004 challenging the aforesaid order and again the writ petition was allowed in terms of judgment dated 02.09.2009 by remitting the matter back to the Estate Officer with a direction to pass a fresh speaking and reasoned order in accordance with law.

The petitioners have filed their show cause pursuant to notice dated 06.05.1978 and judgment dated 02.09.2009 stating inter-alia that the land in question was originally recorded in the name of Pawan Bhumij and aboriginal member of Scheduled Tribe, the great Grandfather of Digamber Bhumij and since 1930, the petitioners and their ancestors were coming in the possession by constructing the shops thereon.

The further point has been raised that the Estate Officer had no jurisdiction to initiate proceeding as he was not authorized to pass order under Section 3 of the Act, 1971. Thereafter, the proceeding proceeded and finally the order passed by the Estate Officer on 29.09.2011 for eviction of the petitioners from the suit premises within 15 days from the publication of the order. The petitioners, being aggrieved with the order of the Estate Officer dated 29.09.2011 in EC Case No.66 of 1978, have preferred statutory appeal under Section 9 of the Act, 1971 being Misc. Appeal No.17 of 2011.

During its pendency, petitioners have filed writ petition being W.P.(C) No.7609 of 2012 which was dismissed vide order dated 20.12.2012, against which, the petitioners have filed L.P.A. No.17 of 2013, wherein, the Division Bench vide

order dated 21.02.2013 has been pleased to pass an order granting stay of eviction from the premises with a direction to decide the appeal on merit and further, with a direction not to demolish any structure for a further period of fifteen days after the decision of the appellate authority. The appellate authority, thereafter, has passed order on 02.04.2013 by dismissing the Misc. Appeal No.17 of 2011 which is the subject matter of the instant petition.

3. Mr. V.P. Singh, learned Senior Counsel appearing for the petitioners has taken the following grounds in assailing the order passed by the Estate Officer confirmed by the appellate authority, i.e.,:-

(A.) The person/authority, who has passed the impugned order in Form-'B' under Section 5(1) of the Act, 1971 on 29.09.2011 was not duly notified in "Official Gazette" as "Estate Officer" and that also for the area where the land in dispute is situated;

(B.) The notice issued under Section 4(1) of the Act, 1971 in Form-'A' on 06.05.1978 was vague and was not in conformity with the provisions of Rule-3 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971;

(C.) The authority who passed the order dated 29.09.2011 adopted a procedure which was unknown to law;

(D.) The proceeding under the Act is a summary proceeding, but in this case a dispute to title coupled with long possession has been decided;

(E.) The decision of the authority under Section 5(1) of the Act as well as of the appellate authority, even on merit was not legal, valid and justified. The findings recorded therein are also perverse.

4. While, on the other hand, Mr. Vikash Kumar, learned counsel appearing for the respondent-South Eastern Railway has submitted that whatever ground has been raised on behalf of the learned Senior Counsel for the petitioners more particularly the ground pertaining to jurisdiction of the Estate Officer, the same is not worth to be considered, reason being that, this is the 4th round of litigation, while the writ petition was filed on first occasion against the proceeding which was commenced in pursuant to notice dated 06.05.1978, basis upon which, an order was passed on 18.05.1979.

It has been submitted that the Estate Officer who has passed the order in Eviction Case No.66/1978 on 29.09.2011 has well been conferred with the power to act as Estate Officer in view of notification issued in this regard by the competent authority on 08.10.1985, as has been appended in Supplementary affidavit filed on behalf of the respondent on 17.10.2022 and as such, it is incorrect on the part of the petitioners to agitate the point about the jurisdiction having not been conferred with the Estate Officer, who has passed the order dated 29.09.2011 in Eviction Case No.66 of 1978.

5. So far as the issue on merit is concerned, it has been contended that the

predecessor-in-interest of the petitioners or the petitioners are trespassers upon a piece of railway land situated over Plot no.1, Khata No.14, Thana No.1162 in Mouza Susnigaria which belongs to the South Eastern Railway, wherein, the land in question was recorded in the name of Bengal Nagpur Railway (BNR) and in the present settlement, it was recorded in the name of South Eastern Railway.

The fact about title which is being claimed by the petitioners has well been considered by the Estate Officer by recording a specific finding to that effect holding the petitioners to be unauthorized occupants of total area measuring 3740 Sq. ft. in Plot No.1, Khata No.14, Thana 1162, Mouza-Sunsnigaria which is of South Eastern Railway.

It has been contended that the Estate Officer and the appellate authority after going through the testimony of the witnesses have arrived at conclusive finding that the land in question was recorded in the name of BNR in the revisional survey finally published in the year 1937 and at present, it has been recorded in the name of South Eastern Railway. The BNR has acquired this land for the railway purpose and after BNR, the South Eastern Railway was in the possession of the said land.

It has further been arrived at that late Akhilesh Singh for the first time, i.e., on 25.05.1977 encroached upon a piece of land measuring an area of 675 Sq. ft., and on 25.12.1977, encroached 1215 sq. ft. of land in Plot no.1, Khata No.14 in Mouza-Susnigaria, Tatanagar Station road, P.S. Jugsalai.

The Estate Officer, based upon such testimony has passed order for eviction of unauthorized occupants.

In this pretext, submission has been made that since the fact finding has been arrived at by the Estate Officer which has duly been confirmed by the appellate authority, therefore, the same cannot be reversed in exercise of power conferred under Article 227 of the Constitution of India.

6. This Court has heard the learned counsel for the parties and has gone through the relevant documents.

7. This Court, after considering the arguments advanced on behalf of the parties, deems it fit and proper to first delve upon the issue of jurisdiction to act as Estate Officer. But before going through the said issue, it requires to refer herein that the instant eviction proceeding as has been initiated after issuance of notice under Section 4(1) of the Act, 1971, which was issued on 06.05.1978.

The order, in pursuant to the notice dated 06.05.1978, was passed by the Estate Officer on 18.05.1979. Thereafter, an appeal was preferred against the said order by filing Misc. Appeal being Misc. Appeal No.14/1979 which was dismissed on 25.05.1985. The aforesaid order was challenged before this Court by filing writ petition being CWJC No.1173 of 1985(R).

8. This Court, after taking into consideration the fact that the order was passed

ex-parte, has remitted the matter before the authority to decide the issue afresh by providing opportunity of hearing to the petitioners to adduce evidence by passing an order in the aforesaid writ petition on 07.11.1990.

Akhilesh Singh, who was party to the Eviction Case No.66/1978, had died during the pendency of the aforesaid proceeding, hence, Most. Shaila Kumari @ Shaila Devi and others have been substituted as legal heirs in Misc. Appeal No.14 of 1979. The said Most. Shaila Kumari @ Shaila Devi and others were also party to the writ petition being CWJC No.1173 of 1985. The writ petitioners had appeared before the Estate Officer but not filed show cause notice even after giving ample opportunity and as such, eviction case was again heard ex-parte and eviction order was passed against the appellants on 02.09.1993 by the Estate Officer, South Eastern Railway, Chakradharpur.

The writ petitioners again filed an appeal against the order dated 02.09.1993 which was registered as Misc. Appeal No.27/1998 but the same was dismissed vide order dated 13.04.2004. The order dated 13.04.2004 passed in Misc. Appeal No.27/1998 was challenged by filing writ petition before this Court being W.P.(C) No.3475/04. The coordinate learned Single Judge of this Court has quashed the order of Estate Officer as also the order of the appellate authority by remanding the matter to the Court of Estate Officer, South Eastern Railway, Chakradharpur with a direction to the appellants to appear before the Estate Officer on 10.09.2009 to submit show cause, whereafter, the Estate Officer shall fix a date within one week from the date of appearance of the parties to enable them to adduce evidence, if any within two months from the date of order and Estate Officer, Chakradharpur shall take a final decision by passing a reasoned speaking order in accordance with law, subject to payment of cost of Rs.10,000/-.

The writ petitioners appeared before the Estate Officer and adduced evidence. The Estate Officer passed an order on 29.09.2011 in Eviction Case No.66/1978. Thereafter, an appeal was preferred being Misc. Appeal No.17 of 2011 which was dismissed vide order dated 2nd April, 2013.

It is thus, evident from the aforesaid factual aspect that at the first instance, when the order was passed by the Estate Officer, i.e., on 18.05.1979, due to the death of Opposite Party, i.e., Akhilesh Singh, the matter proceeded ex-parte and as such, the legal heirs, i.e., Most. Shaila Kumari @ Shaila Devi and others have been substituted in appeal against the order dated 18.05.1979 in Misc. Appeal No.14/1979 which, however, was dismissed. The legal heirs of the predecessor-in-interest, i.e., Akhilesh Singh filed writ petition being CWJC No.1173/1985(R), wherein, the issue of ex-parte order and no opportunity of hearing having been provided was the ground to question the order dated 18.05.1979.

The coordinate learned Single Judge has considered the aforesaid matter and quashed it by remitting the matter before the Estate Officer to provide an opportunity to the petitioners. But the petitioners have again chosen not to appear before the Estate Officer and hence, the order ex-parte again was

passed. Again, the same was quashed vide order dated 02.09.2009 passed in W.P.(C) No.3475/2004. But no issue of jurisdictional error of the Estate Officer has ever been taken by the writ petitioners. However, when the matter was remanded by the coordinate learned Single Judge of this Court by passing an order on 02.09.2009 passed in W.P.(C) No.3475/2004, has taken the issue of jurisdiction in the show cause.

9. The provision of Section 3(a) of the Act, 1971 provides for appointment of Estate Officers, whereby and whereunder, the Central Government may, by notification in the Official Gazette, appoint such persons being Gazetted Officers of Government (or of the Government of any Union territory) or officers of equivalent rank of the (statutory authority), as it thinks fit, to be estate officers for the purpose of this Act, for ready reference, Section 3(a) of the Act reads as under:-

"3. Appointment of estate officers.-The Central Government may, by notification in the Official Gazette,-

(a) Appoint such person, being Gazetted Officers of Government [or of the Government of any Union territory] or officers of equivalent rank of the [statutory authority], as it thinks fit, to be estate officers for the purpose of this Act."

It is thus, evident from the provision as contained under Section 3 of the Act, 1971 that it is the Central Government by way of notification in the Official Gazette, who is to appoint such person being Gazetted Officers of Government or officers of equivalent rank of the statutory authority.

It is further evident from Section 4 of the Act, 1971 that it is the Estate Officers who is required to issue notice, if the Estate Officer has information that any person is in unauthorized occupation of any public premises and that he should be evicted.

10. The question which is required to be considered herein that at such belated stage, whether the issue of jurisdiction in pursuant to notice dated 06.05.1978 can be allowed to be agitated by the petitioners in the 4th round of litigation, even though, the said issue was available with the petitioners at the time of filing of first writ petition being CWJC No.1173/1985(R).

11. The answer of this Court will be negated on the ground that even though, the issue of jurisdiction being the law point is required to be raised at any stage of the proceeding but whether that stage can be construed to be in the 4th round of litigations. The implied meaning of 'stage', according to the considered view of this Court will be the stage of initial proceeding and not the subsequent proceeding, herein, such point is being raised at the 4th round of litigation.

This Court is also of the view after going through the material available on record that on first occasion the order was challenged before this Court being ex-parte which can be considered to be a genuine ground, since, the original unauthorized

occupant, namely, Akhilesh Singh had died in course of pendency of Eviction Case No.66/1978 and as such, the ground of ex-parte decision has been considered to be a good ground for interference shown by this Court by remitting the matter before the authority to pass a fresh order. But, even in the 2nd round of litigation, the writ petitioners have not put their appearance before the Estate Officer and again, the ex-parte order was passed on 02.09.1993 which having been confirmed in an order passed in Misc. Appeal No.27/1998 vide order dated 13.04.2004, again the same was challenged before this Court by filing writ petition being W.P.(C) No.3475 of 2004. However, this Court again interfered with the order in order to provide opportunity to put-forth the evidence.

It is only in the 4th round of litigation which had arisen after passing of order in W.P.(C) No.3475 of 2004, the show cause was filed by the petitioners/applicants and the issue of jurisdiction of the Estate Officer has been questioned.

12. This Court, in view of the aforesaid conduct of the writ petitioners is not hesitant in coming to conclusion that the writ petitioners only for the purpose of delaying and to have the possession of the land, have not appeared in the 2nd round of litigation, even though, there was specific direction to file show cause in order to provide opportunity to the petitioners.

The issue of jurisdiction was well available at the time of filing of show cause, when the matter was remanded by the coordinate learned Single Judge of this Court by passing an order in CWJC No.1173/1985(R) which was disposed of on 07.11.1990.

The respondent, however, has brought on record the notification issued on 08.10.1985 by the Ministry of Railways (Railway Board) which was published in the Gazette of India Part II Section 3(ii) appointing the Divisional Engineers, Adra, Chakradharpur, Bilaspur, Kharagpur, Khurda, Nagpur and Waltair, South Eastern Railway to act as Estate Officer.

13. This Court, therefore, is of the view that since the issue of jurisdiction has never been raised, so far as it relates to notice dated 06.05.1978 having not conferred to the Estate Officer, notice issuing authority in view of the provision of Section 4 of the Act, 1971 and thereafter, when the order was passed by the Estate Officer on 29.09.2011, the same cannot be considered to be having no jurisdiction, since, the notification to that effect has already been notified in the Gazette of India notification on 08.10.1985.

The matter could have been understood if the jurisdiction of the notice issuing authority pertaining to notice dated 06.05.1978 would have been raised during the relevant time, but the same having not been raised even though, the ample opportunity had been provided to the petitioners in the previous two round of litigations and it is only 4th round of litigation that is at the time of filing show cause in pursuant to direction issued by this Court passed in W.P.(C) No.3475 of 2004, the issue of jurisdiction was raised.

Therefore, such issue of jurisdiction cannot be considered to be a good ground to show interference holding the notice dated 06.05.1978 to be without any jurisdiction.

Moreover, the day when the order was passed by the Estate Officer, i.e., on 29.09.2011, such jurisdiction had well been conferred upon the Estate Officer in pursuant to Gazette notification dated 08.10.1985.

14. Accordingly, the ground of jurisdiction, i.e., ground no.'A' is being answered against the writ petitioners.

15. So far as the ground no.'B' and C', i.e., the notice having vague and was not in conformity with the provisions of Rule-3 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 and the authority who has passed the order dated 29.09.2011 adopted a procedure are concerned, the same at such a belated stage cannot be allowed to be considered, since, the said ground, even accepting the contentions of the writ petitioners, were well available at the time of contesting the case by the writ petitioners in pursuant to the direction passed by this Court in CWJC No.1173 of 1985(R) dated 07.11.1990.

The issue of vagueness has been taken since the name of Village, Thana number, Khata number, Plot number and even the boundary wall has also not contained the details but only the names of persons on the boundary have been given, by which, it appears that they are encroachers.

16. Considering the aforesaid fact, this Court is of the view that the same cannot be a good ground to be considered at such a belated stage.

17. So far as the ground no.'D' is concerned, as per which the ground has been agitated that a proceeding under the Act being a summary proceeding, wherein, a dispute of title coupled/long possession cannot be allowed to be considered.

18. It is not in dispute that the very object and reason for enacting the Act, 1971 is to provide for speedy machinery for the eviction of unauthorized occupants of the public premises.

19. Section 5 of the Act, 1971 provides for taking possession of the public premises which are on unauthorized occupation of persons.

Section 7 of the Act, 1971 provides for recovery of rent or damages in respect of public premises from persons who are on unauthorized occupation thereof.

The 'unauthorized occupation' has been defined under Section 2(g), as per which, it means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.

The 'public premises' have been defined under Section 2(e) which means any

premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980.

20. The writ petitioners have tried to impress upon the Court by referring to the show cause filed on 16.02.2011 that the said land was originally belonged to Late Pawan Bhumij whose name was recorded in CS settlement prior to the period of 1906. The period when the CS settlement was held much before bifurcation of the State and much before bifurcation of Singhbhum from Malbhum when Purulia District Court was under the Manbhum District. The present singhbhum District 'East' and 'West' was begotten of Manbhum District. The land in question was recorded, mutated and registered in the name of great grandfather of Digamber Bhumij. Late Pawan Bhumij was bonafide, absolute and lawful owner of the said land and was in the peaceful possession of the same. The said land was alienated to many land then to late Nanak Singh, the father of late Akhilesh Singh. The suit land and shops are in possession of her family since after lawful alienation from the Adivasi (Schedule Tribe) since 1930 and prior to that the suit land and shops were standing thereon. It has also been claimed that the suit land was recorded, mutated and registered in the name of great great grandfather of Digamber Bhumij and after the death of Digamber Bhumij, the said land was devolved to Pawan Bhumij.

The authorities have contested the aforesaid ground by producing the documents, i.e., Exbt.A/1 being letter no.L/4 dated 21.09.1989, Exbt. A/2 being letter no.EP/X/94 dated 26.07.1989, Exbt. A/3, Sketch map showing encroachment of railway land by Smt. Saila Kumari and Sri Mantu Singh, Exbt.A/4 showing encroachment of railway land by Ops., Exbt. A/5 being ROR of plot no.1, Khata No.14, Mouza-Susnigaria, Exbt. A/6, i.e., Sabik Mouza Map of Mouza Susnigaria published in the year 1937, Exbt. A/7, i.e., Hal Mouza map of Mouza Susnigaria published in the year 1961.

The Ops., the writ petitioners herein have produced oral witnesses, i.e., DW/1, namely, Om Narayan Singh @ Tun Tun Singh, DW/2, namely, Surendra Prasad Singh and DW/3, namely, Vansh Narayan Singh. The writ petitioners have also produced several documentary evidences, i.e., Exbt. D/1, which is the Xerox copy of Electricity Bill no.8166 dated 18.10.2001, Exbt. D/2, Xerox copy of Electricity Bill No.675627 dated 08.10.2001, Exbt. D/2, Xerox copy of Bill No.440967 dated 08.10.2001 and Exbt. D/3, i.e., one original unregistered sale deed dated 31.03.1957.

The aforesaid issue of claiming title has been considered by framing an issue, i.e., issue no.4, as would appear from the order passed by the appellate authority dated 02.04.2013 passed in Misc. Appeal No.17/2011 to the effect "whether the O.Ps. have acquired prescription right, title and possession by adverse possession of the suit land."

The authorities have considered recording the land in question being recorded in the name of Bengal Nagpur Railway (BNR) in the revisional survey finally published in the year 1937 which had been acquired by the BNR for the railway purpose in the year 1900 and now it is in the possession of the South Eastern Railway.

The authorities have also come to conclusion that late Akhilesh Singh for the first time on 25.05.1977 has entered into the piece of land measuring an area of 675 Sq. Ft. The authorities, therefore, has come to the finding that when the land in question has been recorded in the name of BNR in the revisional survey finally published in 1937 then where is the question of claiming title by late Akhilesh Singh who has entered into the premises for the first time on 25.05.1977.

Such conclusion has been arrived at on the basis of the exhibits more particularly the record of rights, i.e., Exbt. A/5.

The authorities have negated the claim of title which was claimed only on the basis of the electricity bills and unregistered sale deed dated 31.03.1957.

21. It requires to refer herein that unregistered sale deed does not confer any right and title upon the party under the provision of Transfer of Property Act. The Electricity Bill also does not confer any right and title of a person over the land in question.

The writ petitioners, since, have claimed their title only on the basis of the some of the electricity bills and unregistered sale deed dated 31.03.1957 without disputing the record of right i.e., the revisional survey which was published in the year 1937 showing the land in question recorded in the name of Bengal Nagpur Railway (BNR).

22. This Court, on the basis of the discussions so made by the authority concerned regarding the title of the petitioners over the land in question, is of the considered view that the petitioners have failed to establish their title over the land in question so as to disbelieve the plea of unauthorized occupants over the land in question. The petitioners have also failed to prove the land in question not to be public premises, since there is no rebuttal to the revisional survey finally published in the year 1937.

23. The issue of adverse possession has also been taken into consideration by the authority while dealing the same, as would appear from paragraph-24 of the order passed by the appellate authority and after discussing the rival contention, the appellate authority has come to conclusion by discarding the claim of the writ petitioners that the ancestors of the opposite parties came in possession of the land in question in the year 1930 and purchased it in the year 1957 which means that there was no animus of possession of the opposite parties in the proceeding land.

It has also been held that mere long possession for a period of more than 12 years without intention to possess the land in question adversely to the title of

true owner cannot be said to be adverse possession. The reason has been recorded that for adverse possession, the possession required must be adequate, in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

The appellate authority has arrived to such conclusion by taking into consideration the fact that neither the ancestors nor the petitioners have ever in adverse possession of the proceeding land and acquired title by prescription. The proceeding land remained in unauthorized occupation on and from 25.05.1977 when Akhilesh Singh came in possession of the proceeding land and since then, the matter is sub-judice.

24. In view of the aforesaid discussion, this Court is of the view that even though, the proceeding of eviction as provided to be followed under the provision of the Act, 1971 is a summary proceeding but the issue as to whether the petitioners are trespassers or not has well been considered by providing ample opportunity to the parties to produce the documents.

25. Accordingly, this Court is of the view that the said ground/point having no force accordingly, rejected.

26. So far as the ground/point no.'E' is concerned which pertains to the fact that the proceeding was started on the basis of notice dated 06.05.1978 in Form-'A' under Section 4(1) of the Act with respect to 1890 Sq. ft. of land but final order dated 29.09.2011 has been passed in Form-'B' under Section 5(1) has been passed with respect to 3740 Sq. ft. of land. This issue has also well been considered.

27. It is evident from the material available on record more particularly the order passed by the Estate Officer and the appellate authority that due opportunity was provided to the petitioners to defend about the land comprising an area of 3740 Sq. ft. while dealing with such issue which is evident from the order passed by the appellate authority, the conclusion has been arrived at that while the matter was pending, the petitioners encroached upon the adjacent railway land measuring an area of 1700 Sq. ft. on and from 06.02.1989 towards East and West. Further, they have encroached the adjacent land measuring an area of 150 Sq. ft. towards East in the year 2005 and accordingly, the petitioners are in unauthorized occupation of total railway land measuring an area of 3740 Sq. ft. butted and bounded by East -vacant railway land and unauthorized structure, West-Railway land under unauthorized occupation of Shri Bhagwan Yadav North-vacant land, brick wall, footpath and main road to Jagsalai, South railway land under unauthorized occupation of Shri Pradeep Tanti and Railway quarter no.336.

It would be evident from para-23 of the order passed by the appellate authority that the fact regarding further extended encroachment was not controverted by the petitioners at any point of time, since, the plea raised by the petitioners in their reply to show cause was accepted by the opposite parties. The appellate authority has also given a finding that the only ingredients necessary to be

satisfied before initiating proceeding under the Act is that a person is an unauthorized occupant of the public premises.

It has also been observed that the opposite parties are the legal heirs of late Akhilesh Singh and substituted themselves and since the proceeding was in continuity, there was no need of issuing fresh notice in the name of present opposite parties.

28. The conclusion has also been arrived at that the opposite parties were otherwise having full knowledge of the ground upon which the eviction was proposed and as such, the issue of extended encroachment having not been mentioned in the notice has been considered not to be a worth ground to interfere with the order passed by the Estate Officer.

The said finding, according to the considered view of this Court is not required any interference in view of the fact that when a part of area which is encroached by the petitioners being the legal heirs of the Akhilesh Singh is being accepted to be an unauthorized occupation and as such, the further land which is the part and parcel of the same plot since has been encroached subsequently, the same will also come under the fold of unauthorized occupation of the public premises.

29. The writ petitioners by raising this issue that there is no reference of notice about the extended encroachment, according to the considered view of this Court that the part of the area which is contained in the notice to the extent of 1890 Sq. ft. of land is being accepted and when the same is being accepted, the other part of the land even if not referred in the notice dated 06.05.1978 rather, the encroachment is during the pendency of the proceeding, there is no requirement to give further notice.

The notice is required to be given in a fresh proceeding and once the proceeding has been initiated in pursuant to the notice issued way back on 06.05.1978 and in the meanwhile, if the further land is being encroached and when the land which is the subject matter of the notice dated 06.05.1978 having been adjudicated by holding the said land to be public premises and under the unauthorized occupation of the petitioners, then the extended part of the land if encroached, requires no further notice, since, the encroachment is in course of continuity of proceeding.

30. It needs to refer herein the scope of Article 227 of the Constitution of India. Dealing with the scope of Article 227 of the Constitution of India, the Hon'ble Apex Court in the case of Shalini Shyam Shetty & Anr. Vrs. Rajendra Shankar Patii, reported in (2010) 8 SCC 329 has been pleased to laid down therein regarding the scope of Article 227 which relates to the supervisory powers of the High Courts and by taking aid of the judgment rendered by the Hon'ble Full Bench of Calcutta High Court in the case of Dalmia Jain Airways Ltd. Vrs. Sukumar Mukherjee, reported in AIR 1951 Calcutta 193, wherein it has been laid down that Article 227 of the Constitution of India does not vest the High Court with limit less power which may be exercised at the court's discretion to remove

the hardship of particular decisions. The power of superintendence confers power of a known and well recognized character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep the subordinate courts within the bounds of the authority, to see that they do what their duty requires and that they do it in a legal manner.

The power of superintendence is not to be exercised unless there has been;

(a) An unwarranted assumption of jurisdiction, not vested in a court or tribunal;
or

(b) gross abuse of jurisdiction; or

(c) an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.

Further, in the aforesaid judgment the Hon'ble Apex Court has taken aid of a judgment rendered in the case of Mani Nariman Daruwala Vrs. Phiroz N. Bhatena, reported in (1991) 3 SCC 141, wherein it has been laid down that in exercise of jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to.

The Hon'ble Apex Court has made it clear that except to this limited extent the High court has no jurisdiction to interfere with the finding of facts.

Further, the judgment rendered by the Hon'ble Apex Court in the case of Laxmikant Revchand Bhojwani Vrs. Pratapsing Mohansingh Pardeshi, reported in (1995) 6 SCC 576, it has been laid down that the High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.

It has been laid down at paragraph 47 of the aforesaid judgment that the jurisdiction under Article 227 is not original nor is it appellable. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Article 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226 the High Court normally annuls or quashes an order or proceedings but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made.

It has further been laid down regarding the powers to be exercised by the High Court under Article 227 of the Constitution of India. The High Court, in exercise of its jurisdiction of superintendence, can interfere in order only to keep the tribunals and courts subordinate to it within the bounds of its authority, in order to ensure that law is followed by such tribunals and courts by exercising

jurisdiction which is vested with them and by not declining to exercise the jurisdiction which is vested in them. Apart from that, High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

31. This Court, on the basis of the proposition laid down by the Hon'ble Apex Court about the jurisdiction to be exercised by this Court sitting under Article 227 of the Constitution of India and after taking into consideration the finding recorded by the Estate Officer and the appellate authority on merit, is of the considered view that there is no error apparent on the face of record.

32. Accordingly, the instant petition stands dismissed.

33. In consequent to dismissal of this petition, interlocutory application(s), if any, stands disposed of.