
(2007) 06 JH CK 0043
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5863 of 2006

Shri Bhagwan Yadav

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2, 2(1), 2(2), 3

Citation : (2007) 2 BLJR 2432 : (2007) 3 JCR 617

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : V. Shivnath, Birendra Kumar, Sweetly Topno and Niraj Kishore, for the Appellant; Mahesh Tewari and Prabhat Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. This writ petition has been filed against the order dated 28.8.2006, passed by learned Additional District Judge in Misc. Appeal No. 21 of 1999 (Annexure-4) and the order dated 27.8.1999, passed by the Estate Officer, South Eastern Railway, Chakradharpur in Eviction Case No. 46 of 1996 (Annexure-2) under Public Premises (Unauthorized Occupants) Act, 1971 (the Act for short), for eviction of the petitioner from an area of 2115 sq. ft. used as "Krishna Hotel".

3. Mr. V. Shivnath, learned senior counsel appearing for the petitioner, raised the first objection, that the proceeding was barred under constructive res judicata as the earlier proceeding was withdrawn and no leave was obtained for initiating the present proceeding.

4. Mr. Mahesh Tiwary, appearing for the respondents, submitted that the present proceeding having been started, with the leave of the Estate Officer and with the consent of parties, is not barred by res judicata.

5. The first objection of Mr. V. Shivnath about res judicata is being dealt with

first. An Eviction Case No. 120 of 1977 was started under the Act by the Railways for evicting the petitioner on the ground that an area of 1125 Sq. ft. has been encroached by him on 7.4.1977. Before any decision was given in the said case, on the ground that petitioner encroached upon a further area of 990 Sq. ft. on 25.12.1977, the said case was dropped and a fresh proceeding was started amalgamating the subsequent encroachment, being Eviction Case No. 69 of 1978 for evicting the petitioner from an area of 2115 Sq. ft. (1125 + 990), in which an ex parte order was passed on 5.7.1979. Against that order, petitioner filed appeal being Misc. Appeal No. 22/1978 before the District Judge which was dismissed on 12.11.1984, upholding the said order of the eviction dated 5.7.1979. Against the said order, petitioner filed writ petition being CWJC No. 1418 of 1984, in which the said order dated 12.11.1984 was set aside and the appeal was remanded for fresh hearing. On 6.2.1988, the appellate authority set aside the said ex parte order of eviction dated 5.7.1979. However, the eviction proceeding continued. By order dated 8.12.1995, the Estate Officer permitted the Railways for initiating a fresh proceeding, with the consent of the parties, whereupon the present Eviction Case No. 46/1996 was started. Moreover petitioner challenged the notice dated 5.8.1996, issued in the said Eviction Case No. 46 of 1996, inter alia on the ground of res judicata, by filing a writ petition being C.W.J.C. No. 2577 of 1996 which was dismissed on 23.8.1996. Then, petitioner again raised objection of res judicata before the Estate Officer which was also rejected by the order dated 7.10.1997. This order was not challenged and became final.

In order to complete the chain of events, it may be noted here that ultimately, after hearing the parties, the Estate Officer passed the impugned order on 27.8.1999 for eviction of the petitioner, against which he filed an appeal being Misc. Appeal No. 21/1999. Then he filed a Suit being T.S. No. 43 of 2000. The said Misc. Appeal No. 21 of 1999 was dismissed by the impugned order dated 28.8.2006.

In these circumstances, the objection of res judicata cannot be accepted and it has to be held that the present proceeding is in continuation of the earlier proceeding.

6. The second contention of Mr. Shivnath is that a bonafide dispute of title is involved, which cannot be decided in the summary proceeding under the Act and for which a suit is pending.

In reply Mr. Tiwary submitted that the said suit is barred u/s 15 of the Act. Moreover, the same has been filed for oblique purposes. For the first time, in the said suit filed in 2000, petitioner has raised a claim of purported settlement of the land by ex-landlord, which was never his claim in the eviction case, which is continuing for about last 30 years. Further the suit has been filed after the eviction order was passed, and the appeal against the same was filed by the petitioner, with the mala fide intention to overreach the order passed in the eviction case. Even in the plaint, it is admitted that the land has been recorded in the lat survey, in the name of Railways. In the eviction proceedings, Railways

proved that the land in question belongs to the Railways. During the eviction proceeding, petitioner offered to pay occupation/license fee to Railways. Thus, it becomes admitted position that the land in question is public land which has been encroached by the petitioner since the year 1977.

He further submitted that the appellate authority has rightly observed that the concerned Railways officials are helping the petitioner, in delaying disposal of the eviction proceeding for 30 years, though as per the Act, such proceedings are required to be disposed off expeditiously. Similar is the position in the suit which is kept pending for 7 years. In these circumstances, he submitted that this Court should not interfere with the impugned orders in this writ petition.

The second contention of Mr. Shivnath also cannot be accepted. Firstly, the Railways has proved in the eviction proceeding that the land belong to the Railways, on which the petitioner is in unauthorized occupation since 1977. Secondly, Section 15 of the Act creates a clear bar of jurisdiction of the Civil Court in respect of the eviction of any person who is in unauthorized occupation of any public premises. Thirdly, the aforesaid submissions of Mr. Tiwary that the suit has been filed by the petitioner, for oblique purposes, cannot also be brushed aside.

Thus, it has to be held that no bonafide dispute of title is involved in this proceeding. Rather the said suit is an abuse of the process of law.

7. The judgments relied by Mr. Shivnath are of no help to the petitioner. In the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, the fact situation was different, which will appear from para 7, which reads as follows:

7. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be restored to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property described in Sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by restoring to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land " for which he is liable to pay assessment u/s 3." Section 3, in turn, refers to unauthorized occupation of any land "which is the property of Government." If there is a bonafide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the

property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bonafide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

Firstly, there is no such provision like Section 6(1) of the A.P. Land Encroachment Act, in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Secondly, in the said case also it was held that summary proceeding under the Act should be resorted to for eviction, expeditiously, in public interest. Thirdly, in the said case, the Court found that the dispute of title was bonafide and for deciding such dispute, the summary proceeding was not suitable. But in the present case admittedly the lands in question belong to the Railways, and the purported dispute of title raised by the petitioner is not at all bonafide.

8. Similarly, the case reported in *Madan Mohan Vadehra Vs. Bharat Coking Coal Company Ltd. and Others*, is of no help to the petitioner. In that case, Bharat Coking Coal Limited itself had preferred a suit and in that situation, it was held that there is a dispute relating to right and title. In the case reported in 2006 (4) JLR 65 *Mahendra Gavali v. BCCL, Dhanbad*, notice was issued under the Act during pendency of a suit and in that situation, the proceeding under the Act was stayed.

9. After considering the case from all possible angles, I am not inclined and find no reason for interference with the impugned orders. Accordingly, this writ petition is disallowed. However, no costs.