

(1995) 11 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 10291/95A

Sidharthan, P.K.

APPELLANT

Vs

Estate Offices, Southern Railway and Others

RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 18
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 10, 15, 16, 16(3), 2

Citation : (1995) 11 KL CK 0009

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : B. Gopakumar and Cnincy Gopakumar, for the Appellant; Joy George, for Respondents 1 and 2 and C.N. Ramachandran, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, J.—The Petitioner challenges the decision of the Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Petitioner has sought to invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution. There cannot be any doubt that this Court could exercise its jurisdiction under Article 227 of the Constitution even if the Appellate Authority under the Act is treated as a Court. But the jurisdiction under Article 226 of the Constitution to issue a writ of certiorari cannot be exercised in view of the decision of the Supreme Court in Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another,

2. I will first consider whether the Appellate Authority under the Act is a Court or is only a persona designata. Section 9 of the Act provides that an appeal shall lie to an "Appellate Officer" who shall be the District Judge of the District in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the District Judge may designate in this behalf.

Though Sub-Section 2 of Section 9 provides for certain matters, there is no provision in the section regarding the procedure to be followed by the Appellate Officer. Section 10 of the Act gives a finality to the order of the Appellate Officer and bars a suit, application or proceedings in execution. Section 15 of the Act bars the jurisdiction of Court to deal with any matter in respect of -the eviction of any person or the recovery of arrears of rent. Section 16 protects action taken in good faith. A look at the scheme of the Act indicates that the appellate power is conferred on the District Judge without providing the procedure for the disposal of the appeal except to say that the appeal should be disposed of as expeditiously as possible, that the Appellate Officer has the right to pass an order of stay and the discretion to award or not to award costs of any appeal. This therefore appears to be a case where a jurisdiction is conferred on the Judge of a Principal Civil Court of original jurisdiction other, than the High Court. No doubt the authority is designated as Appellate Officer. But that by itself would not convert that officer into a *persona designata*. But there is a further provision which enables the District Judge to delegate Anr. judicial officer in that District of not less than ten years standing to act as Appellate Officer. The appellation Appellate Officer coupled with the power granted to the District Judge to designate Anr. Appellate Officer could be a circumstance to indicate that the Appellate Officer was intended to be a *persona designata*. The test to determine whether a District Judge appointed as an Appellate Authority under the provisions of a statute would be *persona designata* or a Court was considered by the Supreme Court in the rent decision in *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, Therein considering the scheme of an Appellate Authority u/s 18 of the Kerala Buildings (Lease and Rent Control) Act which provided for conferment of the appellate jurisdiction on such officers and authorities not below the rank of a Subordinate Judge, the Supreme Court held that the Appellate Authority functions as a Court. Dealing with a situation arising under the Indian Telegraph Act where the power was conferred on the District Judge, His Lordship Justice G. Viswanatha Iyer in *K.S.E. Board v. Narayanan* 1973 K.L.T 968 held as follows:

The District Judge, when that expression is used in a Central Act means, as per the General Clauses Act, 1887, the Judge of a principal civil Court of original jurisdiction other than the High Court in the exercise of its original civil jurisdiction, unless there is anything repugnant in the context. Ordinarily he functions as a Judge of the principal civil Court of original jurisdiction. He has not been appointed under any provision of the Electricity Act or the Telegraph Act as a Tribunal to decide this question. There is nothing particular in Sub-section (3) of Section 16 also to suggest that the District Judge is intended to act as otherwise than in a judicial capacity when determining the amount of compensation. The matter that he is called upon to decide is a matter relating to the compensation for the infringement of a civil right, namely, compensation for civil trespass that has been committed under the cover of the statute, viz., the Telegraph Act. It is not a case where he is called upon to decide special matters

like election disputes or assessment of taxes which stand upon an entirely different footing. A determination of the compensation for the damage caused for civil trespass is a matter that comes up ordinarily before a civil Court for adjudication. Again, though Section 16(3) enables any disputing party to apply before the District Judge, the statute does not provide for the procedure which must be followed by the District Judge in the discharge of his function in determining the compensation payable. This can only be because the matter has been referred to him not as a *persona designata* but as a Court and when the matter is referred for determination to a Court with no further provision the necessary implication is that the Court will determine the matters as a Court. Its jurisdiction is only enlarged. All the incidence of such jurisdiction including right of appeal from its decision remain the same unless there is some provision to the contrary in the statute itself. So, from all these, the intention of the Legislature is clear that the District Judge is called upon to act not as a *persona designata* but only as a Court.

Though obiter a Division Bench of this Court in *S. Teenivasa Kamath v. Anantha Kamath* 1992 (1) KLT 190 had also indicated that an Appellate Authority under the Rent Control Act was not *persona designata* though the same would run counter to earlier views of this Court. Whatever it be what is relevant to notice is that the question whether the Appellate Officer is *persona designata* or acts as a Court has to be decided on the scheme of the Act. As noticed by me, the scheme of the Act does not prescribe any procedure for disposal of the appeal and has left it to the District Judge to dispose of the appeal. The District Judge is called upon to decide a civil dispute between the parties as to whether a person was liable to be evicted in proceedings under the Act. Thus the right to determine a civil dispute regarding the liability for eviction from a premises coming within the purview of the Act has been entrusted to the Judge of the Principal Court of Civil Jurisdiction. Going by the reasoning adopted by Justice G. Viswanatha Iyer in *C.G. Narayanan's* case 1973 KLT 968, I am of the view that the Appellate Officer u/s 9 of the Act acts as a Court and not as *persona designata*. In that view it is clear that the jurisdiction of this Court under Article 226 of the Constitution is not attracted in the light of the decision in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, .

3. The question then is whether the decision arrived at by the Estate Officer as confirmed by the Appellate Officer is liable to be interfered with in exercise of jurisdiction under Article 227 of the Constitution. The Petitioner had earlier approached this Court with O.P. 6229 of 1994 seeking the quashing of the notice issued by the Estate Officer. The Petitioner did not question the jurisdiction of "the Estate Officer to initiate proceedings against him as can be seen from the judgment rendered by this Court on 6th May 1994. The only contention raised by the Petitioner was that he had been in possession for a number of years, that he was not heard before the Estate Officer issued the notice dated 6th April 1994 and that he may be given a proper opportunity of being heard and the Estate Officer may be directed to pass a revised order. This plea was accepted by this

Court which directed the Estate Officer to give the Petitioner an opportunity of being heard and to pass a fresh order and until then to keep in abeyance his earlier notice. The Petitioner has no case that he was not given an adequate opportunity to put forward his case. The Estate Officer noted that the Petitioner had admitted in an affidavit filed before him that the land belonged to the Railways. For the reasons stated in the order Ext. P-1, the Estate Officer passed an order directing the Petitioner to vacate the premises. The Petitioner filed an appeal before the Appellate Officer. It is seen from the judgment of the Appellate Officer, the District Judge that the main contention raised was that the property was occupied by the father of the Petitioner as a kudikidappukaran under Ernakulam Devaswom and that the Railway had absolutely no right either in the property or in the building and that The order for eviction passed under the Public Premises (Eviction of unauthorised occupants) Act was improper. The Petitioner also produced certain additional evidence before the Appellate Officer. The Appellate Authority on a re-appraisal of the materials came to the conclusion that there was nothing to show that the father of the Petitioner had occupied the property under the Ernakulam Devaswom as a Kudikidappukaran, "that no evidence was adduced by the Petitioner to show that the property belonged to Ernakulam Devaswom on absolute right and that the fact that the Petitioner had started occupation of the building from the year 1979 would not establish that the property belonged to him absolutely or go to counter the title of the Railway over thalt property. The Appellate Authority also noticed that no contention was raised on behalf of the Appellant that the order of the Estate Officer was passed against him without complying with the requirements under the Act. It is in that view that the Appellate Authority dismissed the appeal. It is necessary to notice that no contention was raised before the Appellate Authority that there was no jurisdiction in the Estate Officer to initiate proceedings under the Act.

4. It is also seen that the Petitioner had filed a suit O.S. 471 of 1994 before the Munsiff's Court, Ernakulam. It is not clear from the allegations in the Original Petition as to what was the ultimate fate of that suit.

5. In the present Original Petition a contention is sought to be raised that the Estate Officer did not have the jurisdiction under the Act to pass an order for eviction. The contention of the Petitioner is that the construction was put up by him. The finding by the authorities is that the land occupied by the Petitioner belongs to the Railways. On the materials I find no justification for not accepting that finding. Though learned Counsel for the Petitioner suggested that the land taken from Respondent No. 3 by the Railway was yet to be precisely identified, and that the Railways themselves have stated in their counter that they propose to approach the Survey authorities for getting such a demarcation, on the materials in this case it is clear that the Petitioner is in occupation of the land belonging to the Railways. The identification of the property left with Respondent No. 3 after the taking over of his lands by the Railway and the properties so taken over is really not relevant at this stage. Moreover the rival title set up by the Petitioner is not a title of the third Respondent as against the title claimed by

the Railway but the title of Ernakulam Devaswom. No attempt was made by learned Counsel for the Petitioner to pursue the contention that the title to the property vested with Ernakulam Devaswom. I am therefore not in a position to find any reason to differ from the conclusion of the authorities below that the land belonged to the Railways. The contention that the Act cannot apply has no substance since a premises as defined in Section 2(c) of the Act means any land or any building. It is therefore clear that the Estate Officer had the necessary jurisdiction to order the Petitioner to vacate the premises, which in this case is the land that belongs to the railways. I therefore find no merit in the contention that the Act has no application to the case on hand.

6. The contention of learned Counsel for the Petitioner that there is no clear finding by any of the authorities that the Petitioner is in occupation of a public premises cannot be accepted. The Petitioner has no case that the Estate Officer has no jurisdiction to invoke the provisions of the Act in respect of the land belonging to the Railways. On the materials it is clear that the land belonged to the Railways. More over it is noticed by the Estate Officer in his order that the Petitioner in his affidavit filed before him had admitted that the land belonged to the Railways. The rival title set up has not been attempted to be established. In such a situation it is clear that the Petitioner was in occupation of a public premises within the meaning of the Act. In fact it is seen from the Order of the Appellate Officer that the main contention urged before him was that the father of the Petitioner was a kudiki dappukaran under Ernakulam Devaswom. That plea was rightly found against by the Appellate Officer. Firstly there was nothing to show that the title to the land vested with Ernakulam Devaswom Secondly it is significant to note that the Petitioner had never approached the Land Tribunal for getting an assignment of the right over the alleged kudikidappu. If he had such a contention or there was any merit in such a claim, surely by this time (it is 25 years this Act came) he would have certainly applied for assignment of the kudikidappu to him. In such a situation I find no error either of law or fact in the orders of the authorities below.

7. It is submitted by learned Counsel for the third Respondent that the Petitioner was working as a porter in the Railways and he had trespassed into the land and the authorities at the relevant time had not taken appropriate action to prevent him from trespass. He further submits that the land is necessary for the use of the Railways and that is the reason why the Petitioner was sought to be evicted. It is the duty of the concerned officers of the Railway to ensure that the lands belonging to the Railways are not trespassed upon and to take prompt action if any trespass is committed. It will be dereliction of their duty if they shut their eyes to such illegal trespass. Merely because the trespasser happens to be an employee in the Railways such an attitude cannot be appreciated.

On the whole I find no reason to interfere with the orders of the authorities below. I dismiss the Original Petition.