
(1995) 08 AHC CK 0142
In the Allahabad High Court
Case No : C.M.W.P. No. 15493 of 1983

Smt. Manarawati

APPELLANT

Vs

City Magistrate (Prescribed Authority) and Others

RESPONDENT

Date of Decision : 22-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 13(2), 14
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 15, 18, 4, 4(1), 4(2)
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Rules, 1973 —
Rule 10, 12

Citation : (1995) 08 AHC CK 0142

Hon'ble Judges : V.N. Khare, J;D.K. Seth, J

Bench : Division Bench

Advocate : Triveni Shanker, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The Order dated 30.11.1983 passed by the City Magistrate (prescribed authority), Jaunpur, in a proceeding under Sections 4 and 5 of Uttar Pradesh Public Premises (Eviction of Unauthorised Occupant) Act, 1972 (hereinafter referred to as the "Act") in respect of House No. 34 and 34/1 (subsequently renumbered as House No. 40) is under challenge in this writ petition.

2. The Petitioner's case in brief was that a notice u/s 4(1) of the said Act was issued to the Petitioner on 16.01.1976 by the Respondent No. 3. The proceeding initiated thereupon continued before the Respondent No. 4 for some time. By an Order dated 05.04.1980, the Respondent No. 4 had dismissed the proceeding for default, since none of the parties were present. On 22.04.1981, an application for restoration was filed on the ground that the District Government Counsel (Civil), Jaunpur, who was conducting the cases had no notice of the date fixed and he was also not aware of the order so passed. During the pendency of the

said application on 22.04.1981 the Respondent No. 1, was appointed prescribed Authority, who by Order dated 02.05.1983 dismissed the restoration application dated 22.04.1981 for default. On 4th May 1983, another application was made for recalling the Order dated 02.05.1983 as well as the Order dated 05.04.1980 on the ground that the District Government Counsel (Civil), who was busy in the civil court when came to attend the present proceeding on 2nd May 1983, found that the same was already dismissed for default. In the meantime, on 31st. October 1983, the Respondent No. 3 filed an application that the Petitioner herein had been making construction and prayed for an order restraining the Petitioner herein from making any construction. By an Order dated 1st November 1983, the Respondent No. 1 restrained the Petitioner from making any construction on the disputed property. Thereafter on 28th November 1983, the Petitioner filed his objection to the application dated 4th May 1983 raising various points. By an order dated 30th November 1983, the Respondent No. 1 allowed the said application dated 4th May 1983 and had also set aside the order dated 5th April, 1980.

3. On this background, the learned Counsel for the Petitioner submitted that by reason of Rule 12 of U.P. Public Premises (Eviction of unauthorised Occupant) Rules, 1973 (hereinafter referred to as the Rules), the application dated 22nd April 1981 is not maintainable. Inasmuch as Rule 10 of the Rules empowers the prescribed authority to restore the application dismissed in default, if sufficient cause is shown and, such an application can be made within thirty days from the date of order of dismissal for default, as provided in Rule 12(2) of the said Rule. According to him the application dated 22nd April 1981 by which the Order dated 5th April 1980 was sought to be neither set aside was hopelessly time barred and that no application for condonation of delay was filed nor any prayer was made. Therefore, in no event the application dated 22nd April 1981 could be allowed and the order dated 5th April 1980 could be set aside. His second contention was that by an order dated 30th November 1983, the Respondent No. 1 could not have set aside the order dated 5th April 1980 simultaneously with setting aside the order dated 2nd May 1983.

4. Learned Counsel for the Petitioner further contended that there having been no proper explanation for delay or in that matter with regard to the merit of two restoration applications, the order appears to be rightly irregular and illegal.

5. A proceeding under the said Act is initiated by issue of notice to show Cause u/s 4(1) of the said Act with the contents as specified in Sub-section (2) thereof. Such notice is to be served in the manner as provided in the CPC in term of Sub-section (3) of Section 4 of the Act. Sub-section (5) lays down that after considering the cause, if shown and the evidence produced and after giving opportunity of hearing to the person, if the Prescribed Authority is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction of the person in unauthorised occupation. For the purposes of holding inquiry, the prescribed authority u/s 8 of the said Act is vested with some of the

power of a civil court relating to summoning and enforcing the attendance of the witnesses, discovery and production of documents and such other matter as may be prescribed. Section 15 of the said Act bars civil court's Jurisdiction while Section 18 empowers the Government to make Rules.

6. In the said Rule as framed, rule-4 provides manner of service of notices and order. While Rule 5 provides the manner of holding inquiry and Rule 7 makes provision for taking possession of the public premises, Rule 10 prescribes the power of the civil court under the Code of Civil Procedure, which can also be exercised by the prescribed authority. Rule 11 empowers the prescribed authority for sufficient cause to set aside the ex parte order made in a proceeding u/s 5 or Section 7 while Rule 12 provides for limitation for making an application for restoration.

7. The Public Premises (Eviction of Unauthorised Occupant) Act, was promulgated by the Central Government by Act No. XXVI of 1950. The said Act was replaced by Act No. XXXII of 1958. In order to overcome the difficult situation arisen from the decision of Hon"ble Supreme Court given in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, , the Public Premises (Eviction of Unauthorised Occupants) (Amendment) Ordinance 1968, followed by Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968, was enacted by the Parliament. But this step for validating the said Act was also declared invalid and struck off in the case of Smt. Nirmala Chhabra Vs. Addl. District Judge, Lucknow and Another, : P.L. Mehra v. D.R. Khanna. AIR 1971 Del 1. Thereupon the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 has been enacted in the process of re-enactment of Public Premises (Eviction of Unauthorised Occupants) Act, 1958.

8. The statement of object and reasons of the said 1971 Act was recorded as follows:

"The Public Premises (Eviction of Unauthorised Occupant) Act, 1958, was enacted to provide for A speedy machinery for the eviction of unauthorised occupants of public premises. Section 5 provides for taking of possession of the public premises which are in unauthorised occupation. Section 7 provides for the recovery of rent or damages in respect of public premises from persons who are in unauthorised occupation thereof. The Act, as it originally stood, did not debar the Government from taking recourse to civil courts to seek the aforesaid reliefs.

2. In April, 1967 in N.I. Caterers (P.) Ltd. v. State of Punjab, the Supreme Court declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (31 of 1959) void on the ground that the section is discriminatory and violative of Article 14 of the Constitution inasmuch as it conferred an additional remedy over and above the usual remedy by way of suit and provided two alternative remedies to the Government leaving it to the unguided discretion of the Collector to resort to one or the other of the

procedures. The object and procedure prescribed by the aforesaid 1958 Act being similar to those in the Punjab Act, there was a risk of the Central Act also being struck down by the Supreme Court, if challenged on similar grounds of discrimination. Subsequently the Delhi High Court in *Hukum Ctian v. S.D. Arya* (Ref. No. 1 of 1968) declared Section 7(2) of the 1958 Act as ultra vires the Constitution. The High Court also observed that Section 5 of that Act must also be held to be tainted with same constitutional infirmity which was held to invalidate Section 5 of the Punjab Act referred to above. In order to overcome the decisions of the Supreme Court and Delhi High Court, the 1958 Act was suitably amended by the Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968. By this Amendment Act, civil courts were precluded from entertaining any suit or proceeding in respect of the eviction of persons who are in unauthorised occupation of public premises and in respect of recovery of the arrears of rent or damages from such persons.

3. The vires of Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended, by the Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968 was again recently challenged by way of writ petition in Delhi High Court and certain other courts. By a majority judgment, the Delhi High Court in *P.L. Metvra v. D.R. Khanna* (Civil Writ No. 431 q] 1970) have held the whole of the Act as void Under Article 13(2) of the Constitution as it was found to contravene Article 14 thereof. The court also observed that as the Act of 1958 was void, the amending Act of 1968 was also ineffective. Similar views have also been held by High Courts of Allahabad and Calcutta. The court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for the Government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to reform a speedy machinery for the eviction of persons who were in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution and the Judicial pronouncements, referred to above.

4. Accordingly, it is proposed to re-enact the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended, from time to time after removing the vice which led to its having been declared as void. The law proposed to be re-enacted is being given retrospective effect from 16th September 1958. The date on which the 1958 Act aforesaid came into force. It is also proposed to make a suitable validating provision providing that anything done or any action taken or purported to have been done or taken under the 1958 Act shall be deemed to be as valid and effective as if such thing or action was taken or done under the corresponding provisions of the proposed law.

5. The Bill seeks to achieve the above objects."

9. The Act was enacted to provide for speedy and summary procedure to evict unauthorised occupants from the public premises and for realisation of rent and damages. The main purpose has been to avoid lengthy procedure of ordinary CPC and that was the reason for incorporation of Section 15 in the said Act barring the Jurisdiction of the civil court. The Act aims to avoid complicated procedure available under general law and also to control the Increasing tendency of occupying public premises without any authority. The present Act provides for eviction of unauthorised occupation, power to demolish unauthorised construction, recovery of rent, assessment and recovery of damages, disposal of property left in the premises, Appeal and various other powers, framing rules and validating the action under the old Act and eviction of temporary occupier. After the amendment of 1984, unauthorised occupation has been made cognizable offence. The statement of object and reasons records that it has become impossible for the Government to take expeditious action even in flagrant cases of unauthorised occupation and realisation of rent and damages. It has, therefore, considered imperative to reform a speedy machinery for the eviction of persons who were in unauthorised occupation of public premises.

10. In the case of Hari Singh and Others Vs. The Military Estate Officer and Another, , wherein vires of 1971 Act was challenged, the Hon"ble Supreme Court while holding that the Legislature has legislative competence to enact 1971 Act observed:

It means that it can legislate on the subject of providing speedy procedure for eviction of persons in unauthorised occupation of public premises.

11. Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 had received assent of the President on 28th April, 1972 which was published in the Government Gazette Extraordinary dated 1st May, 1972 with the statement of object and reasons as quoted below.

1. The Punjab Public Premises and Land (Eviction and Rent) Act, 1959 was declared unconstitutional by the Supreme Court on the ground that it provided arbitrary and discriminatory power for disposal of cases either in a summary manner or through civil courts. Following that decision, the U. P. Public Land (Eviction and Recovery of Rent and Damages) Act, 1959, and the U.P. Industrial Housing Act, 1955 were declared unconstitutional by the High Court, Allahabad and the Central enactment, tamely u. Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was declared unconstitutional by the Delhi High Court.

2. To solve the problem, the Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968, was enacted by the Parliament, and the Uttar Pradesh Public Land and Premises Laws (Amendment and Validation) Act, 1970 by the Uttar Pradesh Legislature. Both these enactments provided for only summary disposal of cases.

a The aforesaid Amendment Acts were, however, also declared illegal on the ground that Acts once declared unconstitutional cannot be activated by amending Acts and that they should be re-enacted.

As numerous cases for eviction of unauthorised occupants from Public Premises became untenable in the absence of any law on the subject and the Legislature was not in session, the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Ordinance 1972 was promulgated. While promulgating this Ordinance, opportunity was also taken to consolidate the several existing laws governing different classes of public lands and buildings.

The Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Bill, 1972 is accordingly introduced to replace the Ordinance.

12. An examination of the statement of object makes it clear that the enactment was made for speedy remedy and summary procedure for eviction of unauthorised occupants of public premises in order to avoid lengthy process of usual litigation in the civil court.

13. In the present case, the learned Counsel for the Petitioner while arguing (he case had resorted to the process available in the proceeding before the civil court. According to him, by reasons of efflux of time as prescribed in Rule 10(2) of the said Rules, namely, expiry of one month from 5th April 1980 the date of order dismissing the proceeding in default, a legal right had accrued to the Petitioner by operation of the said provision which prescribes period of limitation and, therefore, setting aside of the said order is wholly Illegal.

14. Under Rule 10 of the Rules the power exercised by a court u/s 151 of the CPC has also been given to the prescribed authority. Since the proceeding under the said Act is meant for speedy remedy and summary procedure cannot be utilised for delaying the process and resorting to technicalities for defeating the purpose and object. The point taken here is too technical because of the reasons that even If this writ petition is allowed and the order dated 30.11.1983 is set aside or quashed then, in fact, no right accrues to the Petitioner as has been contended by the learned Counsel for the Petitioner. The dismissal for default does not attract the principles of res judicata since no issue is decided when a case is dismissed for default. Therefore, the authority can again proceed with the matter afresh.

15. We have gone through the application dated 22.04.1981 and the application dated 04.05.1993. Though there was no indication that any prayer for condonation of delay was made but there are certain statements which can be taken as explanation and cause shown for the absence. The Respondent No. 1 had allowed the application. In the order dated 30.11.1983, some reasons have been given for setting aside the order. We also had gone through the petitions dated 22.4.1981 and 4.5.1983 and have been satisfied that some causes have been shown explaining the delay and the reasons relating to non-appearance. We are satisfied that sufficient cause for non-appearance and delay was present in

the case. We have undertaken this exercise only for the reason that by means of this writ petition, the object of speedy remedy and summary procedure as contemplated under the said Act is being frustrated. We cannot allow the object to drift away only on mere technicalities. Over and above such frustration of Justice can be corrected In exercise of inherent jurisdiction as contemplated u/s 151 of the CPC which has also been conferred upon the prescribed authority. We feel that the situation as arises in the present case is fit one for exercising inherent power as has rightly been done by the Respondent No. 1 in passing the order dated 30.11.1983.

16. We cannot remain idle onlooker and allow technicalities to frustrate justice. The Procedure are hand-maids of justice and are not overlord. The handmaid of justice cannot be allowed to frustrate justice. In appropriate occasion, the inherent powers are to be resorted to and exercised to overcome technicalities in order to prevent defeat of Justice. According to us this is one such case.

17. We cannot but record our dissatisfaction about the manner in which proceedings have been dragged on for a long period of about twenty years. We hope and trust that our dis-satisfaction should be noted with caution and care by the authorities concerned and all endeavour should be made to get the matter disposed of as early as possible preferably within a period of six months from the date of communication of the operative part of this order to the Respondent No. 1, who will issue notices to either of the parties fixing the date of final hearing.

18. In the facts and circumstances of the case and for the reasons stated above, we are not inclined to interfere with the Order dated 30th November 1983. We direct the Respondent No. 1 to dispose of the proceeding in the light of observations made in the preceding paragraphs.

19. In the result the writ petition is dismissed. There will be no order as to costs.