

(1977) 08 AHC CK 0007
In the Allahabad High Court
Case No : Civil Rev. No. 201 of 1974

Smt. Sukha

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
National Highways Act, 1956 — Section 5
Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 — Section 10
Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 — Section 7
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 15, 19, 2, 20, 20(2)
Civil Procedure Code, 1908 (CPC) — Section 9
National Highways Act, 1956 — Section 5
Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 — Section 10
Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 — Section 7
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 15, 19, 2, 20, 20(2)
Civil Procedure Code, 1908 (CPC) — Section 9
National Highways Act, 1956 — Section 5
Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 — Section 10
Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 — Section 7
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 15, 19, 2, 20, 20(2)

Citation : (1978) AWC 275

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Advocate : S.C. Das and J.C. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This revision arises in the following circumstances. A suit was filed by the Union of India and the State of U.P. against the applicant for restoring the land to its original state and delivering possession of it to them. The Plaintiffs alleged that Luckow-Kanpur-Jhansi-Sheopuri national highway passed through village Netwa, pergana Sikanderpur, district Unnao which is a metalled road. The land in dispute was claimed as Government land. The Defendant wrongfully encroached on the unmetalled portion of the said national highway delineated in the site plan attached to the plaint and made certain, constructions thereon, thereby causing obstruction and creating public nuisance. A notice for removal of the unauthorised constructions was given to the Defendant who failed to comply with the same, hence the suit. During pendency of the suit the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 came into force on 2-5-1972. The Plaintiffs then made an application u/s 20 of the said Act praying that the suit be transferred to the Prescribed Authority appointed under the Act for being decided according to the provisions of the Act. The application was contested on the ground that the suit was within the competence of the Civil Court and could not, therefore, be transferred to any other authority.

2. The learned Munsif rejected the application for transfer of the case to the Prescribed Authority, but on appeal the said order was set aside by the learned District Judge who observed that the suit shall stand transferred to the Prescribed Authority appointed under the Act. This revision is directed against the said order of the learned District Judge.

3. For the applicant it was submitted that a Civil Court has jurisdiction to decide all suits of civil nature unless its jurisdiction is specifically barred by some statute and it is for the party claiming ouster of the jurisdiction of Civil Court to establish that the suit was not cognizable by the Civil Court. In support of his contention the learned Counsel placed reliance on *Abdul Waheed Khan v. Bhawani* AIR 1966 S.C. 1718.

4. To appreciate the argument it would be appropriate to refer to the provisions of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 which deals with the question of jurisdiction of the Civil Court. Section 15 of the Act reads:

No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs.

Sub-section (2) of Section 20 of the Act deals with suits pending in the Civil Court and it reads as follows:

(2) Notwithstanding any judgment, decree or order of any court or authority, and notwithstanding anything contained in Section 15 or Section 19 any suit or other

proceeding for any of the reliefs mentioned in Section 15 instituted in any Court or initiated or purported to be initiated by any authority under a repealed enactment before the commencement of this Act, and pending at the commencement of the Uttar Pradesh Public Land and Premises Laws (Amendment and Validation) Act, 1970 (hereafter in this section referred to as the 1970 Act), either in the court of first instance or in any court of appeal or revision or before such authority, shall stand transferred to the Prescribed Authority, and the Prescribed Authority shall thereupon dispose of the same as proceeding under the relevant provision of this Act, and in any proceeding:

(a) the Prescribed Authority may proceed further from the stage from which the suit or proceeding is transferred, and may for that purpose treat any summons of notice issued, written statement or reply filed or evidence adduced in such suit or proceeding before the transfer, as notice issued by itself, or, as the case may be, cause shown or evidence adduced before itself, under the relevant provision of this Act;

(b) any objection referred to the District Judge u/s 10 of the Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 or before the Civil Judge u/s 7 of the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959, before those sections were repealed by the 1970 Act shall be decided by the Prescribed Authority itself, and any reference, suit or appeal under the said sections shall abate:

Provided that where any such reference, suit or appeal has been decided before the coming into force of this Act the Prescribed Authority shall act according to such decision, which, subject to the provisions of Section 9, shall be deemed to be final.

"Premises" as defined in Section 2(b) of the Act means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes....

5. Under the Schedule attached to National Highways Act, 1956 Lucknow-Kanpur-Jhansi-Sheopuri Road is National Highway No. 25. Section 5 of the National Highway Act, 1956 stipulates that it shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways but the Central Government may, by notification in the official gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified by the notification also be exercisable by the Government of the State within which the national highway is situated by any officer or authority subordinate to the Central Government or to the State Government. Pursuant to a notification dated 4-4-1957 the Central Government directed that the functions in relation to the execution of works pertaining to each of the National Highways described in column 2 of the schedule shall be exercisable by the State Government specified

in column 3 of the Schedule against such highway. At Serial No. 3 of Schedule 13 it is stated that so much of National Highway No. 25 as are situated within the State of Uttar Pradesh shall be maintained by the State Government. Thus the land which is claimed to be a part of the National Highway situated on National Highway No. 25 is covered by the definition of the term "premises" and the provisions of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972, therefore, apply to it. Section 15 of the Act bars the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises. "Public premises" means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government. In view of the said notification No. 1180 dated 4-4-1957 so much of the National Highway No. 25 as is situated within the State of Uttar Pradesh is to be maintained by the State Government. That portion of the national highway can be said to belong to the State Government. In Abdul Waheed Khan's case (supra) it was laid down that u/s 9 of the CPC a Civil Court can entertain a suit of a civil nature except a suit of which cognizance is either expressly or impliedly barred and it is for the party who seeks to oust the jurisdiction of Civil Court to establish his contention. It was also laid down that a statute ousting the jurisdiction of a Civil Court must be strictly construed. Section 15 of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 in unmistakable terms ousts the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises, and u/s 20 of the Act any suit for any of the reliefs mentioned in Section 15 instituted in any court or initiated or purported to be initiated by any authority under a repealed enactment before the commencement of the Act and pending at the commencement of the Uttar Pradesh Public Land and Premises Laws (Amendment and Validation) Act, 1970 either in the court of first instance or in any court of appeal or revision or before such authority, shall stand transferred to the Prescribed Authority and the Prescribed Authority shall dispose of the same as proceeding under the relevant provision of U.P. Act 22 of 1972. A combined reading of Sections 15 and 20 thus makes it quite manifest that the cognizance of the suit by the Civil Court is expressly barred. Hence the Civil Court's jurisdiction to try the suit, which has given rise to this revision, must be held to be excluded. In fact u/s 20 of the said Act the Civil suit stood transferred to the Prescribed Authority and that authority has, therefore, jurisdiction to dispose of the same as a proceeding under the relevant provision of the Act.

6. The revision application lacks merits and must, therefore, fail. It is accordingly dismissed. In the circumstances of the case I make no order as to costs.

7. The interim stay order is vacated.