

(1991) 04 OHC CK 0007

In the Orissa High Court

Case No : Original Jurn. Case No. 1875 of 1991

Subhadra Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9

Citation : AIR 1991 Ori 328

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : S. Misra, S.N. Misra, S.K. Nayak, R.C. Praharaj and S. Mallik, for the Appellant; Ashok Mohanty, for the Respondent

Judgement

S.C. Mohapatra, J.—Heard Mr. S.Mishra-1, learned counsel for the petitioners and Mr. Ashok Mohanty, learned standing counsel for the Central Government.

2. Petitioner No. 1 is a postal employee. She was staying in a quarter allotted to her father who was also a postal employee. She is continuing in the said quarter for which rent and other charges are paid by her. Despite it, a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act was initiated against her to end in her eviction order. Against this, petitioner has preferred an appeal and obtained an order of interim stay. On a date to which the appeal was posted, the senior Standing Counsel of the Central Government appeared and filed objection to the interim stay granted, and moved to vacate the interim order. On copy being served on learned Counsel for petitioner, matter was heard that day. It was brought to notice of the appellate authority that pursuant to order of the Central Administrative Tribunal, another quarter has been allotted to her. On such finding order of interim stay having been vacated, this writ application has been filed to quash the order.

3. Learned Counsel for the petitioner submitted that in this case principle of

natural justice has been violated inasmuch as the order of interim stay was vacated on a date to which appeal was not posted. When stay was vacated on the ground that another quarter has been allotted, opportunity ought to have been given to learned counsel for the petitioner to get the detailed instruction. According to learned counsel for the petitioner, impugned order vacating the interim stay granted does not contain any fact which according to the appellate authority required urgent hearing without waiting for the date to which the appeal was posted. Mr. Ashok Mohanty, learned Standing Counsel on the other hand submitted that ex parte order of stay without hearing the respondent in the appeal was granted. Accordingly, when it was brought to notice of the appellate authority that another quarter has been allotted, rightly the order of stay was vacated since petitioner cannot get benefit of two quarters whose number is much less than the employees waiting to be allotted with the same. Added to it, Mr. Mohanty submitted that natural justice has not been violated since learned counsel for the petitioner was heard by the appellate authority.

4. There is right of appeal against the order of eviction under the Act and an appellant is to be heard both on fact and law to examine correctness of the order of eviction. However, appellant has no right to get an order of ex parte interim stay. Grant of stay during pendency of appeal is ancillary power. Unless there would be irreparable injury to the appellant who applies for stay, no ex parte order of interim stay shall normally be passed. Where on the strength of the order, appellant takes steps or moves statutory authority that the appeal itself would become infructuous unless an ex parte interim order is passed, notice in the matter of stay should ordinarily be issued. Where ex parte interim order is passed, the order should contain clear reason why the order was thought to be necessary. Unless this principle is adopted, an appellant getting ex parte interim order in his favour would not get ready for the appeal or the interim matter to be heard on some ground or other to enjoy benefit of the interim order as long as possible. By this process the person who gets the advantage and the person against whom the order is passed lose confidence in the adjudicatory process both having the feeling that the adjudicatory authority does not apply judicial mind while passing the order. Lack of confidence in the adjudicatory process makes it unacceptable to the society creating unrest developing attitude to take law in one's own hand. Mohanty is correct in his submission that ex parte interim order of stay was uncalled for in this case when the process of eviction is bound to take some time under the Act.

5. Allotment of another house is no ground to vacate the order of stay if the person to whom the house is allotted is not able to occupy the same. Opposite parties ought to have taken steps so that full opportunity is given to the person to occupy the same without any difficulty. It is well-known that a house allotted even if vacant has many normal deficiencies. After occupation none takes care to eradicate the deficiency. At times the occupier desires more facilities than necessary and at another time, authorities feel that their duty is over in allotment of house. Appellate authority ought to have insisted upon a statement

that the house allotted is ready in all respects to be occupied by the petitioner.

6. It is true that the learned Counsel for the petitioner took part in the hearing of the application for vacating the order of stay. Appellate authority should have envisaged that the appellant is at Bhubaneswar and the application is being heard at Puri. There is no scope for the appellant to instruct about the allotment of the house to his learned counsel. At least the application should have been posted for hearing on the date to which the appeal was posted. Advancing the date and hearing the application for vacating the order of stay without adequate opportunity the learned counsel for appellant to get instructed from the appellant when the hearing of the application could have been deferred for some time without irreparable injury to the respondent amounts to violation of principle of natural justice.

7. There is no allegation by the petitioner that the house allotted is deficient in any manner. Accordingly ends of justice would be best served in case we direct that the house allotted to petitioner shall be given occupation to her on 26-4-1991 at 11 a.m. As the same is office hour, petitioner should be given permission not to attend office till 1 p.m. that day since it would take some time to take charge of the house for her occupation. Officer who is to give occupation shall inspect the house and make it fit for occupation in all respects and shall remain present at 11 a.m. to give occupation. Such Officer shall make all documents ready for being signed by the petitioner. After occupation of the newly allotted house some time should be given to petitioner to shift from the house from which she has been directed to be evicted. Time till 29-4-1991 is adequate for the purpose.

8. Occupation of the new house is subject to result of the appeal. In case petitioner becomes successful in appeal, the house in respect of which she has been directed to be evicted shall be delivered back to her.

9. In the result, writ application is allowed to the extent indicated above. No costs. Requisites for issue of writ to opposite parties 3 and 4 shall be filed by day after tomorrow. A copy of this order be handed over to Mr. Ashok Mohanty, Standing Counsel for early communication to Opposite Parties and other Officers connected with it.

J.M. Mahapatra, J.

10. I agree.