

(1992) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition (M) No. 343

The H.P. Housing Board

APPELLANT

Vs

N.S. Bramta and Others
 The H.P. Housing Board Vs
Romesh Chand and Sheela Sharma and Another

RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Banks (Nationalization) Act, 1974 — Section 3(4)
Constitution of India, 1950 — Article 227
Himachal Pradesh Housing Board Act, 1972 — Section 3, 4
Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 —
Section 2, 3, 4
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3

Citation : (1993) 2 ShimLC 100

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Prem Goel, for the Appellant; G.C. Gupta and Shubh Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—These three petitions are filed under Article 227 of the Constitution of India. Himachal Pradesh Housing Board (hereinafter called the Board) is the Petitioner in all three of them. The Board is aggrieved by the order(s) passed by Commissioner Shimla Division, Shimla (hereinafter called the Commissioner), whereby the appeal by first Respondent, in each case was accepted and eviction order(s) was set aside. The eviction order(s) was passed against the first Respondent, in each case, by Sub-Divisional Magistrate (Urban), Shimla exercising the powers of Collector under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter called the Act of 1971) on the petition(s) filed by the Secretary-cum-Chief Engineer of the Board u/s 4 of the Act of 1971.

2. The case of the Board in all the three petitions is that it had purchased a part

of the property known as Straw Berry Hill Estate, Chhota Shimla on 26th March, 1982 vide sale deed dated 31st August, 1982. At the time of purchase of this property, the previous owner had declared by way of her affidavit that there was no tenant in any part of the said property. But after taking possession of the property, the Board found that the first Respondent, in each case, was occupying the premises whose description is given in each petition. Therefore, the Board issued notice(s) through its then Executive Engineer calling upon the first Respondent, in each case, to vacate the premises on or before 15th January, 1983. When despite notice(s), the premises were not vacated, the Board filed petition(s) u/s 4 of the Act of 1971 through its Secretary-cum-Chief Engineer, in which besides eviction the relief of damages for the use and occupation of the premises was also sought at the rates given in the petition(s). In the petition(s), the then Executive Engineer of the Board appeared as witness and reiterated the allegations made in it.

3. In the case of Civil Misc. Petition (Main) No. 343 of 1988, notice as well as petition was also filed against second Respondent Shri C.S. Bramta besides first Respondent Shri N.S. Bramta for the same premises. During the proceedings before the Collector, Shri C.S. Bramta made statement that premises in dispute were in exclusive possession of Shri N.S. Bramta, therefore, eviction order was passed against him (N.S. Bramta) only. The appeal against the eviction order was also filed by the first Respondent, therefore, second Respondent Shri C.S. Bramta, impleaded in the present petition, is unnecessary. In the result, his name is ordered to be deleted from the array of Respondents in the present petition.

4. In all the three petitions u/s 4 of the Act of 1971, the stand of the first Respondent, in each case, was similar that he was not in unauthorised occupation of the premises in dispute and liable to be evicted under the Act of 1971. According to him he had been tenant in the premises in dispute on payment of monthly rent under the previous owner much before the premises were purchased by the Board. In C.M.P. (M) No. 343 of 1988, the first Respondent had brought on record rent receipts Ex. R-1 to Ex. R-38 issued by Sh. Paras Ram, agent of the previous owner Rani Sahiba Padamjit Kaur. Besides his own statement, through other witnesses, the first Respondent, in each case, had got proved from the records of tax department and water works department of Municipal Corporation that he had been recorded as tenant of the premises in dispute and water connection existing in the premises in dispute was on his name. From the voter list as well as the record of the office of District Food and Civil Supplies brought on the file, it has further been proved that first Respondent, in each case, had been residing in the premises in dispute along with members of his family since long. Despite this evidence, the Collector held first Respondent, in each case, as unauthorised and illegal occupant of the premises in dispute on the ground that these were neither leased out nor allotted by the Board to him after these became the public premises. It was also held that the first Respondent, in each case, was liable to pay damages at the rate

given in the eviction order(s).

5. The eviction order(s) was challenged by the first Respondent, in each case, in appeal before the Commissioner. Accepting the appeal, in each case, the Commissioner set aside the findings of the Collector. After reappreciating the evidence on record, the Commissioner held that the first Respondent, in each case, was residing in the premises in dispute much before these were purchased by the Board on 26th March, 1982. Without deciding the title of the first Respondent, in each case, it was held that since the possession of the first Respondent, in each case, over the premises in dispute was prior to its sale in favour of the Board, he was not liable to be evicted under the Act of 1971 as the premises could not be termed as public premises. According to the Commissioner, he had arrived at this conclusion on the basis of law laid down in a judgment of Supreme Court in *Rajkumar Devindra Singh and Another Vs. The State of Punjab and Others*,

6. Feeling aggrieved, the Board has filed the present petitions.

7. I have heard learned Counsel for parties and gone through the record. Sh. Prem Goel, learned Counsel for the Board, has urged that the Commissioner has gravely erred in upsetting the findings of the Collector and in holding that the possession of first Respondent, in each case, over the premises in dispute was of long before these were purchased by the Board on 26th March, 1982.

8. On the other hand, Sh. G.C. Gupta, learned Counsel for the first Respondent, in each case, has submitted that these are findings of fact which cannot be gone into by this Court in exercise of the powers of superintendence under Article 227 of Constitution of India. For making this submission, Sh Gupta has relied upon number of judgments, out of which two are suffice to be referred to. These are AIR 1975 1297 (SC) and *Mohd. Yunus Vs. Mohd. Mustaqim and Others*,

9. In para 7 of the judgment in *Babhutmal's case (supra)*, Justice Bhagwati, J. speaking for the Bench held that:

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it. What Morris. L.J., said in *Rex, v. Northumberland Compensation Appeal Tribunal* 1952 AER 122, in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Article 227. That jurisdiction cannot be exercised "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings." If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227

cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.

10. In *Mohd. Yunus v. Mohd. Mustaqim and Ors.* (supra), the Supreme Court held further that:

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In this case there was in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

11. In view of the settled legal position in respect of supervisory jurisdiction of this Court under Article 227 of Constitution of India, this Court restrains to interfere with the findings of fact arrived at by the Appellate Authority, the Commissioner that the first Respondent, in each case, was in possession of the premises in dispute much before these were purchased by the Board.

12. The next point raised by Shri Prem Goel, learned Counsel, is that the law laid down in *Raj Kumar's* case (supra) has been wrongly applied to the facts and circumstances of the present case by the Commissioner. According to him, the case of *Raj Kumar* has been distinguished in *Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another*, and the law laid down in the said judgment applies in the present case.

13. This argument has been raised to be rejected. In the case of *Raj Kumar*, the Supreme Court was interpreting "unauthorised occupation of public premises", as defined in *Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959*, whereas, in the case of *Jain Ink Manufacturing Company*, the definition of "unauthorised occupation" under the Central Act, namely, *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* was under consideration. Comparing language of the relevant sections of both the Acts, the learned Judges of the Supreme Court have held in *M/s. Jain Ink Manufacturing Company's* case that as per the definition of the Punjab Act, the unauthorised occupation "required the following conditions:

(1) that the occupant had entered into possession before or after the commencement of the Act.

(2) that he had entered into such possession otherwise than under and in pursuance of any allotment, lease or grant.

14. Whereas, in Section 2(2)(g) of the Central Act, the word "possession" and "entry into possession" at any point of time has not been used. "Section 2(2)(g) of the Central Act is an inclusive definition and consists of two separate limbs-(1) where a person is in occupation in relation to any public premises without authority for such occupation, and (2) even if the possession or occupation of the tenant continues after the lease is determined.

15. In the present petitions, this Court is concerned with the definition of "unauthorised occupation" as given in the Act of 1971, which is *pari materia*, to the definition of Punjab Act. Therefore, the judgment in Raj Kumar's case applies to the facts of the present petitions. As in the case of Raj Kumar (*supra*), the first Respondent, in each petition, was in possession of the premises in dispute before these became public premises. Therefore, the first Respondent, in each case, cannot be held in unauthorised occupation as provided in Sub-section (a) of Section 3 of the Act of 1971. The only difference in the facts of the present case and the case of Raj Kumar is that there the occupants had claimed themselves to be owners of the premises in dispute and in the present petitions the first Respondent, in each case, has claimed the tenancy but the title of the occupant was not relevant. What was really relevant was the possession, before the premises in dispute became the public premises by their purchase by the Board as held in the case of Raj Kumar:

A person shall be deemed to be in unauthorised occupation of public premises for purposes of Section 3(a) where he has, before or after the commencement of the Act, entered into possession "thereof", otherwise than under and in pursuance of any allotment, lease or grant. The word "thereof" makes it clear that the person must have entered into possession of public premises before or after the commencement of the Act in order that he may be deemed to be in unauthorised occupation. If the Appellants were in possession before the date of the sale of the property to the Government, it could not be said that the Appellants entered into possession of public premises, for, at the time when they were in occupation of the property, the property was not public premises. Then it was either the joint family property or the property of the Maharaja, namely, Yadavindra Singh. The property was not public premises before it was sold to the Government. So, if the Appellants were in possession of the property before it was sold to the Government, it could not be said that they entered into possession of public premises before or after the commencement of the Act and Clause (a) of Section 3 of the Act cannot obviously apply and the Appellants were not in unauthorised occupation of public premises within the meaning of Clause (a) of Section 3. Therefore, the question is, whether the Appellants were in possession of the property before it was sold to the Government.

16. So far Sub-section (b) of Section 3 of the Act of 1971 is concerned, it is not attracted in the facts and circumstances of the present petitions. If the first Respondent, in each case, was tenant or licensee of the premises in dispute, he continued to be so even after these were purchased by the Board and became public premises unless his tenancy rights/licence were determined in accordance with the law. Admittedly, in the present petitions no such action was taken by the Board as its stand was that it took vacant possession of the property purchased by it including the premises in dispute and the first Respondent, in each case, had entered into possession thereafter. The case of the Board has not been accepted by the Commissioner, who has held the first Respondent, in each case, in possession of the premises at the time these were purchased by the Board.

17. In view of the above discussion, there is no merit in these petitions, which deserve to be rejected. But before parting with them, Anr. argument of Shri G.C. Gupta, learned Counsel may be taken note of that the premises in dispute are not public premises as defined in Section 2(e) of the Act of 1971 because the Board is not a Corporation established by an Act of Himachal Pradesh. There is no substance in this submission. Admittedly, the Board is established under the H.P. Housing Board Act, 1972 and as provided in Section 3 of the said Act it is a body corporate having perpetual succession and common seal subject to the restrictions stated therein. From the other provisions of this Act, it is clear that it is owned or controlled by the State of Himachal Pradesh. Dealing with almost similar preposition in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, the Constitution Bench of the Supreme Court held as under:

Merely because the expression "body corporate" has been used in relation to the nationalised banks in Section 3(4) of the Banks Nationalisation Act and the expression "corporation" has not been used, does not mean that the nationalised bank is not a corporation. The expression "body corporate" is used in legal parlance to mean "a public or private corporation" (Black's Law Dictionary p. 159).

18. Therefore, this Court holds that the premises in dispute became public premises on their purchase by the Board on 26th March, 1982. Further u/s 4 of the H.P. Housing Board Act, it has been specifically provided that Himachal Pradesh Urban Rent Control Act, 1971 shall not apply nor shall be deemed to have ever applied to the premises of the Board.

19. In the result, the present petitions are rejected but there is no order as to costs.