

(2015) 02 AHC CK 0106

In the Allahabad High Court

Case No : Special Appeal Nos. 121, 114 to 120, 122 to 127 of 2015 and Special Appeal Defective No. 175 of 2015

Union of India and Others

APPELLANT

Vs

Arun Saluza

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 1, 5, 5A, 5A(1), 5B

Citation : (2015) 3 ADJ 594 : (2015) 3 ADJ 1 : (2015) 3 ALJ 125 : (2015) 109 ALR 789 : (2015) 2 AWC 1753 : (2015) 127 RD 737

Hon'ble Judges : D.Y. Chandrachud, C.J.;Suneet Kumar, J

Bench : Division Bench

Advocate : Satish Kumar Rai, C.G.C. and Ashok Mehta, for the Appellant;
Manish Kumar Jain, R.K. Mathur and A.K. Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J.—This batch of special appeals arises from a judgment of the learned Single Judge dated 8 October 2014. The learned Single Judge was seized with a batch of petitions under Article 226 of the Constitution questioning the legality of notices for eviction issued under Section 5A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act of 1971) and orders passed in pursuance thereof. The learned Single Judge held that Section 5A and Section 5B were introduced by the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (Amendment Act of 1980) which, upon receipt of the assent of the President, was published on 22 December 1980 and that, in consequence, the power to remove an unauthorized construction would exist only in respect of premises which have been constructed after the date on which the provisions had been introduced. In other words, in the view of the learned Single Judge, the provision would not apply to a structure which was existing prior to 22 December 1980. The learned Single Judge, in

consequence, while allowing the writ petitions and setting aside the orders of eviction, held that this would not preclude the competent authority from proceeding afresh against the writ petitioners after duly verifying that the constructions have been made only after 22 December 1980. The learned Additional Solicitor General of India has, at the hearing, prefaced the submissions by stating that the challenge in this batch of special appeals is only to that part of the order of the learned Single Judge by which the applicability of the provisions of Section 5A has been confined to constructions which have been erected after 22 December 1980. Subject to the position in law being adjudicated upon and clarified by this Court, the appellants would have no objection to the eventual order of remand for re-examining all the facts and circumstances of individual cases.

2. Section 5A and Section 5B were introduced by Section 6 of the Amendment Act of 1980 (No. 61 of 1980). The Amendment Act of 1980 received the assent of the President on 20 December 1980 and was published in the Gazette of India on 22 December 1980 (Gazette of India Extraordinary, Part-II, Section 1, pp 653-660). Section 5A and 5B provide as follows:

"5A. Power to remove unauthorized constructions, etc.--(1) No person shall--

(a) erect or place or raise any building or other structure or fixture.

(b) display or spread any goods.

(c) bring or keep any cattle or other animal, on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show-cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such remove from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost

of such removal from such person as an arrear of land revenue.

5B. Order of demolition of unauthorized construction.?(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order:

Provided that no order under this sub-section shall be made unless the person concerned has been given by means of a notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Section 9.

(3) The estate officer shall cause every order made under sub-section (1), or, as the case may be, under subsection (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under subsection (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorized by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of installments; as may be specified in the order."

3. In *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, AIR 1974 SC 2009 : (1974) 2 SCC 402 : (1975) 1 SCR 1 , a Bench of seven learned Judges of the Supreme Court overruled an earlier decision in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, AIR 1967 SC 1581 : (1967) 69 PLR 781 : (1967) 3 SCR 399 . The Supreme Court held that the provisions of the Act of 1971 could not be construed as being in violation of Article 14 merely on the fanciful theory that the power of pursuing proceedings for eviction of unauthorized occupants could be exercised in certain cases by resorting to the summary proceedings of the Act and in other cases by taking recourse to the ordinary Civil Court. In that context, the Supreme Court observed that the purpose behind the introduction of the provisions of Section 5 was that properties belonging to the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. In other words, the provisions of Section 5 were construed as provisions in aid of laying down a speedy procedure for eviction. The same principle was recognized in a decision of the Constitution Bench of the Supreme Court in *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, AIR 1991 SC 855 : (1992) 74 CompCas 482 : (1990) 3 JT 417 : (1990) 2 SCALE 200 : (1990) 4 SCC 406 : (1990) 3 SCR 649 , where it was held that the Public Premises Act had been enacted to provide for a speedy machinery for the eviction of unauthorized occupants of public premises. The Supreme Court adverted to the Statement of Objects and Reasons for the enactment which was as follows:

"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 unauthorized occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in flagrant cases of unauthorized occupation of public premises and recovery of rent or damages for such unauthorized occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorized occupation of public premises keeping in view at the same time the necessity of complying with the provision of the Constitution and the judicial pronouncements, referred to above."

4. Now, it is in this background that we must construe the provisions of Section 5A. Sub-section (1) of Section 5A contains a prohibition on any person erecting or placing or raising any building or any movable or immovable structure or fixture; displaying or spreading any goods or bringing or keeping any cattle or other animal on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises.

5. In other words, what sub-section (1) of Section 5A does is to ensure, inter

alia, that any erection or raising of a building or other immovable structure or fixture shall only be in accordance with the authority under which the person was allowed to occupy the premises. There is nothing in sub-section (1) of Section 5A to indicate that the provision shall not apply to those cases where the authority, whether by way of grant or by any other mode of transfer, under which a person was allowed to occupy the premises, was executed prior to 22 December 1980. The emphasis in sub-section (1) of Section 5A is on compliance with the provisions of the authority, whether by way of grant or any other mode of transfer, under which a person is allowed to occupy the premises by stipulating, inter alia, that no building shall be erected or raised except in accordance with that authority. Sub-section (2) of Section 5A allows the Estate Officer to issue a notice where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), requiring the person erecting such a building, structure or fixture to either remove the structure or to show-cause why it shall not be removed within a period which shall not be less than seven days. If the person either refuses to or omits to show-cause or to remove the building, structure or fixture, or where the cause shown in the opinion of the Estate Officer is not sufficient, the latter has been empowered to pass an order for the removal thereof and for the recovery of the costs as arrears of land revenue.

6. Section 5B (1) deals with a situation where the erection of any building or the execution of any work has been commenced or is being carried on or has been completed on any public premises by any person in occupation of such public premises under an authority, whether by way of grant or any other mode of transfer. Where such erection of a building or the execution of the work is found to be in contravention of or not authorised by such authority, the Estate Officer is empowered to direct that it shall be demolished by the person at whose instance it has been commenced, or has been carried on or has been completed.

7. There is no basis in the interpretation which has been placed by the learned Single Judge to the effect that Section 5A(1) creates an embargo upon raising certain constructions in future, i.e. after the date on which Section 5A was introduced on 22 December 1980. To hold that Section 5A does not speak of an already existing structure is to beg the issue because the provision does not except structures which were existing as on 22 December 1980 from the operation of the provision. Above all, it must be recognized that Section 5A was intended to provide a speedy machinery or procedure for dealing with unauthorized constructions which were erected contrary to the authority, whether by way of grant or any other mode of transfer, under which the person has been allowed to occupy the premises. The emphasis is on whether the structure has been erected in accordance with the authority or beyond the terms of the authority under which a person has been allowed to occupy the premises.

8. In holding this, we may also draw sustenance from a decision of the Supreme Court in Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India

and Another, AIR 1981 SC 670 : (1982) 2 SCALE 1382 : (1980) 4 SCC 435 : (1981) 1 SCR 498 . In that case, it was sought to be submitted that the provisions of the Public Premises Act would have no application to an occupant who had entered into possession of the premises long before they came to belong to LIC. Repelling that submission, the Supreme Court held that Section 5 merely required occupation of any public premises and occupation is a continuous process which starts right from the point of time when the person entered into possession or occupied the premises and continued until he left the premises.

9. We may clarify at this stage that in the present proceedings, this Court is not considering a situation which arose before the Supreme Court in a recent decision rendered in *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer*, AIR 2014 SC 1509 : (2014) AIRSCW 1171 : (2014) 3 JT 15 : (2014) 2 SCALE 223 : (2014) 4 SCC 657 : (2014) 3 SCJ 367 . The issue in that case was whether the rights of an occupant, licensee or tenant protected under State Rent Control legislation could be adversely affected by the Act of 1971. That issue is not the subject-matter of these proceedings.

10. For these reasons, we hold that the learned Single Judge was in error in coming to the conclusion that the provisions of Section 5A of the Act of 1971 would apply only to a construction which has been raised after 22 December 1980 and that it does not apply to an existing structure. Section 5A provides a speedy machinery and procedure for dealing with unauthorized constructions which has been made in a manner which is not in accordance with the authority under which a person was allowed to occupy the premises. There is nothing in the provision by which a construction which was made prior to 22 December 1980 shall stand excluded.

11. The learned Single Judge having adopted a particular interpretation of the provisions of Section 5A, noted above, has not enquired into the facts of each individual cases leaving it open to the authorities to scrutinize them. As we have noted at the commencement of the judgment, the learned Additional Solicitor General of India has stated that there is no objection on the part of the appellants to comply with those directions of the learned Single Judge subject to the position of law being clarified.

12. In view of the interpretation which we have placed on the provisions of Section 5A, we now clarify that we have kept all the facts of individual cases including the defence, if any, that are open to the original writ petitioners, to be urged before the Estate Officer in suitable proceedings initiated in accordance with law. The special appeals are, accordingly, allowed and the impugned judgment of the learned Single Judge dated 8 October 2014 is set aside. In consequence, the writ petitions shall stand disposed of in terms of the observations made in this judgment.