

(1980) 05 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2392 of 1988

Union of India

APPELLANT

Vs

P. Govinda Rao and Others

RESPONDENT

Date of Decision : 06-05-1980

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 4, 7
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 19

Citation : AIR 1980 P&H 323

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. Land measuring two bighas one biswa out of Khasra No. 2540 of Khewat No. 423 and Khatauni No. 1195 and 3 Biswas out of Khasra No. 2539 Khewat No. 423 Khatauni No. 1193 situate in Karnal was acquired by the Central Government under the Land Acquisition Act (hereinafter the Act) by an award dated Jan. 31, 1890 for the purpose of Delhi Kalka Railway line. The land was consequently mutated in the name of the petitioner Union of India and was shown as owned by it in the revenue records of 1890 to 1895. In the subsequent Jamabandis and the settlement records the name of the petitioner was not shown as owner of this land. The land was shown in the names of respondents Nos. 2 to 7 The petitioner called upon respondents Nos. 2 to 7 to surrender the possession of the land to it because the compensation had been paid according to law but with no response. The Union of India filed a suit for possession of this land against respondents Nos. 2 to 7 and the same was decreed by the Subordinate Judge 1st Class Karnal vide order dated Oct. 31, 1958, (Annexure A). The respondents preferred an appeal against the order Annexure A and the same was dismissed by the Additional District Judge vide order dated Mar. 21, 1957 (Annexure B). The respondents still preferred regular second appeal in the High Court and that also met the same fate vide order dated Aug. 31, 1960 (Annexure C). The petitioner then moved an application under Ss. 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act No. 32 of 1958 for the

eviction of the respondents alleging that they are in an unauthorised possession of the Government premises. The Estate Officer respondent No. 1 vide order dated Sept. 30, 1967 (Annexure E) opined that the application of the petitioner under Ss. 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act No. 32 of 1958 was not maintainable because the judgment of the High Court dated Aug. 31, 1960 (Annexure C) had not been executed within a period of three years. The application was therefore dismissed. It is at this order that the present writ is directed.

2. The learned counsel for the petitioner has argued that the order of the Subordinate Judge Annexure A dated Oct. 31, 1956, was maintained by the High Court vide Order dated Aug. 31, 1960, Annexure C. The petitioner was thus declared to be the owner of the property in dispute. The respondents were in occupation of the same. Irrespective of the fact that the decree of the Civil Court was not executed within a period of three years after the order of the High Court dated Aug 31, 1960, the petitioner could avail of the provisions of Act No. 32 of 1958 for evicting the respondents and the Estate Officer wrongly held that its application for eviction of the respondents was not entertainable. In my opinion; this contention must prevail. The Civil Court declared the petitioner to be the owner of the land in dispute. The respondents stand debarred from challenging this finding. The non-execution of the decree of the Civil Court for three years did not have the effect of divesting the petitioner of the ownership of the land in dispute. The property in dispute thus having become the Government property and the respondents being in unauthorised occupation of the same the application filed by the petitioner under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act No. 32 of 1958 was maintainable. The Estate Officer therefore wrongly held that the application of the petitioner for the eviction of the respondents was not maintainable because the judgment of the High Court dated Aug. 31, 1960, had not been executed within a period of three years.

3. The learned counsel for the respondents has argued that Act No 32 of 1958 under which the petitioner had moved an application for the eviction of the respondents in 1956 stands repealed u/s 19 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter the New Act) and there is no provision under the New Act for the continuance of the applications under the old Act. In this situation, the Estate Officer cannot be given a direction to proceed with the application of the petitioner that was moved in 1966 for the eviction of the respondents. The learned counsel for the petitioner has rightly conceded that under the New Act there is no provision for the continuance of the proceedings initiated under the old Act of 1958 which was repealed. No direction can, therefore, be issued to the Estate Officer for deciding the application of the petitioner for the eviction of the respondents filed in 1966 according to law. The petitioner if so advised; will be at liberty to file an application under the New Act "for an appropriate relief.

4. In view of the discussion above, the impugned order of the Estate Officer dated Sept. 30, 1967, Annexure E is quashed. The prayer for direction to the Estate Officer or deciding the application of the petitioner for the eviction of the respondents from the property in dispute according to law is declined. The petitioner may, if so advised, move an application afresh under the New Act for an appropriate relief. The writ is disposed of accordingly. No order as to costs.

5. Order accordingly.