

(1990) 11 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 53 of 1979

Union of India (UOI) and Others

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Constitution of India, 1950 — Article 34
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104, 104(17), 15, 2, 34

Citation : (1990) 2 ILR HP 601

Hon'ble Judges : P.C. Balakrishna Menon, C.J.;Devinder Gupta, J

Bench : Division Bench

Advocate : P.A. Sharma, Central Government Standing, for the Appellant; K.D. Sood, for Resppondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—By this writ petition, the Petitioners have sought the quashing of the order dated November 29, 1977 (Annexure PG), Passed by District Judge, Shimla, exercising the powers of Appellate Authority under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act No. 40 of 1971), (hereinafter to be called as the Act), allowing the appeal of Nikroo Ram, original Respondent and predecessor of Respondents No. 1 (i) to 1 (vii).

2. The facts giving rise to the tiling of the present writ petition are that three agricultural plots of land depicted by Survey No. 82,83 and 83-A, admeasuring 2.357 acres, 6.14 acres and 8190 square feet, respectively, situate within the Cantonment area of Jotogh in the District of Shimla, owned by the first Petitioner-Union of India, under the management of third Petitioner, were given on lease for agricultural purposes, on April 21, 1953 to Nikroo Ram (hereinafter to be referred as the Respondent), on the basis of lease document Annexure PB/I for the period from September 16, 1952 to June 30, 1956 on payment of Rs. 185/-

as rent on the terms and conditions mentioned therein. The period of lease was extended from time to time by various supplementary deeds, Annexures PB/2 to PB/5, up to June 30, 1973. On the expiry of lease period, proceedings for eviction of Respondent were initiated under the provisions of the Act by issuing a notice, Annexure PC, dated December 23, 1975. It was mentioned in the notice that as the period of lease had not been renewed, the Respondent was an unauthorized occupant, liable to be evicted. A reply dated January 9, 1976 (Annexure PD), was filed by Respondent and thereafter Petitioner No. 3, exercising the powers of Collector under the Act, on May 26, 1976, passed an order (Annexure PE), ordering his eviction. Feeling aggrieved by the said order, an appeal, (Annexure PF), was preferred by the Respondent before the Appellate Authority, who allowed the appeal on November 29, 1977, vide order Annexure PG, by setting aside the order of eviction. The Appellate Authority held that by virtue of provisions of Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) (briefly the Tenancy Act), all rights, title and interest of the Union of India in the land in question had extinguished and stood vested in the Respondent free from all encumbrances as property leased out was "land" and Respondent was "tenant" as defined in the Tenancy Act. It is this order (Annexure PG) which is sought to be quashed by the Petitioners in this writ petition.

3. The Petitioners have assailed the order on the ground that the Act is a special Act providing for a speedy procedure for eviction of unauthorized occupants of public premises and Parliament is competent to legislate in respect of the property of Union of India under Entry 32, List I of Schedule VII of the Constitution of India, regardless of whether the property is situate in a State and as the Parliament has already enacted the legislation, namely, the Act, therefore, it will prevail upon as against the Tenancy Act enacted by the State. On the strength of this argument it has been urged that proceedings for eviction initiated against the Respondent were valid and order of eviction, Annexure PE, was rightly passed by the Collector. The Tenancy Act has no applicability insofar as the property in question is concerned.

4. Respondent contested the writ petition by filing a reply and urging that the property was "land" and he was a "tenant" as defined in the Tenancy Act, provisions of which Act did apply to the land in question. The State Legislature was competent to enact the Tenancy Act, the same being relatable to Entry 18 of List II in Schedule VII of the Constitution. It was further urged that Tenancy Act had been enacted by way of Agrarian Reforms and was relatable to land tenures and as such was applicable to tenancy land. It was further urged that as he was in occupation of the land, which had been leased out to him for agricultural purposes and had not been evicted in accordance with law till the coming into force of the Tenancy Act, therefore, by virtue of the provisions of Section 104 of the Tenancy Act, all rights, title and interest of Union of India had come to an end and he had become its absolute owner which Order had become final and conclusive under the Tenancy Act but the same had not been challenged or called

in question in the proceedings under the Act. The original Respondent Nikroo Ram, died during the tendency of the writ petition. The present Respondents, who are his legal representatives, were brought on record in his place as Respondents. We have heard the learned Counsel for the parties and have also perused the records.

5. The Tenancy Act was enacted by the Legislative Assembly of Himachal Pradesh and was passed by it on December 22, 1972. It is an act to unify, amend and consolidate the laws relating to tenancy or agricultural land and to provide for certain measures of land reforms in Himachal Pradesh. It received the assent of the President of India on February 2, 1974 and thereafter it was published in the Himachal Pradesh Rajpatra (Extraordinary) on February 21, 1974. Section 2, Sub-section (17) of the Act defines the tenant in the following words:

(17) "tenant" means a person who holds land under a landowner, and is, or but for a contract to the contrary would be liable to pay rent for that land to that landowner, and includes-

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Section 104 of the Tenancy Act makes a provision for acquisition of ownership rights by the tenants other than occupancy tenants. Amendments were carried out to the original Act by the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 (Act No. 6 of 1988) which received the assent of the President on March 25, 1988 and was published in the official gazette on April 14, 1988 (hereinafter to be referred as the amendment Act). By the Amendment Act, lands either owned or vested in the Government were excluded from the operation of Section 104 of the Tenancy Act. This amendment was made effective from the date of the commencement of the Tenancy Act. As a result of this amendment, a tenant, who holds the land, owned by the State Government will not become its owner by virtue of provisions of Section 104 of the Tenancy Act. This position has not been disputed by the learned Counsel for the Respondents and rightly so.

6. The next contention of the learned Counsel for the Respondents was that Section 34 of the Tenancy Act provides that a tenant shall not be liable to be ejected from his tenancy land except on any one or more of the grounds mentioned therein. It was further urged that if once the relationship of landlord and tenant comes into existence it continues unless it is terminated in accordance with the provisions of the tenancy laws. There is no question of tenancy being determined by lapse of time, as the tenancy has been made heritable, therefore, a tenant has a right to continue in possession so long he continues to pay rent and till he is evicted in pursuance to a decree passed under the Tenancy Act. This argument of the learned Counsel for the Respondents has been refuted on behalf of the Petitioners by urging that though the State legislature had enacted the Tenancy Act, which as per the Respondents is also applicable with respect to the property of the Union of India situate within the

State of Himachal Pradesh, but as the Parliament had in exercise of its power relatable to Entry 32 in List I already enacted "the Act", which provides for a speedy remedy for eviction with respect to the property belonging to the Union of India and the revenue therefrom, therefore, in view of the decision of the Supreme Court in Saiyada Mossarrat Vs. Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) and Others, the Act enacted by the Parliament will prevail upon the Tenancy Act enacted by the State legislature.

7. In the view which we are presently taking, there is no need to deal with the other arguments addressed on behalf of the Respondents.

8. In the case of Smt. Saiyad Mussarat (supra) challenge to the constitutional validity of "the Act" was renewed by the Petitioner in the said case by filing a writ petition under Article 32 of the Constitution. The constitutional validity of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, had already been upheld by a constitution Bench of seven Judges of the Supreme Court earlier in Hari Singh and Others Vs. The Military Estate Officer and Another, Smt. Saiyada Mussarat Petitioner in that case had been allotted a piece of land on license by the Respondent-company incorporated under the Companies Act, The license was cancelled on the ground that the licensee had made illegal encroachments outside the land given on license and had also illegally raised structure on the land granted on license. After terminating the license, proceedings were initiated for adjustment of the licensee under "the Act". The competent authority passed an order of eviction. The licensee preferred an appeal, which was also dismissed. The High Court also dismissed the petition. Special Leave was also refused and ultimately the petition under Article 32 of the Constitution was preferred. One of the grounds on which the validity of the Act was challenged was that the subject matter of the Act did not fall under any of the entries in List I (Union List) or List III (Concurrent list) and it squarely fell under Entry 18 of List II, that is to say, the State List, On this basis, it was urged that since the subject matter fell squarely under the State List, Parliament had no competence to legislate in respect of the subject matter and as the State legislature had enacted Madhya Pradesh Accommodation Control Act, the rights will be governed under the said Act and not under the Public Premises Act. Although the constitutional validity of the Act had already been upheld in Hari Singh's case (supra), yet the Supreme Court allowed the Petitioner to make submissions, as in Hari Singh's case, legislative competence of Parliament to enact the Act did not appear to have been debated at all and there was no discussion in the said judgment as to under which entry of which list, the subject matter of the Act fell. The Supreme Court was of the view that the constitution Bench in Hari Singh's case had in clear and unequivocal terms pronounced that the subject matter of legislation was to provide a speedy procedure for eviction of persons in unauthorized occupation of public premises and concurring with that view, it observed as under:

Apart from the name of the Act, the preamble to the Act itself makes it

abundantly clear that the Act it designed to "provide" for the eviction of unauthorized occupants from the public premises and for certain incidental matters". The scheme of the Act also indicates that the central theme of the legislation is to provide for speedy procedure in order to evict persons in unauthorized occupation of public premises. The scheme of the Act shows that apart from the dictionary of terms and expression used in the Act, the vital provisions of the Act pertain to eviction of unauthorized occupants in exercise of powers conferred by Section 5 after following the procedure u/s 4. The incidental provisions are: (1) with regard to the disposal of the property left in the public premises by the unauthorized occupants and (2) recovery of arrears referable to the point of time prior to the occupation becoming unauthorized and damages in respect of the period of unauthorized occupation as provided in Section 7. Section 8 pertains to the incidental powers of summoning witnesses etc. And Section 9 provides for the appeals. Section 15 excludes the jurisdiction of the civil courts. There are similar provisions in regard to incidental and ancillary matters. It is, therefore, evident that the whole Act revolves around the issue of eviction of unauthorized occupants and incidental matters. In any view of the matter it is not open to contend that the subject matter of the legislation is other than the designing of speedy procedure for eviction of persons in unauthorized occupation of public premises and incidental matters in view of the law declared by the Constitution Bench of this Court in Hari Singh case. It is in the light of this perspective that the question as to under "which entry" of "which list" the subject matter falls, will have to be examined.

After scrutinizing Entry 32 of List I of Schedule VII, it analyzed the said entry and pointed out that:

(1) The Parliament can legislate in respect of property of the Union and revenue there from regardless of whether the property is situated in Union Territory or in a State.

(2) But as regards the property situated in a State the property will be subject to legislation made by the State subject to the rider which follows.

(3) While the State can legislate in respect of Union property situated in a State, with regard to such legislation in respect of the Union property, Parliament can enact a legislation in respect of the property belonging to the Union of India and the revenue there from and in that event the legislation enacted by the Parliament will prevail as against the law enacted by the State."

9. The Supreme Court, after examining the provisions of the Madhya Pradesh Accommodation Control Act and the scope of entry 18 in List II pertaining to land, that is to say, rights in or over land tenures including the relationship of landlord-tenant, collection of rents, transfer and alienation of agricultural land, land improvement, agricultural lands and acquisitions, further observed as under:

.....it may be stated that the "pith and substance" of the legislation under scrutiny viz Public Premises (Eviction of Unauthorized Occupants.) Act of 1961 is

eviction of unauthorized occupants from properties belonging to the Union of India and incidental and ancillary matters. It does not pertain to any matter relating to rights in relation to landlord and tenants for eviction of tenants from lands which have been leased. The Public Premises Act is concerned with the eviction of those persons who have no authority in law to remain in possession of the land belonging to the Union of India. The unauthorized persons may be squatters, persons having no rights whatsoever, or persons who were in occupation by virtue of any agreement but whose right under the agreement had come to an end. Thus, there is no substance in the contention that the Parliament had no legislative competence to enact the Public Premises Act.

10. Now by adverting to the facts of the case in hand, it will be seen that by virtue of document Annexure PB/I and subsequent documents Annexures PB/2 to PB/5, Respondent continued occupying the land till June 30, 1973 but the right to occupy the land came to an end on June 30, 1973. The definition of unauthorized occupation in the Act reads as under:

2(g)"unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises, without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

11. Nikroo Ram (Respondent) after June 30, 1973 had no authority in law to remain in occupation of the land belonging to the Union of India, therefore, he was an unauthorized occupant within the provisions of the Act which were rightly applied in his case. The Tenancy Act is not an enactment providing for speedy remedy for eviction of unauthorized occupants from the property belonging to the Union of India. The Supreme Court in Saiyada Mossarrat's case (supra) has said as under:

..... Entry 32 is wide enough to cover all legislations pertaining to the property of the Union of India including the legislation for eviction of unauthorized occupants from the property belonging to the Union of India.....

The agricultural land, which was given on lease and which is the subject matter of this writ petition squarely falls within the definition of public premises as contained in Section 2(e) of the Act. The Parliament in exercise of its powers relatable to entry 32 in List I of VII Schedule of the Constitution had enacted the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which provides for a speedy remedy for eviction of unauthorized occupants with respect to the property belonging to the Union of India, therefore, in view of the law laid down by the Supreme Court in Saiyada Mossarrat's case (supra), the Act will prevail upon the Tenancy Act enacted by the Himachal Pradesh Legislative Assembly. The contention of the learned Counsel for the Respondents as such that eviction of the original Respondent could not have been sought by the Petitioners except

by resorting to the provisions of the Tenancy Act and on the grounds mentioned in Section 34 of the said Act has no force.

12. In view of the above discussion, we are clearly of the view that the original Respondent, who was in occupation of the land in question by virtue of documents Annexures PB/1 to PB/5, had no right after June 30, 1973 to remain in occupation of the same as the period of lease was not extended beyond that day and he was an unauthorized occupant on the land as defined under the Act. The Appellate Authority had proceeded on wrong assumption and its order, therefore, cannot be upheld and is liable to be quashed.

13. In the result, the writ petition is allowed. The order Annexure PG of the Appellate Authority is quashed and set aside. Parties are left to bear their respective costs.

14. After the judgment was pronounced, a request was made by the learned Counsel for the Respondents that as the Respondents have been in occupation of the property for a considerable time, therefore, time may be allowed to them to vacate the property in dispute.

15. The learned Central Government Standing Counsel, Shri M.L. Sharma, appearing on behalf of the Petitioners has fairly submitted that the Respondents will not be evicted from the property in dispute for a period of three months from today. Order accordingly.