

(2002) 10 AHC CK 0172

In the Allahabad High Court

Case No : C.M.W.P. No's. 2055-56 and 2061 of 1988

Union of India (UOI)

APPELLANT

Vs

IIIrd Additional District Judge and Another

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 5

Citation : (2003) 1 AWC 66

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Lalji Sinha, for the Appellant; H.P. Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—The case has been taken up in the revised list. Heard learned counsel appearing on behalf of the petitioner as well as learned standing counsel. No one appears for the contesting respondent.

2. Since all the aforesaid three writ petitions raise common question of facts and law, therefore, they are being disposed of finally by a common judgment.

3. By means of the present writ petitions under Article 226 of the Constitution of India, petitioner-Union of India, in all the aforesaid three petitions, has challenged the order dated 31.10.1987, passed by respondent No. 1 under the provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as the "Act") whereby the respondent No. 1 has allowed the appeals filed by respondent No. 2, in each petition and set aside the order dated 23.7.1984 passed by the Estate Officer (hereinafter referred to as "prescribed authority").

4. The facts giving rise to the filing of these writ petitions are that certain shops were constructed by the petitioner near platform of the Railway Station, district Deoria, which were allotted through auction for a period of three years to the respondent No. 2 (hereinafter referred to as the "contesting respondents") in the

year 1972. Since, as per averments made in the writ petitions, the contesting respondents had encroached more than area allotted to him, therefore, notice was issued by the petitioner to vacate the premises which was encroached upon by contesting respondents and to pay damages. Thereafter, the petitioner approached the prescribed authority, who after registering a case, issued notice to the contesting respondents calling upon to show cause in writing as to why the order of eviction should not be made and also why the damages should not be awarded for illegal occupation. The prescribed authority after considering the reply submitted by the contesting respondents and the material and evidence on record has arrived at the conclusion that the contesting respondents were unauthorised occupants of the Public Premises within the meaning of the word used under the Act and they have not vacated the same on notice being served upon them, therefore, the order of eviction has been passed. It is this order, which has been challenged by the contesting respondents before the appellate authority.

5. The appellate authority heard and decided all the three appeals filed by the contesting respondents by a common judgment, which is impugned in the present writ petitions. The appellate authority, after going through all aspects of the matter, allowed the appeal on the ground that the notices have not been served on the contesting respondents, therefore, the action of the prescribed authority in passing the order of eviction is contrary to the provisions of the Act as well as the action is illegal and arbitrary. The another ground that has found favour with the appellate authority was that there was variation of the total area occupied by all the three appellants, in the present petitions contesting respondents, therefore there is defect in mentioning the boundary with regard to the portion occupied by these appellants. He, therefore, allowed the appeals and set aside the order passed by the prescribed authority and quashed the notices issued by the prescribed authority.

6. It is admitted case of the parties that notices were served upon the contesting respondents, which have been incorrectly referred to by the appellate authority that no notice was served, as would be clear from paragraph 13 sub-paragraph (d), which clearly reveals that the grounds of appeal filed by the contesting respondents wherein they have admitted that they have been served with the notices, therefore, the finding arrived by the appellate authority is as a result of misreading of the evidence/non-consideration of the materials on record. The another ground, which found favour by the appellate authority was that the total difference of the area occupied by the contesting respondents should have been 259 sq. ft., which has been shown 356 sq. ft. (in Writ Petition No. 2061 of 1988). This ground also, in my opinion, is not sufficient for setting aside the order of eviction passed by the prescribed authority. In this view of the matter, the order passed by the appellate authority suffers from the manifest error of law ; therefore, these writ petitions deserve to be allowed.

7. In view of what has been stated above, these writ petitions succeed and are

allowed. The order passed by the appellate authority dated 31.10.1987, is quashed. The matter is remanded back to the appellate authority with the direction to decide the controversy within a period of six months from the date of production of a certified copy of this order before him. There shall be no order as to costs.