
(1972) 01 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1755 of 1970

Union of India (UOI)

APPELLANT

Vs

Km. Sharifulnisha Begum and Another

RESPONDENT

Date of Decision : 19-01-1972

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15

Citation : (1972) 42 AWR 149

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : T.N. Sapru, for the Appellant; N.C. Rajvanshi and S.C., for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The Union of India has filed this petition Under Article 226 of the Constitution, praying for the setting aside of an order dated 14th January, 1970, made by the District Judge, Lucknow, quashing the proceedings for ejectment of Respondent No. 1 from the premises in dispute, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act. 1953. The learned District Judge held that in a recent judgment, the High Court has declared this Act ultravires Article 14 of the Constitution. This view was taken by a Single Judge of this Court in Banwari Lal Tandon v. Military Estates Officer 1969 AWR 151.

2. In this very decision, it was held that the amendment of the Act by the amending Act No. 32 of 1968, whereby Section 10-E was sought to be introduced in the principal Act, was an exercise in futility and did not, in law, effect any amendment to the principal Act.

3. Thereafter, Parliament repealed and re-enacted this Act as the Public Premises (Eviction of Unauthorised Occupants) Act No. 40 of 1971. Section 21 of this Act, is the validation section. It provides:

20. Validation-Notwithstanding any judgment, decree or order of any court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958) hereafter in this section referred to as the 1958-Act shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act which, Under Sub-section (1) of Section 1 shall be deemed to have come into force on the 16th day of September, 1958 and accordingly-

(a) no suit or other legal proceeding shall be maintained or continued in any court for the refund of any rent or damages or costs recovered under the 1958-Act where such refund has been claimed merely on the ground that the said Act has been declared to be unconstitutional and void; and

(b) no court shall enforce a decree or order directing the refund of any rent or damages or costs recovered under the 1958-Act merely on the ground that the said Act has been declared to be unconstitutional and void.

In view of this validating provision, the position would be that all orders or actions taken under the 1958 Act would be as valid and effective as if those orders and actions were taken under the corresponding provisions of the 1971 Act, as if the 1971 Act had been in force at all relevant times. Such a validating provision is competent-see *The State of Mysore and Another Vs. D. Achiah Chetty, etc., and Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore*, by its Commissioner, Bangalore City, .

4. In *Banwari Lal Tandon's* case, the 1958 Act was held ultra vires Art 14, on the basis of the decision of the Supreme Court in *Northern India Caterers (P) Ltd. v. State of Punjab* 1967 SC 1581, wherein it was held that Section 5 of the Punjab Act left an unguided discretion with the relevant Executive Officer. He could, in a given case, proceed to take action under the more stringent provisions of the Eviction Act, while, in the case of another unauthorised occupant similarly situated he may take recourse to proceedings in the ordinary civil courts. It was held that the Act did not prohibit the Officer from instituting a suit to recover possession of the public premises.

5. This defect has been remedied in the 1971 Act. Section 15 of the 1971 Act bars the jurisdiction of the court. 11 says:

No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person.... The prohibition is in relation to any suit or proceeding "in respect of" the eviction of any person. The phrase "in respect of" is of wide amplitude. It includes all ancillary and supplementary matters connected with the eviction of any person in my opinion, the Estates Officer cannot now file a suit for the eviction of any unauthorised occupant in respect of whom he could take action u/s 4 or 5 of this Act. Under the circumstances, it

cannot be said that the Estates Officer has an discretion in the matter in relation to the premises covered by the Act and ii relation to persons occupying the premises. For their eviction, the Estate Officer can take action only under the provisions of the Act. He cannot take recourse to the ordinary civil courts. So, the provisions of the Act cannot be held discriminatory.

6. The learned District Judge allowed the appeal of the Respondents and quashed the proceedings only on the ground that the Act was ultra vires. He did not go into the merits of the appeal. It is hence necessary to send the case back to him.

7. In the result, the petition succeeds and is allowed. The order dated 14th January, 1970, is quashed. The matter is sent back to the appellate court for decision of the appeal in accordance with law. In view of the fact that the change in law came into existence during the pendency of the writ petition, the parties will bear their own costs.