
(2004) 10 AHC CK 0002
In the Allahabad High Court
Case No : C.M.W.P. No. 41409 of 2004

Virendra Bahadur Singh alias Hira Singh	APPELLANT
Vs	
District Judge and Others	RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 14, 16(1), 25, 7

Citation : (2004) 5 AWC 5186

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Suresh Singh, for the Appellant; Vinod Swarup and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard learned Counsel for the Petitioner and Sri. Vinod Swarup, appearing for Respondent No. 5.

2. The Petitioner by means of this writ petition has prayed for the following reliefs:

(i) To issue a writ order or direction in the nature of certiorari quashing the impugned orders dated 1.9.2004 of Judge Small Causes Court Varanasi, passed in Misc. Case No. 104 of 2004, Virendra Bahadur Singh v. Satish Kumar Yadav and Ors. and judgment and order dated 22.9.2004 of District Judge, Varanasi, passed in Civil Revision No. 229 of 2004, Virendra Bahadur Singh v. Pradeep Kumar Yadav, contained in Annexures-1 and 2 to the writ petition ;

(ii) To issue a writ order or direction in the nature of mandamus commanding the Respondent not to interfere in the peaceful possession of the Petitioner over the property in dispute ;

(iii) To issue any other such order or direction, which may deem fit and proper under the circumstances of the case ;

(iv) Award costs to the Petitioner.

3. The facts leading to filing of the present writ petition are that Respondent-landlord filed a suit for eviction of the Petitioner-tenant before the Judge Small Causes Court. The trial court decreed the suit. Aggrieved thereby the Petitioner preferred a revision before the revisional court u/s 25 of the Provincial Small Cause Courts Act. The revisional court dismissed the revision and maintained the decree passed by the trial court. Aggrieved by the orders passed by the trial court as well as the revisional court the Petitioner preferred a writ petition before this Court being Civil Misc. Writ Petition No. 32643 of 2001. This Court vide its judgment and order dated 23rd August, 2003, dismissed the writ petition and granted one year's time to the Petitioner to vacate the accommodation in question provided within one month from the date of judgment the Petitioner gives undertaking before the trial court concerned that after expiry of the aforesaid period of one year he will willingly handover possession of the accommodation in question to the landlord. Aggrieved by the order passed by this Court dated 23rd August, 2003, it appears that the Petitioner preferred SLP before Hon''ble Supreme Court being Special Leave to Appeal (Civil) No. 18161 of 2003. Hon''ble Supreme Court was pleased to pass the following order in the aforesaid leave petition:

Special leave petition is dismissed. The undertaking permitted by the High Court may be filed within four weeks from today.

4. Now one year's time granted to the Petitioner by order of this Court dated 23rd August, 2003, passed in the aforesaid writ petition also expired on 22nd August, 2004. The Petitioner has now filed this writ petition with the prayer quoted above.

5. The Petitioner's counsel submits that occupation of Petitioner of the accommodation in question stands regularized by virtue of the order dated 29th March, 2001, passed by the Rent Control and Eviction Officer in Case No. 80 of 2000, Shiv Prasad Singh v. Satish Kumar Yadav and Ors., regarding the same accommodation u/s 16(1) of Act No. 13 of 1972. It is submitted on behalf of the Petitioner that because of this order the occupation of the Petitioner as tenant stands regularized u/s 14 of the Act. The decree passed by the trial court in the suit, which has resulted into grant of one year's time in the aforesaid writ petition, has thus become inexecutable because of the order dated 29.3.2001, referred to above. Learned Counsel for the Petitioner relied upon a decision in Haji Sk. Subhan v. Madhorao AIR 1962 SC 1230. Paragraphs 37, 38 and 39 which are relevant for the controversy, as relied upon by learned Counsel for the Petitioner, are reproduced below:

(37) It is clear from the various provisions of the Act already discussed in relation to the facts of this case, that the Respondent was not recorded and could not have been recorded to have khudkasht in the land in suit in the papers of 1948-49 and therefore could not have claimed this land as his home-farm. In

fact, he did not claim so. He therefore lost his proprietary rights in this land and they got vested in the State. He therefore had no subsisting right to recover possession of the land in suit, in spite of the decree in his favour passed on the basis of his being the proprietor of the land in suit, and the Appellant being in wrongful possession of that land. On the other hand, the Appellant continued in possession and has, on the basis of the entries in the village papers which had to be presumed correct for the purpose of assessment of compensation, secured a declaration of his being malik makbuza of such land from an officer of the State in whom the land in suit now vests. His right to occupy the land under this right was not adjudicated by the High Court in the judgment leading to the decree sought to be executed. He can therefore object to the execution of the decree for the delivery of possession as the Respondent has no subsisting right and as he has secured from the State a good right to possess it as malik makbuza, even though it be on the basis of a wrong entry in the village papers.

(38) The right to possession vests in the State and, u/s 7 the Deputy Commissioner formally takes possession of the land, which is not home-farm or occupied land within the definition of those expressions in the Act. If the land in suit be treated to be the Appellant's occupancy tenancy his right to remain in possession as occupancy tenant continues after the vesting of the land in suit, in the State. If the land in suit be not taken to be occupancy land of the Appellant in view of the finding of the High Court the Deputy Commissioner would be deemed to have taken possession of the land from the Appellant and any subsequent possession of the Appellant would be deemed to be possession under the State.

(39) The contention that the executing court cannot question the decree and has to execute it as it stands, is correct, but this principle has no operation in the facts of the present case. The objection of the Appellant is not with respect to the invalidity of the decree or with respect to the decree being wrong. His objection is based on the effect of the provisions of the Act which has deprived the Respondent of his proprietary rights, including the right to recover possession over the land in suit and under whose provisions the Respondent has obtained the right to remain in possession of it. In these circumstances, we are of opinion that the executing court can refuse to execute the decree holding that it has become inexecutable on account of the change in law and its effect.

6. On the other hand learned Counsel for the contesting Respondent has relied upon a decision of the Supreme Court in *Suresh Chandra Jain v. Jai Krishan Goswamy and Ors.* 1993 (2) ARC 484, wherein it was held as under:

The Respondent suffered an ex parte decree which this Court ultimately confirmed and dismissed the SLP No. 8382 of 1992 on July 9, 1992. The Respondent also had given an undertaking that they will vacate the premises within three months from the date of the High Court order. The High Court order was on July 1, 1992, in 1992 (2) ARC 246. They did not vacate. Again they launched upon the second front of litigation and filed a Writ Petition No. 34606 of

1992 which was dismissed by the High Court on August 18, 1992, in 1992 (2) ARC 645. Thereafter, a Regular Suit No. 400 of 1992, was got filed in the Court of the Civil Judge, Mathura through proxy for declaration and injunction. Civil suit was dismissed on September 1, 1992, which was confirmed by the Division Bench of the High Court on September 30, 1992. Again in the third round of litigation in execution objecting as to jurisdiction was raised but disallowed by the executing court. Two proceedings were initiated against that order one before the Second Additional Civil Judge, Mathura and another by the writ petition in which the impugned orders came to be made. It is stated that the High Court has heard the matter and the orders were reserved. That order does not detain us from disposing of the matter on merits. As stated earlier, this process adopted by the Respondent is in sheer abuse of the process of the Court and cannot be permitted to agitate the matter even on points of jurisdiction.

7. Learned Counsel for the Petitioner in reply to a query by the Court has answered that the counsel has committed mistake in not bringing to the notice of the court below and the High Court, when the earlier writ petition was being heard and decided by this Court, the order dated 29th March, 2001.

8. The counsel appearing for the contesting Respondent submitted that the case relied by the Petitioner does not apply to the facts of the present case. Secondly he submitted that the present writ petition is sheer abuse of the process of the Court.

9. In the aforesaid set of facts, to me, it appears that the case relied upon by learned Counsel for the Petitioner in Haji Sk. Subhan Vs. Madhorao, does not apply to the facts of the present case. In view of the fact the defence now raised by the tenant-Petitioner regarding order dated 29th March, 2001, ought to have been taken before the trial court, revisional court or before this Court in Writ Petition No. 32643 of 2001, which has been decided on 23.8.2003 since have not been taken cannot be permitted to be taken by the Petitioner now.

10. In this view of the matter I do not find any merit in the present writ petition. It is accordingly dismissed.