

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/ S) No. 590 of 2011

State of Uttarakhand through
Collector Champawat

... Petitioner

Vs.

Prescribed Authority Eviction/Upziladhikari
and Another

... Respondents

Advocate: Mr. Rajesh Pandey, Standing Counsel, for the petitioner
Mr. Dinesh Kumar Bankoti, Advocate, for respondent No. 2
Mr. Devesh Upreti, Advocate, for the intervener

Hon'ble Sharad Kumar Sharma, J.

CLMA No. 4673 of 2011 has been preferred by Mr. Anand Ballabh, contending thereof, that he may be permitted to intervene in the matter, because he happens to be the complainant based on which, the proceeding under the provisions of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 was initiated. Since the complainant has got no role to play as such, as after the initiation of the proceedings under Section 4/5, the interest of litigation stood protected by the State the owner of public property and it is not a case where, in the absence of the complainant the writ petition itself cannot be effectively decided on merits. Thus, the Intervention Application (CLMA/4673/2011) is misconceived, the same, is accordingly rejected.

2. A proceeding under Section 4/5 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 stood instituted as against the occupant respondent No. 2 herein, who by the notices issued by the State on 10.07.2006, wherein, in the notice allegedly issued under Sections 4, 5, 7, the proceedings were contemplated to be

taken against the illegal occupant respondent No. 2, in relation to the land lying in khatauni khata No. 117/118, pamise khet No. 87/62M, having an area of 89 nali, 5 mutthi of land which was contended by the respondent, that the same was being unauthorizedly occupied by the applicant and consequently they have determined the compensation to be made payable for its unauthorized use @ Rs. 4,000/- per annum and has determined the same as to be Rs. 1,40,000/- which was directed to be made payable by the respondent in the treasury of the State.

3. The matter had proceeded on the basis of the challani report, which was submitted on 10.10.2006, whereby the respondent No. 2, was noticed to participate in the proceedings for eviction and accordingly, the Case No. 10 of 2006-2007 dated 27.10.2006 State Vs. Ganga Dutt, stood instituted before the learned Prescribed Authority.

4. It is argued by the respondent, that in the notice thus issued under Section 4(1), the notice does not satisfies the conditions as provided under Section 4(2) of the Act, enumerating therein the grounds based on which, the proceedings for eviction is being contemplated to be taken as against the respondent. The matter proceeded and the same was contested by respondent No. 2, who had filed his objection on 25.02.2006 and in the objection which was filed, he has contended that the land lying in khata No. 2 khet No. 54/61, having a total area of 19 nali and 15 mutthi of land the same was said to have been purchased by the occupant respondent No. 2, from its previous occupant and accordingly, he was validly occupying the land, which was

falling under the part of the sale deed, based on which he has purchased the land.

5. He has contended that out of the said land which was part and parcel of the sale deed executed in favour of the respondent No. 2, it was the adjoining land of 15 nali which was said to be in occupation of the brother of respondent No. 2 Laxmi Dutt, in pursuance to the order of regularization which was issued on 24.02.1983 and as a consequence of the regularization of the land in favour Laxmi Dutt, who became an occupant of the land since 1971, hence the possession of the applicant, since it happens to be prior to 1970, it will not be a public land as per the provisions of U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, and specific ground in that regard was taken by respondent No. 2 in his objection filed on 28.03.2007. The relevant excerpts are extracted hereunder:-

“4.....स्वीकृत हुई थी, उक्त नियमितीकरण पर स्वीकृत भूमि पर आवादकार का सन् 1971 से कब्जा था, इसी के सिलसिले में लगी हुई कुछ भूमि पर भी आवादकार का 1970 में जब आवादकार के द्वारा श्री चिन्मामणी से नाप भूमि क्रय की थी तब से कब्जा है, इस कारण भी उक्त भूमि सार्वजनिक उपयोग की न होने के कारण इस पर भू-ग्रहादि अधिनियम लागू नहीं होता है।”

6. In the proceedings which were held before the Court below, the revenue entries pertaining to shreni 9 land was relied by the parties to the proceedings as an Exhibit Ka1, in relation to the non-Z.A. land of the Village Dechmar (Devidhura) Patti Devidhura.

7. The matter proceeded on merits; the statement was recorded of the witnesses and the learned Prescribed Authority by the impugned judgment dated 12.02.2009, had quashed the notice contending thereof, that no proceedings on the basis of the challani report dated

10.07.2006 could have been issued as against the present petitioners by invoking the provisions contained under Section 4(1) of the Act of 1972 and the reason which has been assigned by the learned Prescribed Authority, it was to the effect that according to the Patwari report dated 10.07.2006, the challani report showed, that he was in possession of the property only on a part of the land, which was said to have been conveyed to him by virtue of a sale deed which was executed in his favour, which was coupled with the fact that the remaining land of 15 nali was a land, which was in occupation of Ganga Dutt i.e. the brother of respondent no. 2 w.e.f. 1970, since having purchased the same from its predecessor owner and in contravention to the aforesaid pleadings raised by respondent No. 2, no evidence to the contrary was adduced by the present petitioner to substantiate, that after the sale deed executed in favour of Ganga Dutt, whether his property still continued to be a public premises as described under the Act of 1972.

8. It was further observed by the learned Prescribed Authority, that since the occupancy of the land was regularized by the order of District Magistrate, Pithoragarh and the said order has not been put to challenge, the occupancy of respondent No. 2 over the land, which constituted as to be part of the notice issued under Section 4(1) would be treated to be an occupancy which stood regularized way back in 1971.

9. The learned Prescribed Authority, while answering the question of about the applicability of Act of 1972, based on the statement and the document which has been placed on record has come to the conclusion, that even if the

regularization order of the District Magistrate is taken into consideration, the possession of respondent No. 2 over the land was shown to be since 1971 and said age of occupancy stood fortified from the report of the Patwari, which was submitted on 10.07.2006 and even in accordance with the statement of Patwari which was recorded in the proceedings before the learned Prescribed Authority, that the occupancy of the respondent No. 2 was prior to 1971 and as such the learned Prescribed Authority has observed that the provisions of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, would not be applicable in relation to those occupants, who had occupied the land prior to enforcement of the Act, itself because the land thus occupied by them will not constitute as to be a public premises, as defined under the said Act.

10. The aforesaid contention about the applicability of Act of 1972 though in the context of the provisions of the Public Premises Act of 1971 (Central Legislation), the Hon'ble Apex Court in the judgment as reported in 2014 (4) SCC 657, *Suhas H. Pophale v. Oriental Insurance Co. Ltd. and its Estate Officer*, has observed, that the provisions of Act of 1972 would not apply to those premises over which the construction existed prior to the enforcement of the Act. The relevant paras are extracted hereunder:

“45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (*see* para 7 of the Constitution Bench judgment in *Janardhan Reddy v. State* [1950 SCC 898 : AIR 1951 SC 124 : (1951) 52 Cri LJ 391]). In the instant case, the appellant was undoubtedly

protected as a “deemed tenant” under Section 15-A of the Bombay Rent Act, prior to the merger of the erstwhile Insurance Company with a government company, and he could be removed only by following the procedure available under the Bombay Rent Act. A “deemed tenant” under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a “tenant” under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellant's status as a deemed tenant was accepted under the State enactment, and therefore he could not be said to be in “unauthorised occupation”. His right granted by the State enactment cannot be destroyed by giving any retrospective application to the provisions of the Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to Respondent 1 i.e until 1-1-1974. The corollary is that if Respondent 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.

70. For the reasons stated above, we allow this appeal and set aside the impugned judgment and order dated 7-6-2010 rendered by the High Court of Bombay in *Suhas H. Pophale v. Oriental Insurance Co. Ltd.* [*Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2010) 5 Mah LJ 744 : (2010) 4 Bom CR 279] The said writ petition shall stand allowed, and the judgment and order dated 17-1-1996 passed by the City Civil Court, Mumbai, as well as the eviction order dated 28-5-1993 passed by Respondent 2 against the appellant will stand set aside. The proceedings for eviction from premises, and for recovery of rent and damages initiated by the first respondent against the appellant under the Public Premises Act, 1971, are held to be bad in law, and shall therefore stand dismissed. We however, make it clear, that in case the respondents intend to take any steps for that purpose, it will be open to them to resort to the remedy available under the Maharashtra Rent Control Act,

1999, provided they make out a case therefor. The parties will bear their own costs.”

11. In the instant case, the said aspect pertaining to the existence of the construction over the land covered by the Central Act, will have to be read with in consonance to the occupation /possession of respondent No. 2, as it was reported by the patwari's report dated 10.07.2006. The fact that the respondent No. 2 was in possession over the disputed land prior to enforcement of Act of 1972, along with the guiding factor and the principles as laid down in the judgment of Suhas H. Pophale (*supra*), would be equally applicable, because here the respondent's case admittedly is to the effect that since it happens to be prior to 1971, the Act will not apply.

12. The matter was taken in an Appeal under Section 9 and the learned Appellate Court too, had dismissed the Appeal of the respondent by the judgment dated 27.07.2010.

13. The learned Appellate Court too, has almost fortified the aforesaid fact, that in accordance with the report of patwari, which was the basis of issuance of notice under Section 4, the possession of respondent No. 2 was shown to be for last 35 years and as such, the proceedings would be barred by the provisions contained under Article 112 of the Limitation Act, apart from the fact, that the possession of the applicant since was admittedly proved to be prior to the enforcement of the Act of 1972, the provisions of the Act would not be applicable.

14. Owing to the aforesaid principles and the concurrent findings which were recorded by the Court, pertaining to the age of occupancy of the respondent No. 2 over the land, which the petitioner contends to be a public land the same would not be applicable in the instant case, for the reasons already recorded above and also because of the fact that the notice issued under Section 4(1), since itself is not in compliance of the provisions as contained under Section 2(4) of the Act, the entire proceedings initiated based upon the challani report dated 10.07.2006 would be in violation to the provisions of the Act itself as well as in violation of the principles laid down by the Hon'ble Apex Court in the judgment of Suhas H. Pophale (*supra*), that the Act would not have a retrospective applicability.

15. Owing to the above, since the writ petition is concluded by a concurrent finding of facts, I do not find any merit in the writ petition, the same is hereby dismissed.

(Sharad Kumar Sharma, J.)
12.09.2023