

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 19th April, 2016

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W.P.(C) No.4020/2014 & CM.No.8078/2014

DR. SHEKHAR SHAH

..... Petitioner

Through: Mr. Kamal Mehta, Adv.

Versus

GOVERNMENT OF MAHARASHTRA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the show cause notice dated 23rd June, 2014 of the respondent to the petitioner under Section 4(2)(b)(ii) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act) with respect to Kum Kum Bungalow and the open portion of land appurtenant thereto at the north-east corner of Sirmur plot, forming part of and within the boundaries of New Maharashtra Sadan, Kasturba Gandhi Marg, 7, Faridkot House Lane, Copernicus Marg, New Delhi and seeks quashing thereof.

2. Notice of the petition was issued and vide order dated 2nd July, 2014, the impugned notice stayed. Counter affidavit was filed by the respondent; though the petitioner availed of opportunity to file rejoinder but no rejoinder was filed.

None appeared for the respondent when the matter came up on 24th August, 2015. However considering that ordinarily writ petitions at the show cause notice stage are not entertained and that the petitioner was also enjoying stay of proceedings pursuant to the show cause notice under PP Act, it was not deemed appropriate to await the counsel for the respondent and the counsel for the petitioner was heard and judgment reserved with liberty to the counsels to file written arguments. Though the counsel for the petitioner has filed written arguments also, the counsel for the respondent has not done so also. Notwithstanding the anxiety shown by me on 24th August, 2015, on account of remaining busy in other work, judgment remained to be pronounced.

3. It is the case of the petitioner i) that the property under dispute i.e. Kum Kum Bungalow, 7 Faridkot House Lane, Copernicus Marg, New Delhi is owned, occupied and possessed by the petitioner and has been in the ownership and possession of predecessor in interest viz. Sh. Harin J. Shah of the petitioner who occupied and possessed the same since 1940 through Maharaja Pratapsinhrao Gaekwad, this being the Maharaja's personal property; ii) that ownership of Late Sh. Harin Shah was recognized by the Maharaja and his successors and the New Delhi Municipal Committee was also directed to collect property tax from Late Sh. Harin J. Shah; iii) that the property tax,

water and electricity dues were accordingly raised in the name of Late Sh. Harin Shah and continued to be so without interruption; iv) that there have been unsuccessful legal claims for possession of the property by Union of India (UOI) and the State of Gujarat, which claims were withdrawn on the ground of non-clarity of title of UOI and the State of Gujarat; v) that liberty sought by the UOI and the State of Gujarat from the Court to re-present the claim was never availed; vi) that the UOI through the Ministry of Housing, Government of India replied on the very floor of Parliament viz. Rajya Sabha, in reply to unstarred question No.1296 on Wednesday, the 11th December, 1974, that the disputed property / premises did not belong to the UOI; vii) that the matter with regard to the same property is pending adjudication in CS(OS) No.1193/2008 titled *State of Maharashtra Vs. Harin Shah* for the reliefs of declaration of title, possession and damages and in which suit Issues had been framed on 1st August, 1996; viii) that while the title to the property in question is pending adjudication in the suit, it is totally and completely gross abuse of the provisions of the PP Act to have issued notice thereunder; ix) that thus the impugned notice is without jurisdiction; x) that by invoking PP Act, process of law in the civil Court cannot be bypassed; xi) that the notice is without jurisdiction since the premises are not public premises; and, xii) that the Estate

Officer is not competent to decide the issue of title which has not been adjudicated by the Civil Court till now.

4. The petitioner along with the writ petition, besides impugned notice, has filed only copies of pleadings in the suit aforesaid.

5. The respondent in its counter affidavit, besides taking the plea as to the maintainability of the writ petition against a show cause notice citing *Special Director Vs. Mohd. Ghulam Ghouse* (2004) 3 SCC 440, *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh* AIR 1996 SC 691, has contended that the petition is also not maintainable because of the alternative efficacious remedy of contesting the show cause notice and if remaining aggrieved preferring appeal to the District Judge under Section 9 of the PP Act being available and citing *Harbans Lal Sahnia Vs. Indian Oil Corporation Ltd.* (2003) 2 SCC 107, denied the factual pleas in the petition.

6. The counsel for the petitioner though at the time of hearing did not cite any case law, in the written arguments has relied on:

- (a) *DCM Ltd. Vs. Delhi Development Authority* 2013 (136) DRJ 688 to contend that having regard to the limited nature of jurisdiction of Estate Officer, *bona fide* title disputes cannot be gone into under the PP Act;

- (b) ***State of U.P. Vs. Amar Singh*** (1997) 1 SCC 734 to contend that merely because the respondent State of Maharashtra had got the property mutated in its name does not make it a public premises as mutation does not confer title;
- (c) ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania*** (2010) 9 SCC 437 to contend that ‘malice-in-law’ of the respondent is evident from the respondent in its counter affidavit having not disclosed how it has title to the property; and,
- (d) ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai*** (1998) 8 SCC 1 to contend that notwithstanding the availability of alternate remedy, writ petition can be entertained.

7. I have considered the rival contentions.

8. Though the Constitution Bench of the Supreme Court in ***Ashoka Marketing Ltd. Vs. Punjab National Bank*** (1990) 4 SCC 406 had held that there being no requirement in the PP Act of the Estate Officer being a person well versed in law cannot by itself be a ground for holding that the question whether a lease had been determined or not involving complicated questions of law could not be decided by the Estate Officer and I have on the basis thereof in ***Ocean Plastics and Fibres (P) Ltd. Vs. Delhi Development Authority*** 187

(2012) DLT 359 LPA No.415/2012 whereagainst has been dismissed as withdrawn on 28th May, 2012 interpreted the same as not excluding from the purview of Estate Officer under the PP Act matters relating to validity of determination of lease but the Division Bench of this Court in **DCM Ltd.** supra held that mere issuance of a notice under Section 4 of the PP Act would not divest a Civil Court from exercising its jurisdiction where the noticee seeks a declaration of his title to the property. It was further held by the Division Bench that the summary procedure available to the government under the PP Act could not oust the jurisdiction of the Civil Court to examine questions pertaining to title claimed by an unauthorized occupant in the Civil Court and that the summary remedy of eviction under the PP Act can be resorted to by the government only against the persons who are in unauthorized occupation of any land which is the property of the government but if there is a *bona fide* dispute regarding the title of the government to any property, the government cannot take a unilateral decision in its own favour that the property belongs to it and on the basis of such decision take recourse to the summary remedy provided under the PP Act for evicting person who is in possession of the property under a *bona fide* claim or title. It was further held that the summary

remedy under the PP Act is not the kind of legal process which is suited to an adjudication of complicated question of title.

9. It is thus not as if according to *DCM Ltd.* supra also, whenever a person to whom a notice under Section 4 of the PP Act is issued disputes that the premises are public premises or the title of the government or the public authority thereto and sets up title in himself or in some other person that the proceedings before the Estate Officer would not be maintainable. If such a view were to be taken, the same would make the PP Act redundant inasmuch as all noticees would raise such a dispute and upon mere raising whereof the Estate Officer would be compelled to abandon the proceedings. It is only where the dispute is found to be *bona fide* and requiring adjudication of complicated questions of title, would the Estate Officer restrain himself from adjudicating thereon and / or upon being approached the Court would intervene.

10. Though from a mere filing of a civil suit for possession by the respondent prior to the initiation of proceedings under the PP Act, it may appear that the present case would fall in the category where this Court should allow this petition by striking down the notice under the PP Act leaving the question of title to be adjudicated in a already pending suit but on a reading of

the writ petition, the facts pleaded wherein have been succinctly set out in para no.3 hereinabove, to me, it appears that there is no *bona fides* dispute raised by the petitioner or any complicated question of title to be adjudicated. I thus proceed to examine the pleadings in the pending suit which as aforesaid are annexed to the petition.

11. It is the case of the respondent State of Maharashtra which is the plaintiff in the suit:-

- (i) that the Sirmur Plot on Kasturba Gandhi Marg, New Delhi admeasuring about 6 acres belonged to the Government of India and was originally allotted to the Sirmur Durbar but as the Sirmur Durbar did not undertake the construction thereon within the stipulated time, the allotment was cancelled and the plot was re-allotted to Baroda Durbar in the year 1935; however even after re-allotment to Baroda Durbar, the plot continued to be known as Sirmur Plot;
- (ii) that on the merger of Baroda State with the Dominion of India, the aforesaid plot including the two buildings thereon vested in the Dominion of India under the Baroda Merger Agreement dated 25th March, 1949 as the same was held to be State property;

- (iii) that later, by virtue of the States Merger (Governors' Provinces) Order, 1949 made under Section 290A of the Government of India Act, 1935, the said property vested in the then Province of Bombay and from the commencement of the Constitution of India, it vested in the State of Bombay and on the enactment of Bombay Re-organisation Act, 1960 became the property of the State of Maharashtra;
- (iv) that the petitioner is in occupation of the Staff Quarters measuring 420 sq. yds. situated on a portion of the aforesaid plot along with open space surrounding the same and together which is called by the petitioner as Kum Kum Bungalow, admeasuring 1100 sq. yds. since before 1st May, 1960;
- (v) that the State of Bombay which was the owner of the property prior to 1st May, 1960 had not authorized the petitioner to occupy the property; thus the possession of the petitioner on the property has all along been unauthorized and wrongful;
- (vi) that the petitioner started wrongfully asserting himself as the owner;

- (vii) that the Government of Maharashtra vide letter dated 28th April, 1978 asked the petitioner to vacate the property;
- (viii) that accordingly the suit was filed for declaring the State of Maharashtra as the owner of the property in possession of the petitioner and for recovery of the possession of the said property from the petitioner with *mesne profits* / damages for use and occupation thereof;

12. The petitioner is contesting the said suit pleading:

- (a) that the Sirmur Plot is the personal property of Maharaja Pratapsinhrao Gaekwad and State of Maharashtra has no right thereto;
- (b) that no claim could be made or was made against the private property of the Ruler under the Recognition of States Act, 1956;
- (c) that the said property was never part of the erstwhile Baroda State to be taken over by UOI;
- (d) that the portion occupied by the petitioner is different from Baroda House;
- (e) that the petitioner is in continuous and uninterrupted occupation of the said property from 1945;

- (f) that the petitioner had obtained right, title and interest in the said property which was the personal property of Maharaja Pratapsinhrao Gaekwad from the Maharaja in consideration of advice and services rendered and the petitioner was put in possession of the property;
- (g) that the Controller of Household of the Maharaja Pratapsinhrao Gaekwad informed the New Delhi Municipal Committee to collect house tax thereafter from the petitioner as owner;
- (h) that the Ministry of States of the Government of India had not even claimed the said property; and,
- (i) that Sh. Fatehsinhrao vide letter dated 3rd April, 1973 to Sh. Harin Shah, father of the petitioner had confirmed that the said property was given to the father of the petitioner by Maharaja Pratapsinhrao Gaekwad.

13. What immediately stands highlighted on reading of the writ petition and the written statement of the petitioner in the pending suit is that the petitioner does not claim any registered document of title to the property in his favour. Without any registered document, the right even if any created in favour of the

petitioner by the erstwhile Maharaja Pratapsinhrao Gaekwad with respect to immovable property would be as a licensee and not as owner.

14. The mainstay of the case of the petitioner is that the said property was the personal property of the Maharaja and thus did not become the property of the UOI and of the State of Maharashtra. What the petitioner is disputing is the title of the respondent to the property without disclosing any lawful title in his own favour with respect to the property.

15. I have wondered the locus of the petitioner to dispute the title of the respondent to the property or to claim the property to be not of State of Maharashtra but of erstwhile ruler of Baroda State. The challenge if any to the title claimed by the respondent to the property has to be by the heirs of Maharaja Pratapsinhrao Gaekwad and cannot be by the petitioner.

16. From the aforesaid it becomes evident that the dispute raised by the petitioner is not *bona fide*. This becomes further evident from the fact (i) that the lease of the entire plot of land, of which a portion is in possession of the petitioner, was granted by the Government of India first to the Sirmur Durbar and thereafter to Baroda Durbar; (ii) on the major portion of the said plot of land the New Maharashtra Sadan has been constructed and is in possession of State of Maharashtra; (iii) it is obvious therefrom that Maharaja Pratapsinhrao

Gaekwad or his heirs have not claimed and /or are not claiming the subject plot of land to be their personal property and have no dispute with the same being the property of the State of Maharashtra; (iv) when Maharaja Pratapsinhrao Gaekwad or his heirs have no claim to the property, the petitioner claiming rights under them in a portion of the property that too by an unregistered document, cannot dispute the title of the State of Maharashtra on the ground of the same being the personal property of the Maharaja and having thus not become State property and the dispute raised by the petitioner is a mere sham and a facade to perpetuate his illegal possession of the property. In fact such disputes with respect to the properties of erstwhile princely state and entailing the question whether the properties were the State properties or the personal Properties of Maharaja have been subject matter of several litigations the last of which came up before the Supreme Court in *State of Madhya Pradesh Vs. Maharani Usha Devi* (2015) 8 SCC 672 where also the claim of the property being private property of the erstwhile ruler was negatived. The Supreme Court in the said judgment has referred to a large number of earlier judgments on the subject and in the light thereof also it cannot be said that there really is any disputed question of law or fact remaining to be adjudicated.

17. I am therefore of the view that even if the law as laid down by the Division Bench of this Court in **DCM Limited** supra and by which I am bound were to be applied, the petitioner does not get any benefit thereof.

18. I may however mention that the Division Bench of this Court in **DCM Limited** supra, notwithstanding the Constitution Bench in **Ashoka Marketing Ltd** supra having held that the jurisdiction of the Estate Officer under the PP Act cannot be ousted merely for the reason of complicated questions of law and fact requiring to be adjudicated, on the basis of judgments of the Supreme Court in **Government Of Andhra Pradesh vs Thummala Krishna Rao** (1982) 2 SCC 134 relating to Andhra Pradesh Land Encroachment Act, 1905 and the **State of Rajasthan Vs. Padmavati Devi** 1995 Supp (2) SCC 290 pertaining to the provisions of Rajasthan Land Revenue Act, 1956 held that the judgment in **Ashoka Marketing Ltd.** supra has to be confined to complicated questions of law relating to determination of lease and cannot be extended to complicated questions of law relating to title to the property. A Division Bench of the High Court of Bombay in **Kaikhosrou (Chick) Kavasji Vs Union Of India** MANU/MH/0407/2009 is however found to have, after considering **Thummala Krishna Rao** supra, held that the provisions of the Andhra Pradesh Land Encroachment Act, 1905 were materially different from the provisions

of the PP Act and that the Estate Officer appointed under Section 3 of the PP Act as well as the Appellate Authority under Section 9 thereof have to determine whether or not the premises are public premises and that the PP Act provides complete due machinery (which was lacking in Andhra Pradesh Land Encroachment Act, 1905) and that it is thus not necessary to go to the Civil Courts to seek declaration of title and thereafter resort to the provisions of the PP Act. Reliance in this regard was placed on *M/s. Anamallai Club Vs. Government of Tamil Nadu* (1997) 3 SCC 169. Similarly, High Court of Punjab and Haryana also in *Hari Kishen Dass Vs. Union of India* AIR 1961 Punjab and Haryana 98, with reference to the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 is found to have held that even a disputed question of title can be determined by the Estate Officer when he issues notice under Section 4 of the Act for action under Section 5 of the Act. It was accordingly held that even if the person to whom notice is issued by the Estate Officer claims that he owned the land of which he was stated to be in unauthorized possession of, it was open to him to prove his claim before the Estate Officer. It was reasoned that the right of appeal to the District Judge ensured that even if a question of disputed title arises out of the issue of notice under Section 4 by the Estate Officer, the said dispute can be properly

adjudicated within the framework of PP Act, before any final action under Section 5 was taken. The same was the view taken by the Division Bench of the High Court of Andhra Pradesh in ***Budan Khan Vs. Estate Officer, Hyderabad*** AIR 1966 AP 336 and by the High Court of Calcutta in ***Birla Corporation Limited Vs. Life Insurance Corporation of India*** 2001 SCC Online Cal 95. I have, speaking for the Division Bench of this Court in ***Cement Corporation of India Vs. Life Insurance Corporation of India Ltd.*** MANU/DE/2068/2014, after noticing ***DCM Ltd.*** supra have however held that even a claim for specific performance of agreement of renewal of lease could have been made before the Estate Officer.

19. The above discussion is only to show that the view taken by the Division Bench of this Court in ***DCM Limited*** supra is different from the view taken by the other High Courts.

20. The petitioner having claimed lawful title to the property in his possession through Maharaja Pratapsinhrao Gaekwad and/or his heirs cannot simultaneously take the plea of adverse possession. It was so held in ***Mohan Lal Vs. Mirza Abdul Gaffar*** (1996) 1 SCC 639; ***Karnataka Board of Wakf Vs. Government of India*** (2004) 10 SCC 779; ***Annasaheb Babusaheb Patil Vs. Balwant @ Balasaheb Babusaheb Patil*** (1995) 2 SCC 543 and ***L.N.***

Aswathama Vs. P. Prakash (2009) 13 SCC 229 that pleas based on title and adverse possession are mutually destructive; adverse possession does not begin to operate until title is renounced.

21. The petitioner even otherwise has not pleaded any necessary ingredients of adverse possession. Supreme Court in *Roop Singh Vs. Ram Singh* (2000) 3 SCC 708 held that mere long possession does not create any rights in immovable property. In fact, Supreme Court in *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan* AIR 2009 SC 103 & *State of Haryana Vs. Mukesh Kumar* (2011) 10 SCC 404 has gone to the extent of holding the law of adverse possession which ousts an owner on the basis of inaction within limitation, to be irrational, illegal and wholly disproportionate and is a highly iniquitous plea and a person taking the said plea has no equity in his favour.

22. Issuance merely of House Tax, Electricity and Water Bills in the name of petitioner would not amount to the petitioner publicly declaring himself as the owner within the meaning as ascribed in *Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh* (2002) 3 SCC 258. The petitioner being admittedly in possession and use, for collecting and demanding the said charges the bills necessarily have to be raised in the name of petitioner. The lease of land has admittedly been granted by the Government of India. If the petitioner

claimed rights by adverse possession, he ought to have applied for and got mutation of the lease of the portion of which he claims to have become owner, in his own name. No such public declaration of intention of ownership has been pleaded.

23. I have also considered the effect if any of the respondent, much prior to the initiation of proceedings under the PP Act, having instituted the suit aforesaid for declaration of title and for recovery of possession of the portion of the property in possession of the petitioner and have wondered whether for that reason alone the petitioner is debarred from now taking action under the PP Act.

24. A Single Judge of this Court in *Yogender Kumar Sharma Vs. DDA* MANU/DE/4963/2009 was concerned with the maintainability of proceedings under the PP Act during the pendency of a suit for declaration and injunction filed by the person against whom proceedings under the PP Act were initiated. On a consideration of a host of case law, it was held that the proceedings under the PP Act could not be said to be illegal or without jurisdiction or barred by principles of *res judicata* or prohibited for any other reason. It was also noted that the proceedings in the suit had been pending for a period of almost 11 years while the persons against whom proceedings under the PP Act had been initiated continued in occupation of public premises. It was further reasoned

that the larger public interest has to be kept in mind while exercising power under Article 226 of the Constitution of India and that the proceedings before the Estate Officer cannot be prohibited for the mere reason that the suit wherein the plaintiffs were claiming right to the property was pending. LPA No.592/2009 preferred thereagainst was disposed of by the Division Bench vide order dated 23rd November, 2009 with the direction that the persons against whom proceedings under the PP Act had been initiated may prefer an appeal against the order of ejectment of the Estate Officer.

25. Reference may also be made to *Transcore Vs Union of India* (2008) 1 SCC 125 laying down that the question of election does not arise in the case of parallel remedies. In fact, Supreme Court in *Mahavir Vs. Rural Institute, Amravati* (1995) 5 SCC 335 lamented on the State having filed a suit for possession when they should have resorted to summary eviction under the PP Act.

26. Thus in my view merely because the respondent initiated a misguided action of instituting a suit for declaration of title and for recovery of possession cannot be a ground for holding the State now when good sense has prevailed and has seen reason, to be not entitled to resort to the PP Act.

27. Lastly, the remedy under Article 226 of the Constitution of India is an equitable one and is to be used to promote justice and in public interest. Here, it is not found that the petitioner without even any semblance of title to the property has been occupying a prime valuable property in the heart of the city at India Gate, obviously to the detriment of the public at large and is using the process of the Court to perpetuate his illegal unauthorized possession. This Court would not allow the writ jurisdiction to be further abused by the petitioner.

28. There is thus no merit in the petition and the same is dismissed. It is clarified that the interim order earlier granted stands vacated.

29. The petitioner having enjoyed the interim stay, this Court to balance the equities now directs the Estate Officer to complete the proceedings initiated under the PP Act within six months from the date of receipt of a copy of this judgment.

30. The respondent State of Maharashtra having not only not contested this petition diligently as aforesaid but having also allowed the petitioner to continue in the premises for the last over half a century, without taking any effective steps for recovery of public property, has otherwise also been negligent. It is thus deemed appropriate to direct that a copy of this judgment

be forwarded to the Resident Commissioner in New Delhi of the State of Maharashtra and to the Chief Secretary of the State of Maharashtra to take remedial steps.

31. The petitioner is also burdened with costs of Rs.30,000/- of this petition payable to the respondent on the next date of hearing before the Estate Officer.

APRIL 19, 2016
'gsr/M'

RAJIV SAHAI ENDLAW, J.