

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1318 of 2015

Shri P. K. Dwivedi S/o Late Shri J.P. Dwivedi Aged About 56 Years
President, Manav Shikshan Samiti, R/o T.H. 4, Aakashganga Colony, E -8,
Shahpura, Bhopal M.P. Current Address Oriental College Of Nursing
Katghora, District Korba Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through The Chairman Cum Managing
Director, Secl Bhawan Seepat Road, Bilaspur Chhattisgarh. P.S.
Sarkanda., Chhattisgarh
2. General Manager South Eastern Coalfields Limited, Manikpur Colliery,
District Korba Chhattisgarh. P.S. Manikpur., District : Korba, Chhattisgarh
3. Deputy General Manager South Eastern Coalfields Limited, Manikpur,
Colliery, District Korba Chhattisgarh. P.S. Manikpur., District : Korba,
Chhattisgarh
4. Estate Officer Manikpur O.C.M., Secl, Korba Area, Korba Chhattisgarh.
P.S. Manikpur, District : Korba, Chhattisgarh
5. Manager Personal South Eastern Coalfields Limited, Manikpur Colliery,
District Korba Chhattisgarh. P.S. Manikpur., District : Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate
For SECL	:	Mr. V. R. Tiwari, Additional AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/02/2020

1. The relief sought for in the present writ petition is quashment of the
proceedings pending before respondent No.4 under the proceedings of
the Public Premises (Eviction of unauthorized occupants) Act 1971.

2. The facts in brief is that the respondent management of SECL had issued a notice to the petitioner for removal of illegal construction and for handing over the possession over the said property to the respondent SECL.
3. Contention of the petitioner is that he is the owner of land bearing Khasra No.361/1, 366 & 404/1 in village Dadarkhurd under PH No. 5 Tahsil and District Korba admeasuring 237 Hectares through a registered sale deed. According to the petitioner he has got the demarcation done of his property wayback in the year 2007 in presence of the officers of SECL. In addition, the petitioner has got his name mutated in the revenue records in accordance with the provisions of law governing the field and thereafter with due sanction and permission the petitioner society started construction of a college building in the aforesaid piece of land, after getting proper layout passed from the competent authority. According to the petitioner the entire action on the part of the respondents seeking eviction from the said property is perse illegal. According to him he is the title holder of the said property with his name entered in the revenue records as also property being duly demarcated and mutated in his name. The contention of the petitioner is also that the order of demarcation by the competent authority so also the order of mutation of his name in the revenue records have not been challenged by the respondent SECL before any Court of law. Thus, those proceedings have attained finality. That unless the management of SECL challenges those proceedings and set aside orders, the petitioner cannot be held to be an encroacher on the said land. Thus, the respondent cannot insist for the eviction of the petitioner from the said property. According to the petitioners they had purchased the property by a registered sale deed executed in the year 2006 and since then they are in possession of the said property and subsequent on due permission, sanction and approval from the competent authorities they started construction over the said land.

4. It is thereafter that the respondent SECL issued a notice dated 10.10.2014 directing petitioners to remove the construction on the ground that petitioners are illegal encroacher upon the property of SECL. The said notice was subjected to challenge in writ petition WPC No. 39/2015. When the matter came up before the High Court on 13.07.2015 the following orders were passed :-

"1.The petitioner has filed this petition aggrieved by order dated 10/10/14 by which the respondent / SECL and its authorities have directed the petitioner to vacate the premises.

2.During the course of hearing of the petition, it transpired that the proceedings of eviction of the petitioner have already been drawn by the Estate Officer under the provisions of the Public Premises (Eviction of unauthorised occupants) Act, 1971. Learned counsel for SECL submits that the eviction of the petitioner shall follow only in accordance with the provisions of the Act of 1971 depending upon the result of eviction proceedings pending before the Estate Officer.

3. In view of the aforesaid statement, the petitioner's apprehension that he would be forcibly removed only on the basis of order dated 10/10/14 (Annexure P/1) is ill-founded.

4.In the result,, this petition is disposed off leaving it open for the petitioner and the respondent to work out their remedies. It goes without saying that the petitioner will have all the opportunities to defend himself in eviction proceedings initiated against him by the Estate Officer under the Act of 1971 and challenge the order, if any, passed against him."

5. Subsequently, the Estate Officer of the SECL proceeded with the proceeding under the provisions of the Public Premises (Eviction of unauthorized occupants) Act 1971. In the course of proceeding before the Estate Officer the petitioners preferred an objection questioning the

authority and applicability of provisions of aforesaid Act of 1971 upon the petitioners.

6. Grievance of the petitioner is that the Estate Officer has not properly considered the objection raised by the petitioner and ignoring the same has decided to proceed further under Public Premises Act against the petitioner. Contention of the petitioner is that the land which the petitioners are in possession and they are raising the construction not on the land which has been acquired by the SECL. According to the petitioner the land which has been acquired by SECL and the land in possession by the petitioners situate in the same Khasra No. it was also contention of the petitioner that when the acquisition of land was being made for SECL, it was only a portion of the said Khasra No. which got acquired and portion which was not acquired is one which has been purchased by the petitioners. He further submits that this part has already been duly verified by the State Authorities and only then have they passed the order of demarcation and mutation.
7. Under the circumstances the petitioner cannot be said to be the encroacher or the unauthorized occupants as his property on which the petitioner is in possession is not a public premise under the definition of Section 2(e) of the PP Act.
8. Per contra, counsel for the SECL on the other hand opposing the petition submits that writ petition at the first instance itself is not maintainable as it is hit by the principle of constructive Res Judicata. According to the respondent the petitioner on an earlier notice issued by the SECL had filed writ petition i.e. WPC 39/2015 which was disposed of on 13.07.2015 and where the High Court had very specifically made certain observations and had also held that merely because the respondents have issued him a notice of eviction by itself would not mean that he would be ousted from

the said property without following the due procedure of law. It was further contention of the counsel for the respondent that this High Court itself while disposing of the WPC 39/2015 on 13.07.2015 had clearly envisaged that the petitioner will be given full opportunity to defend himself before the Estate Officer under the Act of 1971. If that be so, according to the respondent the present writ petition at this juncture is not maintainable and petitioners can approach the Court only after the final order under the Act of 1971 is passed and that too if it goes against the petitioner. For the aforesaid reasons the counsel for the respondent prayed for rejection of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of records it would be relevant at this juncture to take note of the order passed by this Court on 13.07.2015 in WPC 39/2015. Plain reading of the order passed by this Court in the aforesaid writ petition, it clearly reflects that this High Court on finding that the proceedings drawn against the petitioner was under the Public Premise Act. The High Court had left it for the Estate Officer to decide the issue. The High Court in its order had also specifically held that the petitioner can now challenge only an order passed by the Estate Officer that too if it is decided against him. If we read the operative part of the paragraph No.4 in the orders of the High Court in WPC 39/2015 it would clearly reflect that the High Court had permitted the Estate Officer to proceed further with the proceedings under the Act of 1971 and the petitioner be given a reasonable opportunity to defend himself. Further it has also held that only in the event of the order under provisions of the Act going against the petitioner would he have the right to challenge the proceedings under Act of 1971. Once, when the High Court as early as on 13.07.2015 had disposed of the earlier writ petition, this Court in the present writ petition is of the firm opinion that writ petition challenging the initiation of proceedings under PP Act of 1971 would not

be sustainable nor would the writ petition in the teeth of the order dated 13.07.2015 in WPC 39/2015 be maintainable at this juncture.

10. This Court had already directed the Estate officer to give a fair opportunity of defence to the petitioner, this by itself meant that petitioner can raise all his defence before the Estate Officer establishing the fact that they are firstly not an unauthorized occupants and secondly the land is not a public premise.

11. When the petitioner raises an objection as regards the said property not being a public premise it becomes incumbent upon the management of SECL to adduce sufficient proof to show that the property where the petitioners are raising his construction is one which was included in the acquisition proceedings and is not that part of the property which was excluded from the acquisition proceedings. The respondent company must be having the details of the acquisition made including the details of the property which stood acquired with which it could be determined whether the disputed property in the present writ petition also is one which stood outside the purview of the acquisition proceedings.

12. It is expected that Estate Officer will take note of all these facts while finally deciding the case. That as regards the judgment relied upon by the petitioners are concerned, all the three judgments i.e. (1982) 2 SCC 134, (2001) 1 MPLJ 680, (2003) 4 MPLJ 503 are distinguishable on its facts itself. Moreover, in the instant case there is already an order passed by the High Court in the present dispute on 13.07.2015 in WPC 39/2015 permitting the proceeding under the Provisions of the PP Act of 1971.

13. Given the aforesaid facts and circumstances of the case, taking into consideration the order dated 13.07.2015 passed in WPC 39/2015, this Court is of the opinion that present writ petition would not be sustainable. Any grievance that petitioner can have would be only after the Estate

Officer passes the order detrimental to the interest of the petitioner and not before that. The writ petition thus fails and stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit