

13.01. 2021
Rc/Ct.No.10
Item No.09

W.P.A. 10419 of 2020

Mr. Arik Banerjee
Mr. Joyjit Dutta

.... For the Petitioners

Mr. Y.J. Dastoor
Mr. Sidhartha Lahiri

.... For the UOI

This is the third round litigation initiated by the petitioners.

In this petition, the petitioners assails a show cause notice dated July 2, 2019 issued by the Estate Officer, Sukna Military Station. By the impugned notice the Estate Officer had sought for removal of illegal encroachment on Defence land at Mouza Sainikpuri. A notice has been issued under Section 5A (2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the Act). The contention of the petitioners is that there is a dispute in respect of the title of the land which forms the subject matter of the impugned notice. It is further contended on behalf of the petitioners that the Estate Officer had no jurisdiction to decide on question of the title to the said land. The petitioners assert that the remedy of the Estate Officer is to file a civil suit. The petitioners also rely on two judgments

reported in 1995 Supp. (2) SCC 290 [State of Rajasthan vs. Padmavati Devi (Smt.)(Dead) by Lrs. & Ors.] and (1998) 8 Supreme Court Cases 483 (State of U.P. & Anr. vs. Zia Khan). Accordingly, the petitioners pray for quashing of the impugned notice.

Mr. Dastoor, Learned Additional Solicitor General along with Mr. Sidhartha Lahiri, Advocate represent the Union of India. It is submitted on behalf of the respondents that there is a serious issue of encroachment by the petitioners on defence land. It is further submitted by the respondents that the petitioners have illegally and unauthorisedly occupied defence land and encroached upon the same without any authority of law. It is further submitted on behalf of the respondents that a date i.e. 15 February, 2021 has been fixed for a joint survey of the parties. It is further pointed out on behalf of the respondents that on an earlier occasion a date had been fixed for joint survey but the same could not be carried out due to problems created by local villagers at the behest of the petitioners.

I have heard the parties and I have also perused the pleadings. At the outset, I am of the view that the impugned notice is merely a show cause notice issued under the provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The matter is at a nascent stage before the Authority. It is well settled that ordinarily a Writ Court ought not to interfere with a

show cause notice. I am fully mindful of the fact that the said rule is not without exceptions. However, in the facts of the instant case, I find no exceptional ground which warrants interference with the impugned notice. The interference at the show cause notice stage by a Writ Court should be the rare and not in a routine manner. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. The mere fact that the petitioners allege that there is a dispute as to title does not automatically warrant interference by this Court. There is a complete machinery provided under the aforesaid Act which is a complete Code itself in so far as the eviction of unauthorised occupants from public premises is concerned. The section itself pertains to removal of unauthorised construction and illegal encroachment. The petitioners have a full and complete opportunity to take all points including the question of jurisdiction before the Estate Officer. No prejudice can be said to have been caused to the petitioners at this stage. It appears from the records that the petitioners have themselves participated and attended a joint survey conducted on November 26, 2020. It is unfortunate that the petitioners themselves are Ex-army personnel and their acts tend to interfere with the smooth functioning of the Defence authorities.

The reference to the two decisions relied on by the petitioners are misplaced and inapposite to the facts of the present case. In the decision reported in (1998) 8 Supreme Court Cases 483, the High Court had come to the rescue of the petitioners and had remanded the trial to a pending suit on merits. Moreover, in the decision reported in 1995 Supp. (2) SCC 290, the Court had found bona fide disputes to exist which warranted interference. The factual scenario in the present case is totally distinguishable.

I am of the view that the petitioner has an available alternative remedy and should take all the points available to them in law before the Estate Officer. For the foregoing reasons, I am not inclined to interfere with the impugned show cause notice and do not exercise my discretion in favour of the petitioners. On the contrary, I am of the view that the petitioners are deliberately trying to procrastinate the proceedings initiated before the Estate Officer. Accordingly, WPA No.10419 of 2020 is dismissed.

(Ravi Krishan Kapur, J.)