

S.P. Anand Vs. the Competent Officer, Secretary to Bangalore Development Authority, Bangalore and anr.

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Court : Karnataka

Decided On : Aug-24-2001

Reported in : 2001(6)KarLJ72

Judge : M.P. Chinnappa, J.

Acts : Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 - Sections 2, 4, 5, 5(1), 6, 6(1), 7 and 10; [Constitution of India](#) - Articles 19(1), 226, 227 and 300-A; Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 5(1); Karnataka Rent Control Act

Appeal No. : Writ Petition No. 16287 of 2000

Appellant : S.P. Anand

Respondent : The Competent Officer, Secretary to Bangalore Development Authority, Bangalore and anr.

Advocate for Def. : Sampath Anand Shetty and ;Ravi Prakash, Adv.

Advocate for Pet/Ap. : C.B. Srinivasan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

The Court

1. The brief facts of the case are that the then City Improvement Trust Board allotted a site in favour of the petitioner at Koramangala, Bangalore. Subsequently, at the request of the petitioner the BDA allotted the site in question in favour of the petitioner in HAL II Stage and possession certificate was issued on 14-12-1978 and he surrendered Koramangala site. As on 24-11-1987 the petitioner had put up a residential house and was residing therein. The 2nd respondent filed W.P. No. 2610 of 1988 challenging the allotment in favour of the petitioner alleging that the layout was formed by the 2nd respondent-Society and that particular site was earmarked for a park. The BDA filed the statement of objection in that case justifying the allotment in favour of the petitioner as per Annexure-B as far back as on 23-3-1988 and denied the allegation that the site was situated in a park. Ultimately on a direction of this Court, it took up an enquiry wherein the petitioner also participated. Without any basis, the BDA tried to say that the allotment in favour of the petitioner was liable to be cancelled on the baseless assumption that the site was in an area reserved for park as per Annexure-C. Based on the heels of this resolution, the respondent 1 purported to initiate action under Section 5 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 (for short, 'the Act') as per Annexure-D which the petitioner received on 10-12-1999 and he had sent a reply as per Annexure-E. Before that however, the petitioner had caused the issue of notice on the BDA seeking declaration that its resolution dated 31-10-1998 as per Annexure-C was illegal and without the authority of law and the petitioner filed a suit in O.S. No. 743 of 2000 on the file of the City Civil Judge, Bangalore, a copy of the plaint is as per Annexure-F which is pending. Suddenly, the petitioner received a notice on 29-4-2000 stating that he had already been evicted and he was liable to remove his belongings and the respondents would take possession of his property as per Annexure-G. Astounded by this claim for eviction by the respondent, the petitioner appeared before the respondent on 3-5-2000 and urged that no enquiry at all was held under the Act and opportunity was denied and he also contended that there was no eviction. The

statement of reply is as per Annexure-H. The respondent refused to receive this personally and therefore, the petitioner handed over the same to the office of the Commissioner of the BDA and obtained an acknowledgement as per Annexure-H1. The respondent assumed that the enquiry was concluded under the Act and that there is an eviction order passed under the same and that the only thing remaining is for the petitioner to remove the property found in the premises. So much so the threatened action as per Annexure-G is portent for the real eviction of the petitioner from the premises. Therefore, the petitioner contends that the real and positive threat of eviction from the premises is just round the corner. As there is no other effective alternative relief to the petitioner, he approached this Court with this writ petition under Articles 226 and 227 of the Constitution for the following reliefs:

'For a writ of mandamus or any other appropriate writ, order or direction:

(a) declaring the initiation of the proceedings under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, is illegal and opposed to law;

(b) declaring that the question about the unauthorised occupation of the premises is sub judice pending disposal of O.S. No. 734 of 2000 on the file of the City Civil Judge, Bangalore;

(c) Quashing Annexure-G the notice in No. B.D.A./Secy/14/2000-01, dated 25-4-2000 in respect of premises bearing No. 155/B, HAL II Stage, Bangalore as illegal, arbitrary and void; and

(d) directing a proper enquiry after affording sufficient opportunity to the petitioner and pass such other orders as the situation demands in the interest of justice'.

2. Initially the petition was filed only against the Competent Officer -the Secretary, BDA. Subsequently, the 2nd respondent got itself impleaded by making application as per the order dated 28-5-2001.

3. The respondent 1-BDA filed its objections contending inter alia that the petition is not maintainable and the petitioner is not entitled for any relief. The fact that the

petitioner is in possession of the premises No. 155/B, HAL II Stage is admitted but however, it is illegal, unjust and unauthorised inasmuch as the allotment of the very site has been cancelled by this respondent in pursuance of the directions of this Court vide order dated 8-12-1997 in W.P. No. 2610 of 1988 and the premises in question is situated in a place reserved for public purpose and as such it has to be treated as a public premises as contemplated under the Act. As per the order of this Court enquiry was held and after a detailed survey it was confirmed that the premises in question was situated in the area which was meant for a park and therefore, the allotment came to be cancelled. The petitioner cannot take advantage of the recitals contained in the statement of objections filed on behalf of the respondent in W.P. No. 2610 of 1988 vide Annexure-B as the petitioner is estopped from taking such a contention. The action initiated by the authority under Section 6(1) is perfectly lawful. When once the allotment is cancelled, the occupation of the petitioner becomes illegal and unlawful and this respondent is entitled to evict unauthorised occupants from public premises. The spot was inspected and a detailed enquiry was held before passing the order.

4. The 2nd respondent also filed a detailed objection statement reiterating the objections filed by the 1st respondent and also contended that in the sanction plan of the layout of the year 1966 of the then CITB the area is shown as a park and the BDA has illegally converted a portion of the park area facing the road into sites. The action was rightly taken in pursuance of the order passed by this Court in W.P. No. 2610 of 1988. The petition is not maintainable as brought and no relief can be granted by this Court. Therefore both the respondents pray that the petition is liable to be dismissed.

5. The fact that the site in question allotted in favour of the petitioner is in the layout formed by the 2nd respondent and the same is part and parcel of the area earmarked for a park and this is not denied by the petitioner or the BDA. Further, this Court also held in W.P. No. 2610 of 1988, a copy of which is produced herein that from the available records it appears that site No. 155/B has been allotted to the petitioner on an alternate site in lieu of the site earlier allotted to him by the erstwhile CITB in Koramangala IV Block, IV Stage. The possession certificate in respect of site No. 155/B was issued after executing LCS Agreement on 14-12-

1978. From the notings on the available file, there are indications that site No. 155/B does not find a place in the approved layout plan. As per the layout plan furnished by the petitioner, as approved by the CITB vide Resolution No. 265, dated 12-10-1966 the area where site No. 155/B is now located is shown as a park. The City Development Plan of 1984 and the revised City Development Plan approved in 1995 also show the area as a park. It is further understood that the petitioner has already constructed a house. After considering all these aspects, the Court has held as follows:

'Thus, it is seen from this affidavit that the allotment of sites 164-A and 206-A have been cancelled by the BDA on 25-4-1995. So far as site No. 155-B is concerned, it is submitted by Mr. Laxmi Narayana Rao appearing for the BDA that the BDA is going to take action in accordance with law to cancel the allotment made in favour of respondent 2 (petitioner herein). If the BDA does not take steps to cancel the allotment made in favour of respondent 2 of site No. 155-B and other necessary action within six months from today, the petitioner is at liberty to move the Court again. With this observation, the petition is disposed of.

Consequent upon this order, the BDA on the assumption that it is a public premises issued a notice as per Annexure-D, dated 12-11-1999 informing that the BDA was satisfied that the petitioner is in unauthorised occupation of the public premises specified therein and while acting under Section 5(1) of the Act directed to vacate the said premises within 45 days from the date of the said publication of this order and informed him that in the event of refusal or failure to comply with that order, within the period specified therein, the petitioner or other persons would be evicted from the premises by use of force if necessary. Thereafter, the petitioner filed the suit in O.S. No. 743 of 2000 on 31-1-2000 for the following reliefs as per the copy of the plaint produced in this case:

(i) declaring that the resolution of the defendant dated 31-10-1998 in subject No. 184 of 1998 touching the schedule premises and the cancellation of the allotment communicated to the plaintiff on 10-2-1999 is in breach of contract, illegal and without the authority of law;

(ii) restraining the defendant from taking any action against the plaintiff for the plaintiffs dispossession from the schedule premises either under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 or otherwise;

(iii) awarding Court costs and such other reliefs as the Hon'ble Court deems fit to grant as the situation demands in the interest of justice.

From a reading of the plaint it is clear that the petitioner has sought for a declaration that the resolution is in breach of the contract and is illegal and without the authority of law, etc. However, the said suit is pending before the City Civil Court, Bangalore and that question cannot be gone into in this writ petition. In this writ petition the prayer of the petitioner is as stated above.

5-A. The learned Counsel for the petitioner rightly submitted that he does not press the 2nd prayer in view of the fact that the suit is pending and he will work out the remedy in respect of the site in question. However, in this writ petition he restricted his relief only insofar as the house which he constructed in site No. 155B sanctioned by the BDA without any objection from anyone. He also further submitted that his house was constructed spending heavy amount in the year 1988. He has been in possession of the same henceforth. As against it, the learned Counsel for the 2nd respondent submitted that his house was constructed during the pendency of the proceedings. He had done so with the knowledge that the BDA has no right to grant the land in his favour. In spite of objections, he has put up the construction which cannot be held to be legal and valid to claim any exemption from the Act. Therefore, he argued that the petition is liable to be dismissed.

6. The learned Counsel for the petitioner vehemently argued that notwithstanding the fact that the site in question is owned by the 2nd respondent, the building constructed thereon is exclusively owned by the petitioner who is innocent in the entire transaction. Therefore, though the respondent may evict the petitioner from the site, they have no right to evict the petitioner from the building which he has constructed as per the sanction plan under the Public Premises Act as the house is not a public premises. To substantiate his argument, he placed reliance on a

decision of the Supreme Court in *Express Newspapers Private Limited and Others v Union of India and Others*. In that case, the Express Newspaper Private Limited constructed a building with the sanction of the lessor i.e., Union of India, Ministry of Works and Housing on plot Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease deed dated March 17, 1958. The notice of re-entry upon forfeiture of lease and on threatened demolition of the Express Building were issued and that was questioned before the Supreme Court. The question arose before their Lordships as to whether Union of India, Ministry of Works and Housing can under the facts and circumstances of that case take recourse to the provisions of the Act after the Express Newspapers Private Limited having acted upon the grant of permission by the lessor is an unauthorised occupant within the meaning of Section 2(e) of the Act and after considering the scope, ambit and purpose of Section 2(e) their Lordships have held the Express Buildings was constructed with the sanction of the lessor i.e., the Union of India, Ministry of Works and Housing on plot Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease deed dated 17th March, 1958, by no process of reasoning be regarded as public premises belonging to the Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Private Limited under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law, in a case like the present necessarily implies the filing of suit by the lessor i.e., the Union of India, Ministry of Works and Housing for the enforcement of the alleged right of re-entry if any, upon forfeiture of lease due to breach of the terms of the lease. It is also further held that nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Act, where admittedly there is unauthorised construction by a lessee or by any other person on Government land.

7. In view of this decision, the learned Counsel submitted that the petitioner is an innocent person. He was allotted site in Koramangala and he surrendered the site with an object to live with the defence service personnel for whose benefit the 2nd respondent-Society was formed and allotted sites and with that object he

approached the BDA and the BDA has allotted this site and without knowing that this site is part and parcel of the park, he had taken possession of the same. He also applied for sanction plan and licence which was duly granted by the BDA on the basis of which he has constructed the building. Therefore, this is not an illegal construction to be evicted acting under Section 5(1) of the Act. Therefore, he submitted that the principles laid down by their Lordships are squarely applicable to the facts of this case. However, he emphatically submits that in view of the order passed by this Court, he is not the owner of the site. Nonetheless he has constructed the building over which the respondent has no right to evict him summarily acting under the said Act as the building was constructed lawfully on the basis of approved plan and licence granted in his favour.

8. As against it, Sri Ravi Prakash, the learned Counsel for the 2nd respondent has drawn my attention to the prayer to emphasise the inconsistencies between the first and fourth prayer in the writ petition and also the prayer in the suit filed by the petitioner as per Annexure-A. Both the prayers are quoted above for easy reference. The suit was filed only in respect of the action taken to evict the petitioner from the site. This writ petition as referred to above is filed questioning the order directing the petitioner to vacate the house which he constructed in accordance with the approved plan and licence issued by the BDA. The W.P. No. 2610 of 1988 was filed on 16-2-1988 and on 7-12-1988 requested the society not to take action. The Corporation directed to cancel the order. It is true that the BDA does not say that the site is not in the park. On the other hand, the BDA is virtually sitting on the fence as at one place it says that the BDA was not aware whether the site belonged to the society and suddenly changes its version to make believe that the site belonged to the society and it is a civic amenity site. However, the petitioner has not pressed into service the second prayer in this petition since the subject-matter is different.

9. It is further argued that Ex. D is not a notice but it is an order and the petitioner has not replied to the notice, etc. When Annexure-D is the order passed under the Act, the petitioner ought to have questioned the same by way of appeal to the District Judge and when alternative remedy is available according to the learned Counsel for the 2nd respondent, the writ petition is not maintainable. From the

perusal of the order at Annexure-D it is clear that this order is passed under Section 6 of the Act. The only appeal provision provided under the Act is, under Section 10. According to Section 10 appeal shall lie from every order of a competent officer made in respect of public premises under Section 5 or 7 to an Appellate Officer who shall be the District Judge having jurisdiction over the area. The order in question Ex. D was passed under Section 6 of the Act. Therefore, no appeal is provided under the Act. Thus, the petitioner has rightly approached this Court under Articles 226 and 227 of the Constitution as the petitioner has no other alternative remedy. Hence, this argument has no force and the same is rejected.

10. Sri Ravi Prakash further argued that the legal notice as per Annexure-H, dated 2-5-2000 was issued only to create a fresh cause of action and filed a writ petition on 5-5-2000 without making respondent 2 as party. Therefore, the writ petition itself was not maintainable. It cannot be said that notice was issued only to create a cause of action in the light of the circumstances under which the action was taken against the petitioner. The contention of Ravi Prakash that 2nd respondent was not made a party initially by the petitioner and therefore, the petition itself was not maintainable also is unfounded in view of the fact that no relief was sought as against respondent 2 by the petitioner and subsequently, the society itself got impleaded as respondent 2. Hence, this argument also is not available to the respondent.

11. It is further contended by Sri Ravi Prakash that because the suit is pending this writ petition is not maintainable and the resolution Annexure-D is not questioned. This argument also is without any force. In the suit, the relief sought for is different from the relief claimed in this writ petition. It is pertaining only to vacate the house which was constructed on the civic amenity site.

12. The learned Counsel for the respondent to substantiate his argument also placed reliance on a decision in Ashoka Marketing Limited and Another v Punjab National Bank and Others. In that case action was taken against the tenant who was holding over as unauthorised occupant. Under the circumstances their Lordships have held that the Section 2(e) covers both residential and commercial premises. It does not warrant to confine it to residential premises only. It is further

held that it is not a ground to exclude the case of a tenant holding over from purview of the Act.

13. In that case the tenant was occupying the residential premises unauthorisedly. Therefore, action was taken and their Lordships have held that according to the definition it covers both residential and commercial premises and he can be evicted.

14. In this case as stated above, the site belongs to the respondent but the construction was put up by the petitioner. In the light of this, it is now necessary to refer to the decision rendered by this Court in *B. Srinivasa Acharya v District Judge*. In that case also there was no dispute of the ownership of the house. The question before the Division Bench was whether the person who is unauthorised would become authorised merely because protection was given against the arbitrary eviction under the provisions of the KRC Act earlier.

15. This Court in *M/s. Bombay Swadeshi Stores v State Bank of Mysore*, considering Section 2(e) and (g) of the Act and Articles 19(1)(g) and 300A of the Constitution held that grounds to be considered are whether the premises is a public premises and the occupant is an unauthorised occupant and no other question arises for consideration.

16. In this case as stated above, the question of tenancy does not arise in view of the fact that the building in question was constructed by the petitioner spending money and the same was also according to the plan and specifications granted by the BDA. Therefore, it cannot be construed as a public premises. Their Lordships of the Supreme Court in *M.I. Builders Private Limited v Radhey Shyam Sahu and Others*, held that construction of underground shopping complex in a park with the permission granted by mahapalike is violative of obligatory duty cast by Section 114 on mahapalike to maintain the parks and also violative of public trust doctrine. In that case, the Lucknow Nagar Mahapalika directed the M.I. Builders Private Limited to construct underground shopping complex in Jhandewala Park also known as Aminabad Market, situated in Aminabad Market, Lucknow. The High Court held that the permission so granted is illegal, arbitrary and unconstitutional and set aside and quashed the relevant resolutions of Mahapalika permitting such

construction and also the agreement entered into between the Mahapalika and the builders and consequently writ of mandamus was issued to the Mahapalika to restore the park in its original condition, etc. That order was questioned before the Supreme Court. The Supreme Court considering all aspects, dismissed the appeal preferred by the builder. In that case, only this resolution was passed and no underground market was constructed. But in this case, the building was constructed in the year 1988 and the petitioner has been using it. Apparently that house does not belong to the BDA. Respondent is the owner of the site. Therefore, the decision of the Supreme Court in *Ex-press Newspapers Private Limited*, referred to supra, is squarely applicable to the facts of the case. Under the circumstances, the impugned order is liable to be set aside reserving liberty to the respondents to work out their remedy in the Civil Court by a properly constituted suit.

17. In the result therefore, the petition is allowed declaring that the initiation of the proceedings under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, is illegal and opposed to law. Consequently, Armexure-G, the notice dated 25-4-2000 in respect of building constructed on site No. 155/B, HAL II Stage, Bangalore, is held to be illegal, arbitrary and void and accordingly it is quashed. However, liberty is reserved to the respondent to take suitable action before the Civil Court with a properly constituted suit.