

Sultan Singh Vs. Union of India and Another

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Court : Rajasthan

Decided On : Aug-22-2000

Reported in : 2000(4)WLC575; 2001(1)WLN299

Judge : Rajesh Balia and; Sunil Kumar Garg, JJ.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 5(1), 7 and 11; [Interest Act, 1978](#) - Sections 116 and 388; Rajasthan Municipal Corporation Act

Appeal No. : D.B. Civil Writ Petition No. 743 of 1998

Appellant : Sultan Singh

Respondent : Union of India and Another

Advocate for Def. : Ravi Bhansali, Adv.

Advocate for Pet/Ap. : M.S. Singhvi, Adv.

Judgement :

ORDER

Balia, J.

(1). Heard learned counsel for the parties.

(2). This petition is directed against the order of the Central Administrative Tribunal passed on 1.1.98 (Annex. 6) in O.A. No. 140/94.

(3). The brief facts giving rise to this petition are that the petitioner was in occupation of the Government premises while in service of the Railways. The petitioner retired from service on 30.11.85 from the post of Junior Head Shroff. At that time he was in occupation of Railway Quarter No. T-177. B at Railway D.S. Colony, Jodhpur, however he did not vacate the same and therefore proceedings were initiated against the petitioner under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act of 1971').

(4). The Estate Officer, Northern Railway Jodhpur, made an order on 17.3.88 for eviction of the petitioner from the said premises which has been produced at Annex. 1. The Estate Officer vide Annex. 1 determined that the petitioner is liable to pay rent at Rs. 28.50 per month for two months after his superannuation w.e.f. 1.12.85 to 31.1.86 upto which he was entitled to keep occupation of the premises after retirement under the Rules and from 1.2.86 to the date of vacating the premises for use and occupation at market rate which is to be 10% of the emoluments or four times of the assessed rent whichever is higher and made him liable to make payment of the electrical charges w.e.f. 1.12.85 to 31.1.86 which were determined i.e. Rs. 1525.92 and for the remaining period until vacation it was to be determined as per the reading of the meter installed at said public premises.

(5). Petitioner was given one month's time to vacate the premises. On failure to comply with direction, in addition to aforesaid charges the Estate Officer also ordered to pay Rs. 100/- per day by way of penalty. The relevant part of the order of Estate Officer reads as under:

In view of the aforesaid discussion I order that respondent is an unauthorised occupant of public premises (i.e. Rly. Qr. No. T-177 B). I do hereby order in exercise of the powers conferred upon me under Sec. 5(i) of the Public Premises (Eviction or Unauthorised Occupants) Act, 1971 that the respondent Shri Sultan Singh in occupation of the said public premises shall vacate the same (i.e. Rly. Qr. No.T/177B within a period of one month from the date of pronouncement of this

judgment. On failure to do so the respondent shall be liable to pay penalty of Rs. 100/- per day after expiry of said one month. Even though he fails to vacate same public premises respondent shall be liable to evict with help of Police force. In addition to this I do hereby further order that respondent is directed to make the payment of rent Rs. 28.50 per month w.e.f. 1.12.85 to 31.1.86 and from 1.2.86 to till the date of vacation market rent @ 10% of emoluments or four times the assessed rent whichever is higher. Respondent is also directed to make the payment of Electrical charges w.e.f. 1.12.85 to 31.10.86 i.e. Rs. 1525.92 and w.e.f. 1.11.86 to till the date of vacation of Qr. the Electrical charges will be assessed as per Meter reading installed in the said public premises'.

(6). The petitioner had preferred an appeal against the order passed by the District Judge, Jodhpur which had been dismissed as barred by time on 9.11.89 (Annex.2) and revision against the order of the District Judge has also been dismissed in default on 6.9.90 (Annex.3). Thereafter when the respondents commenced deducting the aforesaid amount including the amount determined by way of penalty at Rs. 100/- per day during the occupancy of the house after expiry of one month from the date of the order of Estate Officer dt. 17.3.88, the petitioner challenged such deduction by way of Original Application before the Central Administrative Tribunal inter alia on the ground that levying of penalty by the Estate Officer was void ab initio inasmuch as Estate Officer has no jurisdiction to impose any penalty under the provisions of the Act of 1971 and it was liable to be ignored and that the said unauthorised void levy of penalty cannot be recovered from the amount of pension payable to the petitioner.

(7). The said Original Application has been dismissed by the Central Administrative Tribunal vide order dt. 1.1.98 on the ground that contention of the petitioner is barred by principles of res judicata and also same claim cannot be entertained on account of laches and delay.

(8). Learned counsel for the petitioner has urged that Central Administrative Tribunal has failed to consider the detailed contentions raised by the petitioner before them which has even been submitted in writing. The application was heard by the Tribunal on 22.10.96. The decision of the Central Administrative Tribunal

has been announced almost 21 months thereafter by a laconic order without considering any of the grounds raised by the petitioner including one stated in the written submissions.

(9). We find substance in this contention that respondent has submitted a detailed written argument before the Tribunal on 23rd October, 1996 in which a plea has been taken in unequivocal terms that the order imposing penalty at the Rs. 100/- per day for continued occupation of the premises after one month of the order dt. 17.3.88 was nullity and liable to be ignored without challenging at that time. The plea of nullity can be raised even in response to any action to execute that order. The decisions of Courts including Supreme Court had been referred to in the said reply.

(10). The Central Administrative Tribunal has failed to consider the contention whether the order imposing penalty was void ab initio to be ignored and whether the principles of res judicata can be invoked in the present case so far as levy of penalty is concerned. The fact that such contentions have been raised before the Tribunal is not and could not have been denied by the learned counsel for the respondents. The order of Central Administrative Tribunal stands vitiated on that ground alone.

(11). Having considered on merit we find substance in this contention also that the order imposing penalty at Rs. 100/- per day during the continued occupation of the unauthorised occupation of the premises in question, in addition to rent and damages for use and occupation as awarded by the Estate Officer, was wholly without jurisdiction and was void ab initio. The relevant provisions for the present purposes may be noticed in Sec. 7 & 11 of the Act.

Sec. 7: Power to require payment of rent or damages in respect of public premises:- (1) Where any person, is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the Estate Officer may, having regard to such principles of

assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalment as may be specified in the order.

(2A) Where making an order under Sub-Sec. (1) or sub-sec. (2), the Estate Officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the [Interest Act, 1978](#).

(3) No order under sub-section (1) or sub-section (2), shall be made against any person until after the issue, of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Estate Officer.

Section 11: Offences and penalty:- (1) If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees or with both:

Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority as ceased to be valid, shall not be guilty of such offence.

(2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to Five thousand rupees or with both.

(3) Any Magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

(12). Sec. 7 provides the authority of the Estate Officer to require payment of rent as well as for damages for use and occupation in respect of public premises from which eviction is sought. While sub-sec. (1) of Sec. 7 empowers the Estate Officer to pay the arrears of rent payable in respect of such public premises to direct payment of such arrears of rent within such time and in such instalments as may be specified in the order. Thus sub-sec. (1) deals only for recovery of rent during lawful possession of the occupant under proper authorisation.

(13). Sub-Sec. (2) envisages where any person is in unauthorised occupation of any public premises, in such event the Estate Officer is empowered to assess the damages on account of the use and occupation of such premises and requires that such persons to pay the damages within such time and in such instalments as may be specified in the order. Apparently for the period of unauthorised occupation no rent can be payable, which is a creation of contract or terms of employment. Yet if a person is in possession of any premises owned by others the owner is not entitled to any rent for the period of unauthorised occupation, but is still entitled to reasonable damages from the unauthorised occupant for use and occupation of his property. Sub-sec. (2) gives effect to this principle a statutory recognition.

(14). Sub-section (2A) of Sec. 7 authorises charging of interest on arrears of rent as well as damages for use and occupation from the unauthorised occupation.

(15). Thus Sec. 7 does not empower the Estate Officer to levy any penalty for any period during which premises remained in occupation of the person, whether he is in occupation authorisedly or he is in unauthorised occupation.

(16). So far as the order Annex. 1 is concerned the Estate Officer has determined the arrears of rent payable for one month at Rs. 28.50 for the period from 1.12.85 to 31.1.86 that is to say for two months during which he was treated in authorised occupation and liable to pay rent only. Thereafter the petitioner was treated to be an unauthorised occupation and w.e.f. 1.2.86 the Estate Officer assessed the damages for use and occupation to be 10% of the emoluments or four times whichever is higher and the said amount has also been directed to be paid by the petitioner under sub-sec. (2) of Sec. 7 of the Act of 1971.

(17). So far as Sec. 7 is concerned no penalty is authorised to be levied nor Estate Officer is authorised to direct any payment other than amount as damages for use and occupation for the period of unauthorised occupation and also interest on delayed payment of any such arrears as are determined by him under Sub-sec. (1) or sub-sec. (2). That order the Estate Officer did make by ordering payment of damages for use and occupation until vacation of the premises. He is also entitled to order eviction. However any sum other than rent, damages for use and occupation and interest on arrears by way of penalty, therefore the Estate Officer could not have ordered in exercise of his power u/S. 7 for continued unauthorised occupation of the premises.

(18). The only provision which authorises the levy of penalty under the Act of 1971 is Sec. 11 which makes unlawful occupation of public premises as an offence punishable with simple imprisonment for a term which may extend to six months or with fine of five thousand rupees or with both. The penalty for said offence, whether by way of imprisonment or by way of imposition of fine has to be by Magistrate on conviction of a person under sub-sec. (2) of Sec. 11 and not otherwise. That is to say levying of penalty by way of fine for offence of continued unauthorised occupation of premises in question, has been left to be tried exclusively by the criminal Courts.

(19). The statement of law in this connection in the words of Supreme Court in Municipal Corporation, Ludhiana vs. Commissioner, Patiala (1) reads as under:-

'The normal rule of legislative drafting is that wherever it says that a particular Act shall be 'punishable with fine', it contemplates its imposition by a Criminal Court only. Be that as It may, both Sec. 116 and 388 speak of 'punishable with fine'. Section 388 provides not only for fine but also for imprisonment. It cannot be suggested that the punishment of imprisonment contemplated by Sec. 388 can be awarded by the officers of the Corporation. If so, the punishment of fine can also not be imposed by them. We, therefore, agree with the High Court that punishment of fine provided by Sec. 116 can be imposed only by the Criminal Court and cannot be imposed by the officers of the Corporation.'

(20). That was a case which has arisen under the provisions of Punjab Municipal Corporation Act under Sec. 116 of which penalty for evasion of octroi has been provided. The said provision made the contravention of the Act punishable with fine which may extend to the amount specified therein or imprisonment for a term which may extend to the period specified in that behalf, the Court was considering the expression 'punishable with fine'. The same view has been expressed by this Court in *Brijlal Sringar Singh & Party vs. State of Raj. & Ors.* (2) decided on August 11, 2000 while construing the like provision under Rajasthan Municipal Corporation Act. Sec. 11 of the Act of 1971 also speaks about the offence of unlawfully occupying any public premises 'to be punishable with simple imprisonment which may extend to 6 months or fine which may extend to Rs. 5000 or more'. Therefore, the expression, 'punishable with fine' which may extend to Rs. 5000/- must receive the same construction as has been received in the aforesaid case. Obviously, in such event, the fine can only be imposed on conviction by a criminal Court and not by the authority of the Estate Officer. No other provision has been pointed out under which the Estate Officer is authorised to levy the penalty for delayed eviction other than charging damages for use and occupation under Sec. 7(2) of the Act.

(21). The conclusion is irresistible that the order made by the Estate Officer was one which was without authority of law and which the Estate Officer had no jurisdiction to impose. The order must be taken to be void ab initio. Such an order is liable to be ignored. The plea of *res judicata* cannot be raised in respect of orders which are liable to be ignored. The plea of nullity can be raised at any stage, including during the execution proceedings.

(22). The principle was enunciated by Mookherjee, J. in *Gurdeo Singh vs. Chandrika Singh*, (3);

'A Court cannot adjudicate upon a subject matter, which does not fall within its province as defined or limited by law; this jurisdiction may be regarded to be essential, for jurisdiction over the subject matter is a condition precedent to the acquisition of authority over the parties, and if a Court has no jurisdiction over the subject matter of the controversy, consent of the parties cannot confer such

jurisdiction, and a judgment made without jurisdiction in such a case is absolutely null and void; it may be set aside by review or appeal, or its nullity may be established, when it is sought to be relied upon in some other proceedings; See Hawes on jurisdiction, pages 12- 16; Herman on Estoppel, Sec. 110 and Frankel vs. Sutterfield, (1890) 19 Atlantic Rep 898'.

(23). A Division Bench of this Court in Tarachand & Ors. Misrimal & Ors. (4) relying on the aforesaid decision laid down;

'The general principle is that the judgment or decree of a Court which was not competent to entertain the proceedings in which such judgment or order has been made is not effective'.

(24). The principle is well settled that ordinarily an executing Court cannot go behind the decree but where the decree is a nullity passed by the Court having no jurisdiction to pass such decree, the objection to the non-executability of the decree which is nullity, can be raised in execution proceedings, is also well established.

(25). Venkatarama Ayyar speaking for the Apex Court in Kiran Singh & Ors. vs. Chaman Paswan & Ors. (5), stated the principle;

'It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties'.

(26). In this connection reference may be made to decision of Supreme Court in Kesar Singh & Ors. vs. Sadhu (6) where the Court held that when the matter goes to the root of the jurisdiction, it is settled law that it can be raised even in execution also.

(27). In view of the aforesaid we allow this petition and hold that order dt. 17th March, 1988 to the extent imposes penalty at Rs. 100/- per day after the expiry of

one month from the date of the order for continuing occupation of premises is void ab initio and cannot be implemented consequently the amount of such penalty cannot be recovered from the pension payable to the petitioner. If any amount is recovered in pursuance of the said order the same may be refunded to the petitioner within three months. Any reduction or constraints raised against the petitioner in the matter of release of pension as a result of the aforesaid order the imposition of penalty shall forthwith be released. There shall be no order as to costs.

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