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Murlidhar Vs. District Judge

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Court : Rajasthan

Decided On : Apr-23-2002

Reported in : 2002(3)WLN576

Judge : Sunil Kumar Garg, J.

Acts : Rajasthan Public Premises (Eviction of Unauthorised Occupant) Act, 1964 - Sections 2 and 5

Appeal No. : S.B. Civil Writ Petition No. 6657 of 1991

Appellant : Murlidhar

Respondent : District Judge

Advocate for Def. : Basti Chand, Adv.

Advocate for Pet/Ap. : Sajjan Singh, Adv.

Disposition : Petition allowed

Judgement :

Garg, J.

1. The present writ petition under Article 226 and 227 of the Constitution of India has been filed by the petitioner on 16.12.91 against the respondents with a prayer that order dated 28.2.84 passed by the Estate Officer, DevasthanDepartment

(Annex. 5) at page 24 by which eviction of the petitioner from the temple in question was ordered under Section 5 of the Rajasthan Public Premises (Eviction of Unauthorised Occupant) Act, 1964 (herein after referred to as the Act of 1964) and the judgment dated 3.12.91 passed by the learned District Judge, Udaipur in appeal No. 34/85 (Annex. 6) by which appeal of the petitioner was dismissed be quashed.

2. It arises in the following circumstances:

(i) In the city of Udaipur, there is temple known as mandir Shri Naval Shyamji.

(ii) On 15.4.83 a notice in file No. 5/83 issued by the respondent No. 2 purporting to be under Sec. 4(1) of the Act of 1964 was received by the petitioner and by that notice, the petitioner was intended to be evicted as the petitioner had renovated the shop attached to the temple without permission and thus he was in unauthorised occupation. By that notice, the petitioner was called upon to appear on or before 19.4.83. A copy of the notice is marked as Annex. 2.

(iii) Since at the time of receiving notice, the petitioner was ill, he immediately sent a written request to the respondent No. 2 on 15.4.83 under registered cover intimating about his ailment and requested for being adjournment of the case and to be intimated the next date of hearing. But the petitioner could not attend the office of respondent No. 2 on 19.4.83. Since the petitioner did not appear before respondent No. 2, proceedings were initiated against him exparte and after recording some evidence, impugned order dated 28.2.84 (Annex. 5) was passed against the petitioner by Estate Officer, Devasthan Department, Jaipur and it was ordered that notice under Section 5(1) of the Act of 1964 be issued against him.

(iv) Aggrieved from the order dated 28.2.84, the petitioner preferred an appeal before the Dist. Judge, Udaipur and the same was dismissed vide judgment dated 3.12.91 (Annex. 6). Hence this writ petition.

3. Reply to the writ petition was filed by the respondents on 3.1.95 in which it has been submitted by the respondents that the same temple is in direct charge of the State Government and it was admitted that the petitioner and his ancestors are

residing in the temple. It is also stated that the petitioner is pujari of the said temple and in lieu of seva Puja of Naval Shyamji, he is allowed to live in the temple premises. But since the petitioner had constructed shop without permission of the Devasthan Department and had raised new construction, therefore, under the provisions of the Act of 1964, his possession had become a possession of unauthorised person and thus a notice under Section 4(1) of the Act of 1964 was issued to him.

4. I have heard both and perused the record.

5. The question that arises for consideration is whether by doing so, act of that person can be categorized as unauthorised occupation or not?

6. Clause (g) of Section 2 of the Act of 1964 defines 'Unauthorised Occupation' in the following manner:

'Unauthorised Occupation', in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and included the continuance in occupation by any person of the public premises after the authority (either by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.'

7. It may be stated that provisions of the Act of 1964 are applicable to evict a person whose occupation is unauthorised otherwise not. The occupation becomes unauthorised when licence/tenancy is terminated by public authority. The definition as stated above, envisages two classes of occupants (i) who are in occupation without any authority and (ii) whose occupation at inception was lawful but it rendered unlawful because of determination or term of lease has expired.

8. The present petitioner cannot be said to be in occupation without any authority as he is the person authorised to perform seva puja of the temple. There is no dispute on the point that his occupation was lawful from the very beginning and simply because he had raised some construction without permission, his occupation cannot be termed as unlawful. In this case the only allegation against

the petitioner is that he raised some construction in the shop without permission, his occupation cannot be termed as unlawful. In this case the only allegation against the petitioner is that he raised some construction in the shop without permission and for that account, his possession was declared unauthorised.

9. In my opinion this fact is itself not sufficient to declare the possession, which is already legal, as unauthorised within the meaning of Section 2(g) of the Act of 1964 without determining term of lease according to law.

10. Thus, from every point of view, the possession of the present petitioner cannot be termed as Unauthorised occupation and for applicability of provisions of Act of 1964 for evicting a person, occupation must have been unauthorised. Since occupation of the petitioner cannot be said/termed to be unauthorised in the facts and circumstances of the case, therefore, the whole proceedings initiated against him under the provisions of Act of 1964 are liable to be quashed.

11. Under Articles 227 of the Constitution of India, this Court can interfere with the judgment of a Court or Tribunal when they are found erroneous or in excess of jurisdiction, arbitrary or capricious exercise of authority or discretion and the subordinate Court or Tribunal arrived at a finding which is perverse or based on no material. Since in the present case, the findings treating the possession of the petitioner as unauthorised occupation are based on no evidence and thus, a legal right has accrued in favour of the petitioner for which he is entitled to the relief under Article 226/227 of the Constitution of India.

12. Judgment of this court in the case of Gopi Kishan vs. State of Rajasthan (1), is not applicable in the present case as the facts of the present case are altogether different as in the present case, the possession of the petitioner has not been unauthorised occupation and thus, this authority would not be helpful to the respondents.

For the aforesaid reasons, this writ petition is hereby allowed. The order dated 28.2.84 (Annex. 5) passed by the Estate Officer, Devas-than Department, Jaipur and the judgment dated 3.12.91 (Annex. 6) passed by the District Judge, Udaipur are quashed. Cost made easy.

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