

State Vs. Badri Lal

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Court : Rajasthan

Decided On : May-08-2000

Reported in : 2007(3)WLN551

Judge : N.P. Gupta, J.

Appeal No. : S.B. Civil Revision No. 1109 of 1997

Appellant : State

Respondent : Badri Lal

Disposition : Petition dismissed

Judgement :

N.P. Gupta, J.

1. The matter comes up for consideration of stay application. However, with the consent of the parties, the matter has been finally heard. The record of the courts below was summoned but the record of the Appellate Court has only been received while that of trial court has not been received. In my view for the disposal of the revision the record of the trial court need not be awaited.

2. By the impugned order the learned lower Appellate Court has set aside, the order of the learned trial court dismissing the plaintiffs application for injunction and has granted interim injunction to the effect that pending disposal of the suit,

the defendants No. 1 to 3 shall not forcibly dispossess the plaintiff and shall maintain status quo of the suit property.

3. The case of the plaintiff is that he is a tenant on the suit premises and has been regularly paying rent from time to time, he was served with a notice by the defendant No.3 on 19.6.1984 calling him upon to leave possession, which was duly replied on 22.6.1984, thereafter on 23.9.1984 yet another notice was issued to the petitioner, then on 15.1.1985 still another notice was sent to the plaintiff by defendant No.2 fixing 18.1.1985 for fixing the terms of the plaintiffs possession, then on 19.10.1986 another notice was given to the plaintiff to the effect that the plaintiff should deposit a sum of Rs. 2718/- by way of rent within three days otherwise he shall be evicted. According to the plaintiff, even before receipt of this notice the plaintiff had deposited Rs. 2000/- with the defendant No.3, then had also deposited rent in the year 1987 and onwards. With these allegations it was alleged that subsequently the rent was declined to be received and the defendant No.2, in the file opened in the year 1984 about plaintiffs unauthorised possession in the year 1986 passed an order of dispossession which is in violation of the principles of natural justice. On these premises, the suit was filed for declaration of the 1986 order to be void and ineffective and for injunction seeking u> restrain the defendants from dispossessing the plaintiff without due process of law and without determining his tenancy.

4. The main contention raised on behalf of the petitioner before me is that in view of the provisions of Section 10 and Section 10A of the Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1964 (hereinafter referred to as the Act) the jurisdiction of the Civil Court is barred, and therefore, the learned court below has no jurisdiction to grant any injunction.

5. A perusal of Section 10 and Section 10A would show that Section 10 attaches a finality to the order made by the Estate Officer or Appellate Officer under that Act and provides that such order shall not be called in question in original suit, application or execution proceeding and no injunction shall be granted by court or other authority in respect of any action taken or to be taken in pursuance of any powers conferred by or under the Act. While Section 10A bars the jurisdiction of

the Civil Court to entertain any suit or proceeding in respect of eviction of any person who is in unauthorised occupation of any public premises or for recovery of arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of Section 7 or the cost awarded to the State Government Under Section 9(5) or any portion of such rent, damages or cost. Considering the present case from the stand point of these two sections, undisputedly the present is not a suit or proceeding for eviction of any person (plaintiff) nor is it for recovery of any arrears or for any of the amount enumerated in Section 10A. The term 'unauthorised occupation' has been defined in Section 2(e) of the Act to mean occupation of any person of public premises without authority for such occupation and includes the continuance in occupation, after the authority has expired or has been determined for any reason whatever. Since the Act itself provides a complete machinery for eviction of such unauthorised occupation, and that machinery itself contemplate a particular legal procedure which includes the right of hearing to the person in occupation, and that procedure is summary one, the jurisdiction of the Civil Court is barred. Since in the present case as observed above the suit does not relate to proceedings in respect of eviction or for recovery of any amount, Section 10A as such does not have any application.

6. Coming to Section 10 of the Act, all that it provides is to attach finality to the orders. On being pointedly asked, learned Counsel for the petitioner pointed out that the order of eviction had been passed against the plaintiff on 24.4.1985. The said order dt. 24.4.1985 was shown to me and having perused that, the learned Counsel for the petitioner was pointedly further asked as to whether the compliance of Section 5(1) had been done or not after pronouncement of the order and the categoric reply was that except passing the order nothing more has been done. In such circumstances, the order dt. 24.4.1985 is not of much consequence to the petitioner more particularly when, thereafter, on 19.10.1986 another notice was sent to the plaintiff calling him upon to pay the arrears of rent within 3 days otherwise proceedings shall be initiated against him for eviction. Admittedly despite the suit having been filed in the year 1989, no proceeding had been initiated against the plaintiff after or in furtherance of the notice dt. 19.10.1986. In such circumstances, It cannot be said that the suit contemplates to call in question or challenge any order passed by any authority competent under the Act or seeks

to challenge any action taken by any authority under the Act and In accordance with the provisions of the Act. On the other hand the apprehension of the plaintiff, as expressed in the plaint is that some order has been passed in the year 1986, in the file opened in the year 1984 and since that order is without hearing the plaintiff, a threat to his possession is illegal as has become clear now, that on the other hand after the notice dt. 19.10.1986 no order of eviction has been passed against the plaintiff under or in accordance with the provisions of the Act. Therefore, as the things stand on the date, there is no subsisting order of eviction of the plaintiff as required by Section 5(1) of the Act.

7. In this background a perusal of the impugned order shows that all that has been granted to the plaintiff is that the defendants have been restrained from forcibly dispossessing the plaintiff and to maintain status quo of the property. This obviously means that the plaintiff may not be dispossessed without adopting due process of law being the process provided under the Act. In such circumstances the objection taken by the petitioner on the anvil of Section 10 or Section 10A, rather does not arise in the present case.

8. Consequently, the revision petition has no merit and is dismissed. However, it is clarified that the order impugned does not come in the way of the petitioners in their initiating any proceeding under and in accordance with the provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 if they so desire and If any such ground is available to them.