

(2013) 08 AHC CK 0193

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 39732 of 1996

Anil Mahajan

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Aug. 22, 2013

Citation: (2013) 8 ADJ 163 : (2013) 100 ALR 798 : (2013) 6 AWC 5870

Hon'ble Judges: Arvind Kumar Tripathi, J

Bench: Single Bench

Advocate: A. Pandey, Ashutosh Pandey, Kshit Shailendra, M.K. Jain, S.K. Joshi and P.K. Jain,
for the Appellant; U.N. Sharma and Satish Kumar Rai, for the Respondent

Final Decision: Dismissed

Judgement

Arvind Kumar Tripathi, J.

Heard learned counsel for the petitioner, learned Standing Counsel appearing on behalf of the Union of India and perused the record. By means of the present writ petition, the prayer on behalf of the petitioner is to quash the impugned orders dated 18.7.1996 and 6.12.1996 (Annexures 6 and 7 to the writ petition) passed by the respondent Nos. 1 and 2 respectively. Further prayer is to issue writ of mandamus directing the respondents not to demolish the construction over the property situated at Taj Road, Agra Cantt, Agra pursuant to the impugned orders.

2. On 10.12.1996, the demolition of the property in question was stayed.

3. Learned counsel for the petitioner submitted that the property in question is part of the Bungalow No. 49, Taj Road, Agra on which the petitioner is tenant and Sri N.K. Patni is the landlord. The notice was issued u/s 5-A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the "Act, 1971") for removal of the construction existing on a portion of land of Bungalow No. 49 with the allegation that the petitioner has raised unauthorised construction without obtaining sanction of the respondent No. 3 Union of India. The notice dated

10.10.1994 was issued by the Estate Officer u/s 5-B of the Act to Sri N.K. Patni as well as to the petitioner. The objection was filed on behalf of the petitioner that the allegation of unauthorised construction was incorrect and the action was illegal and without jurisdiction. It was further case of the petitioner that the land in question lies within the cantonment area and as such the Estate Officer who has issued notices was not authorised to do so under the said Act. Subsequently, respondent No. 3 instituted case No. 4/314/PPE Act/49 against the petitioner in the Court of respondent No. 1. Objection was filed before the respondent No. 1 on behalf of the petitioner on the ground that the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was not attracted. The proceeding on the basis of the notice which was wholly vague, illegal for eviction and demolition of the construction in question was without jurisdiction and no action can be taken under such provision. It was also contended that the site does not vest in the Government, hence, it was not public premises within the meaning of the Act, 1971. The notice u/s 5A(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was not maintainable.

4. The case of respondent No. 3 which was filed in reply to the objection filed on behalf of the petitioner was that the land in question falls and vests in the Ministry of Defence, Government of India, which was within the Cantonment limits of Agra, therefore, Sri N.K. Patni was bound to obtain sanction of the construction from the competent authority under the provisions of Cantonment Act 1954. Learned counsel for the petitioner contended that the respondent No. 1 directed for demolition of the construction situated on the part of the land of Bungalow No. 49 without deciding the question as to whether the property in question was a public premises within the meaning of the said Act or not. Respondent No. 1 also failed to consider the validity of the notice and the objection of the respondent No. 2 and the objection raised on behalf of the petitioner. Aggrieved against the order dated 18.7.1996 passed by the respondent No. 1, the appeal was preferred on behalf of the petitioner u/s 9 of the said Act before respondent No. 2. However, the appeal was dismissed by impugned judgment and order dated 6.12.1996.

5. He further submitted that in view of the provisions u/s 2(E) of the Act, 1971, the building in question is not covered within the definition of public premises under the said Act, hence, the finding recorded by the respondent No. 1 and 2 are totally illegal and without jurisdiction.

6. It was further contention by the learned counsel for the petitioner that the respondent No. 2 placed reliance on general order of the Governor General in Council No. 179 dated 12.9.1836. However, that order of grant was not filed either before the respondent No. for respondent No. 2 and that is not part of the record. Only during course of the arguments, a copy of the order was produced by counsel for the respondent. Meaning thereby, the additional material was considered by the respondent Nos. 1 and 2 in deciding the controversy without giving any opportunity

of rebuttal and to produce any evidence in defence, hence, right of the petitioner was prejudiced. He submitted that even if there was any construction without permission then there was provision to take action under the Cantonment Act and the rules framed by the Cantonment Board and no proceeding was maintainable under the Act, 1971. Hence, the notice as well as proceeding on the basis of that notice are totally illegal, without jurisdiction and as such the impugned orders are liable to be set aside and the present petition deserves to be allowed.

7. Learned counsel for the respondent Union of India vehemently opposed the prayer of the petitioner and submitted that in view of the general order of the Governor General in Council No. 179 dated 12.9.1836, the regulations were framed with regard to the grant of sites of land in the cantonment area. The condition regarding grant was that the Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected. The land belongs to Government, and cannot be sold by grantee. When it is proposed with the consent of the general officer to transfer possession and to a native should be value of the house building or property to be so transferred exceed Rs. 5,000/-, the sale must not be affected until the sanction of the Government shall have been obtained through His Excellency the Commander-in-Chief. The land in question belongs to Union of India, Ministry of Defence which is managed by the "Defence Estate Officer", Agra, hence, this is a public premises and the proceeding can validly be initiated under the provisions of Act, 1971. Hence rightly, notice was issued u/s 5-A and 5-B to the petitioner and Mr. Patni who alleged to have let out the land and the unauthorised construction was raised.

8. He submitted that a big hall/shop measuring 41 x 31 feet, area about 1271 square feet was illegally constructed by the petitioner. Since the land in question belongs to the Central Government, Ministry of Defence, hence, it is a public premises and the provisions of Act, 1971 will prevail over the provisions of Cantonment Act, 1925 and the rules and regulations framed by the Cantonment Board for management of the property. The grant was with regard to the Bungalow No. 49 with a pertinent land but the land belongs to the Central Government which cannot be sold or transferred to any other person by the grantee, only constructed portion of Bungalow No. 49 would have been transferred through sale-deed. The grant was not in the name of Mr. Patni but subsequently, he purchased the same. He relied upon the following judgments:

1. [Smt. Suman Purohit and Another Vs. VIIIth Addl. District Judge and Others](#), ;
2. [Union of India \(UOI\) and Others Vs. Kamla Verma](#), ;
3. [Chief Executive Officer Vs. Surendra Kumar Vakil and Others](#), ;
4. [Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others](#), .

9. He submitted that in view of the aforesaid judgments and facts of this case, the proceeding initiated under the Act, 1971 against the petitioner was legal and as such the petitioner is not entitled for any relief, in whose favour there was no grant and as such the present petition is liable to be dismissed with costs.

10. Considered the submission of learned counsel for the parties. In view of the Regulation relating to the grants of sites of lands in cantonments, all applications for unoccupied ground for the purpose of being enclosed, built upon or in anyway appropriated to private purposes, such ground being within the limits of military cantonment, are in the first instance, to be made to the commanding officer of the Station through the usual channel; and in no case, the boundaries of compounds are to be changed, old roads or new ones opened without the sanction of the commanding officer. All grants are to be registered by the officer of the Quarter Master General's Department attached to the Division and at stations where no such officers may be present, by the Executive Officer of the Public Works, to whom also in such cases applications for ground are to be addressed; and all grants are to be immediately noted upon the plan of the" cantonment in Quarter Master General's office. The condition of occupancy was that no grant will be granted except on the conditions that the Government to retain the power of resumption at any time on giving one months notice and paying the value of such buildings as may have been authorised to be erected. The ground being in every case, the property of the Government, cannot be sold by the grantee; but houses or other property thereon situated may be transferred by one military or medical officer to another without restriction except in the case of relief when, if required, the terms of sale are transfer are to be adjusted by a committee of arbitration. When it is proposed with the consent of the General Officer, to transfer possession to a native, the value of the house building or property to be so transferred exceeds Rs. 5000/-, the sale must not be affected until the sanction of the Government through His Excellency the Commander-in-Chief. Hence, it is clear that the grant is with regard to the house/buildings and the ownership of the land is not with the grantee which cannot be transferred. Hence the land belongs to the Central Government, the grant was in favour of one Mr. George A. John, who transferred the same by sale-deed in favour of Sri N.K. Patni and according to case of the petitioner, which was let out by Mt. Patni to the petitioner. As per reply submitted by Sri Patni, land-lord, the alleged unauthorised construction was not permitted by him. The question is whether the land belonging to the Central Government can be transferred by the grantee and further even if it can be transferred in favour of Mr. Patni, whether he was authorised to raise any construction on the same. Construction has been denied by Mr. Patni rather his case was that he had not permitted to raise unauthorised construction.

11. The Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was repelled by Section 19 after enactment of Act No. 40 of 1971, the definition of Public Premises" under the provisions of The Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 is as follows:

Public Premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,--

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company;

(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(iii) any University established or incorporated by any Central Act.

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted u/s 79 of the Punjab Reorganization Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the [National Capital Territory of Delhi]--

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee;

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

12. In view of the fact and definition, since the land belongs to Central Government, hence, the same is governed under the definition of public premises.

13. In view of Section 5(A)(1) of the Act 1971, no person shall erect or place or raise any building or any movable or immovable structure or fixture, on or in front of, any public premises except in accordance with the authority whether by way of grant or any other mode of transfer, under which he was allowed to occupy such premises. If there is any construction in contravention of Section 5(A)(1), the Estate Officer is authorised to serve upon the person show-cause notice, who erected such building or other structure or fixture requiring him either to remove or to show-cause why he should not remove such building or other structure or fixture from the public premises within such "period, not being less than seven days, as specified in the notice. Even on failure on part of the such unauthorised occupant or if it is found that the show-cause was not sufficient, the Estate Officer may order for removal of such unauthorised construction or calls to remove the building or such structure or fixture from the public premises and can recover the cost of such removal from such unauthorised occupant as an arrear of land revenue.

14. u/s 5(b) where the erection of any building or execution of any work has been commenced or is being carried on, or has been completed on any public premises by any person in occupation of any public premises under an authority, whether by way of grant or any other mode of transfer, and such erection of building in contravention of or not authorised by, such authority then the Estate Officer may in addition to any other action that may be taken under the Act, 1971 or in accordance with the terms of authority aforesaid, make an order for reason to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the work has been commenced or was being carried on, or has been completed, within such period, specified in the order. But that order has to be passed after giving notice why such order should not be made.

15. Hence in the present case in view of the fact the notice was given to the petitioner as well as the alleged landlord Mr. Patni u/s 5(a) and 5(b). According to Mr. Patni, he has not permitted to raise unauthorised construction and there is no grant either in favour of Mr. Patni or in favour of the petitioner. Petitioner is only claiming to be tenant of Mr. Patni but he is not the tenant of the Bungalow in question. As far as Mr. Patni is concerned, even if there was any sale-deed in his favour executed by the "Grantee" then that was with regard to the Bungalow No. 49 and no right can be transferred by the grantee in favour of Mr. Patni regarding land. The purchaser Mr. Patni will have no better right than the Grantee by alleged sale-deed in his favour, because the land belongs to the Central Government, Ministry of Defence. The land within the compound of Bungalow No. 49 can be used by grantee as open land but permanent construction cannot be raised. Hence, contention of the petitioner that the land in question is not covered under the definition of public premises cannot be accepted.

16. In case of Suman Purohit (supra), it was held by this Court that the licence granted to the petitioner expired who was put in occupation on the basis of the premises under licence for a period between 30.3.1973 to 30.3.1974, hence, after that period occupation of the petitioner was found unauthorised and it was held that since the occupation of the premises was without any authority and the premises in question belongs to the Central Government which was only in the management of Cantonment Board. Hence, the provision of Act 1971 were fully applicable and proceedings have rightly been initiated against the petitioner who was unauthorised occupant.

17. In case of Union of India v. Kamla Verma (supra), it was held by the Apex Court that in view of the old grant made under the regulation 1836, the Government cannot be prevented from resuming land in question and the grantee was not a full-fledged owner of the land but had right only in respect of superstructure put up on land in question. A vendor cannot transfer title or right better than what he had in respect of land in question. The original grantee/allottee of an old grant never became a full-fledged owner nor his heir who inherited the rights, could have transferred any rights better than what they had in land in question.

18. In case of Chief Executive Officer v. Surendra Kumar Vakil and others, it was held by the Apex Court that in view of the terms of the old grant" under Regulations 1836, the ownership of land shall remain with Government and the land even not be sold by the grantee. Bungalow in cantonment area granted to civilian on old grant basis and on that ground grantee was mere occupier/licencee having no title over the land so as to decide into four portions and to transfer the land to any other person without prior sanction of the authority concerned. Even the sub division of the land was not permissible without prior sanction of the competent authority

19. In case of Ashoka Marketing Ltd. and others v. Punjab National Bank and others, the controversy before the Apex Court was whether the provisions of Act, 1971 overrides the provisions of Delhi Rent Control Act, 1958. Para 63, 64 and 70 of the aforesaid judgment are quoted herein below:

63. As mentioned earlier, the Public Premises Act has been enacted with a view to provide for eviction of unauthorised occupants from public premises. In the statement of objects and reasons for this enactment reference has been made to the judicial decisions whereby by the 1958 Act was declared as unconstitutional and it has been mentioned: "The Court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in-flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy

machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provision of the Constitution and the judicial pronouncements, referred to above." This shows that the Public Premises Act has been enacted to deal with the mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribes the time period for the various steps which are enquired to be taken for securing eviction of the persons in unauthorised occupation.. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, Companies in which the Central Government has substantial interest, Corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises.

64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than Government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or Companies in which the Central Government has substantial interest or Corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to Companies Corporations and Autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to Government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz., the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

70. For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises u/s 2(e) of the Act cannot invoke the protection of the Rent Control Act.

20. Section 15 of the Act No. 40 of 1971 is reproduced herein below.

15. Bar of jurisdiction.--No Court shall have jurisdiction to entertain any suit or proceeding in respect of:

(a) the eviction of any person who is in unauthorised occupation of public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises u/s 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, u/s 5B, or

(cc) the sealing of any erection or work or of any public premises u/s 5C, or

(d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of--

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal u/s 5A, or

(ii) expenses of demolition u/s 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.

21. In view of the aforesaid discussion, considering the contention of learned counsel for the parties, object and purpose underlying both the enactments, it is clear that the provisions of the Public Premises Act, 1971 will have overriding effect over the provisions of the Cantonments Act 1924. A person in unauthorised occupation of public premises as defined u/s 2(e) of the Act, 1971 cannot invoke the protection of the Rent Control Act or Cantonment Act or any other Act, because the public premises act has been enacted with a view to provide for prompt action to evict unauthorised occupants from public premises. In case of inconsistency between the provisions of two enactments, both of which are special in nature, the conflict has to be resolved by reference to the purpose and policy underlying both the enactments. Both the Acts are the special Act enacted by the Central Government, however, the Act, 1971 is a subsequent Act and considering the aim and object of the aforesaid Act, the provisions of Act No. 40 of 1971 will prevail over the Cantonments Act 1924. Hence, in view of the fact, the proceedings are maintainable under the provisions of Act No. 40 of 1971. According to the landlord unauthorised construction was not permitted by him. The land in question belongs

to Central Government and ownership of which cannot be transferred. The land in question is only under management of "Defence Estate Officer". Admittedly there was no permission granted by the competent authority for the construction raised on the apertinent land of Bungalow No. 49, hence construction is illegal and unauthorised. It was rightly held that the petitioner who is not landlord or licensee and the construction is unauthorised and they were unauthorised occupants. The construction and occupation of that construction by the petitioner being unauthorised, rightly the notice was issued and action was taken under the provisions of the Act No. 40 of 1971.

22. Hence, in view of the facts and circumstances, no interference is required in the order passed by the respondent Nos. 1 and 2. Accordingly, the present petition, being devoid of merit, is hereby dismissed. Interim order dated 10.12.1996 is hereby discharged. However the parties to bear their own costs.