

(2006) 3 GLT 295

Gauhati High Court

Case No: W.A. No. 175 of 2006

Ram Shah

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: June 29, 2006

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – Section 15, 2, 4, 5(1), 9

Citation: (2006) 3 GLT 295

Hon'ble Judges: B.S. Reddy, C.J; T. Nandakumar Singh, J

Bench: Division Bench

Advocate: K.N. Choudhury, K. Dubey and J. Patwary, for the Appellant; J. Singh, for the Respondent

Final Decision: Dismissed

Judgement

T. Nandkumar Singh, J.

The Appellant/Respondent No. 2 and Respondents/writ Petitioners are not disputing that the plot of land

measuring 675 sq. ft covered by Plot No. 2, dag No. 497 (Railway Plot No. DEN"s/TSK Plan No. DBRT) situated inside the Dibrugarh Railway

Station Yard belongs to the N.F. Railway i.e. Respondent No. 1/writ Petitioner No. 1.

2. Further, it is also the admitted case of both the parties that the said plot of land belonging to the N. F. Railway is in possession of the

Appellant/Respondent No.2 in the writ petition. It is also admitted case of both the parties that there is no order or/license or lease issued by the

Railway in favour of the Appellant/Respondent No. 2 in the writ petition for allowing to occupy the said plot of land belonging to the NF Railway

except the License, dated 10.6.1970 issued in favour of the Appellant/Respondent No. 2 for a period of 1 (one) year by the Respondent No.

1/writ Petitioner No. 1. Thereafter, after expiry of license period of one year issued in favour of the Appellant/Respondent No. 2 there is no license

or lease or order issued in favour of the Appellant/Respondent No. 2 for allowing to occupy the said land belonging to the N. F. Railway.

3. This writ Appeal is directed against the judgment and order of the learned Single Judge dated 11.4.2006 passed in WP(C) No. 9297 of 2003

filed by the Respondents/writ Petitioners against the Appellant/Respondent No. 2 and the learned District Judge, Dibrugarh, Assam upholding the

order of eviction dated 4.1.2001 passed by the Estate Officer, Tinsukia in Eviction Case No. EO/TSK/4523/2000 for evicting the

Appellant/Respondent No. 2 from the said land belonging to the NF Railway.

4. This case has a very chequered history. The concise facts which would be required for deciding the present appeal are that: the said land was

said to have been developed by the Appellant/Respondent No. 2 in the year 1947 and since then the Appellant Respondent No. 2 has been

occupying the said land by carrying on Hotel business to earn his livelihood. It is said that the N. F. Railway authority granted a license dated

10.6.1970 in favour of the Appellant/Respondent No. 2 for allowing to occupy the said land belonging to the NF Railway for a period of one year

after releasing arrear rent from the year 1947 to 1970. Admittedly after expiry of the license period of one year, the Respondents/writ Petitioners

did not issue any order for extending the said license period of one year in favour of the Appellant/Respondent No. 2 for occupying the said land

belonging to the N F Railway.

5. In the year, 1975 the Appellant/Respondent No. 2 was served with eviction notice under the provisions of Defense India Rules, which was

challenged by him before this Court in C.R. No. 7 of 1977. This Court by passing judgment and order dated 27.7.1977 had disposed of the said

CR No. 7 of 1977 with the observation that:

Mr. D.N. Choudhury, learned Counsel for the Petitioner submits that the Petitioner will seek relief in the Civil Court. The status quo as on today to

be continued for 4 months. During this period if any notice has to be served he may do so. The Petitioner will be entitled to seek relief in Civil

Court and filing of this writ petition will not stand as a bar to file the Civil Suit.

Thereafter, the Appellant/Respondent No. 2 approached the Civil Court, i.e. Sadar Munsiff No. 1, Dibrugarh by filing Title suit No.39 of 1989

against the General Manager, N.F. Railway and three others praying, interalia, declaration of the tenancy right, title and possession over the suit

land i.e. the said land belonging to N F railway. The learned Munsiff dismissed the suit by passing judgment and decree dated 27.08.1992, and

being aggrieved, the Appellant/Respondent No. 2 preferred an appeal, which was registered as Title appeal No. 10 of 1992 before the Court of

learned Addl. District & Sessions Judge, Dibrugarh. The learned Addl. District & Sessions Judge, Dibrugarh, passed judgment and decree dated

30.4.1994 partly allowing the title Appeal No. 10 of 1992. The operative portion of the judgment and decree of the learned Addl. District &

Sessions Judge, Dibrugarh passed in Title Appeal No. 10 of 1992 reads as follows:

In view of the foregoing discussion and decision, the appeal is partly allowed on contest setting aside the impugned judgment and decree. The suit

of the Plaintiff stands decreed on contest without cost. Plaintiff's right to possess the suit land as lessee is declared and he is entitled to continue his

possession till evicted there from under the appropriate provisions of law.

6. It is said that the Estate Officer, NF Railway, Tinsukia issued show cause notice dated 30.12.2000 u/s 4 of the Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 asking the Appellant/Respondent No. 2 to show cause on or before 10.12.2000 as to why the

Appellant/Respondent No. 2 should not be evicted from the said land belonging to the Nf Railway. In reply to the show cause notice dated

30.10.2000 the Appellant/Respondent No. 2 submitted his show cause statement and also appeared before the Estate Officer for hearing on

22.12.2000 but it was adjourned and re-fixed on 27.12.2000. The Appellant/Respondent No. 2 appeared before the Estate Officer on

27.12.2000 and filed a list of documents in support of his claim. In other words the Appellant/Respondent No. 2 was, personally heard by the

Estate Officer. On 4.1.2001 the Estate Officer passed order in exercise of the power conferred u/s 5(1) of the Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 for evicting the Appellant/Respondent No. 2 from the said land belonging to the NF Railway within 15

(fifteen) days from the date of receipt of the order.

7. Against the order for eviction dated 4.1.2001 passed by the Estate officer the Appellant/Respondent No. 2 preferred an appeal being Misc

Appeal No. 2 of 2001 u/s 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in the court of the learned District Judge,

Dibrugarh on the ground that the case of the Appellant/Respondent No. 2 shall not come under the provisions of Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 and also that the Appellant/Respondent No. 2 is protected under the TP Act and Easement Act and also that

the Appellant/Respondent No. 2 can only be evicted by an order of the competent civil Court in an Eviction Suit inasmuch as the earlier judgment

and order of the learned District Judge dated 30.4.1994 passed in the Title Appeal No. 10 of 1992 clearly stated that the Appellant/Respondent

No. 2 is entitled to continue possession till evicted therefrom under appropriate provisions of law. The Respondents/writ Petitioners contested the

Misc Appeal No. 2 of 2001 on the main ground that the said appeal is bared by Section 15 of the Public Premises (Eviction of Unauthorized

Occupants) Act, 1971. The learned District Judge, Dibrugarh by passing final judgment and order dated 28.5.2003 allowed the Misc Appeal No.

2 of 2001 by holding that the appeal is not barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and in

the result the impugned eviction order dated 4.1.2001 passed by the Estate Officer is set aside.

8. The Respondent/writ Petitioner filed writ petition being WP(C) No. 9297 of 2002 against the judgment and order of the learned District Judge

dated 28.5.2003 passed in Misc Appeal No. 2 of 2001.

9. The Appellant/Respondent No. 2 contested the WP(C) No. 9207 of 2003 on the main ground that:

(i) Occupation of the said land belonging to the F Railways by the Appellant/Respondent No. 2 cannot be treated as ""unauthorized occupation"" for

the purpose of taking up eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971;

(ii) The eviction proceeding under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against the Appellant/Respondent No. 2

for evicting him from the said land belonging to the NF railways is not the eviction proceeding contemplated in the judgment and order of the

learned addl. District Judge, Dibrugarh dated 30.4.1994 passed in Title Appeal No. 10 of 1992; and also that.

(iii) No notice contemplated u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the Appellant/Respondent

No. 2 before passing the eviction order, dated 4.1.2001 by the Estate Officer.

10. The word ""Unauthorized Occupation"" is defined in Section 2(g) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 thus:

Section 2(g) ""unauthorized occupation"", in relation to any public premises, means the occupation by any person of the public premises without

authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether 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.

11. Admittedly, in the present case, the Appellant/Respondent No. 2 could not produce any sort of order/lease or license for allowing him to

occupy the said land which is admittedly belonging to N F Railway save and except the said License dated 10.6.1970 in favour of the

Appellant/Respondent No. 2 for using the said land for a period of 1 (one) year only. After the expiry of license period, occupation of the said land

belonging to the NF Railway by the Appellant/Respondent No. 2 would be unauthorized occupation within the meaning of Section 2(g) of the

Public premises (Eviction of Unauthorized Occupants) Act, 1971. There cannot be second interpretation in this regard. The learned Single Judge

while passing the impugned judgment and order dated 11.4.2006 in WP(C) No. 9297 of 2003 clearly held that the occupation of the said land

belonging to the NF Railway by the Appellant/Respondent No. 2 after the expiry of license period of one year would be unauthorized occupation.

12. Regarding the second ground for contesting the WP(C) No. 9297 of 2003 by the Appellant/Respondent No. 2, the learned Single Judge while

passing the impugned judgment and order dated 11.4.2006 clearly held that the eviction proceeding under the Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 is one of the eviction proceedings contemplated by the learned Addl. District Judge, Dibrugarh in this

judgment and order dated 30.4.1994 in Title Appeal No. 10 of 1992 wherein it is clearly stated that the Appellant/Respondent No. 2 is entitled to

continue his possession till evicted therefrom under the appropriate provisions of law. We are in agreement with such finding of the learned Single

Judge in the judgment and order dated 11.4.2006.

13. Regarding the third point for contesting WP(C) No. 9297 of 2003 by the Appellant/Respondent No. 2 that notice contemplated u/s 4 of the

Public premises (Eviction of Unauthorized Occupants) Act, 1971 was not issued to the Appellant/Respondent No. 2 before passing the eviction

order dated 4.1.2001 by the Estate Officer, we have carefully applied our mind to the materials available on record and also the finding of the

learned Single Judge in the judgment and order dated 11.4.2006. The Appellant/Respondent No. 2 even in the memo of appeal filed by him in the

Misc Appeal No. 2 of 2001 had clearly mentioned that not only show cause notice for evicting the Appellant/Respondent No. 2 from the said land

belonging to N. F. Railway was issued to him but also he was even given personal hearing on 27.12.2000 by the Estate Officer and he was also

allowed to produce documents in support of his case. We are of the considered view that procedure contemplated in Section 4 of the Public

Premises (Eviction of Unauthorized Occupants) Act, 1971 had been fully complied with by the Estate officer before passing the eviction order

dated 4.1.2001.

14. In the course of hearing of the present appeal the learned senior counsel appearing for the Appellant made a faint attempt for remanding the

whole case to the learned District Judge, Dibrugarh for re-hearing the Misc Appeal No. 2 of 2001, for the reasons that the learned District Judge,

Dibrugarh has not decided the merit of the said Misc Appeal No. 2 of 2001 but simply allowed the appeal by passing the judgment and order

dated 28.5.2003 by holding that the said Misc Appeal is not barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants)

Act, 1971 and in the result, the eviction order dated 4.1.2001 of the Estate Officer is set aside. It is a clear fact that the Appellant/Respondent No.

2 had not challenged the judgment and order of the learned District Judge, Dibrugarh dated 28.5.2003 in the higher court or higher authority in

the manner prescribed by law. The present Writ Appeal is not the appeal against the judgment and order of the learned District Judge, Dibrugarh

dated 28.5.2003 passed in Misc appeal No. 2 of 2001, hence the Appellant/Respondent No. 2 is barred by the principle of collateral challenge

from challenging the said judgment and order of the learned District Judge dated 28.5.2003 passed in Misc appeal No. 2 of 2001. It is well settled

in law that the judgment and order of the competent court is required to be challenged in the prescribed forum by filing appeal/revision or any other

authorized proceeding by specifically seeking the relief for setting aside or/quashing the same. But there cannot be a collateral attack against the

judgment and order of the competent court in writ proceedings which is not filed against the said judgment and order of the competent court and

also in the writ petition in which the relief for quashing the order/setting aside of the said judgment and decree of the competent court has not been

sought for. Accordingly, we are of the considered view that last faint attempt of the learned senior counsel appearing for the Appellant/Respondent

No. 2 cannot be accepted.

15. For the reasons discussed above, we are of the considered view that the Appellant/Respondent No. 2 had utterly failed to make out any case

or reasons for interfering with the impugned judgment and order of the learned Single Judge dated 11.4.2006 passed in WP(C) No. 9297 of

2003. Accordingly, this writ appeal is devoid of merit and hereby dismissed.

Parties are to bear their own costs.