
(2010) 02 MAD CK 0188

Madras High Court

Case No: C.R.P. (NPD) No"s. 1439 to 1453 of 2007 and M.P. No"s. 1, 2 and 3 of 2007

Nakka Markandayalu

APPELLANT

Vs

Estate Officer-cum-
Deputy Collector
(Revenue)

RESPONDENT

Date of Decision: Feb. 24, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Constitution of India, 1950 - Article 226, 227
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 10, 15, 4(1), 5(1)

Citation: (2010) 2 LW 507

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: T.S. Rajagopalan, er for T.R. Rajaraman, for the Appellant; T. Murugesan, Sr. Counselor for Mala, Spl. Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The gist of the case is as follows:

1. (a) The Petitioners are small farmers. They claim that they own and possess agricultural lands in Survey Nos. 79, 80 and 81 of Mallavaram, Georgepeta, Polekurru and Tallarevu Villages, Tallarevu Mandal in East Godavari District. It is also alleged by them either that they belong to them by way of purchase through various sale deeds or by way of inheritance from their ancestors and they have been in possession for a long time. In certain portions of the lands the Petitioners are doing prawn culture. The Government

of Pondicherry (Presently Puducherry) describing them that they are none other than the en-croachers of the lands which are within the territory of Pondicherry, issued notices to them under Sub-section (1) of Section 4 of Public Premises (Eviction of Unauthorised) Occupants Act, 1971, (hereinafter referred to as "Act"). The Petitioners preferred objections for the Estate Officer's consideration. After considering the materials on record, an earlier Estate Officer on 8.12.1978, passed orders of eviction. The lands were required for Government for assigning them to defence personnel.

1. (b) Aggrieved by the above said orders some of the Appellants preferred appeals before the Appellate Authority under the Act. On 16.6.1979, in the batch of appeals in N.A. No. 7 of 1979 etc., the Principal District Judge viz., the Appellate Authority under the Act allowed the appeals, setting aside the orders of the Estate Officer and directed the Estate Officer to proceed against the Appellants again, after issuing fresh notices u/s 4 containing all particulars. The learned Judge has rendered finding that the particulars of the properties were not described properly and that the Estate Officer should have afforded ample opportunities of personal hearing.

1. (c) Afterwards, the Estate Officer, by means of notices dated 24.1.2005 called for objections, heard them and eventually passed separate proceedings to each of the Petitioners on 31.1.2007 under Sub-section (1) of Section 5 of the Act, directing their eviction from the premises, further providing that, if need be, by the use of such force as may be necessary.

1. (d) Carrying the said order in appeal before the Appellate Authority, the Petitioners challenged the proceedings of eviction on various grounds. They have stated in their grounds of appeal that the properties in question are their private properties, that they acquired right over them either by succession or by purchase through registered sale deeds and that the perusal of the survey records of the Government of Andhra Pradesh would disclose the factum that the schedule property is the private property and not the public premises and the river Godavari itself belongs to Andhara Pradesh.

The alleged joint survey of the lands by the officials of Government of Andhra Pradesh and Government of Puducherry could not be relied upon. The reasons adduced in the orders of Estate Officer are unreasonable. The requirements contained in Sub-section (1) of Section 4 of the Act have not been satisfied. Even though there were previous specific directions by the Appellate Authority to furnish details with regard to the exact boundaries, dimensions as well as a sketch be appended to each of the notice as well as the eviction order, the Respondent has not complied with the same. By not giving sufficient materials to defend, principles of natural justice has not been complied with. The Order is not only illegal, but also against the principles of natural justice.

2. After hearing both sides, the learned Principal District Judge, Appellate Authority, Puducherry on 30.03.2007 passed a common order in all the appeals, dismissing them, granting one month time to the Appellants to vacate and to deliver vacant possession of

their respective portions of the public premises in their occupation to the Respondent. He has observed that from the materials, it is found that the survey officials of both the Governments measured the property in the presence of encroachers, with reference to their survey numbers and land records and decided that the property in occupation of the present encroachers lie within the jurisdiction of Yenam, which is a part of Union Territory of Pondicherry, that even in the memorandum of appeal, they have not questioned the validity of Form-A notice or Form-B notice or that they were denied the opportunity of personal hearing and that the Estate Officer before passing the impugned orders has given opportunity to all the encroachers to represent their case and also allowed to file written statements and personal hearings were also given to them. The Appellate Authority has given sufficient reasons to justify the impugned eviction order, challenged before him.

3. In the common counter filed by the Respondent, it is stated that even though the encroached lands are situate along the border, they come within the limit of Mettacur village in Yenam, abutting Andhra Pradesh, that the encroachers have been identified to be persons in unauthorised occupation of public premises and they have also paid encroachment tax to Government of Puducherry till 2004. The land fall under the category of Government Poromboke assessed waste dry land in the resurvey settlement and the same status was observed during town survey as well. Sufficient opportunities were extended to the Petitioners by the Estate Officer before passing the eviction order. On 14.10.2005, joint survey by officials of both the Governments was scheduled at 8.00 a.m., accordingly notice was sent to all the unauthorised occupants on 5.10.2005 requiring them to be present on that appointed date and time at the property in question and all of them were present. In the joint survey, it was found that these lands squarely fell within the survey numbers belonging to the Government of Puducherry. Before conducting the joint survey, the documents were submitted by the encroachers were duly considered. The facts would go to show that the revision Petitioners are encroachers per se, who have no right to continue their illegal occupation.

4. Mr. T.R. Rajagopalan, the learned Senior Counsel appearing for the Petitioners would contend that the Orders passed by the Estate Officer is not a speaking order, it is cyclostyled version to every petition; that two letters from Collector of Kakinada would show that another joint survey has to be conducted; that principles of natural justice have been violated by the Estate Officer; that there was no personal hearing and there is nothing in the order of the District Judge as to the perusal of the relevant documents. He further submits that the Government of Andhra Pradesh is a necessary party to the proceedings and two documents which are the communications issued by the District Collector of East Godavari, Kakinada have been produced by means of which the survey has to be reopened and that for those purposes, separate applications have been filed which may be entertained by the Court.

5. Arguing on the other side of the coin, Mr. T. Murugesan, the learned Senior Counsel and Government Pleader for Union territory of Puducherry would submit that personal

hearing was accorded to the Petitioners as evident from the order of the Estate Officer, that by the joint inspection and survey of responsible revenue officials belonging to both Governments, it was resolved that the land would come within the union territory of Puducherry; that the proceedings in this matter cannot go beyond the procedures adumbrated in the Act; that the statutory requirements have been fulfilled earlier to passing of eviction order, that the estate officer's powers are extensive and that the orders passed under the provisions of the Public Premises Act are final and there could not have been any further remedy by invoking Article 227 of the Constitution which does not provide either revision or appeal in these matters and whatever not available under law is attempted to be made available by filing the revision petitions and M. Ps.

6. As far as the factual scenario of these cases are concerned, it is the definite version of the Respondent that the encroached lands are the poromboke lands belonging to the Government of Puducherry. It has to be seen whether the principles of natural justice, i.e., Audi Alteram Partem have been violated. After the direction of the Appellate Authority in the earlier proceedings, after about five years, in December 2004, statutory notice under Sub-section (1) of Section 4 of the Act was issued afresh by the Deputy Collector (Revenue), Government of Puducherry requiring these Petitioners to vacate the premises calling upon them to appear either in person or through their duly authorised persons and submit all relevant documents supporting their claim. In the eviction order passed by the Estate officer, it is further mentioned that on 5.4.2005 at 10.00 a.m., and whereas on the date of personal hearing, the contentions raised by the various encroachers and the documents submitted in support of their claim were duly considered by the authority, that the main contention was that the lands belong to Andhra Pradesh and it was decided that a joint survey by officials of Andhra Pradesh and Pondicherry should be conducted in the presence of encroachers and whereas intimation was given on 5.10.2005 and a joint survey was also conducted on 14.10.2005 by officials of both the Governments in the presence of encroachers as per the survey and land records of both governments and common boundaries of both sides were fixed and was ascertained that the lands under unauthorised occupation come within the limits of Government of Puducherry. In the land records of Government of Puducherry, these lands have been classified as Government poromboke. After ascertaining these reasons, the Estate Officer has directed eviction.

7. (a) The appellate authority has also properly gone through materials before him and reached a conclusion that it has been established that the lands come within the territory of Government of Puducherry. In order to appreciate the niceties of the matter, it is profitable to narrate certain features which are available in the affidavit filed by the Petitioners in writ petition in W.P. No. 6784 of 2007 before the High Court of Andhra Pradesh. It is admitted therein that a joint survey of the lands have been made by the revenue officials of both the Governments who fixed the boundaries without taking any consideration of Petitioners' objections and the second Respondent in the writ petition (The District Collector, East Godavari District, Kakinada) signed the 4th Respondent's (The Deputy Collector (Revenue- cum-Estate Officer), Yanam, Pondicherry) survey report

as the lands fall in the territory of the Union Territory of Pondicherry, ignoring the fact that the River Godavari flowing through the area as the border for both the territories of Union Territory of Pondicherry and State of Andhra Pradesh.

7. (b) They have also alleged therein that they have produced the relevant material of payment of tax to the State Government of Andhra Pradesh and the valuation certificate issued by the Government of Andhra Pradesh. But those documents have not been produced either before this Court or before both the fora below. The writ petition has been filed with a prayer for direction to 1st and 2nd Respondent, who are top officials of Andhra Pradesh Government to liaison with 3rd, 4th and 5th Respondents (top brass of Union Territory of Puducherry and Ministry of Home Affairs, Union of India, New Delhi) to protect the interests of the Petitioners in their agricultural lands from illegal eviction of them by 3rd and 4th Respondents and/or otherwise to take steps not to dispossess or evict them. The contents of the affidavit would go a long way to show that the joint survey of the lands were conducted by the officials of both the Governments with the knowledge and in the presence of these Petitioners.

AS TO APPLICATION OF/UNDER ORDER 41 RULE 27 Code of Civil Procedure:

8. (a) Miscellaneous Petition has been filed under Order 41 Rule 27 of C.P.C to receive additional documents as additional evidence in C.R.P. (NPD) No. 1446 of 2007. It is to be borne in mind that this Court is not sitting in appeal upon the order passed by the Appellate Authority under the Act. These revision petitions have been filed invoking the relief under Article 227 of the Constitution. In this context, it is remote to consider receipt of additional evidence in these petitions as if these proceedings are statutory appeals preferred from the authority below. A plain reading of the provision would depict that the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the Appellate Court excepting the circumstances where the trial Court had refused to admit the evidence which ought to have been admitted or the party, seeking to produce additional evidence, establishes that despite his exercise of due diligence it was not within his knowledge or could not, after exercise of due diligence be produced by him or if the Appellate Court requires the documents to pronounce judgment or for any substantial cause.

8. (b) The test to be applied is, whether the appellate court would be able to pronounce judgment without such additional evidence. Though the evidence sought to be received before Appellate Court is relevant, the necessary statutory requirements have to be fulfilled before entertaining such evidence. In case, if the matter involves recording of evidence on perusal of the additional evidence, to ascertain facts to give findings on the issues, the Appellate Court would normally remit the matter back to the original Court or call for a finding when recording of evidence is necessary. This rule does not confer any right on the party to produce additional evidence. These are all the settled procedures to regulate the proceedings before the appellate Court, while it comes across with a petition under this provision. The mere fact that evidence is sought to be placed is vital and

important does not constitute a "substantial cause" as provided in the provision to allow its admission at the appellate stage especially when the evidence was available to the party at the initial stage and had not been produced by him and what is "substantial cause" will depend upon the facts of each case. This Court is not an Appellate Court as per any law for the disputes under the Act and it could not be equated with an Appellate Court to consider the above.

8. (c) In this regard, it is also to be noted that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is a Special Act and whatever be the proceedings under the provisions have to be taken before appropriate fora and the unfavourable orders, if any, have to be challenged as prescribed in the Act and those proceedings shall be within the four corners of the Act.

8. (d) As adverted to supra, since this Court is not sitting as an appellate court from the order passed by the appellate authority under the Act and when there is no ground for this Court to interfere with or disturb the decisions of the forum below, the petition under Order 41 Rule 27 Code of CPC is not maintainable in these Revision Petitions.

MAINTAINABILITY OF PETITION UNDER ORDER 1 RULE 10 Code of Civil Procedure:

9. The Petitioners have filed Miscellaneous Petition in C.R.P. (NPD) No. 1446 of 2007 to implead the Government of Andhra Pradesh and the Director of Survey & Settlement Records as Respondents 2 and 3 in the revisions. As already stated, this Court cannot transform itself to a Court of appeal and the petitions for impleadment of parties in revision petition filed under Article 227 of the Constitution, would enlarge the scope of exercise of powers by this Court. The Apex Court has time and again held that the powers under Article 227 of Constitution have to be exercised sparingly only to ascertain whether the subordinate courts/fora have exceeded jurisdiction or not exercised jurisdiction when they have got jurisdiction or when they have failed to exercise their powers which they have possessed. Under the guise of exercising power of superintendence, this Court cannot call for various parties and their objections and to deal with the matter elaborately which involves resolution of factual issues. I am of the considered opinion that these petitions are not maintainable in these proceedings which could not be entertained.

AS REGARDS FINALITY OF ORDERS:

10. Section 10 of the Act deals with "Finality of orders" and Section 15 deals with "Bar of jurisdiction" of the Court, which read thus:

10. Finality of orders: Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

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 any public premises,
- (b) to (e) omitted.

11. The terminology employed in Section 10 of the Act expressly expresses the thrust of the section and intention of the legislature. It attaches conclusiveness to the orders and extends protective umbrella. Where the appellate court has considered all the points and has done material justice, no interference will be made either in revisional or writ jurisdiction, as held in (Gram Panchayat Village Chirasmi v. Jage Ram 2001 AIHC 4678) in page 228 of the text book of S.P. Gupta (supra). Any further proceedings above the order of the appellate authority has been specifically barred by statute.

AS TO POWERS OF HIGH COURT UNDER ARTICLE 227 OF THE CONSTITUTION:

12. This power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court or tribunal. It must be restricted to cases where grave injustice would be done unless the High Court interferes. The following are the excerpts from the book "Shorter Constitution of India" (14th Edition - Volume 2) by Durga Das Basu:

167. The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less an error of law. In exercising this supervisory power, the High Court does not act as an appellate court or the tribunal." (page 1550)

20. The High Court of its supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappraisal or evaluation of evidence or correct errors in drawing inferences or correct mere formal or technical character" (page 1551)

Resjudicata.- A writ petition under Article 227 cannot be entertained to challenge a judgment which has attained finality."(page 1553)

2. Under Article 227, the High Court has to see whether the lower court/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process.

3. But -

(iv) Nor can the High Court, nor being an appellate Court, pass an order of remand." (pages 1556 & 1557)

13. The excerpts in Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by S.P. Gupta, Third Edition (Page 225), would show that in [Sadhan Kumar Acharya Vs. Reserve Bank of India and Another](#), it is held that, against the orders of the Estate Officer and Appellate Authority, the High Court will not sit as Court of Appeal. Under writ jurisdiction, it has to ascertain whether principles of natural justice were followed and to see whether authority below has not exceeded its jurisdiction, whether a fair and proper opportunity has been granted. I am in respectful agreement with the said decision of the learned single Judge of the Delhi High Court in this regard.

14. The learned Senior Counsel for the Respondent in support of his contention placed reliance on a decision of the Supreme Court Bhutnath Chatterjee v. State of West Bengal and Ors., (1969) 3 SCC 675 wherein Their Lordships have held that normally High Court exercises its jurisdiction under Article 227 of the Constitution to ensure that a subordinate court or tribunal does not transgress the limits of its jurisdiction and the jurisdiction with which the High Court is invested is not appellate; it cannot seek to correct what it regards as merely an error of law or fact. It is further held as follows:

Determination of the question whether the first notification remained operative, therefore, depended upon proof of facts. The High Court could not entertain a petition under Article 227 of the Constitution against the order of the District Judge, and determine an important issue of fact on which the case of the Appellant largely depended, on a presumption. Against the award of compensation by the District Court, an appeal lies to the High Court, and in that appeal the question would be fully considered in all its aspects on the evidence on the record. This was not a case in which the jurisdiction of High Court under Article 227 of the Constitution could be invoked or exercised.

15. In the above said case, appeal provision is available in land Land Acquisition Act to prefer appeal before the High Court and the Supreme Court is of the view that whatever matters to be considered in appeal could not be expected to be dealt with by the High Court under Article 227 of the Constitution. The principles set out in the said decision would squarely apply to the facts of the present case. In the case on hand there is no provision for further appeal before the High Court from the orders of the appellate authority and there is no scope in the considered view of this Court for revision on mere factual aspects which have been finally concluded by the Appellate Authority.

16. Another decision of the Supreme Court in [Ganpat Ladha Vs. Sashikant Vishnu Shinde](#), has also been cited on behalf of the Respondent, wherein the scope of exercise of powers under Article 227 of the Constitution by the High Court have been discussed and the guidelines have been laid down as follows:

12..... We feel certain that the High Court would not have fallen into such error if its attention was drawn to the law as laid down by this Court in AIR 1975 1297 (SC) . There, this Court in an appeal by special leave from a judgment of the Bombay High Court observed (at p. 1297) (SCC p.859, para 1):

It is a litigation between landlord and tenant and as is usual with this type of litigation, it has been fought to a bitter end. Much of the agony to which the tenant has been subjected in this litigation would have been spared if only the High Court had kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under Article 226 or 227 of the constitution.

A finding as to whether circumstances justify the exercise of a discretion or not, unless clearly perverse and patently unreasonable is, after all, a finding of fact only, which could not be interfered with either under Article 226 or under Article 227 of the Constitution. In Babhutmal Raichand Oswal's case (supra) this Court also said (at p. 1301) (SCC p. 864, para 7):

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority.

17. It could not be stated that the High Court is precluded from deciding the matter which come up before it under its revisional jurisdiction. However, it has to act as per the principles laid down by the Supreme Court as regards the power of superintendence as held by the Apex Court. It is well settled that the High Court has to see that whether the court or forum below has acted within its jurisdiction or exceeded it. The Full Bench of the Supreme Court in [Surya Dev Rai Vs. Ram Chander Rai and Others](#), has formulated 9 guidelines in the matter of ascertaining vexatious and frivolous litigations and to exercise the supervisory jurisdiction by High Court under Article 227 of the Constitution. The relevant dictum in the decision goes thus:

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction through available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

18. The petition has been filed under Article 227 of the Constitution and the powers of this Court under Article 227 have to be exercised sparingly when any gross injustice and patent violations of elementary principles of law are discernible from the orders or the attitude of the subordinate Courts. This Court has got supervisory power over the affairs of the subordinate Courts.

19. In (Roshan Deen v. Preeti Lal 2002(1) CTC 183 : 2002-2-L.W. 223) the Supreme Court has held that the very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an

academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law.

20. In this connection, if the Subordinate Court transgresses its powers and exceeds its limit and jurisdiction, leading to cause injustice to a party, the High Court can very well exercise the powers under Article 227 and curtail them. It is not in every case that where any error which deserves to be corrected by the appellate court, then exercising power under Article 227 can be limited by the High Court. I have had occasions to deal with the powers of High Court under Article 227 of the Constitution, following various decisions of the Apex Court in my decisions reported in

i. (Dindigul Pettai Sathangudi Shatriya Nadras Uravinmurai and Anr. v. Selvaraj Sundar and Anr. 2009(2) CTC 57 : 2009(3) LW 229 : 2009 (5) MLJ 1573 Mad.)

ii. (The Ootacamund Club v. H.S. Mehta 2009 (5) CTC 627)

iii. (Madras Gymkhana Club v. Sukumar 2010 (1) CTC 199)

21. In the above illuminating judicial pronouncements of the Supreme Court, the powers of the High Court have been demarcated. While this Court carefully scrutinises the impugned order, it appears that the Appellate Authority has correctly rendered findings on the basis of the facts Available, that it has properly exercised its jurisdiction, that it has not exceeded its jurisdiction and that no question of violation of principles of natural justice does arise. Hence the Petitioners have to be non suited for the relief sought under Article 227 of the Constitution.

22. There is no impropriety in the orders challenged before this Court. This Court does not find any infirmity in the orders challenging before this Court either legally or factually which have been rendered after due scrutiny of the materials before the appellate authority and the Petitioners are not entitled for any relief in these revisions, which suffer dismissal.

In the result, all the Revision Petitions and Miscellaneous Petitions are dismissed. No costs.