

(1975) 07 CAL CK 0003

Calcutta High Court

Case No: Civil Rule No. 3016 of 1973

Indian Iron and Steel Co. Ltd.

APPELLANT

Vs

Estate Officer, South Eastern
Railway

RESPONDENT

Date of Decision: July 21, 1975

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Limitation Act, 1908 - Article 112, 149, 28
- Limitation Act, 1963 - Section 27, 30
- Public Premises (Eviction of Unauthorised Occupants) Act, 1958 - Section 1(3), 10E, 11, 19, 20
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 1(3), 15, 20, 6

Citation: (1976) 2 ILR (Cal) 43

Hon'ble Judges: S.K. Bhattacharyya, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: Banamali Das, Amal Kumar Bose and Tapas Banerjee, for the Appellant; P.N. Chunder, for the Respondent

Final Decision: Allowed

Judgement

S.K. Bhattacharyya, J.

This application by Messrs Indian Iron and Steel Co. Ltd. under Article 227 of the Constitution of India is for recalling and/or rescinding the order passed by the Estate Officer of the South Eastern Railway, Kharagpur, at Adra on July 18, 1973, in proceeding No. E/14 of 1971 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and for restraining the Respondents from the proceeding with the aforesaid case before the Respondent No. 1. The fact leading up to the present proceeding may briefly be stated.

2. Undoubtedly, the Petitioner company is in exclusive possession, occupation and enjoyment of certain lands (to be hereinafter called S.E.R.'s lands), that was adjacent to or contiguous with the Petitioner's town and works known as "Burnpur Works". These lands formerly belonged to Bengal Nagpur Railway Administration which was taken over by the Government of India with effect from October 1, 1944, but the Petitioner continued to remain in possession of the said lands and it is not disputed that they are still in possession of these lands for which a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was initiated by the Respondent No. 1 on February 9, 1971, on report made by the Divisional Engineer, S.E. Railway at Adra, on January 1, 1971. A notice was thereupon issued on the Petitioner company. Pursuant to the aforesaid notice requiring the Petitioner to show cause why the order of eviction should not be made u/s 6 of the Act, the Petitioner showed cause and the concerned Railway Administration represented by the Respondent No. 2 also filed their objections.

3. An objection was taken before the Estate Officer that he had no jurisdiction to proceed with the case. The Estate Officer by his order dated April 8, 1971, overruled the objection and decided to proceed with the matter. On July 8, 1973, the Petitioners through their lawyer raised two other objections before the Estate Officer contending, inter alia, that the proceeding was not maintainable and the same was barred by limitation inasmuch as the Government of India was never in actual possession of the premises in dispute. It was contended on behalf of the Petitioner that the Government's right to property was extinguished after expiry of seven years from the date when the new Limitation Act came into force. The learned Estate Officer by his order dated July 18, 1973, decided both the points against the Petitioner and held that the case was maintainable and the application had been filed well, within the period of limitation. Hence, this application.

4. Against the order passed by the Estate Officer on April 8, 1971, the Petitioner moved this Court under Article 226 of the Constitution and a Rule being C.R. No. 1326(W) of 1971 was issued whereby the passing of the final order in the case was stayed. On November 6, 1973, the aforesaid Rule was discharged, but prior to that the Petitioner moved this Court and obtained the instant Rule against the order passed on July 18, 1973.

5. The main contention of Mr. Das, the learned Counsel appearing for the Petitioner, is that the proceeding is barred by limitation and Mr. Das formulated his point in this way : Admittedly, the Petitioner company have been in uninterrupted possession of the premises in dispute since January 1957, as a trespasser. The said premises, it is not disputed, vested in the Government of India with effect from October 1, 1944. Ordinarily, the Petitioner company would have acquired title by adverse possession against the then Railway Administration on January 1, 1949. Since the Government took over the Bengal Nagpur Railway Administration and the deputed premises became Government property the title could not be acquired until

after the expiry of sixty years under Article 149 of the Limitation Act of 1908 the limitation Act, 1963, (to be hereinafter referred to as new Act) came into force on and from January 1, 1964 and Article 112 which governs suits relating to the miscellaneous matters in pt. IX of the schedule of the New Limitation Act, 1963, reduced the period of limitation in such cases to thirty years. Section 30 of the new Limitation Act made provision for suits for which the prescribed period was shorter under the new Act, than the period prescribed by the Indian Limitation Act, 1908 and this section provided that in such cases the Government would have to file a suit for possession within a period of five years next after the commencement of the new Act or within the period prescribed by the old Act, whichever period expired earlier. The period of five years was later extended to seven years by the amending Act X of 1969. Mr. Das, therefore, contended that this extended period of seven years expired on January 1, 1971, with the result that any suit by the Government for possession became barred after January 1, 1971. Mr. Das next referred to Section 27 of the new Act and contended that as the suit by the Government for possession became barred on the expiry of January 1, 1971, its right to the property in dispute was extinguished and the Petitioner's right therein matured into an indefeasible title and the disputed property could no longer be regarded as a "public premises" within the meaning of Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as supplemented by Act XL of 1971. Since the proceeding in the instant case was initiated after January 1, 1971, the Government's right in respect of the premises in question was extinguished. Mr. Das further contended that Section 28 of the old Limitation Act which corresponds to Section 27 of the new Act is of general application and was not confined merely to suits and applications for which period of limitation was prescribed under the Limitation Act. In this connection he relied upon the decision of the Supreme Court in the case of [Dindayal and Another Vs. Rajaram](#), where it was pointed out that the principle underlying Section 28 of the Limitation Act, 1908, (Section 27 of the new Act) is of general application and was not merely confined to suits and applications for which a period of limitation is prescribed under the Limitation Act.

6. Mr. Chunder, on the other hand, contended that as a suit for eviction was specifically barred by Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, provisions of the new Limitation Act prescribing the period of limitation for a suit for eviction did not have any application in the instant case and the Petitioner company could not thus acquire any title by adverse possession.

7. Mr. Chunder contended in the next place that when the Government took over the Railway Administration on October 1, 1944, the disputed lands vested in the Government free from all encumbrances on and from that date. For this purpose Mr. Chunder referred to the order of the Estate Officer dated July 18, 1973, (annex. C). Accordingly, Mr. Chunder contends that the Petitioner is not entitled to any relief in this proceeding.

8. Mr. Das joined issue on both these contentions and wanted to know under which notification the property vested in the then Government of India. It appears from the order passed by the Estate Officer on July 18, 1973, (annex. C) that there is a reference to the relevant notification insofar as vesting is concerned and we, accordingly, asked Mr. Chunder to produce the relevant notification for our perusal. Mr. Chunder took time but had failed to produce any notification before this Court which indicates that the property belonging to Bengal Nagpur Railway Administration vested in the then Government of India free from all encumbrances. Mr. Chunder has drawn our attention to the contracts that the Bengal Nagpur Railway had with the Secretary of the State and in particular, referred to paras. 11, 12 and 90 of this document, which no doubt provides for the termination of the contract and the relinquishment of all lands to the Secretary of State, but these paragraphs nowhere provide that the land to be relinquished or delivered to the Secretary of the State should be free from all encumbrances. We cannot accept this argument of Mr. Chunder in the absence of the relevant notification referred to by the Estate Officer, which was not produced before us and for which Mr. Chunder has not been able to offer any satisfactory explanation. Accordingly, the second contention of Mr. Chunder in our view, cannot be accepted.

9. As to the first contention of Mr. Chunder, Mr. Das sought to meet this point by contending that Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was declared ultra vires and unconstitutional and as such, the Act must be deemed to be non est. Since the Act was a post-Constitution Act, it must be deemed not to have come into existence at any rate till August 23, 1971, when the new Public Premises (Eviction of Unauthorised Occupants) Act, 1971, came into force. Mr. Das referred to the following decisions in support of his contention : [Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another](#), [Rajendra Prosad Singh Vs. Union of India \(UOI\) and Others](#), and the decision of Sabyasachi Mukharji J. dated May 26, 1971 in the case of D. Macropolo and Co. v. Union of India Constitution Writ (O.S.) of Calcutta High Court No. 779 of 1968.

10. In the [Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another](#), validity of Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovers) Act (XXXI of 1959) came to be considered by the Supreme Court and it was held by the majority that Section 5 conferred an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of more drastic procedure u/s 5 the section has lent itself open to the charge of discrimination and as being violative of Article 14. In that view, Section 5 was held to be void. Following the decision of the Supreme Court in the Northern India Caterers' case Supra, a Special Bench of this Court in Rajendra Prosad Singh v. Union of India Supra held that corresponding Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was

violative of Article 14 of the Constitution and declared it to be unconstitutional. The decision of the Special Bench was given on June 7, 1968 and on August 16, 1968, the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was retrospectively amended and Section 10E barring the jurisdiction of civil Courts was inserted therein. The amended Section 10E was challenged before a Single Bench in the Original Side of this Court in the case of D. Macropolo and Co. v. Union of India Supra. Following the decision of the Supreme Court in Northern India Caterers" case Supra and the Special Bench in Rajendra Prasad Singh's case Supra Sabyasachi Mukharji J. held on May 26, 1971, that the amendment introduced by insertion of Section 10E was ineffective and the Act remained void. Section 10E created bar to the jurisdiction of civil Courts to entertain any suit or proceeding in respect of the eviction of any person who was in unauthorised occupation of any public premises. On August 8, 1971, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, came into force. This Act by Section 1(3) provided that except Sections 11, 19 and 20, which came into force on and from August 23, 1971, the 1971 Act is deemed to have come into force on and from September 16, 1958. The new Act came under challenge before the Supreme Court in the case of [Hari Singh and Others Vs. The Military Estate Officer and Another](#), and the Supreme Court held that the vice of Article 14 which the Supreme Court found against the comparable 1959 Punjab Act in the Northern India Caterers" case Supra was no longer there under the 1971 Act and it was also held that there was legislative competence to put out of action retrospectively one of the procedures leaving one procedure only available and thus removing the vice of discrimination. Following this decision, the Supreme Court in [Maganlal Chhaganlal \(P\) Ltd. Vs. Municipal Corporation of Greater Bombay and Others](#), held that the decision in the Northern India Caterers" case Supra was no longer good law. The majority in their two separate judgments found themselves unable to agree with the majority view in the Northern India Caterers" case. It was held that the majority in the Northern India Caterers" case was in error for proceeding on the basis of Section 5 alone and for holding that it conferred arbitrary power on the Collector to resort to the power under the Act in the case of some and a suit in the case of some other. Bhagwati J., speaking for himself and Krishna Iyer J., agreed with the other majority view and held that the decision in the Northern India Caterers" case did not represent the correct law any longer (vide para. 25). It thus appears that the reasons given by the Special Bench as also by Sabyasachi Mukharji J. in his decision dated May 26, 1971, were based on the Northern India Caterers" case and as the decision in the Northern India Caterers" case did not represent the correct position in law any longer, the Special Bench decision in Rajendra Prasad Singh's case Supra cannot any longer be regarded as well-founded. It is also worthy of note that in the Northern India Caterers" case Supra the Supreme Court was considering the validity of Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 and not the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, itself. That point, however, came to be considered before the Special Bench in Rajendra Prasad Singh's case

Supra, but in view of the retrospectivity of the 1971 Act, which has been upheld by the Supreme Court, all actions taken under the Act of 1958 stands validated by virtue of Section 20 of the 1971 Act and it could not, therefore, be contended that there was no legal bar against the filing of suits for eviction by the Government. On the contrary, Section 15 of the 1971 Act provides that no Court shall have the jurisdiction to entertain any suit or proceeding in respect of the eviction of any person, who is in unauthorised occupation of any public premises and this bar is deemed to have been created as and from September 16, 1958. In [Ganapathi Pandaram and Another Vs. Collector of Coimbatore and Others](#), Section 28 of the old Limitation Act was held not to apply in a case where the right of the person to sue for possession was expressly or by necessary implication barred by statute. In view of the decision of the Supreme Court in Hari Singh's case Supra the Government could not have any right to institute a suit for eviction of unauthorised occupants of a public premises as and from September 16, 1958 and this contention of Mr. Das is not, therefore, available to him.

11. Further contention of Mr. Das that the Petitioner company had in the meantime acquired title by adverse possession by virtue of Section 27 of the new Limitation Act before the 1971 Act came into force, in our view, has no substance. The Public Premises (Eviction of Unauthorised Occupants) Act does not itself provide for any period of limitation for taking action against any person in unauthorised occupation of any public premises. Mr. Das contended that the Government could not institute a suit after January 1, 1971, u/s 30 of the new Limitation Act as amended by Act X of 1969, inasmuch as the right under the 1958 Public Premises (Eviction of Unauthorised Occupants) Act, was not available to the Government in view of the fact that the Act was non est during all these period and the right had been extinguished before the validating Act of 1971 came to be enacted. In our view, there could be no extinguishment of right to property within the meaning of Section 27 of the new Limitation Act in this case. The case of Dindayal v. Rajaram Supra, relied on by Mr. Das, would itself go to indicate that a person claiming under a different right would not be debarred from suing even though his right under a special statute was barred. In that case, the widow of a protected tenant under the C.P. Tenancy Act (I of 1920) was in possession of the property as a trespasser. After the death of the widow the reversioners sued for possession claiming from the late owner. In that context the Supreme Court held that the widow held the property against the prospective reversioners as a trespasser and she did not have any right in those property as against the reversioners. Therefore, their right could not be held to be barred even before it accrued although the right under the C.P. Tenancy Act was held to be barred. In the context, the Supreme Court held that the principle underlying Section 27 of the Limitation Act, 1963, was of general application and was not confined to suits and applications prescribed.

12. The Public Premises (Eviction of Unauthorised Occupants) Act, 1958, came to be enacted with effect from September 16, 1958 and by the validating Act of 1971,

substantial provisions of this Act and all actions taken thereunder were protected. At the date when the Act was deemed to have come into force, i.e. September 16, 1958, the Plaintiff had not acquired any title by adverse possession and since the Act did not prescribe any period of limitation, the Petitioner company cannot be permitted to contend that the right of the Government would be extinguished u/s 27 of the new Limitation Act. The contention that in the interregnum between the decision of the Special Bench of this Court in Rajendra Prosad's case Supra on April 4, 1964 and the date of enactment of the 1971 Act, there was no valid law relating to eviction of unauthorised occupants from public premises in existence, cannot be regarded as sound in view of the Supreme Court's decision in Han Singh's case Supra validating the 1958 Act and all actions purported to be taken under it. It could not be contended and Mr. Das did not contend that Parliament had not the competency to legislate the 1958 Act or that the 1971 Act was constitutionally invalid. By the deeming provision of Section 1(3) of the 1971 Act all provisions of the 1971 Act except Sections 11, 19 and 20 were made effective from September 16, 1958 and the consequence was that, the validity of action done or taken is to be tested with reference to the provisions of the 1971 Act. This retrospective validation was accepted by the Supreme Court in Hari Singh's case Supra as constitutional. The decision of the Special Bench in Rajendra Prosad's case Supra and of Sabyasachi Mukharji J. in D. Macropolo and Co.'s case Supra on May 26, 1971, cannot therefore hold the held any longer. The fact that no action was taken by the Respondents prior to January 1, 1971, would not, in our view, affect the position inasmuch as the State did not have any right to institute a suit against the Petitioner company on and from September 16, 1958, by virtue of Section 15 of the 1971 Act. The question of adverse possession came to be considered by the Supreme Court in the case of [The Roman Catholic Mission Vs. State of Madras and Another](#), in connection with the resumption of certain Inams. The Supreme Court after referring to the decision in Raman Nair v. Vasudevan Namboodripad and Anr. ILR (1904) Mad. 16 and T.R.M.T. Subramaniam and Ors. v. Secretary of State AIR 1916 Mad. 696 held that there was no period of limitation prescribed by any law within which the Government alone should exercise its prerogative of imposing assessment on land liable to be assessed with public revenue and the same also was held applicable in respect of resumption in the case of Malwanam lands. The contention of Mr. Das that the company's right and title to the disputed property having been perfected before the Act of 1971 became law or that the said Act did not directly or indirectly provide for taking away of vested rights could not be accepted, for the 1971 Act not only validates all actions taken under the old Act, but it also debars the Collector from bringing a suit retrospectively. In view of what has been discussed earlier, this contention of Mr. Das cannot be accepted as sound and is, accordingly, rejected. That being the position and no limitation being prescribed in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Mr. Das's contention that the application was barred by limitation cannot, therefore, be accepted. In the result, therefore, this application fails and the Rule is discharged.

13. Let operation of this order remain stayed for six weeks.

Chittatosh Mookerjee J.

14. I agree that this Rule should be discharged.