B.C. Shaw Vs The Union of India

Court: Calcutta High Court

Date of Decision: Sept. 16, 2014

Acts Referred: Public Premises (Eviction of Unauthorised Occupants) Act, 1971 â€" Section 1(3), 11, 19, 2(e), 20

Citation: (2015) 5 CHN 1

Hon'ble Judges: D. Datta, J

Bench: Single Bench

Advocate: Sagar Bandyopadhyay, Soma Ghosh and Piyush Meharia, Advocate for the Appellant; Malay Kumar Das and Anirban Datta, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Dipankar Datta, J.
The challenge in this writ petition, presented on May 14, 2014, is to an order of eviction dated March 10, 2014,

passed by the Estate Officer, the third respondent, in a proceeding initiated under the Public Premises (Eviction of Unauthorised Occupants) Act,

1971 (hereafter the 1971 Act). By the impugned order, the third respondent recorded a satisfaction that the plots of land that are the subject

matter of the proceeding (hereafter the said plots) belong to the Eastern Railway administration and that the petitioner is in occupation thereof

without any authority and, thus, not only liable to be evicted but also liable to pay rent/damages for the period of unauthorized occupation of the

said plots till it vacates the same.

2. The writ petition was considered first on June 4, 2014 for admission. Since Section 9 of the 1971 Act provided a remedy to the petitioner to

question the correctness of the order dated March 10, 2014 in an appeal before the District Judge, I had observed that the petitioner should be

relegated to the appellate remedy. Responding to such observation, Mr. Bandyopadhyay, learned advocate for the petitioner contended that the

jurisdiction to initiate the proceeding in terms of the provisions of the 1971 Act is in question and, therefore, the Court ought not to relegate the

petitioner to the appellate remedy.

3. Mr. Bandyopadhyay was allowed to argue the point of jurisdiction of the third respondent to initiate the proceeding under the 1971 Act,

notwithstanding the fact of presentation of this writ petition beyond the period stipulated for filing an appeal u/s 9 thereof and I propose to dispose

of such point by this judgment.

4. According to Mr. Bandyopadhyay, the said plots originally belonged to Bengal Assam Railway and were allotted in favour of the predecessor-

in-interest of the petitioner as a measure of economic rehabilitation in 1942 by a memorandum of agreement. Although with the nationalization of

the railway the said plots became the property of the Central Government, the relationship between the railway and the petitioner continued to be

governed by the Transfer of Property Act (hereafter the 1882 Act) and the 1971 Act which was enacted much later could not have been pressed

into service for the purpose of securing the eviction of the petitioner having regard to the decision of the Supreme Court reported in Suhas H.

Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer, and, therefore, initiation of the proceeding being without jurisdiction, it is the

solemn duty of the Court to undo the legal wrong to which the petitioner has been subjected.

5. It was also urged by Mr. Bandopadhyay by referring to a previous writ petition of the petitioner, which is pending, that the third respondent

ought not to have commenced and continued the proceeding without obtaining the leave of this Court.

6. The only point that arises for consideration in view of the decision in Suhas H. Pophale (supra) and the pending writ petition is, whether the

proceeding initiated against the petitioner under the 1971 Act ought to be interdicted for want of jurisdiction.

7. Having heard the learned advocates appearing for the parties, I have no hesitation to hold that the contention raised on behalf of the petitioner is

without merit and the writ petition deserves dismissal without even calling upon the respondents to file an affidavit placing on record their version.

8. Since part of the claim of the petitioner rests wholly on the law laid down in Suhas H. Pophale (supra), it would be useful to consider the facts of

that case and the dictum of the Supreme Court bearing in mind such facts. The Indian Mercantile Insurance Co. Ltd. (hereafter the IMICL) had

inducted a tenant, Mr. Eric Voller (hereafter Mr. Voller) in the premises in question (hereafter the said premises). A leave and license agreement

was executed on December 20, 1972 by and between Mr. Voller and Dr. Suhas H. Pophale (hereafter the appellant) in pursuance whereof the

appellant was put in exclusive possession of such premises initially for a period of two years. The owner of the premises i.e. the IMICL did not

object to the appellant being delivered exclusive possession and the general manager thereof accepted the appellant as a tenant only for residential

purpose. The appellant started paying rent to the IMICL. On March 14, 1973, the appellant sought for permission of the general manager to use

the said premises for his clinic whereupon the general manager on April 18, 1973 conveyed that the IMICL would have no objection to the change

of user, provided the Municipal Corporation of greater Mumbai gave its no objection. On or about January 1, 1974, the IMICL merged into the

Oriental Insurance Company Ltd. (hereafter the respondent), a Government company. A notice dated July 12, 1980 was issued by the respondent

to Mr. Voller terminating his tenancy and, thereafter, a suit for eviction was instituted against Mr. Voller and the appellant in the Court of Small

Causes at Bombay under the provisions of the then applicable Bombay Rents, Hotel and Lodging Houses Rents Control Act, 1947. During the

pendency of the suit, the appellant by his letter dated November 22, 1984 requested the respondent to regularize his tenancy as a statutory tenant;

however, the appellant was served notices under Sections 4 and 7 of the 1971 Act whereby he was called upon to show cause why he should not

be evicted from the said premises and to pay damages for unauthorized occupation. Failure of the appellant to vacate the said premises led to

initiation of proceeding by the Estate Officer under the 1971 Act, whereafter the respondent withdrew the suit on February 22, 1994. The

proceeding under the 1971 Act culminated in passing of an order dated May 28, 1993 by the Estate Officer directing eviction of Mr. Voller and

the appellant, and also for recovery of damages @ Rs. 6750 per month from September 1, 1980. An appeal u/s 9 of the Act preferred by the

appellant resulted in a remand but on remand the order of eviction was maintained. The Bombay High Court was then approached with a writ

petition, which was dismissed on June 7, 2010 with costs. It was the dismissal order that was the subject matter of the civil appeal before the

Supreme Court.

9. The principal contention of the appellant from the very beginning was that his occupation of the said premises was protected under the newly

added Section 15A of the Bombay Rent Act with effect from February 1, 1973 i.e. prior to the respondent acquiring title of the said premises from

January 1, 1974; therefore, invocation of the provisions of the 1971 Act for treating him as an unauthorized occupant and for seeking an order of

eviction were without jurisdiction.

10. The question that arose for consideration of the Supreme Court appears from paragraph 1 of the decision, reading as follows:

1. Leave granted. This appeal by special leave raises the question as to whether the rights of an occupant/licensee/tenant protected under a State

Rent Control Act (Bombay Rent Act, 1947 and its successor the Maharashtra Rent Control Act, 1999, in the instant case), could be adversely

affected by application of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (""the Public Premises Act"", for short)? This

question arises in the context of the eviction order dated 28-5-1993 passed by Respondent 2, Estate Officer of the first respondent, invoking the

provisions of the Public Premises Act with respect to the premises occupied by the appellant since 20-12-1972. The eviction order has been

upheld by the Bombay High Court in its impugned judgment dated 7-6-2010, (2010 4 Bom CR 279), rejecting the Writ Petition No. 2473 of

1996 filed by the appellant herein.

11. According to Mr. Bandopadhyay, the decision in Suhas H. Pophale (supra) clearly lays down the law that the 1971 Act has no application in

respect of public premises prior to September 16, 1958 i.e. the date from which it was made operational and since the predecessor-in-interest of

the petitioner has been in occupation of the said plots since 1942, it is only the 1882 Act that would be applicable between the parties and the

relationship determined thereunder, and if the petitioner is sought to be evicted, action under the 1882 Act is the only remedy available to the

railway administration. Heavy reliance has been placed by him on the following observations:

64. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act,

but it is so covered from 16-9-1958, or from the later date when the premises concerned become public premises by virtue of the premises

concerned vesting into a government company or a corporation like LIC or the nationalised banks or the general insurance companies like

Respondent 1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself.

Firstly, those who are in occupation since prior to 16-9-1958 i.e. prior to the Act becoming applicable, are clearly outside the coverage of the

Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premises concerned belonging to a government corporation

or a company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the

Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such

premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be

open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such

proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other

rights such as transmission of the tenancy to the legal heirs, etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and

also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum

provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

(underlined portion highlighted by Mr. Bandopadhyay)

12. A close reading of the decision in Suhas H. Pophale (supra) would reveal that the Supreme Court allowed the appeal only on the ground that

merger of the IMICL into the respondent became effective from January 1, 1974 and it is on and from that date that the said premises became

''public premises'' belonging to a Government company; and since the appellant had been inducted in the said premises prior thereto, i.e. on

December 20, 1972 to be precise, the appellant was entitled to the protection of the local rent laws in an action for his eviction from the said

premises.

13. It would be of some worth to note in this connection certain relevant observations made by the Supreme Court in the decision in Suhas H.

Pophale (supra) based whereon the above findings have been reached, reading as follows:

33. The question that is required to be examined, however, is whether the tenants as well as licensees, who are protected under the State law,

could be called unauthorised occupants by applying the Public Premises Act to their premises as ''belonging'' to a government company, and if so

from what date. As we have noted earlier, to initiate the eviction proceedings under this statute, the premises concerned have to be public premises

as defined u/s 2(e) of the Act. Besides, as far as the present premises are concerned, it is necessary that they must belong to a government

company. The definition of ''public premises'' will, therefore, have to be looked into, and it will have to be examined as to from what date the

premises can be said to be belonging to a government company.

34. Section 19 of the Public Premises Act, 1971 repeals the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. While repealing

this predecessor Act, Section 1(3) of the 1971 Act lays down that it shall be deemed to have come into force on the 16th day of September, 1958

except Sections 11, 19 and 20 which shall come into force at once (i.e. from 23-8-1971). Section 11 deals with offences and penalties. Section

19 is the repealing section as stated above, and Section 20 is the section on validation of any judgment, decree or order of any competent court

which might have been passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The conjoint reading of Section 1(3)

and Section 2(e) defining public premises will be that although the provisions with respect to eviction under the Act of 1971 are deemed to have

come into force from 16-9-1958, they will apply to the premises concerned only from the date when they become public premises.

38. In the present matter we are concerned with the question, whether the respondents could resort to the provisions of the Public Premises Act at

a time when the merger of the erstwhile Insurance Company into the first respondent was not complete. The question is whether taking over of the

management of the erstwhile Company can confer upon Respondent 1 the authority to claim that the premises belong to it to initiate eviction

proceedings under the Public Premises Act, to the detriment of an occupant who is claiming protection under a welfare enactment passed by the

State Legislature.

43. In the present case, it must also be noted that the appellant is seeking protection u/s 15A of the Bombay Rent Act, which has a non obstante

clause. Respondent 1 is undoubtedly not without a remedy, and it can proceed to evict an unauthorised occupant under the Rent Control Act, if an

occasion arises. It can certainly resort thereto until the managerial right fructifies into a right of ownership. However by enforcing a speedier

remedy, a welfare provision cannot be rendered nugatory. The provisions of the two enactments will have to be read harmoniously to permit the

operation and co-existence of both of them to the extent it can be done. Therefore, the term ''belonging to'' as occurring in the definition of ''public

premises'' in Section 2(e) will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the government

company at the relevant time. In the facts of this case what we find is that the appellant had the status of a deemed tenant under the Bombay Rent

Act, 1947 prior to the premises concerned ""belonging to a government company"" and becoming public premises. If at all he had to be evicted, it

was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor

Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act.

54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellant''s status as a deemed tenant was

accepted under the State enactment, and therefore he could not be said to be in ""unauthorised occupation"". His right granted by the State

enactment cannot be destroyed by giving any retrospective application to the provisions of the Public Premises Act, since there is no such express

provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until

they belonged to Respondent 1 i.e. until 1-1-1974. The corollary is that if Respondent 1 wanted to evict the appellant, the remedy was to resort to

the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and

not by resorting to the provisions of the Public Premises Act.

(underlining for emphasis by me)

14. Pertinently, the relevant provisions of the West Bengal Premises Tenancy Act, 1956 and West Bengal Premises Tenancy Act, 1997 exclude

premises belonging to the Central Government from its coverage. It is, therefore, clear that the said two enactments would have no application to

the said plots. The present case is, thus, significantly different from the one considered in Suhas H. Pophale (supra).

15. The legislative history of the 1971 Act has been discussed in extenso by the Supreme Court in its decision reported in Ashoka Marketing Ltd.

and another Vs. Punjab National Bank and others, (see paragraphs 6 to 8). While referring to the objects of the 1971 Act, it was observed as

follows:

63....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.

64....The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the 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.

16. The contention of Mr. Bandopadhyay proceeds on a total misconception of the objects that were sought to be achieved by enacting the 1971

Act, and its earlier version that was enacted in 1958. The 1971 Act was enacted for the purpose of expediting recovery of public premises which

were unauthorisedly occupied and/or in respect whereof rent/occupation charges were not being paid by the occupants. The process of securing

eviction of an unauthorised occupant of a public premises by taking recourse to the general laws was cumbersome and to provide for a summary

procedure to secure eviction of such unauthorised occupant of public premises, the predecessor Act of the 1971 Act was conceived and enacted.

The 1971 Act requires a finding to be arrived at by the Estate Officer that the occupant is an unauthorized occupant and that he is liable to be

evicted for the reasons mentioned in his order. The 1971 Act also provides for a summary procedure for eviction of an unauthorized occupant.

Neither the provisions of the 1971 Act nor the objects and reasons for its enactment permit the Court to construe the 1971 Act as empowering the

Estate Officer to initiate proceeding only in respect of those cases where tenancy/lease were created in respect of ''public premises'' after

September 16, 1958. If the Court were to hold so, no proceeding could legitimately have been initiated on September 16, 1958 itself, if the

situation so warranted, and the predecessor Act would have restricted application only in respect of agreements or arrangements by which the

public premises were let/leased out post that date.

17. I have not been able to locate any law laid down in Suhas H. Pophale (supra) to the extent that the 1971 Act would have no application in

cases where the tenancy/lease in respect of ''public premises'' belonging to the Central Government came into existence prior to September 16,

1958. That was really not an issue there and it is axiomatic that the fact situation did not warrant such a finding being returned in that regard.

18. Now, adverting attention to paragraph 64 of the decision in Suhas H. Pophale (supra), it is noticed that the two categories of occupants for

whom exclusion of coverage of the 1971 Act has been adumbrated therein are the ""occupants of (sic premises of) these public corporations"", and

not the occupants of premises belonging to the Central Government. It is settled by a catena of judicial pronouncements that a line here or there in

a judgment of a superior court need not be read as a statute. In fact in the said decision the learned Judge referred to the oft-quoted saying that a

decision is an authority for what it decides and not what can logically be deduced therefrom. The Supreme Court carved out exceptions applicable

to public premises belonging to public corporations, which cannot be extended to public premises belonging to the Central Government. The

decision in Suhas H. Pophale (supra) is clearly distinguishable and does not, therefore, aid the petitioner.

19. There is also no merit in the contention of Mr. Bandyopadhyay that it is only the relevant provisions of the 1882 Act that could be invoked by

the railway administration for securing the eviction of the petitioner. If his contention were accepted, I repeat the Court would have to lay down the

law that even though a tenancy or a lease was created by the landlord/lessor in respect of a public premises before September 16, 1958, the 1971

Act would not be applicable to such public premises on the specious ground that the 1971 Act itself had not been enacted on the date the

tenancy/lease was created. That could not have been the legislative intention and acceptance of the contention raised would militate against the

object of the 1971 Act.

20. The other point of assumption of jurisdiction by the third respondent, which needs to be dealt with having regard to the pleadings in the writ

petition and the documents annexed thereto, is this. According to the petitioner, a previous writ petition [W.P. 14928(W) of 2005] had been

presented before the Court challenging arbitrary and unreasonable enhancement of occupation charges by the railway administration. The dismissal

of the said writ petition for default was cited as one of the reasons for initiation of proceeding under the 1971 Act. However, the said writ petition

has since been restored to its original file and number and a point appears to have been taken in paragraphs 36 and 37 of the writ petition to the

effect that no proceeding under the 1971 Act could have commenced without a decision on the merits of the said writ petition being given by this

Court. From the orders passed on such earlier writ petition (pages 69 to 79), it does not appear that the respondents therein were restrained from

recovering occupation charges in terms of the impugned enhancement. In fact, from the order admitting the writ petition dated September 5, 2005,

it appears that payment of license fee under the enhanced rate was to abide by the result of the writ petition. There is no order restraining the

respondents therein from initiating a proceeding under the 1971 Act for non-payment of occupation charges at the enhanced rate. I, therefore, hold

that this point has been urged only to be rejected.

21. For the reasons aforesaid, there is no merit in this writ petition. It stands dismissed, without any order for costs.

22. The period during which this writ petition was pending on the file of this Court shall be excluded for the purpose of computing the period of

limitation to approach the District Judge u/s 9 of the Act. In such appeal the petitioner shall be entitled to raise all points in accordance with law,

except those which have been dealt with in this judgment.

Urgent photostat certified copy of this judgment and order, if applied for, shall be furnished to the applicant at an early date.

Later:

Mr. Bandyopadhyay, learned advocate for the petitioner prays for stay of the order. Mr. Das, learned advocate for the Railway administration

submits that no order of stay may be passed because no further action in terms of the order of eviction shall be taken till 29th September, 2014. In

view of such undertaking, I do not consider it necessary to pass any order of stay.