

State Of Rajasthan vs Padmavati Devi (Smt) (Dead) By Lrs. And ... on 6 April, 1995

Equivalent citations: JT 1995(5)SC 481, 1995(2)SCALE 619, 1995SUPP(2)SCC 290, 1995(2)UJ 69(SC), AIR ONLINE 1995 SC 758

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Bench: S.C. Agrawal, Sujata V. Manohar, S. Saghir Ahmad

JUDGMENT

S.C. Agrawal, J.

1. This appeal by the State of Rajasthan arises out of proceedings initiated by the Tehsildar, Tehsil Jaipur, under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act') in respect of land measuring about 15 bighas falling in Khasra Nos. 477 and 488 of Village Bhojpura, which is now part of Jaipur city. There are houses and shops on the said land and the persons in occupation of the same were paying rent to respondent No. 1, Smt. Padmavati Devi. By order dated January 16, 1968 the Tehsildar directed that notices be sent to all these persons asking them to deposit rent in the Tehsil and also for issuing a notice to respondent No. 1 to show cause as to how she has been letting the premises in the "Sawai Chak" (Government land) and selling pieces of the land. In pursuance of the said order a notice dated January 30, 1968 was served on respondent No. 1. In response to the said notice respondent No. 1 filed a reply on March 19, 1968 stating that the land is not "Sawai Chak" and that she is the owner of the land and has been in continuous possession of the same since long and that no proceedings could be taken against her under Section 91 of the Act and that she has a right to realise the rent in respect of the premises constructed on the said land. By order dated December 8, 1969 the Tehsildar rejected the said objections of respondent No. 1 and held that the land has been entered as "Sawai Chak" in the revenue records and that the rent according to the schedule be realised from the tenants and that if respondent No. 1 has got right of any kind then she should get her right settled by the court of law. The appeal filed by respondent No. 1 against the said order of the Tehsildar was dismissed by the Collector, Jaipur District, by order dated February 1, 1971. On further appeal the Revenue Appellate Authority by judgment dated July 1, 1971 set aside the orders of the Tehsildar and the Collector. The said order of the Revenue Appellate Authority was set aside, on revision, by the Board of Revenue, by judgment dated June 18, 1973, and it was directed that respondent No. 1 be evicted from the land forthwith under Section 91 of the Act and the construction made thereon be suitably dealt with under the said section. Respondent No. 1 filed a writ petition [Civil Writ Petition No. 2226/73] against the said judgment of the Board of Revenue which was allowed by the Rajasthan High Court

by judgment dated August 27,1979. Hence this appeal.

2. Under Section 91 of the Act a person in occupation of Government land without lawful authority is to be regarded as a trespasser and he can be summarily evicted from such land by the Tehsildar after serving on such person a notice requiring him to show cause why he should not be so evicted therefrom.

3. in the instant case, Section 91 of the Act has been invoked on the basis that the land is recorded as "Sawai Chak" in the revenue records for the year Samvat 2015 (1958 A.D.) and that in the Parcha Khatani dated February 9, 1953 that was given to Praduman Ojha, the husband of respondent No. 1, there is no mention of this land.

4. Respondent No. 1 has claimed her title over the land in dispute on the basis of Patta executed by the Government of the former State of Jaipur on October 10, 1909 in respect of 70 bighas of lands, including the land in dispute, whereby a lease for a period upto Samvat 1994 (1937-38 A.D.) was granted to her husband, Praduman Ojha. The case of respondent No. 1 is that before the expiry of the period of the lease under the said patta the Government of the former State of Jaipur issued Tenancy Rules for Chakbandi Villages on December 23, 1931 which were brought into force with effect from September 1, 1931 and that under Rule 2 of the said rules a right was conferred on every tenant to occupy his holding for his life time and in view of Rule 4, on the death of a tenant, his heir was entitled to retain possession of the holding for a period of five years from the first day of September next following the date of the tenant's death, on payment of the rent payable by the deceased tenant and on the expiry of four out of the five years mentioned above, the Tehsildar was required to report for the orders of the Nazim whether in his opinion the heir should or should not be permitted to retain the holding for his life. The case of respondent No. 1 is further that by virtue of the said rules her husband, Praduman Ojha, was entitled to continue as a tenant during his life time and within his life time the Government of the former State of Jaipur issued a notification dated September 17, 1945 whereby all the tenants who had completed 12 years of possession in Samvat 2000 (1943 AD) were deemed to be tenants of old standing and were not liable to ejectment. Respondent No. 1 also claims that by virtue of Section 8 of the Jaipur Tenancy Act, 1945 her husband, Praduman Ojha became a Khatedar tenant in respect of the said land because on the date of the commencement of the said Act he was in occupation of the land in dispute as a tenant. Respondent No. 1 has also placed reliance on Section 8(1) of the Jaipur State Grants Land Tenures Act, 1947 and the Rajasthan Tenancy Act, 1955 and has come forward with the case that in view of the said enactments Praduman Ojha acquired khatedari rights in respect of the land and that after the death of Praduman Ojha, on May 14, 1965, respondent No. 1, as his wife, has succeeded to the rights of her husband in the land and she could not be said to be a trespasser being in unauthorised occupation of the said land. Respondent No. 1 has also placed reliance on the "Misal Haquiyat (Settlement)" of village Bhojpura for the year Samvat 1987 (1931 A.D.) where the name of Pt. Madhusudanji, the father-in-law of respondent No. 1, is entered as the cultivator in respect of the land in dispute. In addition she has placed reliance on letter dated November 15, 1951, from the Government of Rajasthan, Revenue Department, directing that respondent No. 1 may continue to enjoy the income derived out of the garden and 15 bighas of land, as she has been deriving heretofore. respondent No. 1 has also placed reliance on the judgment of the Additional Munsif

Magistrate No. 2, Jaipur City, dated November 30, 1971 in Civil Suit No. 459 of 1969, filed by respondent No. 1 against the Urban Improvement Trust, Jaipur for permanent injunction in respect of lands including the land in dispute.

5. The appellant has, however, disputed the said claim of respondent No. 1. The case of the appellant is that on the expiry of the lease under the patta dated October 10, 1909 Praduman Ojha ceased to be a tenant of the lands covered by the Patta. It has also been asserted that the Tenancy Rules of 1931 were not applicable to the land in dispute and in any event Praduman Ojha could not avail the benefit of the said rules since he was not a tenant cultivating the lands but was only an Ijaredar having a right to collect the rent. It has also been asserted on behalf of the appellant that possession of the land was taken from Praduman Ojha after the expiry of the lease under the said patta in Samvat 1994 (1937-38 A.D.) and he was not in possession in Samvat 2000 (1943 A.D.) and, therefore, he was not entitled to the benefit of notification dated September 17, 1975 or of the provisions of the Jaipur Tenancy Act, 1945, Jaipur State Grants Land Tenures Act, 1947 and the Rajasthan Tenancy Act. It has also been asserted that land in dispute had been acquired by the State under the Jaipur Land Acquisition Act. As regards the judgment dated November 30, 1971 it is stated that the suit was for injunction only and moreover the said judgment was not binding on the appellant.

6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in *Government of Andhra Pradesh v. Thummala Krishna Rao and Anr.* 1982 (3) SCR 5000, has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bonafide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bonafide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law.

7. In the present case, respondent No. 1 has put forward a bonafide claim about her right to remain in occupation over the land. The said claim raises questions involving applicability and interpretation of various laws and documents as well as investigation into disputed questions of fact involving recording of evidence. These matters could not be satisfactorily adjudicated in summary proceedings under Section 91 of the Act and can be more properly considered in regular proceedings in the appropriate forum,

8. In view of the fact that these proceedings have been pending for the past 25 years, we were not disinclined to consider the claim of respondent No. 1 that she is entitled to remain in occupation of

the land. But we find that many of the questions that arise for such determination require an investigation into facts and in the absence of the factual foundation we are not in a position to deal with the same and record our findings. We, therefore, refrain from expressing our views on the said questions.

9. In the circumstances it is held that proceedings under Section 91 of the Act could not be validly initiated against respondent No. 1 and as a result the orders that have been passed in these proceedings by the Tehsildar, the Collector, the Revenue Appellate Authority and the Board of Revenue are set aside. The impugned judgment of the High Court, insofar as it quashes the order of the Board of Revenue dated June 18, 1973 is maintained but the further direction confirming the order of the Revenue Appellate Authority dated January 1, 1971 is set aside. The findings and observations of the High Court in the impugned judgment on the matters in controversy between the parties are also set aside. It will be open to the appellant to pursue the appropriate remedy available in law before the competent forum for establishing its rights over the land in question.

10. The appeal is disposed of accordingly. No order as to costs.