Jai Dutt vs State Of U.P. & Ors on 26 October, 1978

Equivalent citations: 1979 AIR 1303, 1979 SCC (2) 586, AIR 1979 SUPREME COURT 1303, 1979 (2) SCC 586, 1979 ALL. L. J. 714, 1978 UJ(SC) 940, 1979 UJ (SC) 940, (1979) 1 SCWR 219, (1979) 5 ALL LR 27, (1979) 2 SCR 175 (SC), (1979) 1 RENT C R 204

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, V.D. Tulzapurkar, A.P. Sen

PETITIONER:
JAI DUTT

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT26/10/1978

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
TULZAPURKAR, V.D.
SEN, A.P. (J)

CITATION:
1979 AIR 1303 1979 SCC (2) 586
CITATOR INFO :
R 1984 SC1828 (2)

ACT:

U.P. Land (Eviction and Recovery of Rent & Damages) Act 1959, s. 3(1) and U.P. Tenancy Act 1939 s. 180(2)-Scope of-Appellant remained in occupation of banjar (barren) land for twelve years-Claimed ownership of land -No documentary evidence or rent receipts produced-Failure to take proceedings to evict-If would confer title on trespasser-Land Lying banjar-Lawful ownership lies with State.

A notice under s. 3(1) of the U.P. Land (Eviction and Recovery of Rent and Damages) Act, 1959 was issued by the Public Authority to the appellant on the ground that he was in unauthorised occupation of public land. The Public Authority rejected the appellant's claim that since he was in possession of the land for more than 12 years, he had acquired rights of a hereditary tenant under s. 180(2) of

the U.P. Tenancy Act, 1939. The appellant failed in his appeal to the District Judge and his writ petition under Art. 226 was rejected by the High Court.

HEADNOTE:

In appeal to this Court it was contended that the appellant had become a hereditary tenant under s. 180(2) of the Tenancy Act by reason of the fact that he had been in cultivator possession of the land for a number of years and no steps had been taken to evict him within two years of his entry into possession of the land, (2) that since he had been paying rent to the Government he was not in unauthorised occupation of the land and (3) failure of the Public Authority to refer the dispute to a Civil Judge under Section 7 of the Act vitiated the order of eviction

Dismissing the appeal,

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HELD: l(a) The appellant's claim was not that he lawfully entered into possession of the land but that he took possession without any grunt, settlement or leases from the owner. By claiming acquisition of a hereditary tenancy) under s. 180(2) he admitted that he had taken possession without any title anal without the consent of the land owner. 1180 C]

(b) The provisions of Section 2(18), 30, 180(2) of the Tenancy Act are to be construed in harmony with each other. So construed, a person occupying land belonging to the State Government, as a trespasser or without title or a person holding over after the revocation or cancellation of the lease, allotment or a grant in accordance with the condition thereof, cannot be "a tenureholder. . . from the State Government under the U.P. Act, 1939." within the meaning of Sec. 2(e)(i) of the Tenancy Act. There was thus no doubt that the land was "public land" within the meaning of the Eviction Act. [181 A-B]

(2) The obligation to refer the question whether or not the land is public land, under Section 7, is not basic but contingent. Although the Public Authority did not say in the phraseology of the statute that the objection raised by the
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appellant was prima facie baseless, yet, in substance, it well-nigh came to the same conclusion. It was, therefore, not obligatory for the authority to refer the question to the Civil Court. [181 F]

(3) The plea that the notice did not comply with the requirements of s. 3 of the Eviction Act and for that reason illegal had not been raised in the Courts below. It is not a pure question of law. The appellant has not produced a copy of the notice served on him. Tn the circumstances, the maxim omnia prae sumuntur vite essa acta will be attracted. It will be presumed that the purpose for which the appellant

was sought to be evicted was duly specified in the notices compliance with the requirements of s. 3(2). [182 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 484 of 1969.

From the Judgment and order dated 28-7-1967 of the Allahabad High Court in Special Appeal No. 352/67.

M. S. Gupta for the Appellant.

G. N. Dikshit and O. P. Rana. for the Respondents. The Judgment of the Court was delivered by SARKARIA, J. This is an appeal by certificate against a judgment, dated July 28, 1967, passed by the High Court of Allahabad in Special Appeal 352 of 1967. It arises our of these fact.

Jai Dutt, appellant, was in possession of public land bearing Survey Nos 230, 131A and 131B, with an aggregate area of 80 Bighas and 19 Biswas in the area of village Guljarpur PurraamSingh, Tehsil Kala chungi, Distt. Nainital. The Public Authority, Nainital; served a show cause notice, dated August 26, 1963, under Section 3(1) of the U.P. Land (Eviction and Recovery of Rent and Damages) Act, 1959 (here inafter called the Eviction Act) on the appellant for his eviction from this land on the ground that he was in its unauthorised occupation. The appellant contested the notice on the ground that he was in its possession for more than 12 years and had acquired the rights of a hereditary tenant in the land under Section 180(2) of the U.P. Tenancy Act, 1939 (for short, called the Tenancy Act). On these premises, the appellant contended that the land was not 'public land', and as such, the Eviction Act has no application and the notice was illegal.

By its order dated October 31, 1963, the Public Authority dismissed the objections, holding that the appellant "has not filed any documentary evidence to show that the land in dispute was allotted to him by a competent authority, while the documents filed on behalf of the State show that it is a public land and "the O.P. (appellant herein) is a trespasser thereon", and he is, therefore, liable to be evicted therefrom under Section 4(1) of the Eviction Act. The Public Authority further assessed Rs. 12/- as damages payable by the appellant.

Against this order of the Public Authority, Jai Dutt carried an appeal under Section S of the Eviction Act to the District Judge. The appeal was heard by the Additional District Judge, Kummaon-Nainital, before whom the appellant reiterated the contention that he had been in possession of the land in question for the preceding 12 years, and as such, had acquired the rights of a hereditary tenant thereon. There, the appellant seems to have further contended that he had been paying "rent" for his occupation of the land He appears to have shown some receipts also to the Additional District Judge.

The Additional District Judge negatived all the contentions and dismissed the appeal.

The appellant then filed a writ petition under Article 226 of the Constitution before the High Court to impugn the orders of the Public Authority and of the Add. District Judge, inter alia, on the ground that since he had been paying rent for the land which has been in his cultivating possession for a number of years preceding the eviction proceedings, he could not be said to be all 'unauthorised occupant', but a hereditary tenant under Section 180(2) of the Tenancy Act The learned Single Judge of the High Court, who heard the writ petition, rejected this contention with the observation that 'the Khatauni of 1368 Fasli entered the petitioner's possession over the disputed plots as ranging from 1 to 6 years. The oral evidence led by the petitioner does not outweigh the force of the entries in the Khatauni. The petitioner, therefore, did not acquire any title under Section 180 of the U.P. Tenancy Act before 1953." The learned Single Judge further observed that the decision of the Division Bench of that High Court in Shri Chandra v. State of U.P. & Ors. (W.P. No. 3277 of 1966 decided on 13-2-

67) was applicable to the case and the land in dispute will be public land and the possession of the appellant unauthorised. In the result, the writ petition was dismissed with costs. The appellant's special Appeal was dismissed by a Division Bench of the High Court on July 28, 1967. In the meantime, the Eviction Act was successfully challenged before the High Court in Writ Petitions 3755 and 3756 of 1962 which were decided on May 24, 1968.

Keeping in view the value of the subject matter which exceeded Rs. 20,000/- and the question of the Constitutional validity of the Eviction Act, the High Court granted a certificate under Article 133 (l)(a) and (c) of the Constitution, that the case was fit for appeal to this Court. Hence, this appeal.

Mr M. S. Gupta, appearing for the appeal, has now given up the challenge to the Constitutional validity of the Eviction Act on the ground of its being violative of Article 14 of the Constitution, because this ground of attack no longer survives in view of this Court's judgement in Maganlal Chhagganlal v. Municipal Corporation of Greater Bombay & ors.(1) He, however, sought to make out these points:

> (i) The appellant had been in cultivatory possession of the land for a number of years and no action for his eviction was taken for a long time and since no steps were taken by the Government to evict him evict two years of his entry into possession, he became a here ditary tenant under Section 180(2) of the Tenancy Act.
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> (ii) Even if the appellant did not acquire the rights of a hereditary tenant in the disputed land, he had by long possession acquired the rights of a tenant or tenure-holder of any other kind under the Government. He has been paying rent in respect of the land to the Government, and, as such, was not in unauthorised occupation of the land. Since the land was held by the appellant as a tenant, it did not fall within the definition of 'public land' given in Section 2(a) of the Eviction Act.
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> (iii) Since the objections raised by the appellant in response to the show-cause notice issued under Section 3(1) of the Eviction Act were substantial, the Public Authority was bound to refer the dispute to the Civil Judge under Sec.

7 of the Eviction Act. Its failure to do so, vitiates the code of eviction passed by it.

(iv) one of the prerequisites of taking action under Section 3(1) of the Eviction Act is that title Public land is required "for one or more public purposed of this Act". Sub-section (2) (a) of Section 3 requires that the notice shall "specify the grounds on which the order of eviction is proposed to be made". The impugned notice issued by the Public Authority did not comply with these, requirements of Section 3 and was therefore, illegal.

Points (i) and (ii):

> Mr. Gupta did not seriously press the first point, obviously because it was without substance. It may be noted that Section 180 of the Tenancy Act is subject to the, restrictions contained in Section 30 of that Act, which provides:
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> "Notwithstanding anything in Section 29, hereditary rights shall not accrue on.....
>
> (1) [1975] I S.C.R. 1.
>
> (3) land acquired or held for a public purpose or work of public A utility. ." Even if it is assumed that the appellant was at the material time in occupation of this land for more than two years, he would not acquire rightmost of a hereditary tenant under Section 180(2). Omission of the State Government, therefore, to institute a suit under Section 180(l) within the prescribed period of limitation would not bring into existence relationship of landlord and tenant between the Government and the appellant, and the letter's possession would remain, as it was at its inception, that of a trespasser or unauthorised occupant.

This point is further highlighted by the definition of "unauthorised occupation" given in clause (h) of Section 2 of the Eviction Act, which states:

> "Unauthorised occupation means occupation of a public land by any person without the authority of the owner for such occupation and includes its continued occupation after the expiry of the period of allotment, lease or grant.. anything contained in.. O.P. Tenancy Act, 1939.. to the contrary notwithstanding." n In the context, the definition of "Public Land" given in Section 2(e) of the Eviction Act may also be seen. This definition, so far as material for our purpose, states:
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> "Public land means land belonging to or owned by the State Government but does not include land-
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> (i) for the time being held by a tenure-holder for the State Government under the U.P. Tenancy Act, 1939.
>
> (ii) ..... ."

Section 2 (b) of this Act defines "Lease" to mean "a lease as defined in Section 105 of the Transfer of Property Act, 1882".

There is neither any factual nor legal basis for the appellant's contention that he had acquired some kind of tenure as a tenant by remaining in twelve years' continuous possession of the land in dispute. As noticed by Additional District Judge and the learned Single Judge of the High Court, the Khasra tendered in evidence before the Public Authority, shows that in the years 1362, 1363, 1365 and 1367 Fasli (which we are told roughly corresponds to 16655-56, 1956-57, 1958-59 and 1960-61 A.D.) the land in dispute was lying Banjar (barren). That is to say, in the years 1955 to 1961, the appellant was not in occupation of this land. During these years, when the land was lying Banjar, its possession would be presumed to be of the lawful owner, viz., the State Government. The appellant's possession over the land is shown for the first time in Khasra of the year 1368 Fasli (roughly corresponding to 1961-62) as "bila tasfia, Ziman 10-Ka". Same is the position shown in the Khatauni 1368 Fasli "Bil Tasfia" obviously means "without settlement or allotment or grant". The documentary evidence from the revenue records, accepted by the courts below, had thus discounted the appellant's claim that he had been in cultivator possession of the disputed land for 12 years preceding the issue of the impugned notice under Section 3(1).

It was never the case of the appellant that he had lawfully entered into possession of the land. On the contrary, his case was that he took possession of the land without any grant, settlement or lease from the land owner. Indeed, by clanging acquisition of a hereditary tenancy under Section 180(2), he admitted that he had taken possession without any title and without the consent of the land-owner.

Mr. Gupta has been unable to show that the appellant's occupation of the land even for one or two years preceding the notice under Section 3(1) was that of a "tenure holder"

> within the contemplation of the saving sub-clause (i) in the definition of "public land`' in Section 2(e) of the Eviction Act.
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> The appellant's contention that he has been paying rent for this land does not appear to be well-founded. No such plea appears to have been raised before the Public Authority, much less was any evidence, such as a rent receipt produced there. The Public Authority has nob d in its order dated October 3, 1963, that the O.P. (appellant herein) did not produce any documentary evidence to show that he was holding the land with title permission of or under allotment from any competent authority. Nor was this plea agitated or pressed before the learned Single Judge or the Division Bench of the High Court. Even now, before us, counsel has not referred to any rent receipt or like document on record showing that the appellant had paid rent in respect of this land to the Government for the period of his possession preceding the notice under Section 3 (1) of the Eviction Act. Even the Additional District Judge, to whom for the first time in appeal, some "rent receipts"

appear to have been shown by the appellant, has not recorded any clear-cut finding that those documents evidence the receipt of rent by the Government in respect of the disputed land for the relevant period preceding the issue of notice under Section 3(1). This being the situation, in this appeal arising out of writ proceedings under Article 226, we decline to embark upon a speculative examination of this argument for which there is no firm factual foundation and was never raised before the Public Authority, nor pressed before the High Court.

Be that as it may, the provisions of Sections 2(18), 30, 180(2) of the Tenancy Act on the one hand and Sections 2(b), 2(e)(i) and 2(h) of the Eviction Act on the other, are to be construed in harmony with each other. So construed, a person occupying land belonging to the State Government, as a trespasser or without title or a person holding over after the revocation or cancellation of the lease, allotment or grant in accordance with the conditions thereof, cannot be considered "a tenure-holder from the State Government under . . . the U.P. Tenancy Act, 1939" within the meaning of Section 2(e)(i) of the Tenancy Act. There was thus no doubt that the disputed land was "public land" and the appellant was in its "unauthorised occupation" within the meaning of the Eviction Act.

Point (iii) :

> Section 7, (so far as material) reads thus:
>
> "7(1) Where an objection is taken on the ground that the disputed land is not public land and the Public Authority is of the opinion that the objection is not prima facie base- less or frivolous, he shall refer the question to the Civil Judge, having jurisdiction, stating the facts of the case and the,- point in issue."

From a plain reading of Section 7(1), extracted above, it is clear that the obligation to refer the question whether or not the land is public land, is not absolute, but contingent. It arises only if the Public Authority is of the opinion that objection is not prima facie baseless or frivolous. In the instant case, a perusal of the impugned order would show that although the Public Authority did not say in the phraseology of the Statute that the objection raised by the appellant was prima facie "baseless", yet in substance, ._ unhesitatingly came well-nigh to the same conclusion when he observed:

> "The O.P.. has not filed any documentary evidence to show that the land in dispute was allotted to him by a competent authority. The documents filed on behalf of the State show that the land in dispute is a public land and the C.P. is a trespasser thereon."

We are therefore of opinion that there was no infraction of Section 7.

Point (iv):

> This point was not raised before the Public Authority, nor in any of the Courts below. It is sought to be raised for the first time in this Court, now. We decline to entertain it

at this state. It is not a pure question of law which could be decided on the basis of material already on record. The appellant has not produced even the copy of the notice under Section 3 (1) which was served upon him and is supposed to be in his possession. In the circumstances of the case, the maxim omnia praesumuntur rite essa acta will be attracted. It will be presumed that the public purpose of the Act for which the appellant was sought to be evicted from the public land, was only specified in the notice in compliance with the requirement of sub-section (2) of Section 3 of the Act.

Thus, all the contentions advanced by the appellant are devoid of merit.

In the result, the appeal fails and is dismissed with costs.

P.B.R. Appeal dismissed.