

Punjab-Haryana High Court

M.S. Oberoi vs Union Of India (Uoi) Through ... on 25 February, 1970

Equivalent citations: AIR 1970 P H 407

Author: B R Tuli

Bench: B R Tuli

ORDER Bal Raj Tuli, J.

1. This petition under Arts, 227 and 228 of the Constitution of India is directed against the order of the District Judge, Chandigarh, dated July 30, 1969, dismissing the application of the petitioner under Section 113 of the Code of Civil Procedure for reference of the case to this Court on the ground that questions relating to the interpretation of the Constitution were involved.

2. The petitioner took on lease the premises of the Mount View Hotel with its appurtenances from the Punjab Government on September 24, 1958. The original lease was for a period of three years which could be renewed on the same terms and conditions for another period of three years. The petitioner has been running the hotel in these premises ever since. On August 27, 1959, the Punjab Government offered to sell the said hotel to the petitioner at a price of Rs. 12/- lacs. The petitioner did not accept the said offer which was withdrawn. Since the period of six years of lease had expired, the Government called upon the petitioner to hand over the vacant possession of the premises on or before January 1, 1960. The petitioner did not vacate the premises and a show-cause notice under Section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (hereinafter called the Punjab Act) was issued to the petitioner on January 1, 1960, and thus eviction proceedings were started. The petitioner filed a writ petition in this Court challenging the validity of the said Act and the notice issued thereunder. A Full Bench of this Court heard the writ petition and dismissed it. The judgment is reported in the Northern India Caterers Pvt. Ltd. v. State of Punjab, ILR 1963 (1) Punj 761. The petitioner went up in appeal to the Supreme Court which was accepted and the eviction proceedings were set aside. Section 5 of the said Act was held to be ultra vires being discriminatory and violative of Article 14 of the Constitution of India. Their Lordships of the Supreme Court delivered the judgment on April 4, 1967, and it is reported as Northern India Caterers (P) Ltd. v. State of Punjab, AIR 1967 SC 1581.

3. Chandigarh became Union territory with effect from November 1, 1966 and fresh proceedings for the ejection of the petitioner from the premises were started under Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, (hereinafter called the Central Act) by the Estate Officer, Union Territory, Chandigarh, by issuing a show-cause notice to the petitioner on November 18, 1968. The said Act applied to the premises as it became the property of the Central Government with effect from November 1, 1966. Another notice under Section 7 of the said Act for the recovery of damages to the extent of Rs. 1,28,000 was also issued to the petitioner on the same day. The Manager of the Hotel with his counsel filed replies and also produced a copy of the letter received from the Finance Secretary, Chandigarh Administration, wherein an enquiry was made from the petitioner whether he was willing to purchase the Mount View Hotel building for Rs. 12/- lacs plus interest at the rate of 6 per cent per annum on the purchase price from the date of the Government's earlier offer made in August, 1959, upto the date of payment of the price. The petitioner accepted this offer by letter dated June 23, 1967, on condition that the interest should be

calculated in accordance with the rules of the Capital Project. Ultimately the Capital Control Board in its meeting held on July 3, 1967, considered the matter and decided to sell the premises to the petitioner on the following terms:

- "(i) The price of the hotel would be Rs. 12 lacs plus interest at the rate of 4½ per cent per annum from August, 1959, to September, 1966, and 6 per cent per annum from September, 1966, to the date of actual sale.
- (ii) The concession offered by the hotel to Government officers for staying in the Rest House portion of the hotel during the period shall not be taken into consideration,
- (iii) The entire purchase money shall be paid in lump-sum and must be paid within two months of the date of offer.
- (iv) The registration expenses shall be borne by the hotel.
- (v) The sale deed should include authenticated zoning plan, for the area,"

4. The sale was still under negotiations when an order was passed by the Estate Officer on May 14, 1969, for the eviction of the petitioner under Section 5 of the Central Act and for the recovery of damages at the rate of Rs. 4000 per month with effect from January 1, 1960, to the date of vacation. A copy of this order is annexure 'A' to the petition. The petitioner filed an appeal against that order to the District Judge, Chandigarh, under Section 9 of the Central Act and during the pendency of that appeal the application under Section 113 of the Code of Civil Procedure for reference of the case to this Court was made. While deciding that application the learned District Judge held that Sections 4, 5 and 7 of the Central Act were valid and not unconstitutional and, therefore, declined to make a reference to this Court

5. The present petition under Article 228 of the Constitution is not competent as no question arises relating to the interpretation of any Article of the Constitution. What is contended is that Sections 4, 5 and 7 of the Central Act are unconstitutional. The challenge to the constitutionality of some sections of an Act does not mean that a question of law relating to the interpretation of a provision of the Constitution is involved and, therefore, the learned District Judge was right in dismissing the application, but he decided finally that Sections 4, 5 and 7 of the Central Act were valid and constitutional, that is, while deciding the miscellaneous application the learned District Judge decided that appeal. The petitioner challenges the validity of that order. under Article 227 of the Constitution. A preliminary objection has been raised by the learned counsel for the respondent that there is no question of jurisdiction involved and, therefore, the petition under Article 227 of the Constitution is not competent. I do not agree with this submission of the learned counsel as the learned District Judge exceeded his jurisdiction by deciding the validity of Sections 4, 5 and 7 of the Central Act while passing an order on the miscellaneous application whether to make a reference to this Court or not. I have, therefore, decided to adjudicate on the matters raised in the petition.

6. The first submission of the learned counsel for the petitioner is that Section 4 and 5 of the Central Act are void and unconstitutional as the Estate Officer is both the prosecutor and the Judge. This argument was considered by a Full Bench of this Court (Supra) and was negatived. In the appeal before the Supreme Court, this matter was not discussed. Therefore, the judgment of the Full Bench on the point still stands and I am bound by it. Moreover, this, matter was further considered by I. D. Dua, J. (as his Lordship then was) in *M. L Joshi v. Director of Estates, Government of India*, New Delhi, AIR 1967 Delhi 86, and the learned Judge held "the contention urged on behalf of the petitioner that the Estate Officer would be both the prosecutor and the Judge which is hit by the ratio of the Supreme Court decision in *Gullappalli Nageswara Rao v. State of Andhra Pradesh*, AIR 1959 SC 1376, is unconvincing and of no avail to the petitioner in the present case because the Estate Officer does not appear to me to be acting as a Judge in his own cause when he is disposing of the proceedings initiated by the show-cause notice under Section 4 of the Act. To say that no one shall be a judge in his own cause means that the Judge must not have anything like a personal interest in the cause he is to adjudicate upon and not that an officer discharging his official functions must not start proceedings in a matter which he is under the law, competent to adjudicate upon. The petitioner's argument is obviously misconceived in the instant case and the decision of the Supreme Court does not seem to lend support to the petitioner's submission on the existing facts before me."

In view of this judgment, I find no merit in this argument and repel the same.

7. The learned counsel for the petitioner has then submitted that Section 7 of the Central Act is unconstitutional as no procedure has been prescribed for the trial of an important issue like the determination of damages, and reliance is placed for this submission on a judgment of a Division Bench of the Delhi High Court in *Raja Sahib of Nalagarh v. The Punjab State*, AIR 1969 Delhi 194. The learned Judges relied upon the judgment of their Lordships of the Supreme Court in AIR 1967 SC 1581 (Supra) and held Section 7(2) of the Punjab Act to be violative of Article 14 of the Constitution. The observations are obiter dicta as the learned Judges were of the opinion that Section 7(2) of the said Act fell with Section 5 thereof, and it was expressly stated in para 9 of the report "that though on this ground also, the impugned order seems to be vulnerable, we would, however, like to confine our conclusions on the ground that in the absence of Section 5, Section 7(2) cannot operate, because on the second point, we have not had the privilege of hearing full-fledged arguments."

It is thus apparent that the learned Judges were influenced by the fact that Section 5 was unconstitutional and, therefore, Section 7(2) also fell with it. This argument does not apply now as there is no discrimination after the insertion of Section 10-E in the Central Act by the amending Act 32 of 1968, which reads as under:--

"No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under subsection (2) of that section or costs awarded to the Central Government under subsection (4-A) of Section 9 or any portion of such rent, damages or costs."

8. By the insertion of this section In the Central Act the invalidity of Sections 5 and 7 of that Act has been removed. It is no more open to the authorities to have recourse to the Civil Courts. The only remedy is under the Act before the authorities appointed under it. Section 7 as amended by Act 40 of 1963 reads as under:--

7(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or, has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

9. It is, thus, apparent that it has been provided in this section that a notice to show cause has to be issued to the person in unauthorised occupation of the premises, who has been given the right to file objections and to lead evidence in support of his objections. Until those objections are decided, the order assessing damages cannot be passed. Every safeguard has, therefore, been made in favour of the unauthorised occupant for the assessment of damages against him. Under the Central Act, rules have been framed called the "Public Premises (Eviction of Unauthorised Occupants) Rules, 1958, and Rule 7 provides for the assessment of damages, as under.-

"7. Assessment of damages.--In assessing damages for unauthorised use and occupation

(a) the purpose and the period for which the public premises were in unauthorised occupation

(b) the nature, size and standard of the accommodation available in such premises;

(c) the rent that would have been realised if the premises had been let on rent for the period

(d) any damage done to the premises during the period of unauthorised occupation;

(e) any other matter relevant for the purpose of assessing the damages."

10. This rule also gives guidance to the Estate Officer how to determine the damages for unauthorised occupation. The unauthorised occupant can also lead evidence on these matters and bring any other matter before the Estate Officer relevant to the determination of damages. I am, therefore, of the opinion that a satisfactory procedure has been provided for the determination of the lis as to the assessment of the damages for the period of unauthorised occupation which is in no way restricted. , It gives full opportunity to the unauthorised occupant to prove the amount of damages to which he can be held liable for the period of his unauthorised occupation. It cannot, therefore, be said that Section 7 does not provide any procedure. There is, thus, no merit in this submission which is also repelled.

11. The last argument of the learned Counsel for the petitioner is that Sections 4, 5 and 7 of the Central Act were still-born in 1958 when the Act was enacted as they violated the provisions of Article 14 of the Constitution and those provisions could not be revived by the insertion of Section 10-E by the amending Act 32 of 1968 but these sections had to be re-enacted. Reliance is placed on a judgment of their Lordships of the Supreme Court in Mahendra Lal Jaini v. State of Uttar Pradesh, AIR 1963 SC 1019, wherein, the doctrine of eclipse and revival has been dealt with. In my opinion, the ratio of that judgment does not apply to the facts of the present case. In that case the constitutionality of the U. P. Land Tenures (Regulation of Transfers) Act 15 of 1952, and the Indian Forests (U. P. Amendment) Act No. 5 of 1956 was challenged. It was held that the said Acts were unconstitutional as they violated the provisions of Article 31(2) of the Constitution. An argument was put forth by the Advocate General that by the amendment of the Constitution the eclipse on the validity of those Acts was removed and the provisions of the Acts as revived were intra, vires and, therefore, action could be taken under them. In that case the invalidity of the impugned Acts was not removed by amendment but it was pleaded that because of the amendment of the Constitution the invalidity vanished. This argument was not accepted and it was held that the Acts had to be re-enacted. In the present case the invalidity of Sections 5 and 7 of the Central Act has not been removed by any amendment of the Constitution but by the amendment of the Contract Act by the insertion of Section 10-E which has made the provisions of Ss. 5 and 7, as originally enacted, valid from the date of amendment.' The learned counsel has then relied on a Full Bench judgment of the Jammu and Kashmir High Court in H. Wali Mohd. v. Administrator, Municipality, AIR 1969 J & K 88 (FB), but that judgment, far from helping the petitioner, goes against him, as is clear from the following observations:--

"Thus summarising the Full Bench judgment of this Court the position that emerges is as follows:--

"(1) That Section 5 of the old Act suffered from the same infirmities and was subject to the same criticism as Section 5 of the Punjab Act which was also couched in the same language as Section 5 of the old Act.

(2) These infirmities were two-fold. In the first place Section 5 being couched in a directory form, it invested a discretion in the Estate Officer to evict one unlawful occupant and refuse to evict another at his own sweet will. Secondly the jurisdiction of the Civil Court not being ousted, the Government reserved two remedies for itself; one through the drastic machinery provided under the Act and the other the remedy of the Civil Court. The Government could in its own discretion choose to proceed

against one person under the Act and against another in the Civil Court. Such a power was clearly discriminatory and violative of Article 14 of the Constitution of India as held by the Supreme Court in AIR 1967 SC 1581. There can be no doubt that Section 5 of the old Act also suffered from these infirmities and was, therefore, dearly ultra vires, but since these infirmities were removed by the Ordinance and later by the amending Act, the old Act as amended was not struck down by this Court. The observations of the Full Bench quoted above unmistakably point to the conclusion that this Court would have held Section 5 of the old Act as ultra vires, as being violative of Article 14 of the Constitution of India had it not been for the ordinance which came to its rescue. It was, therefore, rightly contended by Mr. Sen that since the old Act was ultra vires, any proceedings taken under the said Act were completely without jurisdiction and must be quashed."

12. The learned Judges held that Section 5 after amendment by the Ordinance and the amending Act was valid and had not been struck down on the ground that as originally enacted it was unconstitutional. There is, therefore, no merit in this submission of the learned counsel.

13. For the reasons given above, there is no merit in this petition which is dismissed with costs counsel's fee being Rs. 100/-.