

Supreme Court of India

B. Sharma Rao H. Ganeshmal And Anr. vs Head Quarters Asst. And Ors. on 25 November, 1997

Equivalent citations: JT 1998 (9) SC 55, (1998) 9 SCC 577

Bench: S Agrawal, K Venkataswami, V Khare

ORDER

1. These special leave petitions are directed against the common judgment of the High Court of Karnataka dated 6-6-1996. They arise out of civil suits filed by the petitioners wherein they had challenged the proceedings initiated against them on the basis of show-cause notices issued under Section 4(1) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 (hereinafter referred to as "the State Act"). The petitioners have filed replies to the said notices wherein they claimed that they were not unauthorised occupants of the premises and that they were in occupation as tenants of the premises under Section 116 of the Transfer of Property Act and that their tenancy has not been determined. In the suits the petitioners had sought a declaration that the State Act was not applicable to them as well as a permanent injunction restraining Respondent 2 from initiating action under the Act. The said suits of the petitioners were dismissed by the trial court on the view that the civil court has no jurisdiction to entertain the suit in the view of the bar to jurisdiction under Section 16 of the State Act. The said judgment of the trial court was reversed in appeal by the appellate court and the suits were remanded for trial to the trial court. By the impugned judgment dated 6-6-1996 the High Court has set aside the judgment of the appellate court and has restored the judgment of the trial court dismissing the suits. The review petitions filed by the petitioners have been dismissed by the High Court. In pursuance of the order dated 25-4-1997 passed by a Bench of two Hon'ble Judges of this Court these petitions have been placed before us.

2. Shri Venkataramani, the learned Senior Counsel appearing for the petitioners, has placed reliance on the decision in LIC of India v. Shiva Prasad Tripathi, and has submitted that the suits filed by the petitioners were maintainable and that in spite of the provisions contained in Section 16 of the State Act it is open for the petitioners to file a suit claiming that they are not unauthorised occupants of the premises and their tenancy is still continuing. We have perused the judgment of this Court in LIC of India v. Shiva Prasad Tripathi, . In that case this Court was primarily concerned with the provisions contained in Section 10 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Central Act") which confers finality on the order passed by the Estate Officer or appellate authority. In the Central Act the provision regarding bar of jurisdiction of the civil court is contained in Section 15. In LIC of India v. Shiva Prasad Tripathi, this Court has not considered the question regarding maintainability of the suit in view of the bar to the jurisdiction contained in Section 15. In that case the order for eviction had been passed by the Estate Officer under the Central Act and it had been upheld in appeal and a writ petition had been filed challenging the said orders. The said writ petition had been dismissed by the High Court but the said judgment of the High Court was set aside and the writ petition was allowed by this Court. In the present case we are concerned with the bar to jurisdiction of the civil court contained in Section 16 of the State Act which contains provisions similar to those contained in Section 15 of the Central Act. Section 11 of the State Act contains provisions similar to those contained in Section 10 of the Central Act which gives finality to the orders passed by the Estate Officer and the appellate authority. The

decision in LIC of India v. Shiva Prasad Tripathi, has, therefore, no application to the present case.

3. Shri Venkataramani has further submitted that the bar to the jurisdiction of civil courts under Section 16 of the State Act has no application to the present case since the proceedings initiated on the basis of the notices issued by the Estate Officer under Section 4(1) of the State Act were without jurisdiction. In this connection, the submission of Shri Venkataramani is that notices that were issued to the petitioners did not comply with the requirements of Section 4(2)(a) of the State Act inasmuch as the said notices did not indicate the reasons as to why the petitioners, who were tenants, were being treated as unauthorised occupants. We find that there is no basis in the pleadings for this contention. In the plaint of the suits filed by the petitioners no such plea has been raised that the notices that were issued under Section 4(1) did not comply with the requirement of Section 4(2)(a) of the State Act. On the other hand in the plaints it is stated that after the receipt of the notice the petitioners had submitted their reply but they are not aware of the orders that have passed in the proceedings thereafter. The case of the petitioners in the plaint is that they are in occupation as tenants of the premises by virtue of Section 116 of the Transfer of Property Act and they could not be regarded as unauthorised occupants. In other words in the suits the petitioners have raised the question that they are not unauthorised occupants and are not liable to eviction under the provisions of the State Act. Having regard to the provisions contained in the State Act we are of the view that the question whether the petitioners are unauthorised occupants or not is required to be determined by the Estate Officer under Section 5 of the Act and a person feeling aggrieved by such determination can assail the same in appeal before the appellate authority.

4. We are, therefore, of the opinion that the High Court has rightly found that the suits filed by the petitioners could not be entertained by the civil court in view of the bar to jurisdiction contained in Section 16 of the State Act. The special leave petitions are accordingly dismissed. No costs.