

MOHD. RAMZAN SHAH & ORS.

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v.

STATE OF JAMMU & KASHMIR & ORS.

JANUARY 29, 1988

[G.L. OZA AND B.C. RAY, JJ.]

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Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959: Sections 4, 5 and 6

Jammu and Kashmir Land Grants Act, 1960: Section 12-A 'Wasidari lands' transferred in contravention of Ailan 10 dated 7 Bhadon 1976 and Land Grants Act 1960—Notice for eviction of unauthorised occupant—Validity of—Compensation—Person evicted—Entitled to compensation in respect of buildings structures and improvements—Not in respect of land.

The suit premises consisting of lands and buildings were originally owned by Dewan Bishen Dass a former Prime Minister of the State of Jammu and Kashmir. The appellants purchased the same from his successor-in-interest, Purnish Chandra by two sale deeds dated 12.7.1967 and 8.12.1967.

The State Government tried to resume the land for setting up a tonga and lorry stand, and for the purpose of development of the city, and eviction of the appellants was ordered by the Estate Officer under the provision of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 on January 5, 1968. The Municipality took forcible possession of the land and demolished the buildings thereon on January 11, 1968. The appellants filed a Writ Petition in the High Court assailing the action of the Municipality.

The High Court on 19.7.1969 allowed the writ petition and held that the appellants were not unauthorised occupants, possession can be taken only on payment of compensation and that Section 5 of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act was *ultra vires*. The State appealed to this Court and the judgment of the High Court was confirmed on the sole ground that as the Administrator of the Municipality had not complied with the provisions of section 238 and 239 of the Municipal Act the action taken by the Municipality in the matter of demolishing must be held to be entirely illegal and contrary to law, [State of Jammu and Kashmir v.

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A *Haji Wali Mohammad & Ors.*, [1973] 1 SCR 801].

The Estate Officer thereafter issued a fresh notice under section 4(1) of the amended Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 intimating that the appellants were in unauthorised occupation of the public premises mentioned in the Schedule to the notice. The appellants filed objections stating that they were not in unauthorised occupation of the said land nor have they encroached upon the same, and that the notice was wholly misconceived and illegal. It was further contended that the land was purchased by the appellants from the legal heirs of Dewan Bishen Dass, that they had been in continuous possession, made various improvements on the land and built houses, and that the Estate Officer could not declare the person in possession as an unauthorised occupants after lapse of more than 80 years.

The Estate Officer rejected the objections and directed the appellants to handover possession of the premises including structures to the Administrator of the Minicity.

The appellants preferred an appeal to the District Judge but the same was dismissed.

The order of the Estate Officer was also challenged in a writ petition by the appellants, but the same was dismissed by the High Court holding that the land being transferred by the legal heirs of Dewan Bishen Dass without obtaining prior permission of the Government or the competent authority in that behalf, the lease stood determined and that the notice under the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 was in accordance with law.

In the appeal to this Court by Special Leave it was contended on behalf of the appellants: that the lands taken on lease by Dewan Bishen Dass cannot be deemed to have been taken under the provisions of Ailan No. 10 dated 7 Bhadon 1976 and as such section 12(A) and section 6 of the Land Grants Act 1960 are not applicable, that the lands could not be acquired without providing for adequate compensation to be paid to the Wasidar for the buildings, appurtenances and other improvements effected by him, that no compensation in fact was awarded and that the notice under section 4 of the Act was liable to be cancelled and quashed as being not in accordance with law.

The appeal was resisted by the State-respondents, contending: that the appellants predecessor that is the original lessee was a Wasidar and that the lease was granted under Ailan No. 10 dated 7 Bhadon 1976, that section 12-A of the Jammu and Kashmir Lands Grants Act is applicable, that the transfer of the land had been made by the legal heirs of the original lessee Dewan Bishen Dass without the prior permission of the Government or any authority in that behalf, that the lease stood determined from the date of the transfer, the Government had the right of re-entry on the land in accordance with the provisions of section 6 of the Land Grants Act, that the appellants are unauthorised occupants and consequently the notice under section 4(1) of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 is not illegal but is in accordance with the provisions of the said Act.

Allowing the Appeal,

HELD: 1. Dewan Bishen Dass predecessor of the appellants was a Wasidar and the lands were wasidari lands leased out to him for the purpose of constructing buildings. This lease was governed by Ailan No. 10 as well as by the Lands Grants Act, 1960. [860F]

2. The land was transferred by Purnish Chandra and others, legal representatives of the original lessee Dewan Bishen Dass, in favour of the appellants in contravention of the provisions of Section 12(A) of the Jammu and Kashmir Land Grants Act, 1960. [860G]

3. The notice under section 4(1) of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act is in accordance with law and as such it is valid. Under the Act as well as the rule the appellants are entitled to get compensation for the buildings and structures as well as of the improvements made on the land even though they are not entitled to get compensation in respect of the value of the land. [860G-H]

4. The compensation in the instant case, has not been determined nor the same has been paid. Appeal allowed. Judgment and Order of High Court, set aside. Matter remitted to the District Judge, who would expedite the determination of the compensation after determining the market value of the buildings, structures and all the improvements effected on the land. [861A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1115 of 1979.

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A From the Judgment and Order dated 26.10.1978 of the Jammu & Kashmir High Court in W.P. No. 41 of 1978.

A.K. Sen, Harish Salve, K.J. John and C.S.S. Rao for the Appellants.

B Altaf Ahmed, Advocate General and S.K. Bhattacharya for the Respondents.

The Judgment of the Court was delivered by

C RAY, J. This is an appeal by special leave against the judgment and order passed in Writ Petition No. 41 of 1978 dismissing the writ petition and upholding the order of the District Judge, Srinagar dated 26th July, 1978 as well as the order of the Estate Officer dated 20th March, 1978.

D The petitioners purchased the premises in dispute which were originally leased out to Dewan Bishen Dass, Ex. Prime Minister of the Jammu and Kashmir, from his successor-in-interest Purnesh Chandra and others by two sale deeds dated 12.7.1967 and 8.12.1967. Dewan Bishen Dass who took lease of the said property was in possession of the same for more than 75 years. The suit property consists of residential houses, buildings, shed and open lands. The appellants purchased

E the land under Khasra Nos. 885(min) 890 and 891 measuring about 10 Kanals. In 1957 the respondents State Government tried to resume the lands for setting up a Tonga and Lorry stand; but thereafter no action was taken in this regard. In 1961 another order was made by which the land in question was sought to be resumed under the previous order and the said land was sought to be transferred to the Roads and

F Building Department. Under this order compensation was fixed at Rs. 1,39,260 in respect of building and structures standing on the said lands; however no compensation was paid nor any action was taken subsequently in this regard. In 1963 another Government order was issued under sec. 4(1) of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 seeking to resume the

G land for purpose of the development of the city. An appeal preferred by the lessee was rejected. But no further action was taken thereafter. On 5th of June 1968 an order of eviction under the provisions of Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 was issued seeking to evict the petitioners as being unauthorised occupants. On January 11, 1978 a large number of

H police personnel and municipal employees came upon the land and

demolished the buildings of the petitioners on the said land. The Administrator took illegal possession of the suit property whereon the appellants filed a writ petition before the High Court of Jammu and Kashmir praying for a writ or direction prohibiting the Administrator of the Municipality from interfering with the physical possession of the Petitioners and directing him to forbear from taking possession of the property without the authority of law.

The High Court by judgment and order of 19th of July 1979 allowed the writ petition and directed the respondents to restore possession of the premises immediately to the petitioners.

By allowing the writ petition High Court held:

(1) Section 6 of the Land Grants Act, shows that the provisions of the Act would apply to the lease created after the passing of the Act.

(2) Possession of the Lessees can be taken only on payment of compensation. Since no compensation was paid, the lessee is validly in possession and cannot be evicted.

(3) Petitioners not being unauthorised occupants the Act is not applicable and therefore any notice under section 4 or 5.5 of the Act is without jurisdiction.

(4) Section 5 of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act is *ultra vires* Article 14 of the Constitution since discretion is on State Officer to evict one occupant and refuse to evict another. Amendment of 1962 does not revive section 5 of the 1959 Act.

(5) Action of the State was held malafide.

Against the said judgment and order the respondents filed appeals before this Court being Civil Appeal Nos. 144-147 of 1979. On August 8, 1972 this Court dismissed those appeals and confirmed the judgment and order made by the High Court holding that as the Administrator of the Municipality had not complied with the provisions of ss. 238 and 239 of the Municipal Act the action taken by the Municipality in the matter of demolition must be held to be entirely illegal and contrary to law. It was further held "that the conclusions and observations of the High Court on all the points which have not

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A been decided by us become unnecessary in the view we have taken with regard to the illegality and invalidity of the demolition carried out pursuant to the notices issued under s. 129 of the Municipal Act" This decision was reported in *State of Jammu and Kashmir & Ors. v. Haji Wali Mohammed and Ors.*, [1973] 1 SCR 801.

B Thereafter the Estate Officer issued a notice under section 4(1) of the Amended Jammu and Kashmir Public Premises (Unauthorised Occupants) Act intimating the appellants that they were in unauthorised occupation of the public premises mentioned in the schedule below by encroaching upon Government land measuring 10 Kanals 8 Marlas and 208 fts. comprising Khasra No. 890 situated at Bagh Magermal, Srinagar, and calling upon the appellants to show cause why the order of eviction should not be made. The appellants filed an objection to the said notice stating *inter alia* that they are not in unauthorised occupation of the said land nor they have encroached upon the same. The notice is wholly misconceived and it is illegal. The land in question in fact was taken lease of by late Dewan Bishen Dass who

C has been in continuance possession of the same for about 75 years and thereafter the appellants purchased the said land in 1967 from the legal heirs of the lessee Dewan Bishen Dass. The appellants made various improvements on the land and built houses thereon at a cost of about Rs. 50,000. The appellants are not unauthorised occupiers but are full-fledged owners of the said land. These facts are wholly confirmed by

E the judgment of the High Court of Jammu and Kashmir while accepting the Writ Petition of the appellants. The appellants had stepped into the shoes of the original owner who was lawfully inducted in the lawful possession of the land as lessee. It has been stated that the Estate Officer cannot declare the person in possession as unauthorised occupants after lapse of more than 80 years. Their objection however

F was rejected by the Estate Officer and the appellants were directed to hand over possession of the premises including structures to the Administrator of the Municipality within 14 days.

G Against the said order the appellants preferred an appeal before the District Judge, Srinagar. The appellants also challenged the said order by a writ petition before the High Court of Jammu and Kashmir and this was registered as writ petition No. 49 of 1978. The appeal was however dismissed and the order of the Estate Officer was confirmed holding *inter alia* that the appellants purchased the land from the legal heirs of Dewan Bishen Dass who was the lessee of the land, that all the sale deeds were executed without obtaining requisite prior permission from the Government and as such the Sub-Registrar was not em-

powered to accept those documents for registration under proviso to section 4 of the Jammu and Kashmir Lands Grants Act, 1960, that the lease shall be deemed to have been determined because of contravention of the provisions of section 12(A) of the Jammu and Kashmir Lands Grants Act, 1960, that the possession of the appellant was not regular and as such they were in authorised occupation, within the meaning of the said Act, that the Government had a right to re-enter on the land and the notice in question was rightly issued against the appellants directing them to vacate the land.

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The writ petition was amended and this judgment was also challenged. The writ-petition was, however, dismissed by the High Court by Order dated 26th October, 1978 holding that the land being transferred by the legal heirs of the Dewan Bishen Dass without obtaining previous permission of the Government or by the competent authority in that behalf the lease stood determined and the impugned notice under the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act, 1959 was quite in accordance with law.

Against this judgment and order the instant appeal on special leave has been filed by the appellants. It has been urged on behalf of the appellants that the lands taken lease of by Dewan Bishen Dass who was the Ex. Prime Minister of the State cannot be deemed to have been taken under the provisions of Ailan No. 10 dated 7 Bhadon 1976 and as such Section 12(A) and Section 6 of the Land Grants Act 1960 are not applicable. The lease cannot be determined on the ground that the transfer was made in favour of the appellants by the legal heirs of the original lessee without previous permission in writing from the Government or any competent authority. It has been submitted in this connection that the provisions of the said ailan refers to the lease of land to a "Wasidar", but as the lease was granted free of rent it does not come under the said ailan as the said ailan provides for payment of ground rent for the land used. Under rule 6 of the said ailan the land belongs to the Government and permission is granted for building purposes only in respect of an area of land not exceeding 3 acres. In the present case the lease granted in favour of Dewan Bishen Dass is in respect of 20 Kanals of land free of rent whereas under the proviso of the said rule no lease could be granted for a period exceeding 40 years. It has also been submitted that even if for argument's sake without admitting it is accepted that the appellant's predecessor-in-interest was a Wasidar and lease was granted under the aforesaid Ailan No. 10 yet the lands could not be acquired without providing for adequate compensation to be paid to the Wasidar for the buildings and appurte-

A nances and other improvements effected by him on the land and the amount of compensation shall have to be determined by the State Engineer. No compensation was either awarded in respect of valuable buildings, structures and other improvements made by the appellant on the land nor any valuation has been made of the buildings and structures existing on the land as well as all the improvements made in respect of such land. It was, therefore, submitted that the impugned notice under section 4(1) of the said Act was liable to be cancelled and quashed being not in accordance with law.

C The learned counsel appearing on behalf of the State has on the other hand submitted that the petitioner's predecessor, that is, the original lessee was a Wasidar and the lease was granted under Ailan No. 10 dated 7 Bhadon 1976. It was also contended that section 12(A) of the Jammu and Kashmir Lands Grants Act is applicable to this case. The transfer of the land by sale in favour of the appellants have been made by the legal heirs of the original lessee Dewan Bishen Dass without the prior permission of the Government or any authority empowered in that behalf. The lease stood determined from the date of the transfer and the Government has the right of re-entry on the land in accordance with the provision 6 of the said Act. The appellants are unauthorised occupants and as such notice under section 4(1) of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act 1959 is not illegal but is in accordance with the provisions of the said Act.

F After considering the submissions advanced by learned counsels for the parties we are constrained to hold that Dewan Bishen Dass predecessor of the appellants was a Wasidar and the lands in question were wasidari land leased out to him for the purpose of constructing buildings. This lease is governed by Ailan No. 10 as well as by the Lands Grants Act 1960. We affirm the findings of the High Court which held the land as Wasidari land. The land was transferred by Purnesh Chandra and others, legal representatives of the original lessee Dewan Bishen Dass, in favour of the appellants in contravention of the provisions of section 12(A) of the Jammu and Kashmir G Land Grants Act, 1960. The impugned notice under section 4(1) of the Jammu and Kashmir (Public Premises Eviction of Unauthorised Occupants) Act is in accordance with law and as such it is valid. Under the said Act as well as the rule the appellants are entitled to get compensation of the buildings and structures as well as of the improvements made on the land even though they are not entitled to get H compensation in respect of value of the land. The compensation in the

instant case has not been determined nor the same has been paid. A

We, therefore, allow the appeal and set aside the judgment and order of the High Court and remit the matter to the District Judge, Srinagar who will either himself or by any Additional District Judge allotted by him hear the parties and determine the market value of the buildings, structures and all other improvements effected on the land in question after hearing the parties and also considering the papers that will be filed in Court and to make an award accordingly. Since the matter is pending for a long time the District Judge or Additional District Judge allotted by him will expedite the determination of the compensation as directed hereinbefore. The order of Stay granted by this Court will continue till the compensation is determined and paid to the appellants. In the facts and circumstances of the case there will be no order as to costs. B C

N.V.K.

Appeal allowed.