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PARMANAND SINGH (D) THR. LRS.

v.

UNION OF INDIA AND ANR.

(Civil Appeal No. 7183 of 2008)

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AUGUST 31, 2017

[R. F. NARIMAN AND SANJAY KISHAN KAUL, JJ.]

*United Provinces Tenancy Act, 1939 – s. 180 – Case of appellant that his ancestors were zamindars and were in possession of the disputed land since 1930 – In 1974, proceedings were initiated against the appellants u/s. 122-B of the U.P. Zamindari Act on the ground that the said land belonged to the State Government and the Gaon Sabha and therefore appellants ought to be evicted – However, thereafter proceedings under U.P. Zamindari Act were dropped and proceedings u/s. 180 of the U.P. Tenancy Act were initiated against the appellants – During the pendency of the suit u/s. 180, a show cause notice was issued by the Defence Estate Officer under the Public Premises Eviction Act u/s. 4(1) – Appellant replied to the said notice – However, without giving any reason as to why the reply was not acceptable, an order u/s. 5(1) of the Public Premises Eviction Act was made to evict the appellants from the said premises – Meanwhile, the State Government dismissed the suit u/s. 180 in default – Writ petition filed by the appellant was dismissed – On appeal, held: Once suit u/s. 180 of the Act is dismissed for non-prosecution, the provisions of s. 180(2) activates, under which, if no suit is brought under the section, which must also be understood as a suit being brought and dismissed in default, the person in possession shall become a hereditary tenant of such plot – The effect in law, therefore, of the dismissal for default of suit u/s. 180 is that the status of appellant is that of a hereditary tenant – This being the case, the foundational jurisdictional fact of the appellant being an unauthorised occupant in order to attract the provisions of the Public Premises Act is lacking – Respondents directed to give the possession back to appellant – Public Premises (Eviction of Unauthorized Occupants) Act, 1971 – ss. 4 and 5 – U.P. Zamindari Act – s. 122-B.*

Allowing the appeal, the Court

H HELD: 1.1 The suit was filed by the State Government on

behalf of the Union on the footing that the non-occupancy tenant retained the possession of the plot of land without the consent of the Union, and that, therefore, he was liable to ejection and to pay damages. Once that suit is dismissed for non-prosecution, the provisions of Section 180(2) of the U.P. Tenancy Act, 1939 kick in. Under this sub-section, if no suit is brought under the Section, which must also be understood as a suit being brought and dismissed in default, the person in possession shall become a hereditary tenant of such plot. The effect in law, therefore, of the dismissal for default of suit u/s.180 is that the appellant's status is that of a hereditary tenant. This being the case, the foundational jurisdictional fact of the appellant being an unauthorised occupant in order to attract the provisions of the Public Premises Act is lacking. As this is so, all the orders that have been passed by the authorities as well as the High Court are without jurisdiction. [Para 10] [558-C-F]

1.2 This being the case, it is important to do complete justice between all the parties. Since, it appears that some portion of the appellants' 5 acres may be in the possession of the ex-servicemen as lessees of the Union of India, it is directed as follows:-

1) The khatauni numbers contained at pages 14 and 15 of the paper book shall be handed back to the appellants, if they are not in possession of these khatauni numbers already. If the appellant is in part possession, then the part of which they are not in possession shall be handed back by the respondents within a period of twelve weeks. [Para 10] [588-F-G]

2) If it is necessary to displace the ex-servicemen from some part or the entirety of their property in order to hand back the land belonging to the appellants, the Union of India will see to it that equivalent land with an equivalent lease will be made available to the ex-servicemen, which should also be done within a period of twelve weeks granted. [Para 10] [588-H; 589-A]

A From the Judgment and final Order dated 02.09.2005 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ No.14335 of 1990.

Akhilesh Kumar Pandey, Adv. for the Appellant.

B Yashank Adhyaru, Sr. Adv., Mrs. Rani Chhabra, Ms. Priyanka Sony, Ms. Alka Agrawal, M.K. Maroria, D.S. Mahra, Advs. for the Respondents.

The Judgment of the Court was delivered by

**R. F. NARIMAN, J.** 1. The present case reveals a very sorry state of affairs. It appears that the ancestors of the appellant were Zamindars, and the appellants claim that they were in possession of the disputed land, which is roughly 5 acres, since 1930. On 25<sup>th</sup> July, 1974, proceedings under Section 122-B of the U.P. Zamindari Act were initiated against the appellants on the ground that the said land belonged to the State Government and the Gaon Sabha and that the appellants therefore ought to be evicted. After the appellants filed their reply in the aforesaid proceedings, by order dated 25<sup>th</sup> July, 1974, the proceedings were dropped and it was stated that proceedings under Section 180 of the U.P. Tenancy Act be initiated.

2. On 30<sup>th</sup> October, 1974, the State Government on behalf of the Union of India through the Collector Mirzapur filed a suit being Suit No.1 of 1974-75 under Section 180 of the U.P. Tenancy Act for recovery of possession and damages against the appellants. The appellants filed their written statement and contested the suit. During the pendency of the suit, a show cause notice dated 24<sup>th</sup> February, 1977, was issued by the Defence Estate Officer under the Public Premises Eviction Act under Section 4(1) thereof. On 11<sup>th</sup> March, 1977, the appellant replied to the said notice. On 17<sup>th</sup> March, 1977 the Defence Estate Officer passed an order under Section 5(1) of the Public Premises Act. We have gone through the said order, which only states that the respondent was put on notice and their reply was received and considered. Without giving any reason as to why the reply was not acceptable, an order under Section 5(1) of the said Act was made to evict the appellants from the said premises. On 6<sup>th</sup> April, 1977 the State Government allowed the Suit No.1 of 1974-75 to be dismissed in default.

3. Inasmuch as the proceeding under Public Premises Act then continued, a writ petition being filed by the appellant which was also

disposed of, an appeal which was first dismissed on the ground of delay was then restored by the High Court by order dated 10<sup>th</sup> May, 1988. This appeal finally dismissed on 10<sup>th</sup> April, 1990. This order recorded:

“Further it is clear from the evidence on record that the authorities have taken the possession of the land in question and has further allotted the same to some other ex-servicemen on 7.9.84 and the possession was also delivered to the allottees.

On the basis of the discussions made above, as well as on the assessment of the evidence on record, I come to the conclusion that the appellant was rightly found in unauthorized occupation by the Defence Estate Officer over the land in question and I do not find any illegality in the proceeding initiated for the eviction of the appellant from the land in question. I am of the view that the present appeal, being devoid of any merit, is liable to be dismissed and the impugned order dated 17.3.77 passed by the Defence Estate Officer under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 deserves to be confirmed.

#### ORDER

The appeal is dismissed. The impugned order dated 17.3.77 passed by the Defence Estate Officer, Bihar and Orissa Circle Danapur Cantonment Bihar under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is hereby confirmed.”

4. A writ petition was filed against the aforesaid order, in which an affidavit was filed by one Sonam Yangdol in which the deponent recorded some of the aforesaid facts and also referred to the suit that was filed under Section 180 of the U.P. Tenancy Act. Without giving the actual date on which the suit was dismissed for default, which we have seen is on 6<sup>th</sup> April, 1977, the deponent of this affidavit went on to state “thereafter proceedings were initiated under the Public Premises Act for eviction on 24<sup>th</sup> February, 1977.”

5. It is most unfortunate that an impression was sought to be created that it was only after the suit was not proceeded with that proceedings were initiated under the Public Premises Act when the converse was true.

A 6. The appellants met with the same fate in the High Court, which by its order dated 2<sup>nd</sup> September, 2005, held against the appellants as follows:

B "Notice under Section 4 dated 24.02.1977 was issued to the petitioner and he filed his reply dated 11.03.1977. Both the documents are on record and they are not denied. It is only contended that a general notice was served through registered post and reply was also given by post but he was not heard. A perusal of the notice shows it was a specific notice to the petitioner, who gave his reply. Neither in the reply nor anywhere else the petitioner has sought any personal hearing. In my opinion the petitioner had a reasonable opportunity and the order cannot be challenged on this ground. The appellate court has considered this issue in detail and has recorded a finding of fact which has not been shown to be perverse."

C D He has then urged that since a suit under Section 180 of the U.P. Tenancy Act had been filed, which was dismissed in default, parallel proceedings under the Act could not go on. In my opinion, an order dismissing the suit in default will not help the petitioner and earlier to it the order had already been passed for eviction under the Act and thus, the respondents did not pursue the suit under Section 180. In any event, as considered by the learned District Judge, the petitioner himself had averred in paragraph 1 of the Writ Petition No.11820/1984 that he was only recorded as a non-occupancy tenant over the disputed land, which he admitted was set apart for military encamping ground. Thus, the petitioner cannot contend that he had any title to the land."

E F 7. The learned counsel appearing on behalf of the appellant has argued before us that, at the very least, the appellants were non-occupancy tenants and not unauthorised occupants and that, therefore the entire proceeding under the Public Premises Act was *non est* as the jurisdictional fact of their being "unauthorised occupants" was unwarranted. He cited before us certain judgments and showed that, in any event, he was not given any hearing that was mandated by Section 5 of the aforesaid Act, nor was he allowed to lead any evidence which showed that he was not an unauthorised occupant.

G H 8. As against the arguments of the appellant, Shri Yashank Adhyaru, learned senior counsel appearing on behalf of the Union of

India, has argued before us that it is clear that the Union of India is the owner of the premises and as such owner was entitled to initiate proceedings under the Public Premises Act. In any event, according to the learned counsel, the possession has been taken of the said land way back in 1974 and a lease given to certain ex-servicemen which continued till the year 1998. Ms. Rani Chhabra, learned counsel appeared before us on behalf of the intervenor ex-servicemen, and showed us the lease that was granted in their favour, which she says is continuing even as on date.

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9. Having heard learned counsel for the parties, it is first important to set out Section 180 of the United Provinces Tenancy Act, 1939. Section 180 of the Act reads as follows:

[180. Ejectment of person occupying land without consent. - (1) A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person so entitled, and also to pay damages which may extend to four times the annual rental value calculated in accordance with the sanctioned rates applicable to hereditary tenant:

Provided that, notwithstanding the provisions of sub-section (1) of Section 246, where such a person taking or retaining possession is one of the co-sharers whose joint consent is required to bring such suit, he shall not be required to join as plaintiff in the suit. In such a case, the decree passed in favour of the plaintiff shall be deemed to be in favour of all such co-sharers.

Explanation I. - A co-sharer in the proprietary rights in a plot of land taking or retaining possession of such plot without the consent of the whole body of co-sharers or of an agent appointed to act on behalf of all of them, shall be deemed to be in possession of such plot otherwise than in accordance with the provisions of the law within the meaning of this section.

Explanation II. - A tenant entitled to sub-let a plot of land in accordance with the provisions of the law for the time being in force may maintain a suit under this section against the person taking or retaining possession of such plot otherwise than in the circumstances for which provision is made in Section 183.

A (2) If no suit is brought under this section, or if a decree obtained under this section is not executed, the person in possession shall become a hereditary tenant of such plot, or if such person is a co-sharer, he shall become a khudkasht holder, on the expiry of the period of limitation prescribed for such suit or for the execution of land decree, as the case may be.

B Provided that where the person in possession cannot be admitted to such plot except as sub-tenant by the person entitled to admit, the provisions of this sub-section shall not apply until the interest of the person so entitled to admit is extinguished in such plot under Section 45(f).]

C 10. Obviously, the suit was filed by the State Government on behalf of the Union on the footing that the non-occupancy tenant retained the possession of the plot of land without the consent of the Union, and that, therefore, he was liable to ejectment and to pay damages. Once that suit is dismissed for non-prosecution, the provisions of Section 180(2) kick in. Under this sub-section, if no suit is brought under the Section, which must also be understood as a suit being brought and dismissed in default, the person in possession shall become a hereditary tenant of such plot. The effect in law, therefore, of the dismissal for default of suit No.1 of 1974-75 on 6<sup>th</sup> April, 1977 is that the appellant's status is that of a hereditary tenant. This being the case, the foundational jurisdictional fact of the appellant being an unauthorised occupant in order to attract the provisions of the Public Premises Act is lacking. As this is so, all the orders that have been passed by the authorities as well as the High Court are without jurisdiction. This being the case, it is now important to do complete justice between all the parties. Since, it appears that some portion of the appellants' 5 acres may be in the possession of the ex-servicemen as lessees of the Union of India, we direct as follows:

F 1) The khatauni numbers contained at pages 14 and 15 of the paper book shall be handed back to the appellants, if they are not in possession of these khatauni numbers already. If the appellant is in part possession, then the part of which they are not in possession shall be handed back by the respondents within a period of twelve weeks from today.

G 2) If it is necessary to displace the ex-servicemen from some part or the entirety of their property in order to hand back the land belonging to the appellants, the Union of India will see to it that equivalent land with

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an equivalent lease will be made available to the ex-servicemen, which A should also be done within a period of twelve weeks granted.

12. With these observations, the judgment under appeal is set aside and the appeal is allowed.

Ankit Gyan

Appeal allowed.