RAJKUMAR DEVINDRA SINGH & ANR. A

v.

STATE OF PUNJAB & OTHERS

September 11, 1972

[J. M. SHELAT, D. G. PALEKAR, K. K. MATHEW, S. N. DWIVEDI AND Y. V. CHANDRACHUD, JJ.] B

Punjab Public Premises and Land (Eviction and Rent Recovery) Act 1959, *Section* 3 *and Section* 4 (1)—*Unauthorised occupation of public premises—Possession before the premises became public premises—Eviction cannot be ordered under the Act.*

The appellants, along with their brothers, were residing in an ancestral property. The eldest member of the family sold the property to the State Government as property belonging to him. After the sale, the C State Government issued notice of eviction to the appellant under Section 4(1) of the Punjab Public Premises and Land (Eviction and Rent Recovery Act, 1959. The writ petition, challenging legality of the eviction order was rejected by the single Judge, and then on appeal by the Division Bench of the Punjab High Court. Before this Court the appellants contended that they were in possession under a legal title and that the impugned notice was issued without jurisdiction.

HELD : The appellants were in possession of the property before D the date of sale to the State Government, when it was not public pre-premises. The word "thereof" in Sec. 3(1) makes it clear that the person must have entered into possession of public premises before or after the commencement of the Act in order that he may be deemed to be in unauthorised occupation. Unless the premises are public premises on the date of possession, Section 3(a) is not applicable. [170A-B]

HELD, further, that Section 3(b) is attracted only where the person E continues in possession after the cancellation or determination of allotment, lease or grant from Government. The appellants were not in unauthorised occupation of public premises and therefore the notice under Section 4(1) was issued without jurisdiction. [171A]

Appeal allowed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 69 of 1967. F

Appeal by certificate from the judgment and order dated October 15, 1963 of the Punjab High Court at Chandigarh in L.P.A. No. 330 of 1963.

A. Subba Rao, Bhuvansesh Kumari, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain* for the appellant. G

V. C. Mahajan and *R. N. Sachthey* for respondents Nos. 1 to 3.

Ramamurthi & Co. for the Intervener (State of Jammu and Kashmir).

S. C. Majumdar for the Intervener (Megalal Chhaganlal (P) Ltd.). H

Vinod Kumar, Krishan Lal Mehta and *Veneet Kumar* for the intervener.

A

The Judgment of the Court was delivered by

MATHEW, J. The appellants filed a writ petition before the High Court of Punjab for the issue of an appropriate writ or order quashing a notice dated June 21, 1961, issued under s. 4(1) of the Punjab Public Premises and Land (Eviction and
B Rent Recovery) Act, 1959, hereinafter called the 'Act', directing the 2nd appellant to show cause why an order of eviction should not be passed against him in respect of the premises in question.

The appellant's case was as follows. On the demise of the late Maharaja Bhupinder Singh, his eldest son, Maharaja Yadavindra Singh succeeded to the *gaddi* of the erstwhile State of
C Patiala which subsequently merged with the State of Punjab. Maharaja Bhupinder Singh, along with his sons including the appellants, constituted a joint Hindu family. The appellants along with the other sons of Maharaja Bhupinder Singh had an interest, by virtue of their being coparceners, in all the properties of Maharaja Bhupinder Singh. The appellants, along with their
D brothers, were in occupation of a property known as "colonel Mistry's House", Moti Bagh Palace, Patiala, in their own right as the sons of Maharaja Bhupinder Singh. It was an ancestral property in the hands of Maharaja Bhupinder Singh and they were residing as members of the family in the said property. On March 10, 1958, Maharaja Yadavindra Singh sold Moti Bagh
E Palace to the Government of Punjab, as property belonging to him, and delivered actual possession of certain portion and agreed to deliver possession of the rest subsequently. The State Government was not competent to evict them under the provisions of the Act as they were not in unauthorized occupation of any public premises and that the impugned notice was issued without juris-
F diction.

The counter-affidavit on behalf of respondents 1 and 2 was filed by Sri S. P. Jain, Deputy Secretary to the Government of Punjab, and it stated that there was no proof that the appellants were the sons of Maharaja Bhupinder Singh, that Bhupinder and his sons were not members of a Hindu Undivided Family;
G that the Maharaja and his progeny being *Jats*, did not constitute a Joint Hindu Family and that the appellants never acquired any interest by birth in the property. The counter-affidavit did not admit the allegation of the appellants that they were in possession of the property as coparceners.

H The learned single judge came to the conclusion that since the case raised complicated questions of law and fact, it was not meet that they should be resolved in a petition under Art. 226 and that, even if the appellants were in possession before the date

of the sale of the property to the Government, they were in unauthorised occupation of public premises since the appellants were not holding the property under any allotment, lease or grant from the Government after the date of the sale deed and dismissed the writ petition. A letters petent appeal was preferred against this decision and that was dismissed *in limine*. This appeal, by certificate, is against the decision of the High Court in the letters patent appeal.

The appeal as originally filed, challenged the correctness of the order of the High Court, on the basis of the decision of this Court in *Northern India Caterers Private Ltd. and Another* v. *State of Punjab and Another*(1). But the Punjab Legislature amended the Act by passing the Punjab Public Premises and Land (Eviction and Rent Recovery) Amendment Act, 1969. By s. 102 of the Amendment Act, the jurisdiction of the Civil Court, among other things, to entertain a suit or proceeding for eviction of any person who is in unauthorised occupation of any public premises, was taken away. On their motion, the appellants were permitted by this Court to amend the appeal petition and challenge the validity of the relevant provisions of the Amendment Act, and the appeal petition was amended accordingly.

Before us, the appellants raised two contentions : (1) that they were in possession of the property in their capacity as coparceners with Maharaja Yadavindra Singh, or at any rate, they were residing in the property with a right of residence in the property as junior members of the family and the Government cannot, by resorting to the provisions of the Act, summarily evict them from the property on the ground that they were in unauthorised occupation of public premises within the meaning of s. 3 of the Act; (2) that s. 10E of the Punjab Public Premises and Land (Eviction and Rent Recovery) Amendment Act, 1969, which barred the jurisdiction of the Civil Court to entertain a suit for recovery of possession of public premises is constitutionally bad.

The first question, therefore, is whether the appellants were in unauthorised occupation of public premises. S. 2(d) of the Act defines 'public premises' as under :

> "public premises means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government, or requisitioned by the competent authority under the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, and

(1) [1957] 3 S.C.R. 399.

A includes any premises belonging to any district board, municipal committee, notified area committee or panchayat."

S. 3 of the Act deals with what is unauthorised occupation of public premises. That section says :

B "For purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises :—

"(a) where he has whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotC ment, lease or grant; or

"(b) where he, being an allottee, lease or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to D be entitled to occupy or hold such public premises.

"(c) where any person authorised to occupy any public premises has, whether before or after the commencement of this Act;

(i) sublet in contravention of the terms of allotE ment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting the whole or any part of such public premises;

(ii) otherwise acted in contravention of any of the terms express or implied, under which he is authoF rised to occupy such public premises.

"*Explanation* : For purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee."

G S. 4(1) of the Act provides that, if Collector is of opinion that any persons are in unauthorised occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue, in the manner provided in subsections (2), (3) and (4), a notice in writing, calling upon all persons concerned to show cause why an order of eviction should H not be made.

A person shall be deemed to be in unauthorised occupation of public premises for purposes of s. 3(a) where he has, before

or after the commencement of the Act, entered into possession thereof, otherwise than under and in pursuance of any allotment, lease or grant. The word 'thereof' makes it clear that the person must have entered into possession of public premises before or after the commencement of the Act in order that he may be deemed to be in unauthorised occupation. If the appellants were in possession before the date of the sale of the property to the Government, it could not be said that the appellants entered into possession of public premises, for, at the time when they were in occupation of the property, the property was not public premises. Then it was either the joint family property or the property of the Maharaja, namely, Yadavindra Singh. The property was not public premises before it was sold to the Government. So if the appellants were in possession of the property before it was sold to the Government, it could not be said that they entered into possession of public premises before or after the commencement of the Act and clause (a) of s. 3 of the Act cannot obviously apply and the appellants were not in unauthorised occupation of public premises within the meaning of clause (a) of s. 3. Therefore, the question is, whether the appellants were in possession of the property before it was sold to the Government.

It was alleged in paragraph 2 of the affidavit in support of the writ petition that the appellants were in possession of the property in their own right for a number of years as sons of Maharaja Bhupinder Singh; paragraph 2 of the counter-affidavit stated that the allegation is admitted to the extent that the appellants "are, at present residing in Colonel Mistry's House, Moti Bagh, Patiala. Rest of the para is not admitted". There was no denial of the allegation that the appellants were in possession of the property in their own right as sons of Maharaja Bhupinder Singh. It is difficult to understand how a Deputy Secretary to the Government of Punjab could have personal knowledge about the actual possession of the property in question before the sale deed was executed in favour of the Government.

The appellants were admittedly in possession of the property on the date of the issue of the impugned notice. The respondents had no case that the appellants entered into possession of the property after the date of the sale. We are not very much concerned with the title under which the appellants were in possession; what is really relevant for this case is whether the appellants were in possession of the property before the date of sale to the Government. We think that the case of the appellants that they were in possession of the property before it was sold to the Government must be taken as true. The learned single judge also appears to have proceeded on the same basis.

A Clause (b) of s. 3 of the Act speaks of an allottee, lessee or grantee, who has, by determination or cancellation of his allotment, lease or grant, in accordance with the terms in that behalf, ceased, whether before or after the commencement of the Act to be entitled to occupy or hold such public premises. It is clear that for this clause to apply, the person must be an allottee, lessee or grantee B from the Government. We do not think that this clause can apply in this case as the appellants were not allottees, lessees grantees of the Government.

Clause (c) of s. 3 of the Act can obviously have no application to the case.

C The appellants, were not, therefore, in unauthorised occupation of public premises within the meaning of s. 3 of the Act. It is only if the appellants were in unauthorized occupation of public premises that the Collector would get jurisdiction to issue a notice under s. 4(1) of the Act. We, therefore, hold that the notice was issued without jurisdiction and it has to be quashed and we D do so.

In this view, we have no occasion to reach the question whether the impugned provisions of the Amendment Act are constitutionally valid and we do not express any opinion upon that point. We set aside the order of the High Court and allow the appeal with costs throughout.

E

S.B. *Appeal allowed.*