

A MASROOR AHMAD KHAN
v.
STATE OF UTTARAKHAND & ORS.
(Civil Appeal Nos. 11761-11762 of 2018)
DECEMBER 03, 2018

B [ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Municipalities: Auction of residential quarters of Nagar Palika– Appellants claimed to be one of the participants in the auction proceedings and was also highest bidder – Claim of appellant that he occupied quarter no.6 and started living therein since June 1990 – Appellant complained that in 2001, Nagar Palika instead of executing sale deed in his favour in relation to quarter no.6 passed a resolution to sell quarter no.6 along with other quarters in public auction – Application by appellant under s.35 of Municipalities Act praying for direction to Nagar Palika to execute sale deed in his favour in relation to quarter no.6 – Commissioner directed Nagar Palika to execute sale deed in favour of appellant – State allowed the appeal filed by Nagar Palika – Aggrieved appellant filed writ petition before High Court – High Court dismissed writ petition – On appeal, held: There was no allotment letter issued by Nagar Palika in relation to quarter No.6 in favour of appellant in the so-called auction proceedings held in 1990 – Appellant failed to show that he actually paid any amount to the Nagar Palika towards the sale/auction price for quarter no.6 – Moreover, there was no privity of contract between the appellant and the Nagar Palika which could justify appellant’s entry in quarter no.6 as being legal – Therefore, the possession of the appellant since inception, i.e., since June 1990 in quarter No.6 was unauthorized and was that of a trespasser – Appellant is directed to vacate quarter no.6 within 3 months and pay Rs.3000/- per month to the Nagar Palika by way of damages for the use and occupation of quarter No. 6 from June 1990.

G **Disposing of the appeals, the Court**

HELD: 1. The possession of the appellant since inception, i.e., since June 1990 in quarter No.6 was unauthorized and was that of a trespasser. There was no allotment letter issued by Nagar Palika in relation to quarter No.6 to the appellant in the so-called auction proceedings held in 1990. The appellant also

failed to file any such allotment letter nor could file any acceptance letter of Nagar Palika indicating acceptance of his so-called highest bid. The appellant also failed to show as to how much amount he actually paid to the Nagar Palika towards the sale/ auction price for quarter No. 6 and, if so, when. In the absence of any document of title or/and legal document executed by the Nagar Palika in appellant's favour in relation to quarter No.6 before the appellant entering in quarter No.6 in June 1990, the appellant's possession cannot be held legal. [Paras 11, 12][983-A-D]

2. It is a settled principle of law that in order to prove that the possession of any person in any immovable property is legal, it is necessary for such person to prove *prima facie* that he is either the owner of such property or is in possession as a lawful tenant or is in its permissive possession with the express consent of its true owner. Such was not the case here. The appellant was in possession of quarter No.6 as a trespasser since June 1990 and, therefore, he was liable to be evicted from the said quarter by the Nagar Palika. Not only that the appellant has also rendered himself liable to pay damages for wrongful use and occupation of quarter No.6 since June 1990 to the Nagar Palika till he vacates the quarter No.6. [Paras 13, 14, 16][983-D-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11761-11762 of 2018.

From the Judgment and Order dated 28.08.2018 of the High Court of Uttarakhand at Nainital in Special Appeal No. 25 of 2015 and dated 07.09.2018 in MCC No. 1193 of 2018.

K. K. Tyagi, Iftekhhar Ahmad, Anoop Kumar and Sarvam Ritam Khare, Advs. for the Appellant.

Manish Kumar, Piyush Kaushik and Ms. Divya Roy, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

1. Leave granted.

2. These appeals are filed against the final judgment and order dated 28.08.2018 in Special Appeal No.25 of 2015 and order dated 07.09.2018 in Review Application MCC No.1193 of 2018 in Special Appeal No.25 of 2015 passed by the High Court of Uttarakhand at

A Nainital whereby the High Court dismissed the special appeal and the Review Application filed by the appellant herein.

3. In order to appreciate the short controversy involved in these appeals, few facts need to be mentioned hereinbelow.

B 4. Respondent Nos.3 and 4 are the Nagar Palika Parishad, Nainital (hereinafter referred to as “the Nagar Palika”). In 1990, the Nagar Palika issued an advertisement to auction their residential quarter Nos.6 and 7 situated at Waverly Compound (Gopala Sadan) Mallital, Nainital. So far as this case is concerned, it relates to quarter No. 6.

C 5. The appellant herein claimed to be one of the participants in the auction proceedings and also the highest bidder. The appellant claimed that he occupied quarter No.6 and started living therein since June 1990. The appellant complained that in the year 2001 (18.07.2001), the Nagar Palika instead of executing the sale deed in his favour in relation to quarter No.6, passed a resolution to sell quarter No.6 along with other quarters in public auction.

D 6. The appellant, therefore, filed an application under Section 35 of the Municipalities Act praying therein for a direction to the Nagar Palika for execution of the sale deed in his favour in relation to quarter No.6.

E 7. By order dated 21.07.2006, the Commissioner, Nainital passed an order directing Nagar Palika to execute the sale deed in favour of the appellant. He also fixed the rate at which the sale deed was to be executed followed by another order to that effect.

F 8. The Nagar Palika felt aggrieved and filed application/appeal to the State (respondent No.1). By order dated 12.03.2007, the State set aside the order of the Commissioner dated 21.07.2006 which gave rise to filing of the writ petition by the appellant in the High Court at Nainital. By impugned order, the High Court dismissed the writ petition and also the review application filed by the appellant herein, giving rise to filing of the present appeals by way of special leave in this Court.

G 9. The short question, which arises for consideration, in this case is whether the High Court was justified in dismissing the special appeal filed by the appellant.

H 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

11. In our opinion, the possession of the appellant since inception, i.e., since June 1990 in quarter No.6 was unauthorized and was that of a trespasser. This we say for more than one reason. A

12. First, there was no allotment letter issued by Nagar Palika in relation to quarter No.6 to the appellant in the so-called auction proceedings held in 1990; Second, the appellant also failed to file any such allotment letter nor could file any acceptance letter of Nagar Palika indicating acceptance of his so-called highest bid; Third, the appellant also failed to show as to how much amount he actually paid to the Nagar Palika towards the sale/auction price for quarter No. 6 and, if so, when; Fourth, there was no privity of contract between the appellant and the Nagar Palika which could justify appellant's entry in quarter No. 6 as being legal and lastly, in the absence of any document of title or/and legal document executed by the Nagar Palika in appellant's favour in relation to quarter No.6 before the appellant entering in quarter No.6 in June 1990, the appellant's possession cannot be held legal. B C

13. It is a settled principle of law that in order to prove that the possession of any person in any immovable property is legal, it is necessary for such person to prove *prima facie* that he is either the owner of such property or is in possession as a lawful tenant or is in its permissive possession with the express consent of its true owner. Such is not the case here. D E

14. The appellant has not taken any such plea and even if he claims to have taken, then also, in our view, he has failed to prove such plea for want of any evidence.

15. We have also perused the documents filed by the appellant in that behalf. Having perused, we are of the view that these documents are of no help to him to prove his ownership or/and possession in quarter No.6. These documents are not the documents of title, nor do they prove appellants legal possession over quarter No.6 and nor do these documents in any way bind the Nagar Palika. F

16. It is for all these reasons, we are of the opinion that the appellant was in possession of quarter No.6 as a trespasser since June 1990 and, therefore, he was liable to be evicted from the said quarter by the Nagar Palika. Not only that the appellant has also rendered himself liable to pay damages for wrongful use and occupation of quarter No.6 since June 1990(see page E) to the Nagar Palika till he vacates the quarter No.6. G H

A 17. In order to decide the quantum of damages, we do not consider proper to remand the case to the competent authority under **The Public Premises (Eviction of Unauthorised Occupants) Act, 1971**.

B 18. We, therefore, enquired from the lawyers representing the parties as to what is the approximate area of quarter No. 6 and what would be its monthly rent that it could fetch in the market during the period in question.

C 19. Having heard their views, we have formed an opinion that the appellant should be made liable to pay Rs.3000/- per month to the Nagar Palika by way of damages for the use and occupation of quarter No. 6 from June 1990 till he handovers its vacant possession. The sum which we have fixed balances the rights and equities between the parties.

D 20. The appellant is granted three months' time to vacate quarter No. 6 situated at Waverly Compound (Gopala Sadan) from the date of this order. The appellant is further directed to pay to the Nagar Palika (respondent No.3 herein) the damages for use and occupation of the quarter No.6 from June 1990 (the month when he occupied the quarter) till the date he vacates the quarter in terms of this order within three months.

E 21. The damages be calculated at the rate of Rs.3000/- per month from June 1990 till the delivery of possession.

22. In case the appellant fails to vacate the quarter and fails to pay the damages, it would be construed as non-compliance of this Court's order and in that eventuality the Nagar Palika would be at liberty to move to this Court against the appellant for appropriate order.

F 24. The appeal stands accordingly finally disposed of.