

*** THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

+ WRIT APPEAL Nos.1052, 1053, 1054, 1055 and 1056 of 2010

% Dated 06-02-2024

Between:

Estate Officer & A.P.D.,
Airports Authority of India,
N.A.D., Hyderabad Airport,
Hyderabad – 500 016.

...Appellant

and

\$ Smt. T.Satya Suguna Devi

....Respondent

! Counsel for the Appellant : Mr. E.Madan Mohan Rao

^ Counsel for the respondents : Mr.M.V.Durga Prasad

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 1977 BOMBAY 220
2. AIR 1982 SC 1081
3. AIR 2003 JHARKHAND 17
4. AIR 2003 MP 256
5. 1995 Supp (2) SCC 290
6. 2004 (3) ALT 276
7. AIR 1991 SC 855 (1)
8. AIR 1972 SC 2205

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

WRIT APPEAL Nos.1052, 1053, 1054, 1055 and 1056 of 2010

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice N.V. Shraavan Kumar)*

Heard Mr. E.Madan Mohan Rao, learned Senior Counsel for the appellant.

Mr. M.V.Durga Prasad, learned counsel for the respondents in W.A. Nos.1052, 1055 and 1056 of 2010.

None for the remaining respondents.

2. The **W.A. Nos.1052, 1053, 1054, 1055 and 1056 of 2010** have been filed against the common order dated 22.09.2009 passed in W.P. Nos.9083, 9584, 10391, 14417 and 20345 of 2001 by the learned Single Judge. The appellant herein is the Estate Officer & A.P.D., Airports Authority of India. The respondents in these appeals are the writ petitioners in the said writ petitions.
3. Since the common issues are involved in these intra court appeals between the parties they were heard together and are being decided by this common judgment.
4. For the facility of reference, facts from W.A. No.1055 of 2010 are being referred to as a lead matter.

5. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the impugned common order dated 22.09.2009.

Facts of the case:

6. As in all the writ petitions, identical orders were questioned, the learned Single Judge had referred to the facts as narrated in W.P.No.14417 of 2001.

7. In all the above writ petitions, the petitioners/respondents herein have questioned the orders issued under Section 5-A (2) of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, (hereinafter referred to as 'the Act') by the respondent/appellant herein. Through the aforesaid orders, the respondent/appellant herein has ordered for removal of flats in a residential complex, namely 'Archana Apartments'.

8. It is the case of the petitioner/respondent herein that one Smt. C.Kamsamma, claiming to be the owner and possessor of land to an extent of 600 square yards in the premises bearing No.1-11-252/1/E in Survey No.19 of Begumpet, has sold her undivided share to the petitioner/respondent herein by registered sale deed dated 26.10.1994, bearing document No.3071/94. After purchase of the said plot, the petitioner/respondent herein has entered into an agreement for construction of flat bearing No.204 and

the same was constructed, and ever since, the petitioner/respondent herein is in its possession and enjoyment.

9. As averred in the affidavit filed in support of the writ petition, it is the case of the petitioner/respondent herein that one Sri Mamilla Krishna Reddy, who was the father of Smt.C.Kamsamma, was the original owner and possessor of the land as he has purchased the same from its earlier owner one Sri Hzaratulla by a registered sale deed bearing document No.6041, dated 5th Aban, 1358 Fasli, and the said property is given to Smt.C.Kamsamma by way of pasupu kumkuma at the time of her marriage. Afterwards, when there was a claim by her sisters also for the property, the said Kamsamma had filed a suit for declaration of title, in O.S.No.252 of 1990 on the file of Subordinate Judge, Ranga Reddy District, and the said suit was decreed by a judgment and decree dated 15.03.1991. Thereafter, she entered into development agreement with M/s.Naveen Constructions on 4th January 1993, to develop the said property and obtained permission from the Municipal Corporation of Hyderabad to construct an apartment complex, vide permission bearing No.415/12, dated 12th February 1993. The petitioner/ respondent herein has availed housing loan from Canara Bank and having paid the said amount to the vendor of the land, she got constructed the flat in question and is in possession of the same by letting out to a tenant.

10. At this stage, respondent/appellant herein has issued the notice dated 11th January 2001, in exercise of powers under Section 5-A (1) of the Act, alleging that the Airports Authority has got surveyed the land in Survey No.15 and it was found that the building in question is constructed by encroaching upon its land to an extent of 570 Square yards, as such, directed the petitioner/respondent herein to remove these flats. Initially, the petitioner/respondent herein sent a telegram dated 13.02.2001, thereafter, through an Advocate, got filed a detailed representation dated 24.02.2001, questioning the authority of the respondent/appellant herein in invoking the provisions of Act. After filing of explanation by the petitioner/respondent herein, the respondent/appellant has issued the notice dated 26.04.2001 in exercise of powers under Section 5-A (2) of the Act, directing the petitioner/respondent herein for removal of her flat. In the aforesaid notice, it is stated that the land in Survey No.15 of Begumpet village has been acquired for establishment of Hyderabad Airport by the then Civil Aviation Department by paying compensation and the said land is now in possession of the Airports Authority, as such, the land in Survey No.15 is the public premises and being encroached by Archana Apartments, which had constructed in Survey No.15 but not in Survey No.19 and the representation of the petitioner/respondent herein was not considered. Consequently, orders were issued for removal of said flats.

11. In the writ petition, it is the case of the petitioner/respondent herein that the said apartments are constructed in the land covered by Survey No.19, but not in Survey No.15. It is submitted that after purchase of the land by one Mamilla Krishna Reddy through a registered sale deed bearing document No.6041, dated 5th Aban, 1358 Fasli, the name of said Krishna Reddy is recorded in all the revenue records right from the Khasra Pahani of 1954-55, and after the said land was given in pasupu kumkuma to Smt.C.Kamsamma, her name was also recorded in all the subsequent pahanis prepared for Begumpet village. It is also the case of the petitioner/respondent herein that when there was an interference by the National Airports Authority, the vendor of the petitioner/respondent herein i.e. Smt.Kamsamma has filed the suit in O.S.No.137 of 1991 on the file of the I Additional Sub-Judge, Ranga Reddy District, and the said suit was decreed by a judgment and decree dated 16th July 1997. It is submitted that when the respondent/appellant herein has lost its claim in Civil Proceedings, it is not open for them to invoke the provisions under the Act, and deprive the petitioner/respondent herein of her property, by resorting to summary inquiry contemplated under the said Act. It is the case of the petitioner/respondent herein that as much as the apartment complex is constructed in Survey No.19 of Begumpet village, but not in Survey No.15 as claimed by the respondent/appellant herein, which is beyond the scope of the provisions contained under the Act to resolve such disputes and to order for removal of structures. It is submitted that in view of the

long-standing possession of the vendor of the petitioner/respondent herein and the petitioner/respondent herein after construction of the flat in question, if there is any claim by the respondent-Authority/appellant herein, it is for them to approach the competent Civil Court to establish their claim, but at the same time, they cannot pass any order unilaterally, presuming that the property in question is 'public premises' within the meaning of Section 2 (e) of the Act.

12. On behalf of respondent/appellant herein, counter affidavit was filed by the Senior Manager (Law). In the counter, while generally denying the allegations of the petitioner/respondent herein, it is stated that during the course of inquiry under the provisions of the Act, the claim of the petitioner/respondent herein was that she has purchased the ownership rights in Survey No.19 and Archana Apartments are constructed in Survey No.19, which is outside the Airports Authority owned land. It is stated that in support of her claim, the petitioner/respondent herein has submitted several documents, but all the documents pertain to Survey No.19 and they are nothing to do with Survey No.15. While referring to the telegram dated 13th February 2001 issued by the petitioner/respondent herein and the reply dated 24th February 2001 issued on behalf of the petitioner/respondent herein, it is stated that as much as all the documents produced by the petitioner/respondent herein relate to Survey No.19, but not 15, as such, respondent/appellant herein has issued orders for removal of the structures which are constructed in

Survey No.15. It is stated that since the petitioner/respondent's claim of title is over Survey No.19 and the Airports Authority's claim of title is over Survey No.15, there is no dispute regarding title of their respective land and it is only identification of property in question, as such, the respondent/appellant herein is within its powers for invocation of provisions under the Act. It is also stated that the survey report submitted by the revenue authorities, dated 10th August 2000, also shows that the land covered by Survey No.15 belongs to the Airports Authority, and therefore, no conflicted question of law or fact arise for consideration, but it is only the question of identification of the land. Further, with regard to suit in O.S.No.137 of 1991, it is stated that the said suit pertains to the land belonging to Survey No.19, but not 15.

13. A reply affidavit was also filed on behalf of the petitioner/respondent herein, reiterating that the land in question has been in possession and enjoyment of the petitioner/respondent herein and her predecessors in title, for more than 50 years. It is also stated that no notice was given to the petitioner/respondent herein before conducting survey by the revenue authorities, as referred in the counter affidavit. It is further stated that the suit schedule property in O.S.No.137 of 1991 relates to the same property in which the petitioner/respondent's flat was constructed.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS IN THE WRIT PETITION:

14. It is contended by the learned counsel appearing for petitioners/ respondents herein in the batch of cases, that the petitioners/ respondents herein have purchased the undivided share of land and got constructed the residential complex in the land covered by Survey No.19, but not Survey No.15. It is submitted that the title and possession of petitioners/respondents herein and their vendor is traceable to last more than 50 years, which is evident from various public documents issued by the revenue and Municipal authorities. Referring to such documentary evidence, it is submitted by the learned counsel that when there is a serious dispute with regard to title and possession of property in question, the respondent/appellant herein has no authority or jurisdiction to invoke the provisions under the Act and deprive the petitioners/respondents herein of their land, and such action on the part of respondent/appellant herein is illegal and arbitrary, and also runs contrary to the object of the very Legislation. It is submitted that the predecessor of the petitioners/respondents herein in title Smt.Kamsamma was in actual physical possession of the land and the building was constructed thereon, and when there was interference by the respondent/appellant herein, she filed suit during her lifetime in O.S.No.137 of 1991, and there was no dispute that on the very same property, the flats in question were constructed. It is submitted that when the suit was filed by the predecessor in title of the

petitioners/respondents herein is decreed and when such judgment and decree has become final, it is not open for the respondent/appellant herein to invoke the provisions under the Act, so as to deprive them of their property in illegal and high-handed manner. It is submitted that having regard to the object of the Legislation, it is not intended to decide the complicated questions of title and possession, and if the respondent/appellant authorities herein are having any right over the land in question, it is for them to approach the competent Civil Court to establish title. In support of their contentions, the learned counsel for petitioners/respondents herein has placed reliance on the judgments rendered in the case of **S.R.B.Gaikwad V. The Union of India¹, Govt. of A.P. V. Thummala Krishna Rao & another², M/s.Shree Bajrang Hard Coke Manufacturing Corporation V. Ramesh Prasad & others³, Madhya Pradesh Electricity Board V. Badri Prasad & others⁴ and State of Rajasthan V. Padmavati Devi & others⁵.**

CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS-AIRPORTS AUTHORITY IN THE WRIT PETITION:

15. *Per contra*, it is contended by Sri E.Madanmohan Rao, learned counsel appearing for the respondent-Airports Authority that as much as it is not in dispute that the land covered by Survey No.15 is the land belonging to the respondent/appellant-Authority and the same

¹ AIR 1977 BOMBAY 220

² AIR 1982 SC 1081

³ AIR 2003 JHARKHAND 17

⁴ AIR 2003 MP 256

⁵ 1995 Supp (2) SCC 290

was acquired for Hyderabad Airport, in that view of the matter, as the petitioners/respondents herein got constructed their flats by encroaching into the land belonging to the respondent/appellant herein, they have rightly invoked the provisions under the Act and ordered for removal of said structures. It is submitted that as all the documentary evidence filed by the petitioners/respondents herein are not helpful to the petitioners/respondents herein in support of their claim for title and possession. It is further submitted by the learned counsel that in view of the provision contained under Section 15 of the Act, there is a bar on the respondent/appellant-Airports Authority on approaching the Civil Court, and in that view of the matter, the only remedy available to the respondent/appellant herein is to invoke the provisions of the Act, so as to remove the unauthorized structures. In support of his argument, the learned counsel has relied upon the judgments rendered in the case of **S.Lingamaiah V. State of A.P.**⁶, **Ashoka Marketing Ltd. V. Punjab National Bank and others**⁷, and **Hari Singh & others V. The Military Estate Officer**⁸.

16. After taking into consideration the aforementioned various judicial pronouncements, the learned Single Judge has allowed the writ petitions holding as under:

“22. For the aforesaid reasons, as this Court is of the view that the respondents are not empowered to decide such complicated questions of title and

⁶ 2004 (3) ALT 276

⁷ AIR 1991 SC 855 (1)

⁸ AIR 1972 SC 2205

possession which are involved having regard to the pleas of the petitioners herein, the impugned orders are liable to be quashed.

23. Accordingly, all the writ petitions are allowed, declaring the initiation of proceedings against the petitioners under the provisions of the public Premises (Eviction of Unauthorised Occupations) Act, 1971 as illegal, and consequently, the impugned orders issued under Section 5-A (2) of the said Act against the petitioners in all these writ petitions, are hereby quashed. No order as to costs.”

17. Assailing the said common order, the present appeals have been preferred by the appellant/respondent.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

18. The learned Senior Counsel Mr. E.Madan Mohan Rao, appearing for the appellant would submit that the learned Single Judge has not properly considered the factual legal contentions raised in the writ petition and came to a wrong conclusion that there is a *bona fide* dispute of title and the issue to be adjudicated in Civil Courts, whereas it is nothing but dispute of survey/boundary/identification of the property in respect of the land bearing Sy.No.15 held by the Airport Authority which can be resolved by the authority concerned under the Act 40 of 1971 as the Tribunal can decide the issue whether the property is public premises or not. He further submitted that the petitioners/respondents herein are claiming the land in Sy.No.15 as the land bearing Sy.No.19 by illegally occupying the same in Sy.No.15

and therefore, the appellant authority have initiated eviction proceedings under Section 5 of the Act by a notice dated 11.01.2001 and passed eviction order dated 19/26.04.2001. It is further submitted that the suit in O.S. No.137 of 1991 is only an injunction suit in respect of the land bearing Sy.No.19 of Begumpet village not to dispossess the respondents' vendor except in accordance with law but not declaration of title over the property. Eventually he sought to allow the writ appeals by setting aside the impugned common order.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS

19. On the other hand, the learned Senior Counsel appearing for the respondents herein submitted that the learned Single Judge after considering the factual legal contentions raised by the learned counsel for the appellant herein in the writ petitions and after taking into consideration the various judicial pronouncements, has rightly passed the impugned order and therefore no interference of this Court is warranted with the impugned common order and sought to dismiss the appeals.

20. Heard the learned Senior Counsel on either side and perused the material made available on record.

ANALYSIS AND CONCLUSIONS:

21. Having gone through the impugned common order passed by the learned Single Judge, it is apposite to note that since the impugned order dated 26.04.2001 in the writ petition has been passed

under Sub Section (2) of Section 5-A of the Act, the learned Single Judge had preliminarily considered the Statement of Objects and Reasons of the Act and found to be held as under:

“10. Before I consider the respective contentions of the learned counsel for the parties, I deem it appropriate to refer to the Statement of Objects and Reasons of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971. This Act was enacted to provide for a speedy machinery for eviction of unaurhorised occupants of public premises. In the said objects, it is stated that it has become impossible for Government to take expeditious action even in flagrant cases of unauthorized occupation of public premises – and recovery of rent or damages for such unauthorized occupation. It is therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorized occupation of public premises, keeping in view, at the same time, the necessity of complying with the provisions of the Constitution and the judicial pronouncement. “Premises” is defined under Section 2 (c) and “Public Premises” is defined under Section 2 (e) of the said Act. As evident from the definition under Section 2 (e) of the Act, any premises belonging to, or taken on lease or requisitioned by or on behalf of the Central Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat. Further, it also includes any premises belonging to, or taken on lease by or on behalf of any

Company in which not less than 51% of the paid-up share capital is held by the Central Government or any Company which is a subsidiary of the Government Company, and also includes any premises belonging to any Corporation or a local authority established by or under a Central Act and owned or controlled by the Central Government.

11. In that view of the matter, the definition pre-supposes that the premises shall belong to the Government or the Government-owned Company, so as to construe the same as a 'public premises', and the said Legislation is enacted for the purpose of taking steps for eviction and removal of constructions on such public premises. Section 5 of the said Act empowers the authorities to order eviction of the unauthorized occupants, whereas Section 5-A empowers the authorities to remove the unauthorized constructions, etc."

22. Admittedly, it is not in dispute that the appellant's land is claimed to be fallen in Sy.No.15 and whereas the land claimed by the petitioners/respondents herein is fallen in Sy.No.19 of Begumpet village. It is the specific case of the appellant that the learned Single Judge has not properly considered the factual legal contentions raised in the writ petitions and has come to a wrong conclusion that there is a *bona fide* dispute of title. At this juncture, it is pertinent to note here that it is the specific case of the petitioners/respondents herein that the flats in question are forming part of apartment complex constructed in Sy.No.19 of Begumpet village and the predecessor in title of the petitioners/respondents herein were found to be in

possession for the last more than 50 years. To substantiate the claim of the petitioners/respondents herein they have filed various public documents namely, Khasra Pahani for the year 1954-55 and subsequent pahanis, wherein, Smt. Kamsamma's father was shown to have been in possession of the land in question covered by the Survey No.19 and also Smt.Kamsamma, after the said land was given to her by way of pasupu kumkuma at the time of her marriage.

23. Further, it is not out of place to note here that when there was an interference by the appellant authorities with regard to possession of Smt.Kamsamma, she filed a suit in O.S. No.137 of 1991 wherein a written statement was filed on behalf of the defendants No.3 therein, who is the appellant herein, stating that the suit land does not fall in Survey No.19 but is part of Survey No.15 of Begumpet village and did not choose to contest the matter and subsequently the said suit was decreed by a judgment and decree dated 16.07.1997.

24. It is the further case of the appellant that it is a dispute of survey/boundary/identification of the property in respect of the land bearing Sy.No.15 held by the appellant which can be resolved by the authority concerned under the provisions of the Act as the Tribunal can decide the issue whether the property is public or not. In this regard, it is not out of place to observe that it has been stated in the counter affidavit filed in the writ petition that the proceedings have been initiated pursuant to the survey conducted by the Assistant Director of Survey and Land Records, Ranga Reddy District, who has

addressed a letter dated 10.08.2000, but it is found to be conducted without issuing any notice to the affected persons, who is none other than the petitioners/respondents herein, as such there is no basis for initiation of the proceedings against the petitioners/respondents herein.

25. The learned Senior Counsel appearing for the appellant has vehemently argued that the petitioners/respondents herein are claiming the land in Sy.No.15 as the land bearing Sy.No.19 by illegally occupying the same and therefore, the appellant authority have initiated eviction proceedings under the provisions of the Act. From the above submission itself it is clear that there is serious dispute between the parties with regard to the title and possession of the land in question. Further it could be culled out from the record that the appellant authorities themselves have addressed the survey authorities to decide the boundary dispute by demarcating the land covered by Sy.No.15 as well as 19, which itself also indicates that there was a boundary dispute with regard to land covered by Sy.Nos.19 and 15. At the cost of reiteration, it is to be noted here that the proceedings were initiated by the appellant authorities pursuant to the survey conducted by the Assistant Director of Survey and Land Records, Ranga Reddy District and the said survey is found to be an *ex parte* survey and based on which the appellant authorities cannot invoke the provisions under the Act.

26. In view of the above, the learned Single Judge has rightly appreciated the case on hand and the objective of the Legislation and the provisions contained therein and held that *“Having regard to the objective of the said Legislation and the provisions contained therein, it is designed and intended for ordering evictions and removal of encroachments in cases where there is no dispute with regard to title and possession of property in question. The powers conferred on the authorities under the said Legislation are only to order eviction and removal of constructions with regard to premises which belong to them. But in cases, where there is a bona fide dispute with regard to title/boundaries of the land belonged to the Government or its Corporations or Companies, such disputes are outside the scope of said Legislation, and the authority constituted under the said enactment cannot be said to have jurisdiction to embark upon the domain of the Civil Court for the purpose of adjudicating civil disputes, the power of which, is exclusively vested in such Courts, and it would be unreasonable to allow such authority to decide such disputes by invoking the provisions of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, which provides for a summary procedure to conduct inquiry and order for eviction and removal of constructions. In that view of the matter, when the said provisions are read with reference to the object of the Legislation, it is clear that the said piece of Legislation never intended to give its authorities the power to decide such complicated questions of title disputes, so as to decide the same by passing orders under Section 5 of the said Act.”*

27. Coming to the aspect of consideration of the legal position, the learned Single Judge has considered the following judgments, which are taken note of hereunder.

28. In the judgment in the case of **S.R.B.Gaikwad** (1 supra), a Division Bench of Bombay High Court, while considering the scope of the definition of 'public premises' under Section 2 (e) of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, has held to the effect that 'public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government. In the said judgment, it is further held that the enactment, as indicated in the preamble, is intended to provide for eviction of unauthorized occupants from public premises and for certain incidental matters. The enactment is not so much concerned with the title as with the possessory rights vested in the Central Government, and Section 2 (e) only indicates the sources by which such right to possession can be acquired, one such being, the taking of the premises on lease, from its owner. The definition, thus, is descriptive of the source or origin of the possessory rights acquired by the Central Government. It is the continuance of the vesting of this possessory right in Government and not so much more the origin thereof, that makes any premises, a public premises under the Act. In the same judgment, it is held that the enactment is thus aimed at ensuring the continuance of possessory rights acquired through the modes indicated in the definition clause.

29. In another judgment in the case of **Govt. of A.P. V. Thummala Krishna Rao** (2 supra), while elaborately considering the scope of similar such provision under Sections 6 and 7 of the A.P. Land Encroachment Act, 1905, the Hon'ble Supreme Court has held as under :

“The summary remedy for eviction which is provided for by S.6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is “the property of Government”. If there is a bona fide dispute regarding the title of the government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by S.6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by S.6 is not the kind of legal process which is suited to an adjudication of complicated questions of title.

Held, that the questions as to the title to the three plots could not appropriately be decided in a summary inquiry contemplated by Ss.6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of those plots raised a genuine dispute between them and the Government on the question of title, remembering specially that the property, admittedly, belonged originally to the family of Nawab Habibudin from whom the respondents claimed to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of

acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession had to be decided in a properly constituted suit and until the Government succeeded in establishing its title to the property, the respondents could not be evicted summarily.”

30. In the case of **M/s.Shree Bajrang Hard Coke Manufacturing Corporation** (3 supra), wherein, a Division Bench of Jharkhand High Court, while considering the scope of provision under Section 5 of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, has held in paras 14 and 19 as under :

“14. From what has been discussed and quoted above, it is abundantly clear that an authority under the aforementioned Act has a very limited jurisdiction and it has to determine only a dispute that may arise, vis-à-vis a public premises. Upon an application made before it, it has to proceed in a summary disposal thereto. The question, as to whether the area formed part of the Royal Tisra Colliery or not, consequently making it a public premise is a question that becomes the focal point of the instant case and it, therefore, obviously involve determination/finding of fact. Undoubtedly, while attempting to come to such finding, the authority may be faced with complicated question of title as is involved in the instant case. The authority in the aforementioned case cannot be said to have the jurisdiction to embark upon the domain of the Civil Court for the purposes of adjudicating on a question of a complicated title, which can only be done by a Civil Court. It would be extremely unreasonable to allow a

Court vested with summary procedure to give a finding, which can only be arrived at by a Civil Court having the necessary judicial competence.

19.Now, under Section 5 of the aforementioned Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is clear that a Estate Officer after following the procedure required to be followed therein and after reaching to a conclusion that a person is in unauthorized occupation of a public premises, he may make an order of eviction. The catch words that cannot be lost track of in this provision are that, all that the Estate Officer is required to do is that he must come to a conclusion that a person is in occupation of an area which is already confirmed or which has already been declared to be a public premises. He cannot nor does he have the jurisdiction to identify a particular piece of property and then give a finding that, that piece of property is a public property. This power is vested only with a Court of competent civil jurisdiction and not in a statutory authority, such as Estate Officer, who has been conferred only with summary powers. If such Estate Officers are allowed to give such finding, it would amount to conferring them with the powers of adjudication and delivery of judgments within the meaning of Section 2(a) read with provisions of Order XIV of the Code of Civil Procedure and/or principles/provisions analogous thereto.”

31. In the case of **State of Rajasthan** (5 supra), wherein, the Hon'ble Supreme Court, while considering the provisions under Section 91 of Rajasthan Land Revenue Act, 1956, which provides for summary proceedings for eviction of unauthorized occupants, has observed that where there is a *bona fide* dispute, the matter

cannot be decided under the said Section, and it is held that in such cases, proper course would be to have the matter adjudicated by the competent Court of Law.

32. Taking into consideration the above all referred judgments the learned Single Judge has observed at para 17 of the impugned order as under:

“17. All the above referred judgments support the case of the petitioners as much as there is abundant material in support of their plea that the constructed portions fall within the land covered by Survey No.19, but not 15. When such a plea is raised, in view of the judgments referred above, it is not open for the respondents to record a finding to the effect that such piece of land is covered by Survey No.15 and to order removal of constructions by the authority under the Act. In view of the material placed on record on behalf of the petitioner, it is a clear case where there is a bona fide claim of the petitioners with regard to their plea that the constructions are in Survey No.19, but not in 15. Having regard to such a plea, it is not open to the respondents to initiate proceedings under the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, and order eviction.”

33. On behalf of the appellant, the learned counsel placed reliance on the judgment in the case of **Ashoka Marketing Ltd.** (7 supra), and also in the case of **Hari Singh & others** (8 supra) and the learned Single Judge while considering the same has observed at para Nos.18, 19 and 20, which reads as under:

“18. The learned counsel for respondent has relied on the judgment in the case of Ashoka Marketing Ltd. (7 supra), wherein, the Hon’ble Supreme Court has held that the Nationalised Bank is a Corporation established by a Central Act and it is owned and controlled by the Central Government. As such, the premises belonging to such banks are the ‘public premises’ within the meaning of Section 2(e)2(ii) of the Public Premises Act.

19. Reliance is also placed in the case of Hari Singh & others (8 supra). In the said judgment, by upholding the Legislative competency to enact such a law, the Hon’ble Supreme Court has held that the word ‘premises’ as used in Section 2 (c) of the Act would apply to agricultural land also.

20. The questions, which fall for consideration in the aforesaid two judgments relied upon by the learned counsel for the respondent-Authority, would not render any assistance in support of his plea, having regard to the facts and circumstances of the cases on hand.”

34. Eventually, the learned Single Judge has considered the argument advanced on behalf of the appellant herein that in view of the provision under Section 15 of the Act there is a bar on them to approach the Civil Court and held at para 21 as under:

“21. Though a further argument is advanced by the learned counsel for respondent that in view of the provision under Section 15 of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971, there is a bar on them to approach the Civil Court, but it is very difficult to accept such contention advanced by the learned counsel. As per the provisions under Section 15 of the Act, there is a bar of jurisdiction created on the

Courts only in respect of orders passed under the said Act. Upon a reading of the said provision, it is very clear that it creates a bar on the Courts to entertain any suit or proceeding in respect of eviction of any person who is in unauthorized occupation of any public premises or in respect of removal of any building, structure or fixture or goods, cattle or other animal from any public premises etc. But, when there is a dispute with regard to title and possession of the very public premises, this bar created under Section 15 of the Act would not come in the way of respondents to seek declaration with regard to title and possession, in the event of any disputes with regard to boundaries of the public properties. As such, the contention advanced on behalf of the learned counsel cannot be accepted.”

35. In the case on hand, the appellant/respondent authorities have issued the impugned proceedings dated 19/26.04.2001 in the writ petition after the constructions were over. The appellant/respondent authorities ought to have taken steps when the constructions were in progress on the disputed site, however, issued the impugned proceedings in the writ petition belatedly that too after constructions were completed.

36. It is pertinent to note here that the learned Single Judge has observed that the survey was conducted without issuing any notice to the affected persons. However, the learned Single Judge while referring to the judgments in support of the case of the petitioners/ respondents herein and on the basis of the material in support of

their plea observed that the constructed portions on the subject lands fall within the land covered by Survey No.19 but not in Survey No.15.

37. The core issue involved in these appeals, which falls for consideration, is the very identification of the disputed property and clear demarcation of boundary, which is only possible by way of proper survey and thereby rights of the parties would be determined. In view of the same, the parties are left open to pursue their remedies as available under law.

38. On the analysis supra and for the aforementioned reasons, the findings recorded by the learned Single Judge to the extent that the appellant authorities have not empowered to decide such complicated questions of title and possession which are involved having regard to the pleas of the petitioners/respondents herein and declaring the initiation of proceedings against the petitioners/respondents herein under the provisions of the Act as illegal, we do not find any reason to interfere with the impugned common order dated 22.09.2009.

39. In the result, the Writ Appeals No.1052, 1053, 1054, 1055 and 1056 of 2010 fail and accordingly are dismissed in terms of the above, leaving it open to the parties to avail their remedies as available under law, if so desired. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

ALOK ARADHE, CJ

N.V. SHRAVAN KUMAR, J

Date: 06-02-2024

Note: L.R. Copy be marked.
B/o.
LSK