

Shri Satish
Chander
and another
v.
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in my opinion sounds extraordinary when it comes from the mouth of the learned Solicitor-General, speaking on behalf of the Government which quite evidently has done its best expressly to bar the jurisdiction of the Civil Courts to question the validity of any order passed under the Act, and it may be recalled, as I stated earlier, that in the very suit from which this reference has arisen the Government has in fact taken the plea that the jurisdiction of the Civil Court to entertain the suit is barred.

In the circumstances my opinion, for generally the same reasons as have been given in the Calcutta and Allahabad cases, is that the Government Premises (Eviction) Act is *ultra vires* as it offends against the fundamental right to property conferred on citizens by Article 19(1) (f) of the Constitution and that it is not saved by the provisions of clause (5) of Article 19. I would accordingly answer the question referred to the Court by the learned Subordinate Judge under section 113, Civil Procedure Code, in the affirmative. Costs in the reference will be costs in the suit. Counsel's fee Rs. 150.

D. K. M.

CIVIL WRIT

Before Bishan Narain J.

THE PUNJAB STATE CLUB, SIMLA,—*Petitioner*

versus

THE MUNICIPAL COMMITTEE, SIMLA,—*Respondent*.

1957

Civil Writ No. 755 of 1957.

Sept., 5th

Punjab Municipal Act (III of 1911)—Section 47(2) and (3)—Provisions of, whether, mandatory—Whether a Municipal Committee can lease out premises without complying with the provisions of section 47(2) and (3)—Whether a

lease can be granted by passing a resolution—Constitution of India—Article 226—Facts disputed High Court whether will determine the same under Article 226.

Held, that the provisions of section 47(2) and (3) which prescribe mode of transferring immovable property belonging to the Municipal Committee are mandatory. Unless the mode laid down therein is strictly complied with, there can be no valid transfer binding on the Committee. A lease of immovable property is a transfer of right to enjoy such property. The defect of non-compliance with section 47(2) cannot be cured by the application of the doctrine of part performance. The resolution by which the building was handed over by the Municipal Committee does not amount to a contract by lease. It merely allows the building to be used as Club during hours which would be fixed by the Committee. The occupation under the resolution was by license of the Committee.

Held further, that rival claims as to title made by parties based on facts which are disputed should not be determined in proceedings under Article 226 of the Constitution and the matter should be decided more appropriately by a Civil Court in ordinary way.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus, prohibition, certiorari or any other writ or direction be issued directing the respondent not to interfere with the possession and use of the premises by the petitioner and further praying that the respondents be directed to remove their lock and seal and permit the petitioner Club to continue using the premises.

RAJINDAR SACHAR for Petitioner.

R. P. KHOSLA, for Respondent.

ORDER

A certain premises consisting of a building with a small grassy plot known as "Lady Reading Coolies Shelter" situated in Simla was given to the Municipal Committee (hereinafter called the Committee) for use as coolie shelter. The Punjab

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State Club was in possession of these premises in June, 1957, when on 23rd June, 1957, the Committee locked up and sealed the premises. This has led the Club to file this petition under Article 226 of the Constitution on the ground that the Club was in possession of these premises as tenant and could not be evicted without a proper order by a Court of law. This petition is contested by the Committee.

The admitted facts are these. On the 4th of August, 1949, Shri P. Tribhavan, then Press Liaison Officer, requested the Committee to allot these premises to the "Services Club" which was proposed to be started for Government and semi-Government servants. The Committee granted this request and passed a resolution on the 4th August reading—

"Resolved that this building be allotted for one year to this Club on payment of rent on condition that it will be used as a Club during hours which will be fixed by the Committee so as not to deprive the public of the use of the open space in front of this building.

* * * * *

The Services Club accordingly occupied the premises. Admittedly, this Club was an unincorporated members Club and was formed for social intercourse and relaxation and recreation of its members. On the 14th of June, 1950, the Committee passed a resolution calling upon the Club to vacate the premises on or before the 5th of September, 1950. The Club requested the Committee to re-consider the matter but that request was not accepted. Number of notices were issued to the Club and resolutions were passed calling upon the Club to hand over possession. Thereafter

the facts are not admitted and are in dispute and I shall deal with them a little later. Suffice it to say that on the facts alleged by the Club the petitioner claims that it is Committee's tenant, while according to the Committee's version the petitioner is merely a trespasser and has no right to remain in possession of the premises.

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Before dealing with the case on merits I may dispose of the preliminary objection raised on behalf of the respondent Committee. Its objection is that the Punjab Services Club not being a registered body could not file this petition through the Club's officers and that it could be filed only by all the members of the Club. This petition is filed by the Punjab State Club, Simla, through its Managing Committee through Shri Avtar Singh, Chairman, Shri Sewa Ram Anand and Shri S. P. Mehta, members. This petition is supported by the affidavit of Avtar Singh. Other members have not been impleaded as petitioners or respondents. Admittedly the Punjab Services Club, is an unregistered members' Club. Such a club has no legal status. It is neither a company nor a partnership. It is a social club for relaxation and recreation of its members. Unregistered members clubs are societies, the members of which are perpetually changing and are merely aggregates of individuals, called for convenience by a common name. It is well established that such association of members cannot sue or be sued in the association's name and all its members must sue or be sued. It is argued by the learned counsel for the petitioner that it was the intention of all the members of the Club to file this petition and that they have merely used the Club's name as a short and collective name for all the individual members who constitute the Club. According to the learned counsel these three members who figure as petitioners have been authorised by all the members

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to file this petition and they are really acting as representatives of all the members. It is urged that if the procedure adopted is defective, then it is merely a case of misdescription and an amendment may be allowed to cure this defect. This is a possible view and in this view all that is required to be done to regularise the petition is to permit the petitioner to amend the petition and to implead all the existing members as petitioners or as respondents. In view of this matter I have decided not to accept the preliminary objection and to deal with the case on merits.

On the admitted facts it is necessary to determine the nature of the Service Club's rights in the property in dispute. Section 47(2) and (3) of the Punjab Municipal Act prescribes mode of transferring immovable property belonging to the Committee. These provisions are mandatory, and unless the mode laid down therein is strictly complied with, there can be no valid transfer binding on the Committee. A lease of immovable property is a transfer of right to enjoy such property. In the present case it is admitted that no instrument transferring lease rights in these premises was executed by the Committee and that the Services Club was allowed to occupy them by virtue of the resolution passed by it. This resolution, the terms of which I have reproduced earlier, does not purport to lease the property to the Services Club. It merely allows the building to be used as Club during hours which would be fixed by the Committee. It follows that even the whole time possession was not delivered to the Club by this resolution. It is true that the resolution contemplates "payment of rent" by the Club, but this by itself is not sufficient to create the relationship of landlord and tenant. It was argued that as the Committee had been

supplying electricity and water to the Services Club and also to the petitioning Club and has been receiving amounts of bills thereof, it must be taken that the contract of lease had been partly performed. I have already held that the resolution does not amount to a contract of lease. The receipt of dues on account of supply of electricity and water cannot be considered to be a conduct which acknowledges the tenancy rights of the Services Club or the petitioning Club. At the time when electricity or water connection is given, the Committee does not go into the title of the occupier and merely supplies these facilities and charges for them from the occupier of the building. In any case, the defect in the agreement (non-compliance with section 47(2) of the Act) cannot be cured by the application of the doctrine of part performance,—*vide Parashuram Detaram Shamdasani and another v. The Tata Industrial Bank, Limited, and others* (1), and *New Delhi Municipal Committee v. H. S. Rikhy* (2). As the Services Club was permitted by the resolution to occupy the premises in dispute for one year, it must be held that its occupation by that Club in 1949 was by licence of the Committee.

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This brings me to the period after the expiry of one year for which the licence was granted to the Services Club. It is common ground that the Committee called upon the Club to vacate the premises on or before the 5th of September, 1950, by giving about two and a half months' notice and the Club's request to reconsider this decision was rejected. The petitioner's case is that the Services Club and thereafter the Punjab Service Club continued to remain in possession till 1957, when the Committee locked and sealed

(1) A.I.R. 1928 P.C. 238.

(2) A.I.R. 1956 Pun 181.

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these premises. According to the petitioner both the Services Club and the Punjab State Club consisted of Government servants and had many common members. The petitioner has also pleaded that the Committee has been recognising the tenancy rights of the Club by receiving electricity and water charges from it. On the other hand, the respondent's case is that the Committee had taken possession of the premises on or about the 3rd of December, 1951, but a few days later another Club by the name of New Services Club took illegal and forcible possession by breaking open the windows of the building and that thereafter on some unknown day the petitioning Club occupied the premises. According to the petitioner it occupied the premises in 1954. The question arises in these circumstances whether the rival claims made by the parties based on facts which are disputed should be determined by me in the present proceedings. Their Lordships of the Supreme Court have repeatedly deprecated the High Court determining disputed facts in proceedings under Article 226 of the Constitution. In *Sohan Lal v. Union of India* (1), their Lordships have observed—

“There was a serious dispute on questions of fact between the parties and also whether Jagan Nath had acquired in law any title to the property in dispute. Proceedings by way of a writ were not appropriate in a case where the decision of the Court would amount to a decree declaring Jagan Nath's title and ordering restoration of possession. The proper remedy open to Jagan Nath was to get his title declared in the ordinary way in a Civil Court. The

(1) A.I.R. 1957 S.C. 529.

alternative remedy of obtaining relief by a writ of mandamus or an order in the nature of mandamus could only be had if the facts were not in dispute and Jagan Nath's title to the property in dispute was clear."

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These observations fully apply to the present case. The right of the Club to remain in occupation of the premises is far from clear. It is claimed that even as licensee, although the licence has been revoked, the petitioner could not be evicted except in due course of law and not by force. It is further claimed that even a trespasser who has remained in occupation of the property in dispute for about three years cannot be evicted except in due course of law through civil Courts. The Committee replies that the petitioner was not evicted forcibly and its continued possession was due to the members by a device having got the file relating to this case summoned by the Government and they got the same detained there for about four years. In these circumstances, I think the matter should be decided more appropriately by a civil Court in the ordinary way.

Moreover, the petitioner has ample remedy under section 9 of the Specific Relief Act. This provision of law is intended to meet just the cases of the present type. The petitioner can still avail of this remedy as six months have not yet expired since the Committee locked up the premises. In these circumstances it would not be proper for me either to decide these disputed questions of fact and law, particularly when it is still open to the petitioning Club, in spite of my decision, to go to a civil Court under section 9 of the Specific Relief Act.

In the end I may say that strictly speaking the petition fails on the ground that the petitioner has not

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succeeded in showing that it is Committee's tenant on which basis the present petition was filed.

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For all these reasons, this petition fails and I dismiss it with costs. Counsel's fee Rs 100. These costs will be paid by the three members of the Punjab State Club who have filed this position.

Bishan Narain, J.

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Before Bishan Narain, J.

K. R. SHARMA,—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 681 of 1957.

1957

Sept., 12th

Constitution of India—Articles 226 and 311(2)—Government servant—Departmental enquiry against—Nature of—Code of Criminal Procedure (V of 1898)—Section 173(4)—Whether applicable to such departmental enquiry—Non-compliance with the provisions of section 173(4)—Whether an irregularity—Whether can be set aside under Article 226—Punjab Civil Services Rules—Nature of—Whether create an offence.

Held, that the purpose of a departmental inquiry is merely to help the Government to come to a definite conclusion regarding the conduct of a government servant and to decide what penalty, if any, should be imposed upon him. The nature of this inquiry is neither criminal nor quasi-criminal. If any thing, its nature appears to be a kin to civil proceedings. It relates to the terms of service between the Government and its employee. The final order at best puts an end to the contract of service between them. If any term of service is contravened, then the aggrieved employee can file a suit in civil Courts against his wrongful dismissal and for damages for breach of contract.

Held, that section 173(4) of the Code of Criminal Procedure has no application to a departmental inquiry. The Inquiry Officer is not a Court within the Criminal Procedure