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MA-5786-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. APPEAL No. 5786 of 2024

ANN. CHANDIRAMANI AND OTHERS

Versus

UNION OF INDIA AND OTHERS

.....
Appearance:

Shri Rohit Kumar Mangal, learned counsel for the appellants.

Shri Himanshu Joshi, learned Assistant Solicitor General for respondents.
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ORDER

(Reserved on 01.05.2025)

(Pronounced on 13.05.2025)

1. This appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure has been preferred by the plaintiffs/appellants being aggrieved by the order dated 30.04.2024 passed by the appellate Court whereby their application under Order 39 Rule 1 and 2 of the CPC for issuance of mandatory injunction has been rejected.

2. The facts of the case in brief are that the plaintiffs/appellants claim themselves to be the owners of the disputed property the same having been purchased by their predecessors by registered sale deed dated 14.11.1892. On 14.07.1995 defendant No.1 issued notices to the plaintiffs under Section 12 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 seeking documents of title regarding the disputed property. The plaintiffs filed their reply to the notice. On 05.06.1995 defendant No.2



passed an order under Section 5-B(2) of the Act, 1971 informing the plaintiffs for stopping construction over the disputed property. Reply was submitted by the plaintiffs to the said notice on 09.06.2025. On 15.06.1995 defendant No.2 issued a notice to the plaintiffs under Section 4 of the Act, 1971. The plaintiffs then preferred W.P. No.846/1995 before this Court which was dismissed by order dated 10.07.1994 granting liberty to them to file a civil suit.

3. On 07.05.1997 the plaintiffs filed a civil suit before the trial Court for declaration of their title over the disputed property, declaration that the notices issued by the defendants are null and void and for permanent injunction restraining the defendants from interfering with their possession over the disputed property. By order dated 09.05.1997 status quo with respect to the disputed property was directed to be maintained by the trial Court. Written statement to the plaintiff's claim was filed by the defendants. Thereafter by order dated 01.08.2001 the trial Court granted temporary injunction in favour of the plaintiffs. Eventually by judgment and decree dated 20.12.2022 the trial Court dismissed the plaintiff's claim but in paragraph No.39 it was held that though they have failed to prove their title but are in possession of the disputed property and are entitled to right of its occupation.

4. As per the plaintiffs, on the very next day i.e. 21.12.2022 in the morning at around 8.00 a.m. the defendants along with labourers and personnel came to the disputed property and took over possession of the



same without following the due process of law and without any order of eviction passed by any competent Court or authority. On that day itself an appeal under Section 96 of the CPC was preferred by the plaintiffs before the appellate Court along with an application under Order 39 Rule 1 and 2 of the CPC for issuance of temporary injunction. That day itself the appellate Court granted status quo in respect to the disputed property. The plaintiffs subsequently filed another application under Order 39 Rule 1 and 2 of the CPC for grant of mandatory injunction directing for restoration of possession of the disputed property. The same was contested by the defendants by filing their reply and has been rejected by the appellate Court by the impugned order on the ground that plaintiff's title has been negated by the trial Court hence the issues raised by them can be decided only on merits.

5. Learned counsel for plaintiffs has submitted that plaintiffs are in possession of the disputed property as has been found by the trial Court itself. They were also held entitled for its occupation. There is no order of the defendants for dispossession of the plaintiffs despite which they have dispossessed them from the disputed property illegally and in an extremely high handed manner. On the very next morning of passing of the judgment and decree by the trial Court the plaintiffs were dispossessed without even affording them opportunity to challenge the said judgment in appeal and seek interim order from the appellate Court. During the entire pendency of the civil suit there was an injunction in favour of the plaintiffs. In dispossessing the plaintiffs in less than 24 hours after passing of the judgment and decree by the trial Court the defendants have violated all cannons of law. Prayer for



mandatory injunction as claimed by the plaintiffs hence ought to have been allowed. Reliance has been placed on the decision of the Apex Court in the case of State of M.P. and Others V/s. Uttamchand and Others 2000 (2) J LJ 143, Sukh Dutt Ratra and Another V/s. State of H.P. and Others 2022 (7) SCC 508 and of this Court in State of M.P. V/s. Chanchal Jadon 2024 (4) MPLJ 439.

6. Per contra, learned counsel for defendants has submitted that plaintiffs do not have any title over the disputed property as has been held by the trial Court. Plaintiff's claim has been dismissed by the trial Court hence the defendants were free to take action for obtaining possession of the disputed property. They have done the same only by following the due process of law. There was a notice issued to the plaintiffs under Section 4 of the Act, 1971 prior to filing of the suit itself which was very much in existence and acting upon it they have taken the possession. Since on 21.12.2022 there was no subsisting order of injunction in favour of the plaintiffs the defendants had every right to and have legally taken possession of the disputed property. Section 12 and 15 of the Act, 1971 authorizes taking over such possession in which there is no illegality. Appellate Court has observed that the grounds as raised by the plaintiffs are matter of evidence hence no fault can be found with its order in view of which the appeal deserves to be dismissed.

7. I have considered the submissions of the learned counsel for the parties and have perused the record.



8. Notice was earlier issued against the plaintiffs by the defendants under Section 12 of the Act, 1971 followed by an order under Section 5-B(2) informing them for stopping construction. Thereafter notice under Section 4 of the Act, 1971 was issued on 15.06.1995 i.e. almost 30 years ago. Thereafter this Court in W.P. No.846/1995 by order dated 25.06.1995 and the trial Court by order dated 09.05.1997 and 01.08.2021 granted interim orders protecting the possession of plaintiffs. Though plaintiff's claim has been dismissed by the trial Court by judgment and decree dated 20.12.2022 but therein itself it has been held that they are entitled for occupation/possession of the disputed property upon recording a finding that they are in such possession. The judgment was passed by the trial Court on 20.12.2022 but without even waiting for a period of 24 hours, on the very next day itself i.e. 21.12.2022 in the morning the defendants took forcible possession of the disputed property. The appeal could be preferred by the plaintiffs on that very day itself but by the time they had been dispossessed. Pertinently in the appeal, on 21.12.2022 itself status quo was directed to be maintained. It is evident that the defendants did not afford a breathing time of even 24 hours to the plaintiffs to approach the appellate Court and seek issuance of interim order in their favour. In the facts of the case which was pending for about 30 years, heavens would not have fallen if plaintiffs had been granted reasonable time for approaching the appellate Court praying for protection of their possession.

9. The manner in which the defendants have taken possession of the disputed property is wholly illegal and defies all canons of law. Immediately



upon dismissal of plaintiff's claim in which they were held entitled for occupation/possession of the disputed property they were dispossessed within 24 hours without even giving them any opportunity to approach the appellate Court. It is evident that the defendants well bent up and premeditated to deprive the plaintiffs of taking recourse to the remedy as available to them under the law against the judgment and decree passed by the trial Court and making a prayer for protection of their possession. The defendants wanted to and have in fact preempted the plaintiffs from seeking protective orders from the appellate Court. Such an attitude on part of the defendants is most unfortunate and cannot be countenanced.

10. On the record is a notice under Section 4 of the Act, 1971 issued by the defendants to the plaintiffs but there is no order of eviction against the plaintiffs. Thus, the defendants have dispossessed the plaintiffs without taking recourse to the remedies available to them under the law. In any case, the proceedings under the Act, 1971 which were taken against the plaintiffs were also 30 years ago and cannot be pressed into service at this stage.

11. In similar circumstances the Apex Court in State of M.P. and Others V/s. Uttamchand and Others 2000 (2) JLJ 143 has held as under :-

"16. No doubt a person is in possession can protect his possession and cannot be dispossessed without the authority of law or without the orders passed by the competent Court or authority following the process of law. Reliance is placed on the decision of Supreme Court in case of Krishnaram v. Shobha Venkatrao AIR 1989 SC 2097 in which it has been held that it is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to retain on the property he cannot be dispossessed by the owner of the property except by due course of law.



Further reliance was also placed on another Division Bench decision of the Supreme Court in *Laloo Yashwant Singh v. Rao Jagdishsingh* AIR 1968 SC 620 - page 622, Para 8 wherein it is held that, "in our view, in the context the word trespass here would include forcibly entering and dispossession by the landlord". The Supreme Court in this judgment cited with approval the well known passage from the leading Privy Council case of *Mitanapur Jamadary Company Ltd. v. Narain Rao* AIR 1924 PC 144 wherein it has been observed as under:

In India persons are not permitted to take forcible possession, they must obtain such possession as they are entitled to through a Court.

17. This proposition was also accepted by a Division Bench of Apex Court in *Ram Ratan v. State of Uttar Pradesh*, AIR 1977 SC 619. The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law.

18. The Supreme Court in another case of *State of Uttar Pradesh and Ors. v. Maharaja Dharmendraprasad Singh and Ors.* AIR 1989 SC 997 has held as under:

A lessor, with the best title, has no right to resume possession extra judicially by use of force, from the lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease deed does not authorise extra judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited, a lessee cannot be dispossessed otherwise than in due course of law. In the instant case the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'. Therefore, there is no question in the instant case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due



course of law.

19. The another judgment relied by the Respondents is *Bishandas v. State of Punjab and Ors.* AIR 1961 SC 1570 wherein it has been held as under:

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the Petitioners were in possession and occupation of the buildings, and (3) that by virtue of enactments binding on the Government, the Petitioners could be dispossessed, if at all, only in pursuance of a decree of a civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the Petitioners by the display of force exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a government functioning in a society governed by a constitution which guarantees to its citizen against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in *Wazir Chand v. State of Himachal Pradesh*, AIR 1954 SC 415, the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In *Ram Prasad Narayan Sahi v. State of Bihar* AIR 1953 SC 215, this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits with him a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extra-ordinary action are, to quote what we said in Sahi's case (*supra*) remarkable for their disturbing implications."

12. In the available facts of the case the appellate court ought to have directed the defendants to restore status quo ante and to deliver possession of the disputed property to the plaintiffs by applying the principles as regards mandatory injunction laid down by the Apex Court in the case of Dorab



Cawasji Warden V/s. Coomi Sorab Warden and Others (1990) 2 SCC 117 in

which it has been held as under :-

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such



injunctions would be a sound exercise of a judicial discretion."

13. The appellate Court has not at all taken into consideration the entire facts and circumstances of the case and has merely observed that the issues raised by plaintiffs can only be decided on merits. The said order hence cannot be sustained and is accordingly set aside. The application under Order 39 Rule 1 and 2 of the CPC dated 03.01.2023 bearing IA No.3 is hereby allowed and the defendants are directed to restore status quo ante and deliver possession of the disputed property to the plaintiffs and thereafter not to interfere with their possession over the same or change its nature in any manner and create third party interest therein. The appellate Court shall ensure that possession is delivered by the defendants to the plaintiffs within a period of 15 days from the date of receipt of certified copy of this order.

14. The appeal is accordingly allowed. No costs.

(PRANAY VERMA)
JUDGE