

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

O.A./C.E.P/T.A.R.A. NO. 44/2002
Date of Decision 31.3.05

Union of India & Ors. Applicant(s)

Sri Amit Shalekar Counsel for the Applicant(s)

Versus.

S.P. Verma Respondent(s)

Sri R.K. Sahai Counsel for the Respondent(s)

CORAM:

HON'BLE MR. V.K. Majaria V.C./MEMBER (4)

HON'BLE MR. A.K. Bhattacharya MEMBER (5)

1. Whether Reporters of local News Papers may be allowed to see the judgment.
2. To be referred to the Reporters or not.
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.

SIGNATURE

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

Review Application No. 44 of 2002

IN

ORIGINAL APPLICATION NO.1105 OF 1998

ALLAHABAD THIS THE 31st DAY OF March 2005

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

1. Union of India
2. General Manager DLW, Varanasi.
3. Chief Mechanical Engineer, DLW, Varanasi.
4. Dy. Chief Mechanical Engineer, D.L.W,
Varanasi.

.....Petitioners

(By Advocate Shri Amit Sthalekar)

V E R S U S

S.P. Verma, S/o Sri Jhagree Prasad Verma,
Fitter Staff No. 3806, Loco Assembly Shop,
D.L.W., Varanasi.Respondent

(By Advocate: Sri R.K. Sahai)

O R D E R

V.K. MAJOTRA, V.C.

Through this application, review has been sought
of the order dated 7.3.2002 passed in O.A. no. 1105
of 1998.

2. The learned counsel of the Review Applicants
(respondents in the O.A.) contended that under
Section 15 of Public Premises (Eviction of

Unauthorized occupants) Act, 1971 (in short P.P. Act, 1971), jurisdiction of the Civil Court is barred and since the proceedings under the P.P. Act, 1971 were already pending by way of appeal under Section 9 of the P.P. Act, 1971, the suit for injunction filed by the wife of the applicant in the O.A. was not maintainable before the Civil Court and no cognizance could have been taken by the Tribunal of the civil proceedings pending before the Civil Court filed by the wife of the applicant in the O.A. The learned counsel pointed out that in its order, the Tribunal had taken ~~a~~ note that the order relating to "ownership of the disputed land is still pending before the Civil Court" and until & unless the title of the property is finally decided by the Civil Court , it cannot be held that the applicant has either encroached himself or abetted encroachment by his wife on public land and the orders after the departmental enquiry have, therefore, been passed on the assumption that the land , in question, belongs to the Government, which can only be clear after a final decision of the Civil Court." The Tribunal further held that we, therefore, find no merit in the charges against the applicant for the time being. The authorities should have waited for the final outcome of the Civil Suit before giving any charge sheet to the applicant. The order of dismissal passed by the Disciplinary authority, rejection of his appeal by appellate authority and

rejection of revision by revisionary authority are all quashed. The applicant shall be restored to his job and given all benefits of salary, wages and seniority as if the impugned order had never been passed. It shall be open for the respondents to launch fresh disciplinary proceedings against the applicant if a Civil Court finally decides that the disputed land is indeed public land."

3. The learned counsel maintained that civil suit did not relate to declaration of the title of the land, but regarding prohibitory injunction. In this connection, he relied upon Annexure A-3 which is a copy of the plaint in the civil suit. He has further, relied upon Annexure A-2 which is the order dated 18.11.2001 of the Hon'ble Supreme Court in Civil Appeal no. 4510 of 1991 arising out of SLP (C) No. 1474191 in the case of Union of India & Others Vs. Harendra Nath Misra. The cited case related to the official who was placed under suspension for occupying by force the Government quarter without any written order of allotment. The Tribunal had taken the view that the possession of the Government quarter without allotment could not be a ground for taking disciplinary proceedings. The Hon'ble Supreme Court has set-aside the Tribunal's order holding that non-vacation of the official quarter forcibly occupied without any written order of allotment could form the basis for the disciplinary

proceedings. The learned counsel stated that the Tribunal has committed an error on the face of the record and instead of deciding the O.A. on merits, quashed the order of penalty of dismissal from service assuming that the civil dispute relating to ownership was pending in the Civil Court.

4. On the other hand, the learned counsel of the respondent in the Review Application stated that the Tribunal did not commit any error of law as even if the civil suit related to seeking prohibitory injunction, the same could not be decided by the Civil Court without deciding who held the title of the disputed land.

5. We have considered the contentions raised by both sides. Indeed the punishment of dismissal in the disciplinary proceedings against the applicant was quashed and set-aside by the Tribunal holding that the dispute of ownership of the land was pending before the Civil Court and until & unless, the title of the property is finally decided by the Civil Court, it cannot be held that the applicant has either encroached himself or abetted encroachment by his wife on public land.

6. Section 15 of P.P. Act, 1971 reads as under:

"Bar of Jurisdiction:- No Court shall have jurisdiction to entertain any suit or proceeding in respect of :-

- (a) the eviction of any person who is in unauthorized occupation of any public premises, or
- (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or
- (c) the demolition of any building or other structure made, or ordered to be made under Section 5-B, or
- (cc) the sealing of any erection or work or of any public premises under Section 5-C, or
- (d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under Sub-Section (2) or interest under Sub-section (2-A), of that section, or
- (e) the recovery of -
 - i. costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A.
 - ii. expenses of demolition under Section 5-B, or
 - iii. costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or
 - iv. any portion of such rent damages, costs of removal expenses of demolition, or costs awarded to the Central Government or the statutory authority."

7. This provision clearly debars the jurisdiction of the Civil Court in the eviction suit against an unauthorized occupant of P.P. Act, 1971. This Act is a special Act which is exclusive jurisdiction over the premises declared "public premises". Admittedly, the civil suit relating to prohibitory injunction and not for declaration of the title over the land.

Annexure -3, which is a copy of the plaint in the civil suit supports the contention of the Review Applicants that the civil suit did not relate to declaration of the title over the land, in question. Annexure-2 which is the Hon'ble Supreme Court's order also supports that the disciplinary proceedings could be initiated on the charge of non-vacation of the official quarter occupied un-authorisedly. In our view, an error of law has occurred on the face of the record in the Tribunal's order dated 7.3.2002 inasmuch as the O.A. was decided on the ground that the civil dispute between the parties related to the ownership of the disputed land and as such until & unless the title of the property is finally decided by the Civil Court, delinquent cannot be held that he has either encroached himself or abetted encroachment by his wife on public land.

8. In this backdrop, accepting the contention of the learned counsel of the Review applicants, the Tribunal's order dated 7.3.2002 is recalled and O.A. is restored to its original number for re-hearing for which both the parties should be noticed.

✓
MEMBER-J

GIRISH/-

W. Mayoh
VICE CHAIRMAN
31.3.05