

ITEM NO.2

COURT NO.3

SECTION IVA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 4064 OF 2004

S.D. BANDI

Appellant (s)

VERSUS

DIVISIONAL TRAFFIC OFFICER, KSRTC AND ORS.

Respondent(s)

(With applications for exemption from filing O.T, intervention,
directions, permission to intervene by the applicant above-named,
directions, permission to file additional documents and office report)

[Regarding States of West Bengal, Jammu and Kashmir, Orissa and
Madhya Pradesh]

Date: 26/09/2006 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

Mr. Ranjit Kumar, Sr. Adv. (A.C.)

Ms. Anjani Aiyagari, Adv.

For Appellant(s)

Mr. Naveen R. Nath, Adv.

For Respondent(s)

Mr. S.W.A. Qadri, Adv.

Mr. R.C. Kathia, Adv.

Mr. V.K. Verma, Adv.

KSRTC:

Mr. R.S. Hegde, Adv.

Mr. P.P. Singh, Adv.

State of Orissa:

Mr. Jana Kalyan Das, Adv.

State of West Bengal:

Mr. T.C. Sharma, Adv.

Ms. Neelam Sharma, Adv.

U.T. of Andaman Nicobar,

Lakshadweep, Daman and

Diu & Dadar & Nagar

Haveli:

Ms. Sunita Sharma, Adv.

Mr. D.S. Mahra, Adv.

State of Madhya

Mr. B.S. Banthia, Adv.

Pradesh:

Mr. Naveen Sharma, Adv.

State of Jammu and Mr. Anis Suhrawardy, Adv.

Kashmir:

Mr. S. Mehadi Imam, Adv.

....2/-

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UPON hearing counsel the Court made the following

O R D E R

State of Jammu and Kashmir:

The status report dated 4th November, 2004 was filed before this Court on behalf of the State. Learned counsel appearing on behalf of the State stated that though he was directed to file latest status report, but as there has been no change after 4th November, 2004, there is no necessity of filing any further status report. From the annexures, it appears that in relation to vacation of bungalows some of the unauthorised occupants have filed Writ Petition Nos.711 of 2002, 933 of 2002 and 1003 of 2003, before the High Court of Jammu and Kashmir and orders of stay have been passed therein. Call for records of the aforesaid writ petitions. Upon receipt of the records, Registry is directed to issue notices to all the parties to show cause as to why those writ petitions be not transferred to this Court for disposal.

Regarding many unauthorized occupants, i.e., migrants it has been

stated that the matter is pending before this Court in S.L.P.(C) Nos.7369 of 1997 and 19776 of 2003 and because of the order of this Court, it is not possible for the State to take steps for eviction.

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In the chart, which has been enclosed with the status report apart from the cases of migrants, names of various persons have been shown who are unauthorized occupants of Government bungalows and against them eviction proceedings have been initiated. The details and stage of these proceedings have not been mentioned in the chart. It further appears that there are few other unauthorized persons against whom no steps have been taken so far for their eviction from government bungalows. Let Estate Officer, Srinagar and Estate Officer, Jammu, file detailed affidavits stating therein number of cases, the designation and station of the officer before whom cases are pending and reason why the same have not been disposed of as yet. This affidavit shall be filed in relation to the cases of each and every person mentioned in the chart.

Time is granted till 31st October, 2006 to file the affidavit.

Both the Estate Officers are directed to appear in-person before this Court on 7th November, 2006.

Place the matter in relation to the State of Jammu and Kashmir along with the aforementioned two special leave petitions and transfer petitions on 7th November, 2006.

Let a copy of this order be sent to the Chief Secretary, Government of Jammu and Kashmir by Fax as well, who shall ensure the compliance of directions aforementioned by the two Estate Officers.

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State of West Bengal:

It appears that on 13th July, 2006, this Court directed the State of West Bengal to file latest status report within a period of four weeks from that date. Pursuant to that order, status report has been filed along with an affidavit duly sworn on 11th August, 2006 at Kolkata by one Shri Tapan Das Sharma, Joint Secretary in the Housing Department, Government of West Bengal, in which list has been enclosed of unauthorized occupants, but details

have not been enumerated as to what steps have been taken against them.

Learned counsel appearing on behalf of the State stated that he sent several

letters to the Housing Secretary to give clear cut instructions, so that learned

counsel may be able to prepare detailed affidavit, but nobody ever responded

to the same.

Issue notice to the Secretary, Department of Housing, Government

of West Bengal to show cause as to why proceeding for contempt be not

initiated against him for not furnishing all the details and not assisting the

Court in disposing of the matter, in spite of repeated letters sent by learned

counsel appearing on behalf of the State.

Put up the matter on 7th November, 2006, on which date the

Housing Secretary shall remain present in-person in Court.

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Let copy of this order be sent to the Chief Secretary as well as

Housing Secretary, Government of West Bengal, by Fax as well.

State of Madhya Pradesh:

Latest status report has been filed, which is on affidavit and along with the affidavit, list of 320 persons has been enclosed as Annexure R-3 stating therein that steps were taken against the aforesaid persons and vacant possession has been taken from them. On the next date the Court shall pass further order in relation to them.

Apart from this, it has been stated that there are about 211 persons, who are in unauthorized occupation and with regard to them, eviction proceedings have been started in the year 2005-2006 and the cases are still pending. List of such persons has been enumerated which is contained in Annexure - R-4.

On 30th August, 2006, while considering the case of State of Bihar, we directed it to file affidavit in relation to the proposed action enumerated in para 3 of our order against the unauthorized occupants, which runs thus:

"3. Affidavit shall further state clearly for what period 209 persons remained in unauthorized occupation and what is the amount of Rent/Penal rent etc., the State is entitled to realize from them by deducting every month from their salary or post retirement benefits or pension or attaching their deposits or by attachment and sale of their properties in accordance

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with the provisions of relevant Public Demands Recovery Act. It should be also stated in the affidavit as to whether by not vacating the Government accommodation such unauthorized occupants incur any criminal liability under the Public Premises Act or Indian Penal Code or any other law for the time being in force so that in case any such liability is incurred directions may be given to launch criminal prosecution against them by filing complaint in Court. Further affidavit shall state as to why the appropriate Government/Authority/Body/ High Court be not directed to consider desirability of initiating proceeding under the relevant Service Rule and suspend the unauthorized occupants which includes Judicial Officers in contemplation of departmental proceeding as such conduct of theirs is unbecoming of Judicial Officers/Government servants and in future also, no sooner occupation of a person becomes unauthorized, such action be taken immediately."

Let the State of Madhya Pradesh respond to para 3 aforementioned.

The affidavit in this regard must be filed by 31st October, 2006.

Learned counsel appearing on behalf of State stated that he shall see

that copy of this order is circulated to the unauthorized occupants, whose names have been enumerated in Annexure R-4. Secretary Housing of the Government of Madhya Pradesh is directed to take immediate steps for the

said purpose. He shall see that wide publicity of such proposed action is given

within a week from today through print and electronic media.

Place the mater on 7th November, 2006.

Let copy of this order be sent to the Chief Secretary and Housing

Secretary Government of Madhya Pradesh by Fax as well.

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State of Orissa:

It has been stated that out of 290 unauthorized occupants, 146 persons have either vacated or have been evicted as per list contained in Annexure-A. Further order in relation to these persons shall be passed on the next date.

Apart from that it has been stated in the latest status report that in relation to 36 persons, whose details have been enumerated in the list contained in Annexure-B, the allotments have been regularized in view of the fact that they have been transferred back to the stations where they were having the quarter. Apart from this it has been stated that certain persons have been re-elected in the State legislature by virtue of which they are entitled to occupy

the Government bungalows. We are of the view that in relation to these 36 persons, no further steps are required to be taken by the State. In Annexure-C, out of list of 108 persons, 100 persons are such who are in unauthorized occupation and proceedings for eviction are pending against them before one Court or the other since last more than 10 years.

On 30th August, 2006, while considering the case of State of Bihar, we directed it to file affidavit in relation to the proposed action enumerated in para 3 of our order against the unauthorized occupants, which runs thus:

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"3. Affidavit shall further state clearly for what period 209 persons remained in unauthorized occupation and what is the amount of Rent/Penal rent etc., the State is entitled to realize from them by deducting every month from their salary or post retirement benefits or pension or attaching their deposits or by attachment and sale of their properties in accordance with the provisions of relevant Public Demands Recovery Act. It should be also stated in the affidavit as to whether by not vacating the Government accommodation such unauthorized occupants incur any criminal liability under the Public Premises Act or Indian Penal Code or any other law for the time being in force so that in case any such liability is incurred directions may be given to launch

criminal prosecution against them by filing complaint in Court. Further affidavit shall state as to why the appropriate Government/Authority/Body/ High Court be not directed to consider desirability of initiating proceeding under the relevant Service Rule and suspend the unauthorized occupants which includes Judicial Officers in contemplation of departmental proceeding as such conduct of theirs is unbecoming of Judicial Officers/Government servants and in future also, no sooner occupation of a person becomes unauthorized, such action be taken immediately."

Let the State of Orissa respond to para 3 aforementioned. The affidavit in this regard must be filed by 31st October, 2006.

Learned counsel appearing on behalf of State stated that he shall see that copy of this order is circulated to the unauthorized occupants, whose names have been enumerated in Annexure-C. Secretary, Housing is directed to take immediate steps for the said purpose. He shall see that wide publication of such proposed action is given within a week from today through print and electronic media.

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With regard to the remaining 8 persons, it has been stated that at one point of time they were Members of State legislature. Some of them had

remained as Chief Ministers of the State of Orissa, Ministers and Members of legislative assembly.

Issue notices to these 8 persons, whose names have been enumerated in Annexure-C and mentioned below to show cause as to why the State be not directed to evict them by deputing armed forces as their occupation of government bungalows is without any authority of law.

- a) Sri Hemananda Biswal, Former Chief Minister,
- b) Sri Giridhar Gamang, Former Chief Minister and M.P.
- c) Sri Prasanna Acharya, Former Minister and M.P.
- d) Sri Bed Prakash Agarwalla, Former Minister
- e) Sri Prasad Ku. Harichandan, Former Minister
- f) Sri Dharmendra Pradhan, Ex-MLA now MP
- g) Sri Bijoy Mohapatra, Ex-MLA
- h) Sri Sambhunath Nayak, MLA

Call for records of O.J.C. Nos. 2956 and 9603 of 2004, pending before the Orissa High Court. Upon receipt of the records, the Registry shall issue notices to all the parties to show cause as to why the writ petitions be not

transferred to this Court for disposal.

List this matter and transfer petitions on 7th November, 2006.

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Let copy of this order be sent to the Chief Secretary and Housing
Secretary, Government of Orissa by Fax as well.

Union of India:

Secretary, Urban Development Ministry, Government of India, is
directed to see that copies of para 3 of our order dated 30th August, 2006,
containing proposed action against the unauthorized occupants are circulated
to each one of them which runs thus:

"3. Affidavit shall further state clearly for what period 209 persons
remained in unauthorized occupation and what is the amount of Rent/Penal
rent etc., the State is entitled to realize from them by deducting every month
from their salary or post retirement benefits or pension or attaching their
deposits or by attachment and sale of their properties in accordance with the
provisions of relevant Public Demands Recovery Act. It should be also stated in
the affidavit as to whether by not vacating the Government accommodation
such unauthorized occupants incur any criminal liability under the Public
Premises Act or Indian Penal Code or any other law for the time being in force
so that in case any such liability is incurred directions may be given to launch

criminal prosecution against them by filing complaint in Court. Further affidavit shall state as to why the appropriate Government/Authority/Body/ High Court be not directed to consider desirability of initiating proceeding under the relevant Service Rule and suspend the unauthorized occupants which includes Judicial Officers in contemplation of departmental proceeding as such conduct of theirs is unbecoming of Judicial Officers/Government servants and in future also, no sooner occupation of a person becomes unauthorized, such action be taken immediately."

Apart from circulating to them personally, wide publicity of said proposed action shall be given through print and electronic media within a week from today.

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Let copy of this order be sent by Fax as well to the Secretary, Ministry of Urban Development, Government of India. A copy of this order be made over to the learned Additional Solicitor General.

Place the matter on 7th November, 2006.

State of Bihar:

By order dated 30th August, 2006, it was directed to be placed on 10th October, 2006. Let the matter in relation to this State be also placed on 7th

November, 2006 in stead of 10th October, 2006.

States of Karnataka, Gujarat, Tamil Nadu, Andhra Pradesh and Maharashtra

and Union Territory of Chandigarh:

Learned counsel appearing for these States and Union Territory are directed to take instructions from the respective governments file and latest status report and response in relation to the proposed action as enumerated below on affidavit by 31st October, 2005.

On 30th August, 2006, while considering the case of State of Bihar, we directed it to file affidavit in relation to the proposed action enumerated in para 3 of our order against the unauthorized occupants, which runs thus:

"3. Affidavit shall further state clearly for what period 209 persons remained in unauthorized occupation and what is the amount of Rent/Penal rent etc., the State is entitled to realize from them by deducting every month from their salary or post retirement benefits or pension or attaching their deposits or by attachment and sale of their properties in accordance

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with the provisions of relevant Public Demands Recovery Act. It should be also stated in the affidavit as to whether by not vacating the Government

accommodation such unauthorized occupants incur any criminal liability under the Public Premises Act or Indian Penal Code or any other law for the time being in force so that in case any such liability is incurred directions may be given to launch criminal prosecution against them by filing complaint in Court. Further affidavit shall state as to why the appropriate Government/Authority/Body/ High Court be not directed to consider desirability of initiating proceeding under the relevant Service Rule and suspend the unauthorized occupants which includes Judicial Officers in contemplation of departmental proceeding as such conduct of theirs is unbecoming of Judicial Officers/Government servants and in future also, no sooner occupation of a person becomes unauthorized, such action be taken immediately."

Housing Secretaries of these States and Union Territory of Chandigarh

will see that copy of para 3 above is circulated personally to each and every unauthorized occupants immediately. He would further see that apart from circulation above mentioned, wide publicity of such proposed action is given through print and electronic media within a week from today.

Let copies of this order be sent to the Chief Secretaries and Housing Secretaries of these States and Union Territory of Chandigarh by Fax as well.

Place the matter in relation to these States on 7th November, 2006.

Let copy of this order be made over to learned counsel appearing on



behalf of these States and Union Territory of Chandigarh.

[Alka Dudeja]

Court Master

[Om Prakash]

Court Master