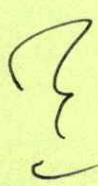


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03.	20.04.12	<p style="text-align: center;">BEFORE</p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE MR. JUSTICE PERMOD KOHLI</p> <p>Present: Mr. K.T. Bhutia, Sr. Advocate with Ms. Bandana Pradhan and Ms. Nisha Rajliwal, Advocates for the petitioner.</p> <p>Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. S.K. Chettri, Asstt. Govt. Advocate for respondents No. 1 and 2</p> <p style="text-align: center;">...</p> <p>1. The petitioner has challenged the orders passed by the Prescribed Authority under the Sikkim Public Premises (Eviction of Unauthorised Occupants and Land Recovery) Act, 1980 (in short "the Act") and that of the Appellate Authority whereby the petitioner has been ordered to be evicted from the alleged public premises in occupation of the petitioner where he has raised a 5 ½ storied building allegedly in the year 1993.</p> <p>2. Briefly stating the facts leading to the filing of the present writ petition are that the petitioner claims to be the allottee of the land measuring 14 Mtr. X 28 Mtr. Situated at Melli-Jorethang Road, South Sikkim having been allotted the same vide Allotment Order dated 01.10.1993 (Annexure P-3) by the Administrative Officer, Sikkim P.W.D. (R & B), Gangtok. It is alleged that along with the allotment letter a site plan of the land was also</p>

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		<p>prepared by the competent authority. A Xerox copy of the same is also annexed as Annexure P-4.</p> <p>3. It is the case of the petitioner that he had constructed a 5 ½ storied building on the allotted site in the year 1993 itself. It seems that some complaint has been made against the petitioner in regard to the aforesaid allotment and on the basis of the said complaint, the District Magistrate, South Sikkim had initiated some enquiry and the petitioner was asked to produce the relevant documents in support of his allotment.</p> <p>4. An application dated 16.02.2011 came to be made by the petitioner along with the copies of the relevant documents i.e. allotment order, etc.</p> <p>5. The District Magistrate/ Prescribed Authority under the Act issued a notice dated 22.02.2011 under sub-section 1 of Section 4 of the Act, whereby the petitioner was asked to show cause why an order of eviction be not passed against him.</p> <p>6. The grounds for eviction indicated in the notice were that the land claimed to be allotted is not leased out to the petitioner and is still in the name of the Government. The petitioner submitted his reply to the aforesaid show cause</p>

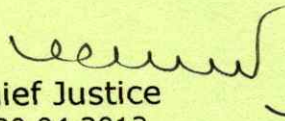
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		<p>notice (Annexure P-7-A) and also claimed further opportunity to supplement the reply.</p> <p>7. The Prescribed Authority, however, declined the prayer for further opportunity and passed an order dated 29.04.2011 with a direction to issue a notice under sub-section 1 of Section 5 of the Act.</p> <p>8. Formal notice dated 16.04.2011 is said to have been issued to the petitioner even before passing of the aforesaid order. Against the said order dated 29.04.2011, the petitioner preferred an appeal before the Appellate Authority constituted under the Act being Appeal No. 01 of 2007. One of the pleas raised before the Appellate Authority was that the order under sub-section 1 of Section 5 had been drawn on 16.04.2011 even before passing of the order dated 29.04.2011. Considering this aspect of the matter, the Appellate Authority vide his order dated 19.08.2011 remanded the case to the Prescribed Authority with certain directions.</p> <p>9. The Prescribed Authority on remand passed a fresh order dated 11.10.2011 and ordered for eviction of the petitioner. The petitioner was constrained to file an appeal against the order before the Appellate Authority. The Appellate Authority vide the impugned judgment dated</p>

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		<p>25.11.2011 dismissed the appeal with the observations to the effect that the process of giving relief involves examination of multiple laws which the Appellate Authority cannot do in view of the limitation of the statute. It has been further observed that since the Appellate Authority cannot enter into a comprehensive examination of all the multiple issues, interference with the order of the District Collector will remain effected in view of this position and as such the order of the District Collector, South cannot be interfered. The appellant was, however, granted liberty to seek remedy under the common law forum. This observation was made on the basis of judgment of the Apex Court reported in AIR 1968 SC 101. Since the appeal stands dismissed, the petitioner has challenged the order passed by the Prescribed Authority and that of the Appellate Authority in this petition before this Court.</p> <p>10. The petitioner has taken me to the evidence recorded during the course of the proceedings before the Prescribed Authority. One of the witnesses, namely, Ms. H. Basnett, the then Administrative Officer, Sikkim PWD (R & B), who is alleged to have issued the Allotment Order in favour of the petitioner, was examined. This witness admitted the signature on the original document which was produced before the Prescribed Authority. However, she</p>

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		<p>stated that if this order was issued, it should have been reflected in the office record as well and in absence of the original file, she is unable to say anything about the validity or otherwise of the allotment.</p> <p>11. It seems that the Appellate Authority was also persuaded by this statement to make observation that the petitioner can find remedy in common law.</p> <p>12. I have heard the learned counsel for the parties. The entire case of the petitioner is based upon the allotment letter, referred to above. The authenticity, validity and existence of the allotment letter has to be established by the petitioner in order to claim the right upon the land which is admittedly the Government property. The Appellate Authority has rightly observed that due to limited scope of the appellate jurisdiction under the provisions of the Act, the Appellate Authority is disabled to hold an effective and factual enquiry regarding the existence and validity of the allotment order.</p> <p>13. I have no reason to disagree with these observations of the Appellate Authority. However, it is seen that on the one hand the Appellate Authority has granted liberty to the petitioner to approach the Civil Court and at the same time the appeal has been rejected. The final order of dismissal</p>

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		<p>of the appeal has deprived the petitioner of availing the opportunity before the Civil Court.</p> <p>14. The jurisdiction of the judicial review of this Court in the matter of examination of the order of the administrative forums is of course limited. However, it is found that the petitioner has been deprived of his right to establish his case due to limited jurisdiction of the Prescribed Authority and the Appellate Authority under the Act.</p> <p>15. At this stage, the learned counsel for the petitioner submits that the petitioner is ready and willing to approach the Civil Court. In view of the observations made by the Appellate Authority, the Petitioner has right to seek remedy in Civil Law. Petitioner has already raised 5 ½ storied building and is in possession thereof. It has also come on record that the petitioner's family is residing in the building and it was locked while his family members were inside the building. It is in the fitness of circumstances and in the interest of justice as also to provide a fair opportunity to the petitioner to prove his case in Civil Court, the petitioner's possession is protected till the Civil Court decides the matter.</p>

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		<p>16. The petitioner is permitted to approach the Civil Court within a period of 4 (four) months failing which the protection afforded to the petitioner herein shall cease to operate.</p> <p>17. With the above directions, the petition stands disposed off.</p> <p style="text-align: right;">  Chief Justice 20.04.2012 </p>

Index : Yes / No
 Internet : Yes / No

rsr/jk