
(2011) 12 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition No. 1251 of 2004

Aslam Jamir

APPELLANT

Vs

Bhilai Steel Plant and Another

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2012) 2 MPHT 6

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—Challenge in this petition is to the notice dated 22.03.2004 (Annexure P/1), whereby, the petitioner has been directed to vacate the official accommodation of the respondent-Company bearing No. 2D, at Street No. 35, Sector 7, Bhilai, District Durg, within a period of seven days, failing which action under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the Act, 1971") would be taken.

2. The facts, in brief, as projected by the petitioner are that the petitioner is a social worker. The petitioner was permitted to reside at the aforesaid accommodation, although the house was allotted in the name of some other employee of the respondent-Company. A condition was imposed to pay rent to the respondent-Company. The petitioner has been residing in the said accommodation since the year 2001. All of a sudden, vide notice dated 23.04.2004 (Annexure P/1), the petitioner was directed to vacate the premises within a period of seven days.

3. At the very outset, Shri Tiwari, learned counsel appearing for the petitioner submits that the notice impugned herein does not amount to a notice as it does not provide any opportunity to the petitioner to explain his stand and was directly ordered to vacate the premises within a period of seven days.

4. On the other hand, Shri Guru, learned counsel appearing for the respondent-Company submits that the petitioner is not an employee of the respondent-Company and he is not entitled to possess the official accommodation. The petitioner is neither the licensee nor the lessee of the aforesaid premises. The petitioner has been served with a proper notice affording seven days time to vacate the same as the petitioner has occupied the same illegally.

5. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. On perusal of the impugned notice, it appears that the petitioner has not been given any opportunity to clarify his stand and has been directed to vacate the premises. Show cause notice implies opportunity of submitting an explanation to a clear unambiguous notice. Even if, the petitioner is in unauthorized occupation of the public premises, which has been permitted by the authorities, he is entitled to show cause notice.

7. The relevant provisions u/s 4 of the Act, 1971 reads as under :

4. Issue of notice to show cause against order of eviction.- (1) If the estate officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, -

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

8. Indisputably, the facts in the case on hand are that the petitioner is permitted to occupy an accommodation bearing No. 2D, at Street No. 35, Sector 7, Bhilai, District Durg. Thereafter, by the impugned notice dated 22.03.2004, the petitioner was informed to vacate the premises within a period of seven days,

failing which, the petitioner would be evicted under provisions of the Act, 1971.

9. On bare perusal of provision of Section 4 of the Act, 1971, which deals with the eviction of a person in unauthorized occupation from the public premises, it is clear that the estate officer is under obligation to issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made. The show cause notice must intimate the date specified in the notice to appear before the estate officer with the evidence and if the person wants personal hearing, the same should also be provided.

10. In the case on hand, the impugned notice does not indicate any date of hearing as required in the petitioner to appear before the estate officer to put forward his case.

11. This Court in *Shekhar Sahu v. State of C.G. & Others* has considered the difference between the "notice" and "show cause notice".

12. In *Jairam Singh v. State of Chhattisgarh*, this Court held as under :

5. "Show cause notice" implies opportunity of submitting an explanation to a clear unambiguous notice. Thus, in the facts of the case an information was brought in the knowledge of the petitioners without giving show cause notice to file response to prove genuineness or bona fide of the documents.

13. Thus, there was no show cause notice, as contemplated under provisions of Section 4 of the Act, 1971. Hence, the impugned notice dated 22.03.2004 (Annexure P/1), is quashed. However, liberty is reserved to the respondents to take appropriate steps, if so advised, in accordance with the provisions of law, as well as on the basis of observations made hereinabove.

14. Accordingly, the writ petition is allowed. No order as to costs.