

(2015) 07 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition Nos. 30080 and 28024 to 28036 of 2015 (LB)

Chintamani Education Society (Kishora Vidhya Bhavan)

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 4, 4(1), 5

Citation : (2015) 6 KarLJ 403 : (2016) 1 KCCR 213

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : Sadashiva Reddy, Senior Advocate for Deepak J., Advocate, for the Appellant; Shweta Krishnappa, High Court Government Pleader and Ashok S. Menasinkai, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—With the consent of the learned Counsel for the parties, theses cases are being decided at this stage itself. Since both these writ petitions challenge the same action of the respondents viz., issuance of notice under Section 4(1) of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 ("the Act" for brevity), both the petitions are being disposed of by this common judgment.

2. The facts are being taken in Writ Petition Nos. 28024 to 28036 of 2015.

3. In these petitions, the petitioners have challenged the notice dated 8-6-2015 issued under the above mentioned section of the Act. It is the case of the petitioners that they happen to be the absolute owners of the site bearing Municipal Khatha No. 3250/35 situated at New Extension, 1st Division, Chinthamani Town, measuring 45 feet East to West and 15+25/2 feet North to South. The first petitioner had purchased the said property from its original owner under a registered sale deed dated 4-6-1991. Subsequently, he obtained

Khatha in his name. Ever since 1991, he has been paying the taxes to the Corporation. After getting the sanctioned plan approved and after getting a licence for the construction in the year 1997, he has constructed a three storied building in the said land. The other petitioners in the said petitions likewise have purchased their sites on different dates. According to them, they have the khatha in their names; after getting the sanctioned plan approved, they too have constructed the house for different stories. Common plea of all these petitioners is that all the sites belong to a layout located in, Survey Nos. 71, 70, 68, 66, 75 and re-survey Nos. 25, 39, 24 of Mallapahalli Village, Kasba Hobli, Chinthamani Taluk.

4. However, on 8-6-2015 they were served with a notice issued by the Municipal Commissioner, Nagarasabe, Chintamani wherein he has directed them to vacate the premises within 45 days. In case they were not to vacate the site within the stipulated period, then appropriate action would be taken against them and they would be evicted from the said sites. Even the expenditure incurred for carrying out such eviction shall be recovered from them. Hence these petitions before this Court.

5. Mr. Y.R. Sadashiva Reddy, the learned Counsel for the petitioners, has vehemently contended that under the Act, the requirement of law is that initially a show-cause notice has to be issued under Section 4(1) of the Act. It is only after giving an opportunity of hearing to the persons who are likely to be evicted from the public premises that an order directing their eviction under Section 5 of the Act can be passed. However in the present case no notice has been issued under Section 4(1) of the Act. Although impugned the notice claims that it is a notice under Section 4(1) of the Act, but a perusal of the notice, according to the learned Counsel, would reveal that the requirement of Section 4(1) of the Act has not been complied with the notice. Therefore the notice has not been issued under Section 4(1) of the Act, but seems to have been issued under Section 5 of the Act without following the procedures established by law. Thus the notice is not tenable in law.

6. Secondly, that the impugned notice mentions an order dated 28-8-2013 passed by the Deputy Commissioner, Chikkaballapur District. However the appeal which was pending before the Deputy Commissioner and which came to be decided on 28-8-2013 does not concern the petitioners as the petitioners were not even parties to the said proceedings. Therefore the very basis for directing the eviction of the petitioners is misplaced.

7. Thirdly, the petitioners have brought the sites through registered sale deeds; they have khathas in their favour; they have constructed their houses only after getting plans sanctioned from the Competent Authority. Despite their living and enjoying the peaceful possession of the property, suddenly they have been threatened with eviction. Therefore their right to shelter under Article 21 of the Constitution of India is suddenly being violated without following the procedure established by law. Hence, the impugned order deserves to be interfered and

impugned notice deserves to be set aside.

8. Mr. Ashok Menasinakai, learned Counsel for respondent 4-Chief Officer, has conceded that before issuing impugned notice, no notice was issued under Section 4(1) of the Act. According to the learned Counsel considering the tenor of the notice, in fact, it is a notice under Section 5 of the Act. Therefore learned Counsel frankly conceded, and in the view of the Court rightly so, that a wrong provision of law has been quoted. Secondly, the Corporation has no jurisdiction to issue the notice. According to the learned Counsel, the said jurisdiction is vested only in the State.

9. On the other hand, Ms. Swetha Krishnappa, learned Counsel for the State, has pleaded that the action of the Municipal Commissioner is based upon an observation made by the Deputy Commissioner in his order dated 28-8-2013 and on the inspection carried out by the Taluk surveyor wherein it was discovered that some of the constructions are illegal. Therefore the Municipal Commissioner directed them to vacate the site. According to her, some of the sites fall under Survey Nos. 24, 25 and 39 which happen to fall in a canal area. Therefore the Municipal Commissioner was justified in directing that the petitioners should be evicted from their respective sites after completion of period of 45 days. Hence, the learned Counsel has supported the impugned notice.

10. Heard the learned Counsel for the parties.

11. Section 4 of the Act reads as under:

"4. Issue of notice to show cause against order of eviction.--(1) If the Competent Officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the Competent 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 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 ten days from the date of issue thereof.

(3) The Competent 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.

(4) Where the Competent Officer shows or has reason to believe that any persons are in occupation of the public premises then, without prejudice to the provisions of sub-section (3) he shall cause a copy of the notice to be served on

every such person by registered post or by delivering or tendering it to that person or failing service by the means aforesaid in such other manner as may be prescribed."

Section 5 of the Act is as under:

"5. Eviction of unauthorised occupants.--(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Competent Officer is satisfied that the public premises are in unauthorised occupation, the Competent Officer may on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (1), the Competent Officer or any other officer duly authorised by the Competent Officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary."

12. A perusal of Section 4 of the Act reveals that it contains principle of natural justice. It clearly lays down that a show-cause notice in writing shall be issued to the concerned persons calling upon such persons to show cause as to why an order of eviction shall not be made. Sub-section (2)(a) of Section 4 of the Act further imposes a duty upon the Competent Officer to specify the grounds on which the order of eviction is proposed to be made. Sub-section (2)(b) clearly states that ten days time must be given to the concerned persons to show cause as to why the eviction order should not be made. Sub-section (4) of Section 4 of the Act further imposes a duty upon the Competent Officer to serve the notice on such persons by registered post, or by delivering, or by tendering the notice. In case the notice cannot be served, the Competent Officer shall cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises where the concerned person resides. It is only after giving such a notice of 10 days under Section 4 of the Act, Section 5 comes into effect. Section 5 of the Act accords the concerned person the right to submit any evidence. It is only after considering such evidence, and after giving him a reasonable opportunity of being heard, that the Competent Officer is permitted to order eviction after giving reasons for such an order and after causing a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises. According to sub-section (2) of Section 5 of the Act, if the concerned person fails to evict within 45 days, then action can be taken against that premises for his physical eviction from the concerned premises. Sections 4 and 5 of the Act clearly prescribe an elaborate procedure that needs to be followed before a person can be evicted from the public premises.

13. A perusal of the impugned notice dated 8-6-2015 clearly reveals that according to the subject-matter of the said notices, the notice is claimed to be issued under sub-section (1) of Section 4 of the Act. It refers to two aspects, firstly an order dated 28-8-2013 passed by the Deputy Commissioner, Chickkaballapura District, and secondly to a survey notice dated 28-9-2010 submitted by the Tahsildar, Chintamani Taluk. According to the notice, the Municipal Commissioner informs the petitioners "to evict the said premises within 45 days from the date of receipt of the notice". This sentence clearly reveals that this notice seems to be a notice which ought to have been issued under Section 5 of the Act and could not possibly be issued under Section 4(1) of the Act. Although the notice claims that it is under Section 4(1) of the Act, in the impugned notice there are no specific reasons assigned except that there is an order passed by the Deputy Commissioner dated 28-8-2013. Even if this were being to be the basis for issuing of notice, admittedly the petitioners were not part of the appeal which were decided by the Deputy Commissioner on 28-3-2013. Therefore any observation made by the Deputy Commissioner in the said order would not adversely affect the interest of the petitioners without first showing the co-relation between the observation made by the Deputy Commissioner, and the property held by the petitioners. Moreover even if such an observation were valid, even then Section 4(1) of the Act requires that an opportunity of hearing should have been given to the petitioners. But instead of giving an opportunity of hearing to the petitioners under Section 4(1) of the Act, the Municipal Commissioner has merely directed them to vacate the public premises within a period of 45 days or else action would be taken against the petitioners. Obviously, the tenor of the impugned notice is unwanted as the notice claims to be one under sub-section (1) of Section 4 of the Act. Since the notice is not in compliance with the requirements of Section 4 of the Act, the notice is illegal and thus, untenable.

14. For the reasons stated above, these petitions are hereby allowed and notice dated 8-6-2015 is set aside. Since it is for the State to decide whether the petitioners should continue to stay, or if State is of the opinion that they have encroached on the public premises, the State is directed to take action if necessary, but strictly in accordance with law.