

(1971) 05 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 779 of 1968

D. Macropolo and Co.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-05-1971

Acts Referred:

Constitution of India, 1950 — Article 14
Public Premises (Eviction of Unauthorised Occupants) (Amendment) Act, 1968 —
Section 4
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 10E, 7(2)

Citation : AIR 1972 Cal 350

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabyasachi Mukharji, J.—In this application under Article 226 of the Constitution the petition challenges the notice dated 2nd December, 1968, issued by the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1953. The petitioner was for a long time a tenant in respect of a building known and numbered as premises Nos. 9, 10, 11 and 12 of the Old Court House Street, Calcutta. The petitioner was paying rent at a particular rate. The Government of India purchased the said property on or about the 31st January, 1963. By a notice dated 22nd July, 1963, the Deputy Director of Estates and Under Secretary of the Government of India on behalf of the President of India terminated the tenancy in respect of the said premises on the expiry of the month of August, 1963. On the 21st September, 1963, the Estate Officer, Government of India, informed the petitioner that the petitioner was in unauthorised occupation of the said premises and called upon the petitioner to show cause on or before the 10th October, 1963, as to why an order of eviction should not be made against the petitioner. The petitioner duly showed cause and after negotiations there was an agreement and the petitioner was allowed to remain in occupation till the end of October, 1965. The petitioner vacated the

said premises on the 29th October, 1965. On the 27th September, 1965, the said Officer demanded damages from the petitioner at the rate of Rs. 2,626/- for the period between the 1st September, 1963 to the 30th June, 1965 and called upon the petitioner to show cause why an order requiring the petitioner to pay the said amount should not be made. By another notice dated the 5th October, 1966, the Estate Officer again demanded from the petitioner damages at the said rate for the period from the 1st July, 1965, to the 29th October, 1965. The petitioner duly showed cause. Then the Estate Officer made an order u/s 7(2) of the Act. There was an appeal preferred and the appeal was heard by the Chief Judge, City Civil Court, Calcutta and by an order dated the 6th March, 1968, the learned Chief Judge, City Civil Court, Calcutta, set aside the order of assessment of damages u/s 7 (2) of the Act and remanded the case back to the Estate Officer for passing a fresh order after taking evidence of both sides. By a notice dated 2nd December, 1968, the Estate Officer issued another notice u/s 7 (2) of the Act and the respondents considered that the damages amounting to Rs. 53.925 were due for the period between the 1st September, 1963 to the 29th October, 1965 and the petitioner-Company was asked to show cause on or before the 18th December, 1968. It is the propriety of the last mentioned order that is under challenge in this application under Article 226 of the Constitution.

2. In the case of Standard Literature Co. Private Ltd. and Others Vs. Union of India (UOI), the Special Bench of this Court upheld the said Act. In the said case however the controversy was not raised in the present form. In the case of Rajendra Prosad Singh Vs. Union of India (UOI) and Others, the Special Bench of this Court following the decision of the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, held that Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was violative of Article 14 of the Constitution and therefore, void Sections 5 and 7 of the Act provide inter alia as follows :

"5. Eviction of unauthorised occupants.

(1) If, after considering the cause, if any shown by any person in pursuance of a notice u/s 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate 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 of the date of its publication under Sub-section (1), the estate officer or any other officer duly authorised by the estate 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 :

Provided that in the case of any such person who is not a Government employee and who has been in continuous occupation of the public premises for a period exceeding three years immediately preceding the date of the publication of the order of eviction, the estate officer shall not, if any application is made to him in this behalf, evict such person from the public premises within ninety days of such publication.

7. Power to recover rent or damages in respect of public premises as arrears of land-revenue.

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order :

Provided that no such order shall be made until after issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

(3) If any person refuses or fails to pay the arrears of rent or any instalment thereof payable under Sub-section (1) or the damages or any instalment thereof payable under Sub-section (2) within the time specified in the order relating thereto, the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue."

The Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968 was passed by the Parliament on 16th August, 1968 and the relevant amendment with which we are concerned provides as follows :

"4. Insertion of new Section 10-E -- After Section 10-D of the principal Act, the following section shall be inserted, namely :--

"10-E. Bar of Jurisdiction -- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or costs awarded to the Central Government under Sub-section (4-A) of Section 9 or any portion of such rent, damages or costs."

3. The main question that was canvassed in this application is, whether the proposed action u/s 7 (2) of the aforesaid Act mentioned in the petition is

permissible in law. It was urged that Section 7 could not stand independently of Section 5 of the said Act. Unless it was determined that a person was in unauthorised occupation, there could not be any scope of determination of damages by a person in unauthorised occupation, it was submitted. Therefore, it was submitted that Section 7 could not have any independent existence apart from Section 5. It was also urged that Section 7 also suffered from, the same infirmity as mentioned in Section 5 of the Act inasmuch as wide discretion had been given to the Estate Officer without laying down any guiding principle to determine whether to go to Civil Court or to take steps under provisions of the Act. Therefore, it was urged that on the parity of reasoning given in the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, Section 7 (2) of the Act was also void. It was submitted that Section 7 (2) of the Act was void because it violated the provisions of Article 14 of the Constitution and it could not be amended by the provisions of the Amendment Act, 1968; the only way was to repeal the Act and enact a new legislation removing the infirmity. This point has been exhaustively considered by the Full Bench of the Delhi High Court in the case of P.L. Mehra, etc. Vs. D.R. Khanna etc., . The minority of the learned Judges of the Delhi High Court consisting of Hardayal Hardy and Parkash Narain, JJ, came to the conclusion that the statute which was void within the meaning of Article 13(2) of the Constitution was non-existent for all purposes including repeal, amendment or enforceability. They further came to the conclusion that the whole of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, was void as it enabled the Government to discriminate between the occupants of Public Premises arbitrarily by adopting the summary procedure against some while giving to the others the benefit of the regular civil suits. As the Act was merely amended in 1968 by the insertion of an additional section, namely. Section 10-E, the amendment was ineffective and the Act remained void. In my opinion Section 7 of the said Act suffers from the same infirmity as Section 5, Section 7 (2) is, therefore, liable to be struck down. The fact that Section 7 (2) was not struck down prior to the passing of the amendment by the Amendment Act, 1968, makes no difference because if an Act is void it is void irrespective of the fact whether it has been so declared by the Court. In that view of the matter on the same reasons mentioned by the Supreme Court in the case of Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, I am of the opinion that Section 7 (2) before the Amendment Act, 1968, was void. I am of the opinion that the Parliament was incompetent to enact the said Section 7 (2) of the Act in violation of Article 14 of the Constitution because of Article 13(2) of the Constitution. Section 7 (2) of the Act was a nullity ab initio. The doctrine of eclipse has no application to post-Constitution laws infringing the Fundamental Rights as they would be void ab initio to the extent of their contravention of the Fundamental Rights. For this reliance may be placed on the observations of the Supreme Court in the case of Deep Chand Vs. The State of Uttar Pradesh and Others, Therefore the said void section cannot be made valid by amendment-Therefore Section 4 of the Amendment Act of 1968 cannot make Section 7 (2) of

the principal Act valid. In, so far as the majority of the learned Judges of the Delhi High Court expressed the aforesaid opinion in the aforesaid decision, I am in respectful agreement with the decision of the minority of the learned Judges of that High Court. It is not necessary for me to decide whether the whole Act was void or not. In the aforesaid view of the matter I, therefore, hold that the Section 7 (2) of the Act was void and could not be amended in the manner purported to be done by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968. Therefore, the action proposed to be taken u/s 7 (2) of the Act by the order of 2nd December, 1968, is not permissible. In the aforesaid view of the matter it is not necessary for me to decide other points urged In this application.

4. In the premises, this application must succeed. The respondents are directed not to give effect to the said notice dated the 2nd December 1968, mentioned in the petition and not to proceed further in pursuance thereof. Let a Writ in the nature of Mandamus issue accordingly. The Rule is made absolute to the extent indicated above. There will be no order as to costs. There will be a stay of operation of this order for 12 weeks. During the period of stay interim order will also continue.