

(2007) 04 AHC CK 0307
In the Allahabad High Court

Dharamveer

APPELLANT

Vs

Krishi Utpadan Mandi Samiti

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Transfer of Property Act, 1882 — Section 106, 113, 116

Citation : (2007) 4 AWC 3904

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—In this group of petitions, the petitioners have assailed the validity of the proceedings initiated against them under the U. P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act). These petitions relate to the allotment of the shops/canteen in the Naveen Mandi Sthal, Saharanpur and Muzaffarnagar. Since the issue involved is one and the same, these groups of writ petitions are being decided together. For convenience, the facts in the case of Dharamveer for Saharanpur district and writ petition of Prem Chandra for Muzaffarnagar district are being taken into consideration. The relevant facts leading to the filing of the writ petition is, that the petitioner is a tenant of the shop on the basis of an allotment order issued by the Chairman of the Krishi Utpadan Mandi Samiti. Initially, the tenancy was on a month to month basis, on a rent of Rs. 600 per month, but later on, it was enhanced to Rs. 1,840 per month. It is alleged that pursuant to the allotment order, the petitioner was paying the rent regularly. It transpires that the Regional Deputy Director of the Krishi Utpadan Mandi Parishad issued an order dated 5.9.2002, directing that the shops would now be allotted on an auction basis for a period of one year. Based on the aforesaid order, the Mandi Samiti issued a notice dated 17.10.2003 u/s 106 of the Transfer of Property Act, determining the tenancy of the petitioner of the shop in question. In the notice, it was contended that the tenancy was being terminated on the ground that the shop would now

be allotted by way of a public auction. Since the petitioner did not vacate the shop and did not hand over vacant possession to the respondents, the respondents filed an application u/s 4 read with Section 5 of the Act for the eviction of the petitioner from the shop in question. In the application, it was alleged that on the basis of an order dated 5.9.2002, issued by the Regional Director for auctioning the shop, the tenancy of the petitioner was determined through a notice and that his continuance in the shop, after the period in question, became unauthorised and was therefore liable to be evicted as an unauthorised occupant from the shop in question under the said Act.

2. The petitioner contested the matter and filed an objection alleging that the proceedings initiated u/s 4 of the Act was illegal, inasmuch as, the notice u/s 4 of the Act did not specify the grounds for the eviction of the petitioner from the shop in question. It was contended that this was a mandatory requirement prescribed under the law and in the absence of any ground being mentioned, the application of the respondent was not maintainable and was also defective and consequently, no proceedings could be initiated for the eviction of the petitioner on the basis of the said notice.

3. The prescribed authority allowed the application filed by the respondents and directed the eviction of the petitioner from the shop in question. An appeal was filed which was also dismissed. Consequently, the petitioner has filed the present writ petition challenging the legality of the aforesaid two orders.

4. Heard Sri M.K. Gupta, Sri Anurag Khanna, Sri Pankaj Agarwal, Sri Nipun Singh and Sri Sumit Daga, the learned Counsels for the petitioners and Sri B.D. Mandhyan the learned senior counsel assisted by Sri Sanjay Chaturvedi, Sri Niranjana Singh and Sri Chandra Shekhar Singh and Sri Ved Vyas Misra, advocates for the Mandi Samiti.

5. The learned Counsel for the petitioners submitted that the notice u/s 106 of the Transfer of Property Act was invalid inasmuch, as the said notice did not specify any ground for determining the tenancy. Further, the initial occupation of the petitioners was duly authorised either by a valid agreement or by an allotment order or by a rent note or by a contract executed by the Chairman of the Mandi Samiti and, even though, the tenancy was determined by a notice u/s 106 of the Transfer of Property Act, the continuation of the occupation of the petitioners in the shop in question did not become unauthorised and that, the principle of holding over, as contemplated u/s 116 of the Transfer of Property Act became applicable. The learned Counsel further contended that since the petitioners were not an unauthorised occupant, the proceedings initiated u/s 4 of the Act was wholly illegal and was not maintainable. Even otherwise, the Chairman of the Mandi Samiti, while allowing the representation of the petitioners during the pendency of the proceedings passed an order for the enhancement of the rent by 10% every three years and permitted the petitioners to remain as occupants of the shop in question. Based on this order of the Chairman, the petitioners deposited the enhanced rent during the pendency of

the appeal and submitted that the action of the Chairman enhancing the rent and permitting the petitioners to remain in occupation of the shop meant that the notice u/s 106 of the Transfer of Property Act stood waived and that the provisions of Section 113 of the Transfer of Property Act would be squarely applicable.

6. In addition to the aforesaid ground, the learned Counsel submitted that the petitions relating to Saharanpur Mandi Sthal, the impugned orders were invalid and was liable to be set aside on the ground that a valid notice, as required u/s 4 of the Act, was not served upon the petitioners. The petitioner's submitted that Section 4 contemplated that the notice should specify the grounds on which the order of eviction was proposed to be made which, in the case of the petitioners belonging to Saharanpur Mandi Sthal, was not specified. The learned Counsel submitted that the provisions of Section 4 of the Act are mandatory and non-specifying the grounds in the notice made the entire proceedings null and void and since a valid notice was not served, as required u/s 4 of the Act, the entire proceedings was invalid and liable to be quashed.

7. On the other hand, Sri Mandhyan, the learned Counsel for the respondents contended that a decision was taken by the Mandi Parishad for auctioning the shops in order to enhance its income and consequently a valid notice u/s 106 of the Transfer of Property Act was issued to the petitioners by which their tenancy was determined and the petitioners were directed to hand over the vacant possession of the premises on the expiry of the period of notice. Since the petitioner's failed to vacate the shop in question, the petitioner's became unauthorised occupants under the Act of 1972 and, consequently, proceedings were initiated under Sections 4 and 5 of the said Act which were legal and valid and that valid orders were passed by the prescribed authority for their eviction. The learned Counsel submitted that the notice u/s 4 of the Act contained the grounds on which the order of eviction was proposed to be made and that the notice u/s 106 of the Transfer of the Property Act did not contemplate that any ground was required to be given for determining the tenancy. Further, the orders of the Chairman of the Mandi Samiti, enhancing the rent by 10% every three years, and permitting some of the petitioners to remain in occupation of the shop did not amount to waiver of the notice as contemplated u/s 113 of the Transfer of Property Act nor, the Chairman had any authority to pass such an order. The learned Counsel submitted that in view of the provisions of Section 18 of the Krishi Utpadan Mandi Adhiniyam read with Rule 58 of the Rules, the order, if any, could be passed under the joint signatures of the Chairman and the Secretary. In support of the submissions raised by the counsel for the rival parties, various case laws were also cited which would be referred hereinafter.

8. Having given my thoughtful consideration in the matter, I am of the opinion, that the writ petitions are liable to be allowed on two grounds and therefore, it is not necessary to dwell on the other arguments raised by the learned Counsel for the rival parties.

9. The writ petitions relating to Muzaffarnagar Mandi Samiti are liable to be allowed on the ground that notice determining the tenancy of the petitioners stood waived by the subsequent order passed by the Chairman during the pendency of the proceedings initiated under the Act of 1972. It is not disputed that the Chairman of the Mandi Samiti had issued the allotment order/rent note/agreement or a contract in favour of the petitioners, on the basis of which, the petitioners entered into an authorised occupation. The notice determining the tenancy u/s 106 of the Transfer of Property Act was issued on behalf of the Mandi Samiti. The representations of the petitioners for reconsideration of the matter was made to the Chairman of the Mandi Samiti who, after considering the matter, passed an order, permitting the petitioners to remain in occupation of the shop in question, by enhancement of the rent by 10% every three years. In my opinion, in view of the express order passed by the Chairman, the provisions of Section 113 of the Transfer of Property Act became applicable. The notice given by the respondents, determining the tenancy after the expiry of the period of notice, stood waived upon an express order being passed by the Chairman showing its intention to treat the allotment order, agreement, etc., as subsisting. The learned Counsel for the respondents vehemently argued that the Chairman was not authorised to pass such an order in contravention to the order dated 5.9.2002, wherein a policy decision was taken for holding a public auction. Even otherwise, the order, if any, could only be passed under the signatures of the Chairman and the Secretary as contemplated u/s 18 of the Mandi Adhiniyam, read with Rule 58 of the Rules.

10. Section 18 of the Krishi Utpadan Mandi Adhiniyam contemplates that a contract by or on behalf of the Committee shall be made in the prescribed manner. Subsection (3) of Section 18 provides that every order of the Committee shall be authenticated by its official seal and the signature of the Chairman. SubClause (2) of Rule 58 provides that every contract made by or on behalf of the Committee shall be executed under the signature of the Chairman or the Secretary. In view of the aforesaid Rule, the learned Counsel for the respondent submitted that the order, if any, could only be passed under the signatures of the Chairman and the Secretary.

11. In my view, the respondents cannot be permitted to raise this ground at this stage. There is no whisper in the pleadings before the authorities that the initial order of allotment agreement/contract executed by the Chairman in favour of the petitioners allotting the shops in question was illegal. Nothing has been alleged nor brought forward as to how the Chairman alone had executed the allotment order/contract of tenancy in favour of the petitioner under his signatures alone and why the Secretary did not sign those contracts/allotment orders. This fact is also not mentioned in the notice issued u/s 106 of the Transfer of Property Act determining the tenancy of the petitioners. In the absence of such pleadings, the presumption is that the Chairman was duly authorised under the Act to issue the orders of allotment or sign the contract and therefore, the Chairman of the Mandi Samiti; being the competent authority, rightly considered the representations of

the petitioners and passed an order in the larger interest permitting the petitioners to continue in occupation of the shops, upon an enhancement of the rent by 10% every three years. The respondents now cannot allege before this Court for the first time, that the initial order of allotment as well as the order, enhancing the rent, was void and against the provisions of the Act and that no cognizance could be taken on the said orders. Further, the application filed by the respondents under Sections 4 and 5 of the Act. reveals that a valid allotment was given in favour of the petitioner and that the tenancy had been determined in accordance with the provisions of Section 106 of the Transfer of Property Act. Further, the order of the Regional Deputy Director dated 5.9.2002 does not indicate that the existing agreement allotments would be terminated. The order passed by the Chairman therefore, could not be said to be in contravention of the order of the Regional Deputy Director dated 5.9.2002. This Court is, therefore, of the opinion that the order having been passed by the Chairman, the notice issued by the respondents determining the tenancy of the petitioner stood waived and consequently the proceedings which were initiated under Sections 4 and 5 of the Act of 1972 could not continue any further since the tenancy subsisted. Once the tenancy became subsisting, the petitioners were no longer unauthorised occupants and could not be evicted under the provision of Sections 4 and 5 of the Act.

12. In so far as the petitioners of Saharanpur are concerned, their petitions are also liable to be allowed on the short ground that the mandatory provisions of Section 4 of the Act had not been complied with by the respondents. Section 4 of the Act provides that if the prescribed officer is of the opinion that any person is an unauthorised occupant of any public premise and that he should be evicted, the prescribed authority shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be made. Sub-section (2) of Section 4 further provides that the notice shall specify the grounds on which the order of eviction is proposed to be made. The form of the notice has been prescribed under the Rules framed under the Act.

13. In *Bikarama v. IVth Additional District Judge, Varanasi and Ors.* 1984 (2) ARC 241, a Division Bench of this Court held that the language of Section 4 was clear and explicit. It required that the notice shall specify the grounds on which the order of eviction was proposed to be made and that a valid notice u/s 4 was a condition for an order of eviction to be passed against an unauthorised occupant. The Court held that if the grounds are not mentioned in the notice, in that event, the notice was not a valid notice and that the defect invalidated the notice ab initio. The Court held:

The notice has been quoted above and it is obvious that a vital requirement of Section 4 is missing. The notice does not profess, directly or indirectly, to state the ground upon which the eviction of the petitioner is being sought. In our opinion the provisions of Section 4 are mandatory and a valid notice specifying

the grounds on which the order of eviction is proposed to be made to sine qua non for an order of eviction. We do not agree with the learned standing counsel that the notice if read as a whole can be construed to be a valid notice u/s 4 of the Act. It does not disclose the ground on which eviction is sought. It is not in the prescribed form either. The defects invalidate the notice ab initio.

The Court further held:

With respect, we entirely agree with the above statement of law and hold that the impugned notice issued to the petitioner u/s 4 of the Act is clearly invalid and proceedings commenced thereon are liable to be quashed, founded, as they are, on such a notice. The learned appellate court has wrongly observed that even though the notice is invalid, the participation of the petitioner in the proceedings had the effect of curing the invalidity of the notice. The notice being void ab initio any participation by the petitioner in the proceedings commenced thereon could not cure the inherent infirmities from which the notice suffered.

14. The aforesaid decision was relied upon in the case of Ram Prajapati and Ors. v. Prescribed Authority, S.D.M., Kotdwar and Anr. 2003 (53) ALR 572, in which it was held that the notice which did not disclose the ground for eviction was void ab initio and that the proceedings for eviction under the Act could not be initiated.

15. The appellate court while dealing with this question, found that the notice u/s 4 of the Act was accompanied by an application in which the grounds for eviction was contained and therefore, there was sufficient compliance of the notice u/s 4 of the Act. The appellate court further held that it was not the petitioner's case that the notice issued by the respondents u/s 4 of the Act was not accompanied by the application containing the reasons. This finding has been specifically challenged by the petitioners in the writ petition. The learned Counsel for the petitioner invited my attention to paragraph 7 of the memo of objection in which a clear assertion was made that the application u/s 4 of the Act was not accompanied by any application containing the grounds of eviction nor the said notice contained any ground for eviction. The learned Counsel submitted that the finding of the appellate authority is perverse and that a specific assertion was again raised in paragraph 22 of the writ petition to the effect that the notice did not contain the grounds for the eviction nor the notice was accompanied by any application which contained the grounds for eviction. The respondents have only made a bald denial of paragraph 22 of the writ petition in paragraph 18 of their counter-affidavit and has not annexed the application containing the grounds for eviction. Consequently, it is clear, that the notice did not contain the grounds for eviction.

16. The learned Counsel for the respondents, however, submitted that if the notice was not accompanied by the application containing the grounds or the notice itself did not contain the grounds, the said defect was only an irregularity which would not invalidate the proceedings initiated under the Act. Since the petitioners participated in the proceedings initiated under Sections 4 and 5 of the

Act, the purpose of the notice was duly served. In support of his submission, the learned Counsel placed reliance upon a Full Bench decision of this Court in *Gyan Singh Vs. The District Magistrate, Bijnor and Others*, , in which it was held:

We, however, do not agree with the observations of the learned Judge that the actual service of the notice of the meeting should be proved. It would be sufficient compliance with the provisions of Section 87A(3) if notice is sent to the members and the members acquire knowledge about the time, date and place of the meeting. The facts involved in *Vishwanath Tripathi's* case, 1968 All WR 114, are different than those available in the present case. The observation of R.S. Pathak, J., that Section 87A(3) was mandatory in its entirety does not represent correct view for the reasons stating earlier. If notice is sent by registered and publication of the notice is done the legal fiction enacted by the Legislature would at once come into place and thereupon every member shall be deemed to have received notice even though a member may not have actually received the same. On the material on record of that case. R.S. Pathak, J., held neither the notice of the meeting was actually served upon one of the petitioners nor the notice was published in any other manner as directed by the District Magistrate, therefore, the meeting was not validly constituted. The learned Judge further held that if the member had knowledge of the meeting he was under no obligation to take notice and for that reason he was not disentitled to relief under Article 226 of the Constitution. We are not in agreements with this view of the learned Judge. As already stated the purpose of sending notice is to give information to the members to attend the meeting convened for the purpose of considering the motion of confidence, and once it is established that the member concerned had notice and had acquired knowledge of the date and time of the meeting convened for considering the motion of no-confidence, the purpose for which notice is required to be sent would be fulfilled and the member concerned will not be entitled to any relief from this Court under Article 226 of the Constitution for nullifying the proceedings of the meeting.

17. In my view, the decision of the Full Bench is distinguishable and is not applicable in the present case. Before the Full Bench, the question that was being considered was whether the notice u/s 47A (3) of the U.P. Municipalities Act, requiring the notice to be sent by registered post, was mandatory or directory in nature. In that case, the District Magistrate had sent the notice through ordinary post giving the information about the date, time and place of meeting for the purposes of considering the no confidence motion. The notice was duly served upon the President and he had full knowledge about the date, time and place of the meeting. It was in that light, that the Full Bench held that the provisions are not mandatory in nature and even though the requirement was to serve the notice by registered post, the same having not been done, but the notice was duly communicated by ordinary post which was sufficient compliance and therefore, the Full Bench, held that the purpose of sending the notice was to give information to the members to attend the meeting convened for the purposes of considering the motion of no confidence which purpose was served by sending

the notice through ordinary post and therefore, the mere fact that the notice was sent by ordinary post and not by registered post would not nullify the proceedings.

18. In the present case, the provision of Section 4 of the Act is mandatory and a valid notice must specify the grounds on which the order of eviction is proposed to be made. The defect in the notice invalidates the notice ab initio. The notice being void ab initio will not cure the inherent defect merely by the participation of the petitioner in the proceedings commenced u/s 4 of the Act. The decision of the Full Bench is clearly distinguishable and has no application to the present facts and the circumstances of the case. Consequently, this Court is of the opinion that since the notice did not contain the grounds for the eviction of the petitioner, the entire proceedings initiated under the Act was void ab initio and the impugned orders, therefore, could not be sustained.

19. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The writ petitions are allowed. There shall be no order as to cost.