
(2015) 01 DEL CK 0209

In the Delhi High Court

Case No : Writ Petition (C) No. 151/2015, CM Nos. 245 and 246/2015

Eastern Economist Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 18, 3, 3(a), 4, 9

Citation : (2015) 148 DRJ 238 : (2015) 2 RCR(Rent) 12

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : R.K. Sanghi and Salyendra Kumar, for the Appellant; Sanjay Jain, ASG, Nidhi Raman and Sarfaraz Ahmad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition under Article 226 of the Constitution of India seeks declaration of the second proviso to Section 3(a) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act), inter alia providing that only an Officer of the Statutory Authority concerned shall be appointed as an Estate Officer in respect of the public premises controlled by that Authority, as ultra vires. The petition also claims certain other and ancillary reliefs.

2. For conspectus of the matter, it may be stated that the petitioner is a tenant with respect to premises ad measuring 2446 sq. ft. on the 4th floor in UCO Bank Building, 5, Parliament Street, New Delhi; the respondent no.3 UCO Bank, after determination of tenancy of the petitioner of the said premises, in or about the year 2008 approached the Estate Officer for eviction of the petitioner from the said premises and the Estate Officer issued notice to the petitioner under Section 4 of the PP Act; and, that the petitioner is contesting the said proceedings before the Estate Officer. It is the case of the petitioner, (i) that the Estate Officer of the UCO Bank has already made up his mind to pass an order of eviction of the

petitioner and with the said motive has been hurrying the matter and conducting the same contrary to law; (ii) that in fact the Estate Officer is the Zonal Manager of the UCO Bank and is directly involved in day-to-day affairs and administration including the administration of the entire UCO Bank building; (iii) that thus the Estate Officer of UCO bank is acting as a Judge in his own cause; (iv) that the witness of UCO Bank, in the proceedings before the Estate Officer also admitted that the issue of eviction of tenant is decided by the Zonal Manager (Head Office); (v) that in the circumstances, the petitioner filed an application under Rule 6 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 (PP Rules) before the respondent No. 1, Department of Financial Services, Ministry of Finance, Govt. of India for transfer of the said proceedings pending before the Estate Officer of UCO Bank; (vi) however when the respondent no.1 did not take any action on the said application, the petitioner filed W.P.(C) No. 1232/2014 in this Court and vide interim order dated 21st February, 2014 wherein the Estate Officer of the UCO Bank was restrained from passing any final order in the proceedings; (vii) the aforesaid writ petition was disposed of vide order dated 4th September, 2014 with a direction to the Joint Secretary, Department of Financial Services, Ministry of Finance, Government of India to decide the said application of the petitioner under Rule 6 of the PP Rules and with a further direction that till the disposal of the said application the Estate Officer of UCO Bank shall not pass any final order in the proceedings for eviction of the petitioner; and, (viii) that though the petitioner requested the said Joint Secretary to pass an order on the application only after summoning the file of the Estate Officer but he has, without summoning / requisitioning the said file, on 15th October, 2014 rejected the said application inter alia on the ground that under the second proviso to Section 3(a) of the PP Act the Estate Officer of UCO Bank only can be appointed as the Estate Officer.

3. The petitioner accordingly, in this petition, besides challenging the vires of the second proviso to Section 3(a) of the PP Act, has also, (i) challenged the order dated 15th October, 2014 of dismissal of the application under Section 6 of the PP Rules; (ii) sought a direction of transfer of the said eviction proceedings from the Estate Officer of UCO Bank to another Estate Officer; (iii) generally sought quashing of the proceedings for its eviction; (iv) sought a direction to the Estate Officer to grant an opportunity to the petitioner to re-examine the witnesses, lead evidence and to pass speaking orders; and, (v) sought a direction to the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises to ensure compliance of Office Memorandums dated 19th February, 1992 and 21st September, 1992 and to take other steps for amendment of the PP Act and PP Rules.

4. The counsel for the petitioner has however addressed us only on the aspect of vires of the second proviso to Section 3(a) of the PP Act.

5. Section 3 of the PP Act is as under:-

"3. Appointment of estate officer. - The Central Government may, by notification

in the Official Gazette, -

(a) appoint such persons, being gazetted officers of Government or of the Government of any Union Territory or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purposes of this Act;

Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority; and (b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act."

(Emphasis added)

6. The ASG, appearing on advance notice, has at the outset only contended that this petition is in abuse of the process of the Court and intended to stall the eviction of the petitioner from a prime commercial premises and which the petitioner has already succeeded in stalling for the last over six years. It is contended that the vires of the second proviso to Section 3(a) is no longer res integra; attention is invited to Accountant and Secretarial Services Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, holding that no bias can be inferred merely from the fact that the Estate Officer is the Officer of the Authority owning the public premises.

7. The counsel for the petitioner states that he himself, along with the petition itself, has filed copy of the subsequent judgment of the Supreme Court in Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, . Attention is however invited to para 19 of the said judgment where the concession of the Solicitor General, that an Officer of the Statutory Authority owning the public premises dealing with the eviction matters will not be presiding over as an Estate Officer, is recorded and to para 23 of the said judgment where it was held that bias is to be determined on the facts of each case. It is contended that in the facts of the present case a case of bias has been made out.

8. We have however drawn attention of the counsel for the petitioner to the fact that the order of the Estate Officer is appealable under Section 9 of the PP Act, before the District Judge and to para 34 of the judgment of the Constitution Bench in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, negating the challenge to the provisions of the PP Act on the ground that the Estate Officers, not steeped in law cannot be expected to decide complicated questions of law, by holding that the final order that is passed in the PP Act proceedings is by a Judicial Officer of the rank of a District Judge of ten years standing. In our opinion, the same reasoning applies also to the challenge

to the proceedings on the ground of bias. We have thus enquired from the counsel for the petitioner as to how the question of bias arises when the validity of the order of eviction even if passed against the petitioner by the Estate Officer, can always be ultimately tested in appeal there against by the District Judge. No answer is forthcoming. Moreover, the Constitution Bench in *Ashoka Marketing Ltd. supra* further held that a plea of mala fides, being a question of fact, cannot be gone into in proceedings under Article 226 of the Constitution of India and the proper remedy is of appeal. Similarly, the plea of bias, even if open to the petitioner, has to be raised in appeal against the eviction order, if passed against the petitioner. It has further been enquired whether not the said question has to be enquired into only after the final order has been passed by the Estate Officer.

9. The Supreme Court, in *D.P. Maheshwari Vs. Delhi Administration and Others*, , *National Council for Cement and Building Materials Vs. State of Haryana and Others*, and *Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others*, has deprecated the practice of challenge to proceedings being made before conclusion, at interim stage, and which result in derailing and delaying of the original proceedings. To the same effect is the judgment of the Division Bench of this Court (of which one of us i.e. Rajiv Sahai Endlaw, J. was a member) in *Maruti Suzuki India Ltd. Vs. India Tourism Development Corporation Ltd. and Another*, . The challenge, on the ground of bias, at this stage is thus misconceived on this ground also.

10. We therefor do not find any merit in the challenge made by the petitioner to the vires of the second proviso to Section 3(a) of the PP Act.

11. The counsel for the petitioner has then contended that his petition be confined to the challenge to the order dated 15th October, 2014 of the respondent no.5 dismissing the application under Rule 6 of the PP Rules.

12. However once the challenge to the second proviso to Section 3(a) of the PP Act is negated and which proviso provides that only an Officer of the Statutory Authority owning the public premises shall be appointed as an Estate Officer, no error can be found in the said order also dismissing the application of the petitioner under Rule 6 supra on the ground of it being not permissible to appoint any person other than an Officer of UCO Bank, owning and controlling the subject property, as the Estate Officer for conducting the said proceedings.

13. As far as Rule 6 of the PP Rules providing as under:

"6. Transfer of pending proceedings.-(1) On the application of any person to whom a notice under the Act has been served and after hearing him, if he desires to be heard, or of its or his own motion, the Central Government or any Gazetted officer especially authorised by the Central Government in this behalf by notification in the Official Gazette may at any stage transfer any proceeding before an estate officer for disposal of the same.

(2) Where any proceeding has been transferred under sub-rule (1), the estate

officer who thereafter is in charge of such proceeding may, subject to any special directions in the order of transfer, either re-start it or proceed from the point at which it was transferred."

is concerned, the same was enacted in the year 1971 when the second proviso supra to Section 3 did not exist. Section 3 as it then existed, was as under:

"3. Appointment of estate officers. - The Central Government may, by notification in the Official Gazette, -

(a) appoint such persons, being gazetted officers of Government or officers of equivalent rank of the corporate authority, as it thinks fit, to be estate officers for the purposes of this Act; and

(b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act."

It was only by the amendment of the year 1980 that Section 3 was amended to its extant form. The question which thus arises is that whether even after such amendment of Section 3 and according to second proviso whereof only an Officer of the Statutory Authority owning/controlling a public premises can be appointed as an Estate Officer of the said premises, it is open to the Central Government to transfer the proceedings from before that Estate Officer for disposal to any other Estate Officer who is not the Officer of the Statutory Authority owning/controlling that public premises. The same in our view is impermissible in the light of the second proviso aforesaid to Section 3(a) of the Act. It is unfortunate that the Central Government which has framed the said Rules in exercise of powers under Section 18 of the PP Act, inspite of amendment of the PP Act has not brought the Rules in conformity with the amended Act. It is not the case of the petitioner that with respect to the subject public premises there is any other Estate Officer.

14. PP Rules being subordinate legislation must fall in line with the principal Act and in no way can be detrimental to the provisions and the legislative scheme of the PP Act. A Rule/subordinate legislation, if in conflict with the subsequent amendment to the plenary/parent Statute, ceases to exist. The Supreme Court in Union of India (UOI) and Another Vs. C. Dinakar, I.P.S. and Others, negated the contention that the Rules (CBI (Senior Police Posts) Recruitment Rules, 1996 till superseded expressly would reign by holding that once by reason of Parliamentary Act, the procedure for appointing Director, CBI has been laid down, it is idle to contend that the Rules would still survive. Similarly, in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, the Constitution Bench finding that the Rules (The Uttar Pradesh Krishi Utpadan Mandi Niyamavali, 1965) which were framed in 1965 were so very different from the then provision of law (Uttar Pradesh Krishi Utpadan Mandi Adhiniyam Act, 1964 as amended) not only expressed its distress about the failure of the Government to amend the Rules and bring them in conformity with the provisions of the statute from time to time but held that the Rules will apply so

long as they do not come in conflict with the Statute.

15. We are thus of the opinion that our interpretation of the second proviso aforesaid to Section 3(a) of the PP Act which was incorporated in the year 1980 cannot be coloured by Rule 6 of the PP Rules framed in the year 1971 when there was no second proviso to Section 3(a). If the Rules become inconsistent with the amended provisions of the Act, the Court will have no option but to cut down the Rule so as not to conflict with the amended provisions of the Act. It cannot be ignored that the Central Government at the time of making the said Rules did not have before it the second proviso to Section 3(a) supra and as per which it is only an Officer of the Statutory Authority owning/controlling the public premises who can be appointed as the Estate Officer of the said public premises. Rule 6 supra therefore, cannot be read as empowering the Central Government to do what is not permitted by the Act.

16. We however hesitate from striking down Rule 6 supra, for the reason that neither is that the prayer nor have any arguments been addressed on the said aspect and also for the reason that the same may still have a play in a given situation where there exists more than one Estate Officer of a public premises.

17. The counsel for the petitioner of course states that the order in the earlier writ petition directing the decision of the application under Rule 6 having become final, the said aspect cannot be considered. The direction issued in W.P.(C) No. 1232/2014 earlier preferred by the petitioner, for disposal of the application of petitioner under Rule 6, was in ignorance of the legal position aforesaid and is thus per incuriam and does not come in our way of holding so in a challenge to the order made on the said application.

18. We may record that no other argument has been urged by the counsel for the petitioner.

19. We may however record that the Office Memorandums dated 19th February, 1992 and 21st September, 1992 qua which reliefs have been claimed, lay down certain guidelines qua the application of the PP Act and the Supreme Court in *New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another*, *Syndicate Bank Vs. Ramachandran Pillai and Others*, and *Banatwala and Company Vs. L.I.C of India and Another*, and the Division Bench of this Court in several judgments as noticed in *Indian Instt. of Public Opinion Pvt. Ltd., Ahuja Refrigeration P. Ltd. and P.P. Chaudhary Vs. Insurance Corporation of India*, where against was dismissed as not pressed on 26th February, 2014) which in turn was followed in *M/s. Pearey Lal and Sons Pvt. Ltd. Vs. Punjab National Bank and Another*--> : and *S.S. Khera Vs. Punjab National Bank and Others*--> have held the said Guidelines directory / advisory in character and not mandatory and thus not affecting the proceedings under the PP Act. The said Guidelines were held to be advisory, recently again in *Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer*, though the said judgement is under review.

20. The petition is accordingly dismissed. We however clarify that all pleas of the

petitioner which are capable of adjudication in appeal under Section 9 of the PP Act shall remain open for adjudication in the event of the petitioner preferring such an appeal.

No costs.