

(2000) 01 DEL CK 0018
In the Delhi High Court
Case No : C.W.P. No. 294 of 1976

Jagdish R. Patel

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Citation : (2000) 3 AD 124

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. S.C. Nigam, for the Appellant;

Judgement

C.M. Nayar, J.—This petition has been filed under Articles 226 and 227 of the Constitution of India impugning the notice which is filed as Annexure- K to the writ petition and may be reproduced as below :-

"No. ES-II-4(4)/70

Government of India

Ministry of Works and Housing

Court of the Estate Officer

Land and Development Officer

6th Floor, Nirman Bhawan,

New Delhi.

To

Shri Jagdish Patel,

55, Hanuman Road (1st floor)

New Delhi.

Union of India Vs. Sh. Jagdish Patel.

Subject :_ Proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for Eviction.

Please take notice that the above matter will now come up for your evidence on 16.7.1974 at 10 A.M.

In case of default in your/representative appearance, the proceedings will be taken exparte without entertaining any objection from you thereafter.

Given under my signature and seal of the Court this 26th day of June, 1974.

Sd/-

C.P. Khanna

Estate Officer

Land & Development Office.

New Delhi."

2. The petitioner has contended that he is a lawful tenant on the first floor of House No. 55, Hanuman Road, New Delhi under Haji Sheikh Nathoo and after his death his legal heirs. Photocopies of the rent bills dated 17th May, 1951 and 18th May, 1951 are filed as Annexure-A and B to the writ petition. The petitioner has also stated that after the partition of the country the said property was declared an evacuee property and the petitioner became the tenant under the Custodian of Evacuee Property and started paying rent to the Custodian. The rent receipt dated 12th July, 1951 is also filed as Annexure-C to the writ petition. The petitioner subsequently received a notice dated 6th January 1970 u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Act") wherein he was stated to be an unauthorised occupant of the premises and told to show cause why the petitioner be not evicted. Reply to the said notice was sent by the petitioner. The petitioner received a further notice on 25th May, 1972 and 26th June, 1974 and replies to these notices were also sent. The main grievance of the petitioner is that no proceedings in the facts and circumstances of the case could be initiated under the Act for eviction as he had never been in an unauthorised occupation of the premises. Affidavit has been filed on behalf of the respondents by Shri U.N. Bhyan, Dy. Land and Development Officer wherein it is stated that the property as having been re-entered on 19th April, 1969 the same now vested in the President of India and the petitioner has no locus standi to file the present petition though this fact is disputed by learned counsel for the petitioner who contends that the petitioner is in possession of the property.

3. There is no appearance on behalf of the respondents though the counsel appearing for them was directed to ascertain as to the stage of proceedings before the Estate Officer by Order dated September 2, 1999.

4. The matter is only at the show cause stage and it will be open for the petitioner to take the necessary plea of want of jurisdiction before the Estate Officer and in case it is raised the Estate Officer shall treat it as a preliminary issue and decide the same. The present petition is, accordingly, disposed of in the above terms. There will be no order as to costs.