

(1996) 02 GUJ CK 0015
In the Gujarat High Court

Phiray Ram

APPELLANT

Vs

The National Airport Authority and Another

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (1996) 3 GLR 118

Hon'ble Judges : C.K.Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—Rule. Mr. S.V. Raju, learned Counsel for the respondents, appears and waives service of rule on behalf of respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed against an order passed by the Competent Authority on February 24, 1995, by which the petitioner was ordered to be evicted, holding him to be in unauthorised occupation of the disputed quarter. The said order was confirmed by the lower appellate Court on April 12, 1995.

3. It is the case of the petitioner that he is serving with the National Airport Authority as Fire Operator. He was appointed to the said post in November, 1982 and since then, he is working with the respondents. It is asserted by him that he is entitled to have allotment of quarter Type II. But as quarter Type I was vacant and since the petitioner was in need of quarter, he was allotted Type I quarter on December 21, 1992. The petitioner thereafter was allotted quarter No. B-4 of Type 11 on February 22, 1995 and possession thereof was also given to him on the next day, i.e., on February 23, 1995. Immediately on the next day, i.e., on February 24, 1995, the said allotment order was cancelled without issuing notice calling for explanation or complying with the principles of natural justice. The petitioner came to know about the said fact. The petitioner, therefore, filed Civil Suit No. 171 of 1995 in the Court of Civil Judge (Senior Division), Ahmedabad (Rural) which is still pending. It is his case that thereafter, respondent No. 2 issued a notice on March 6, 1995 u/s 4 of the Public Premises (Eviction of

Unauthorised Occupants) Act. 1971 (hereinafter referred to as "the Act"), calling upon the petitioner to show cause as to why he should not be evicted from quarter No. B-4 of Type 11. The petitioner submitted his reply on 13th March, 1995. On 15th of March, 1995, the impugned order was passed by respondent No. 2-Competent Authority directing the petitioner to vacate the quarter. Against that petitioner approached the District Court, Ahmedabad (Rural) and the learned 3rd Joint District Judge dismissed the appeal. Against that order, the petitioner has approached this Court.

4. Various contentions were raised by Mr. Dhotare, learned Counsel for the petitioner. It is, however, not necessary for me to deal with all the contentions since, in my opinion, the petition can be disposed of on one ground. It was contended by the Counsel that notice issued to the petitioner in purported exercise of power u/s 4 of the Act is contrary to law and cannot be said to be legal and valid in the eye of law. Section 4 provides for issuance of notice against an order of eviction. It reads thus:

...4. Issue of notice to show cause against order of eviction.-- (1) If the Estate Officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the Estate 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,--

(i) 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 seven days from the date of issue thereof, and

(ii) to appear before the Estate Officer on the date specified in the notice along-with the evidence which they intend to produce in support of the cause shown and also for personal hearing, if such hearing is desired.

(3) The Estate Officer shall cause the notice to be served 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 Estate Officer knows or has reasons 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 post or by delivering or tendering it to that person or in such other manner as may be prescribed....

(emphasis supplied)

5. My attention was also invited by the Counsel to Form "A" prescribed under Rule 3 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as "the Rules"). The notice must be in that form. The said form is as under:

Form "A"

Form of notice under Sub-section (1) and Clause (b)(ii) of Sub-section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To.

Shri Shrimati Kumari.....

.....

.....

Whereas I, the undersigned, am of opinion on the grounds specified below that you are in unauthorised occupation of the public premises mentioned in the Schedule below and that you should be evicted from the said premises:

GROUND S

Now, therefore, in pursuance of Sub-section (1) of Section 4 of the Act, I hereby call upon you to show cause on or before the.....why such an order of eviction should not be made.

And in pursuance of Clause (b)(ii) of Sub-section (2) of Section 4, I call upon you to appear before me in person or through a duly authorised representative capable to answer all material questions connected with the matter alongwith the evidence which you intend to produce in support of the cause shown, on...at...for personal hearing. In case, you fail to appear on the said date and time, the case will be decided ex parte.

Schedule

Date_____

Signature and Seal of the Estate Officer.

5.1 Now, in the instant case, the notice issued by the Competent Authority reads as under:

..... Notice Under Sub-section (1) and Clause (b)(ii) of Sub-section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(1) Sr. Pers. and Admin. Officer-in-charge of Estate Section, National Airports Authority, Ahmedabad Airport, Ahmedabad.... Petitioner.

vs.

(1) Shri Phiray Ram, Fire Operator, National Airports Authority, Ahmedabad Airport.

(2) All others who claim interest in the Public Premises (Qr. Type II - B-4) Ahmedabad Airport, Ahmedabad.... Respondents.

Whereas, I, the undersigned, am of the opinion, on the grounds specified below that you are in unauthorised occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises:

Grounds

Now, therefore, in pursuance of Sub-section (1) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby call upon you to show cause on or before 13-3-1995, why such an order of eviction should not be made.

And, in pursuance of Clause (b)(ii) of Sub-section (2) of Section 4, I also call upon you to appear before me in person or through a duly authorised representative capable to answer all material questions connected with the matter alongwith the evidence which you intend to produce in support of the cause shown on 13-3-1995 at 11-00 hours in the Chamber of the Airport Director/Estate Officer, National Airports Authority, Ahmedabad Airport, Ahmedabad for personal hearing. In case you fail to appear on the said date, time and venue, the case will be decided ex-parte.

Schedule

Public Premises of National Airports Authority, Ahmedabad Airport, Ahmedabad, Quarter Type H - B-4, Airport Colony, Ahmedabad.

Sd/- 6-3-1995

Signature and Seal of the Estate Officer

6. A conjoint reading of Section 4 and Rule 3 along with Form-A leaves no room of doubt that the notice must specify grounds on which it is sought to be issued and an occupier is sought to be evicted. The reason is obvious and simple. The person, who is alleged to be in unauthorised occupation of public premises and who is asked to vacate it, must be made aware as to why and on what grounds he is considered to be in unauthorised occupation or possession of premises. It is with a view to afford him an opportunity so as to enable him to defend his case and protect his possession by satisfying the authority that he is not in unauthorised occupation and the grounds mentioned in the show cause notice are incorrect, nonexistent or not covered by the statute. It is only if the grounds are mentioned in the notice that the person may be able to defend his case by giving effective reply for which minimum time of seven days is granted by Parliament. In the instant case, looking to the notice extracted above, it is clear

that in the first part of the notice, it was stated by the second respondent that he was of the opinion "on the grounds specified below" that the petitioner was in unauthorised occupation of public premises and that he was liable to be evicted from the said premises. Then "Grounds" is also used. But no ground whatsoever had been stated or enumerated below "Grounds". Immediately thereafter, the second respondent stated.

...Now, therefore, in pursuance of Sub-section (1) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby call upon you to show cause on or before 13-3-1995 why an order of eviction should not be made....

Thus, no ground has been mentioned as to why the petitioner was prima facie treated as unauthorised occupant and why an order of eviction should not be passed against him.

7. Mr. Raju, learned Counsel for the respondent-Authority, no doubt, contended that alongwith the notice, other documents were also sent to the petitioner. The petitioner was, therefore, aware as to why he was treated as in unauthorised occupation and, hence, no prejudice was caused to him. In my opinion, such an argument cannot be countenanced by the Court, particularly when there is a Legislative mandate that the authority must specify the grounds on which the notice is issued. Therefore, only on that ground, notice must be held to be bad in law. If the notice is not legal and valid, no proceedings could have been initiated nor an order of eviction could have been passed against an occupier. Wire-Netting Stores and Another Vs. The Delhi Development Authority and Others, . This petition, therefore, requires to be allowed and is accordingly allowed on that ground alone. The orders passed by the second respondent and confirmed by the Third Joint District Judge, Ahmedabad (Rural). Mirzapur, in Eviction Civil Application No. 31 of 1995 dated April 12. 1995 are hereby quashed and set aside.

8. Mr. Raju. learned Counsel for the respondents, submitted that on a number of grounds, the petitioner can be said to be in unauthorised occupation and the impugned order was. therefore, passed. I may clarify that it is open to the respondent-Authorities to specify the grounds by issuing notice as to why the petitioner can be said to be in unauthorised occupation and it is open to them to pass an appropriate order in accordance with law after affording opportunity of hearing. Rule is accordingly made absolute with no order as to costs.