
(2015) 07 AHC CK 0233

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 56072 of 2014

Prem Pal and Others

APPELLANT

Vs

Bharat Heavy Electricals Ltd. and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(e), 2(g), 4, 5

Citation : (2015) 8 ADJ 563 : (2016) 2 ALJ 248 : (2015) 112 ALR 834 : (2015) 5 AWC 5259

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Rahul Jain and Asha Jain Madan, for the Appellant; Vinay Khare and A.K. Roy, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Ms. Asha Jain and Shri Rahul Jain for the petitioners and Shri Vinay Khare and Shri A.K. Roy for the respondents 1 and 2. No one appeared for respondent No. 3 who is only a formal party. The writ petition purports to challenge the order dated 3.12.2012 passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred as "Act") and the order dated 17.9.2014 dismissing the appeal thereto.

2. The petitioners claim that they are employees of the respondent-company B.H.E.L. and are occupying the official quarters for a long time with the permission of the company authorities. They are not unauthorized occupants and that they are not liable to eviction under the Act.

3. The contention of the respondent company is that there is no privity of contract between the petitioners and the respondent-company rather the petitioners are employees of a contractor and they have no legal authority to occupy the official quarters of the respondent company. They have not produced any order of allotment in respect of the quarters occupied by them. Therefore,

they have rightly been declared to be unauthorized occupants. The Appellate Court has rightly dismissed the appeal of the petitioners as in pursuance to the notice dated 29.11.2012) they have appeared before the management on 6.12.2012 for negotiation and had knowledge of the proceedings.

4. Learned Counsel for the petitioners submit that the notice dated 29.11.2012, first of all is not a notice as contemplated under Section 4 of the Act read with Rule 4 of the Rules framed under the Act. Secondly, the said notice was never served on any of the petitioners in the manner prescribed under the Act as well as the Rules. The appearance of the petitioners before the management was in a different context and cannot be deemed to be participation in the proceedings on their part. The respondent-company in appeal admitted the possession of the petitioners and that in the exigency of work certain persons even from the workforce engaged by the contractor were allowed to stay on temporary basis in the official quarters which means that the petitioners even if assumed to be the workers of the contractor, were permitted to reside in the official quarters with the due permission of the management of the respondent-company and as such they are not unauthorized occupants. The petitioners were not temporary occupants and that their authority to occupy official quarters was never determined by the respondent company at any stage.

5. Section 2(e) of the Act defines the "public premises" to mean any premises belonging to or taken on lease by or on behalf of the Central Government or any premises belonging to or taken on lease by or on behalf of any company as defined under Section 3 of the companies Act, 1956 in which the Central Government or a company which is a subsidiary of it has a share capital of not less than 51%.

6. There is no dispute that the Central Government is holding more than 51% share capital in the respondent company, therefore, any property or premises belonging to the said company would be covered by the definition of the public premises. Accordingly, the quarters occupied by the petitioners and belonging to the respondent company would constitute public premises.

7. Section 2(g) of the Act defines the "unauthorized occupation" to mean occupation by any person of a public premises without authority for such occupation and includes its continuation after determination of the authority to occupy. In other words, no person is supposed to occupy a public premises except by an authority for such occupation. The official quarters of the company as such have to be allotted and allowed to be occupied by the respondent company. This authority need not necessarily be in writing or through an order of allotment. Even an oral permission to occupy would be sufficient authority to occupy the "public premises".

8. Section 4 of the Act provides for issuance of notice of show-cause before the order of eviction. It provides that if the Estate Officer is of the opinion that any person or persons are in unauthorized occupation of any public premises and

that they should be evicted, he shall issue a notice in writing in the manner prescribed calling upon the person/persons to show-cause why an order of eviction, should not be passed against them. The notice shall specify the grounds for the proposed eviction and require the said persons to show-cause by the date specified in the notice, why they should not be so evicted.

9. The purpose of the notice is to give the persons in alleged unauthorized occupation of the public premises an opportunity to appear before the Estate Officer on the date fixed alongwith the evidence which they intend to produce in their defence and to give them personal hearing in the matter before any order of eviction is passed.

10. The manner of service of notice has been laid down in Rule 4 of the Rules framed under the Act. It provides that the notice under Section 4 shall be served by delivering or tendering a copy of the notice to the person concerned or to any adult member of his family or by sending it to the said person by registered post/AD at his usual or his last known place of residence or business. It also provides that where a notice under the previous Rule is delivered or tendered, the signature of the person to whom the copy is so delivered or tendered, should be obtained in token of acknowledgement of service. It further provides that where such person cannot be found after using all due and reasonable diligence, and there is no adult member of the family of such person, a copy of the notice would be affixed on the outer door or some other conspicuous part of the residence or usual place of business of such person.

11. Thus, from the plain reading of Section 4 of the Act and Rule 4 of the Rules, it is clear that a show-cause notice is mandatory before passing an order of eviction against any unauthorized person from the public premises. The said notice should contain the grounds on which the eviction is proposed and must give an opportunity to the person concerned to appear before the Estate Officer on specified date fixed to produce evidence and for hearing. Such a notice is to be served either by delivering or tendering copy of it upon the person concerned or any adult member of his family and in case it is so tendered or delivered, signature of the person to whom such copy is delivered or tendered is required to be obtained. It is only in the event that a person is not so found or there is no adult member in his family that a notice can be placed upon the outer door or some conspicuous part of his residence or place of his business.

12. Admittedly, in the present case the record does not reveal that any notice as contemplated by Section 4 was ever issued or served upon the petitioners in the manner prescribed under Rule 4 of the Rules. The presence or the appearance of the petitioners on 6.12.2012 before the management of the respondent company cannot be assumed or deemed to be appearance before the Estate officer in pursuance of a notice as contemplated under Section 4 of the Act inasmuch as the notice under Section 4 has to specify the grounds of eviction and the date for the appearance of the person concerned for the production of evidence and hearing. No notice to such an effect was issued and served. It has been brought

on record.

13. The notice dated 29.11.2012 is not exactly a notice as contemplated by Section 4 of the Act rather it is a simple notice for the production of the allotment order under which the petitioners were said to have occupied the official quarters. A notice requiring production of allotment order is not a notice as contemplated by Section 4 of the Act.

14. A plain reading of the impugned order dated 13.12.2012 reveals that it is not an order of eviction but only an order holding the petitioners as unauthorized occupants for the purposes of initiating proceedings for their eviction in the manner prescribed under the Act as they have failed to produce the orders of allotment.

15. In view of the aforesaid facts and circumstances, as has also been accepted by the counsel for the respondents, the estate Officer had not arrived at a stage for issuance of a show-cause notice as contemplated by Section 4 of the Act and had not passed any order of eviction in pursuance rather the order is that petitioners are unauthorized occupants of a public premises as they have no order of allotment.

16. Learned counsel for the petitioners at this stage submit that the appeal as preferred by the petitioners was premature and was not maintainable as there was no order of eviction against the petitioners to enable them to maintain the appeal.

17. The notice dated 29.11.2012 and the orders dated 13.12.2012 and 4.2.2013 are only orders which record the satisfaction of the authorities that the petitioners are unauthorized occupant against whom proceedings for eviction under the Act can be drawn but the said notice or the orders fall short of a notice contemplated vide Section 4 of the Act and order of eviction required to be passed under Section 5 of the Act.

18. In the above view of the matter, I am of the opinion that the petitioners are not liable for eviction from the official quarters under their occupation until and unless a proper order of their eviction in accordance with the provisions of the Act is passed against them under Section 5 of the Act pursuant to a notice under Section 4 of the Act.

19. Accordingly, the appellate order dated 17.9.2014 is quashed leaving it open for the Estate Officer to initiate and continue proceedings for the eviction of the petitioners by issuing notice under Section 4 of the Act and to complete the same in accordance with the provisions of the Act. The writ petition is allowed as aforesaid with no order as to costs.