

(1991) 08 MAD CK 0071
In the Madras High Court

R. Kannaiyan

APPELLANT

Vs

The Assistant Township Administration, T.A. Department,
Neyveli Lignite Corporation and Another

RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5

Citation : (1992) 1 MLJ 214

Hon'ble Judges : Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The petitioner challenges an order passed u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act XL of 1971) on 22.6.1990, by which the petitioner was requested to surrender the quarters in which he was residing.

2. The petitioner was employed as Assistant Purchase Manager in Neyveli Lignite Corporation and retired from service on 30.11.1989 after serving the Corporation for 33 years. While he was in service, he was allotted a quarters C.30, Block No. 9, J.C. Bose Road, Neyveli and the petitioner has been living in the quarters with his family. The petitioner's eldest son is a qualified Noildar Attendant in the Corporation and he has undergone three years apprentice course in the Corporation and he was appointed as an Industrial Worker, Grade I with effect from 1.1.1991 for a period of one year. The other children of the petitioner are studying in Neyveli. It is alleged in the affidavit that the petitioner has to necessarily stay in Neyveli till 1994 in view of his children prosecuting their studies in Neyveli and that one of the sons of the petitioner has become eligible for allotment of quarters on his getting married shortly. By order dated 22.11.1989, the petitioner was relieved from his duty with effect from 30.11.1989 and according to the rules in force, he can retain the quarters allotted to him for a maximum period of 4 months from the date of his relief from service till 31.3.1990. The petitioner was informed on 22.11.1989 that he

should arrange to vacate and surrender the quarters on the due date positively. It is also stated that the order allotting the quarters will be deemed to have been cancelled from that date, i.e., 31.3.1990. By an order dated 29.11.1989, the pensionary benefits were granted to the petitioner. On 16.2.1990, the petitioner has requested for continuance of quarters upto 30.4.1990 and his request for retention of the quarters was acceded to subject to payment of house rent and other charges in advance. It was made clear to the petitioner that the quarters on any account should be arranged to be vacated and surrendered to the Department on or before the 22.6.1990, a notice u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act has been issued to the petitioner stating that in Form A notice dated 19.5.1990, the petitioner has been requested to surrender the quarters and that he has not surrendered the quarters, nor given proper reply with reference to Form A notice and the quarters should be vacated immediately. The petitioner was asked to vacate the premises on or before 12.7.1990. Thereafter, the petitioner started making representations on 11.7.1990 to the General Manager for some more time to surrender the quarters. However, by May, 1991, the petitioner started taking a stand that his son is entitled to an accommodation and the family has to reside there for the purpose of the education of the children. The petitioner has also made a representation to the president of N.L.C. Retired National Employees" Association. It is alleged in the affidavit that he has been continuing to occupy the premises by paying the stipulated rent and in this case alone, the Corporation has shown a different attitude and has permitted retired employees to occupy the quarters on payment of stipulated rent. Further, since he has made a representation on 11.7.1990 and no reply has been received, he was under the impression that, that his request to continue the premises will be considered. It is stated in the affidavit that the notices issued under Sections 4 and 5 have become inoperative by efflux of time and are invalid, illegal and arbitrary. In paragraph No. 4 of the affidavit, about four names of the retired employees have been given who have been allowed to continue the premises even after retirement and that the petitioner alone has been discriminated. The petitioner also alleges in the affidavit that an order u/s 5 is shown to have been passed on 22.6.1990, but by reason of the order not being executed for more than a year, it has become invalid and inexecutable. The petitioner alleges as if he has got a right to continue the premises.

3. Mr. C. Ramakrishnan, learned Counsel for the petitioner contends that the petitioner has been in permissive possession of the premises and a prior notice is necessary before any proceedings are taken under the Public Premises (Eviction, of Unauthorised Occupants) Act 1971. For this proposition, learned Counsel relies upon the decisions reported in *Jamni Devi v. Union of India* (sic), in *Hardwari Lal Verma Vs. The Estate Officer and Others*, . Learned Counsel contends that so far as the petitioner has been permitted to continue, it has to be taken that he is in permissive possession of the quarters so as not to attract the provisions of the Public Premises (Eviction Unauthorised Occupants) Act 1971. Learned Counsel

further argues that the petitioner's eldest son, being an employee of the Corporation, is entitled to a quarters. As such, the impugned order has got to be set aside, since the petitioner's son is also residing with the petitioner. The learned Counsel further contends that similarly situate persons like the petitioner i.e., retired employees are allowed to continue the premises and for no good reason, the petitioner alone had been singled out and has been asked to vacate the premises. An allegation is made in the affidavit that the Corporation is resorting to this method for no better reason than the reason that he belongs to an inferior caste.

4. It is necessary to set out certain provisions of the Public Premises (Eviction of Unauthorised Occupants) Act (Central Act XL of 1971) for the purpose of understanding the arguments of the learned Counsel for the petitioner. Sub-Section (e) of Section 2 -defines public premises. Sub-Section (g) of Section 2 defines unauthorised occupation. Section 4 talks issue of notice to show cause against an order of eviction. Section 5 spoke of an order of eviction passed for unauthorised occupation Section 9 provides for an appeal against the order of estate officer made in respect of any public premises u/s 5 or Section 7 to an appellate authority.

5. In this case, it is not in dispute that the petitioner retired from service on 30.11.1989 and on 22.11.1989 itself, he has been given notice about the vacation of the quarters allotted to him. It is made clear in that notice that according to the rules, the petitioner is entitled to have the quarters for a maximum period of four months only from the date of retirement of service. Apparently, the petitioner made an application for extension of time dated 16.2.1990 and by an order dated 3.3.1990, the petitioner has been given per-i; mission to retain the quarters till the closure of the academic year 30.4.1990 subject to certain conditions. When the petitioner has not vacated the premises, Form A notice has been given as required in Section 4 and that the petitioner kept quiet. As such. Form B notice has been issuer u/s 5 for eviction. The petitioner has been asked to vacate by 12.7.1990. As such, I am not able to see any contravention of any provisions of the enactment in my view, the procedure contemplated under the Act has been fully complied with in this case. Form A notice issued clearly shows that consequent on the petitioner's retirement on 30.11.1989, he has been given permission to retain the quarters till 30.4.1990 on educational grounds and that the petitioner is still in custody of the quarters after the permitted period and so he has been requested to surrender the quarters immediately. A reading of the notice makes it clear that after 30.4.1990, the petitioner is in unauthorised possession of the premises. The extension was given only because of the petitioner making a request, on 3.3.1990. So, I am not able to agree with the learned Counsel for the petitioner that the petitioner is in permissive possession and prior notice is necessarily before action is taken under Act XL of 1971.

6. The decisions relied on by the learned Counsel are not applicable to the facts

of this case. In Jamni Devi's case 1986 A.L.J. 783, the Division Bench of the Allahabad High Court was concerned with the question of eviction under Rule 155(1) and (2) of the Defence and Internal Security of India Rules, 1971. In that case, the facts were; One Nandu Singh was allotted premises in Bania Bazaar, Dehradun in 1955 and subsequently, the Estate Officer initiated proceedings for eviction u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and directed the wife of Nandu Singh to be evicted. The order was passed u/s 5(1) of the Central Act 40 of 1971. Aggrieved by that order, the petitioner in that case filed an appeal u/s 9 before the District Judge and questioned the order directing eviction and in the appeal, the petitioner had claimed that her husband had been given permanent licence by the then Commandant and that in pursuance thereof, he had built the disputed accommodation. The learned District Judge, Dehradun found the issue in favour of the petitioner in that case and held that the petitioner's husband had actually been granted a licence on 2.2.1959 and the same had been acted upto for more than a decade and a half. The District Court held in that case that it operated as a revocable licence and that there was no evidence to show that it has been so revoked. This order of the District Judge had become final. After it had become final, action has been taken under Defence and Internal Security of India Rules, 1971. In those circumstances, the Division Bench held that when the order of the District Judge had become final in proceeding under Public Premises Act and that the petitioner was therein a licensee and is not in authorised occupation, no proceeding can be taken under Rule 155(1) and (2) on the ground that the petitioner in that case was in unauthorised occupation. I am not able to see any comparison of facts with the case on hand. The case before me is a clear case where the petitioner has been allotted a quarters while he was in service and he was asked to vacate the premises. When the petitioner requested for some time, it was granted on compassionate grounds. So, I am not able to accept the contentions that the petitioner has been in permissive occupation. Sufficient notice has been given to the petitioner while granting extension, to vacate the premises. At least after 30.4.1990, the petitioner should be deemed to be in unauthorised occupation. I am not able to accept the contention of the learned Counsel for the petitioner that the petitioner is in permissive occupation and as such, eviction is not contemplated under Central Act 40 of 1971.

7. So far as the other ground raised that the petitioner's son is in the employment of the petitioner and he is entitled to an accommodation, that is a matter for the Corporation to decide whether to allot a premises to the petitioner's son or not and it depends upon the contingencies in the Corporation and the availability of quarters to be allotted. Surely, it cannot be a ground to challenge the order passed by the authority concerned under Central Act 40 of 1971.

8. So also, the other ground raised by the petitioner that he has been singled out and others are allowed to continue, is not convincing. If any person is allowed to continue unauthorisedly or even granted permission unauthorisedly, he has got

to be evicted under Act 40 of 1971. If any permission is granted to some other person, it should be on some valid reasons. It cannot be said all persons are similarly situated and facts differ when an authority grants permission to continue to occupy the premises by a particular person. So I am not convinced with the argument of the learned Counsel for the petitioner that the petitioner has been singled out.

9. I do not think, the decision reported in *Hardwari Lal Verma Vs. The Estate Officer and Others*, supports the petitioner's case. It has been held in that case that a Government servant who is allotted a quarter, is nothing more than a licensee and the licence can be cancelled at any time. In fact, this decision is against contention raised by the petitioner.

10. Apart from that, the impugned order in this case has been passed as early as 22.6.1990 and the petitioner has approached this Court after one year and has filed this writ petition only in July, 1991. I am not convinced with the reasons given by the petitioner that he has been making representations to the Corporation to continue him in the premises. So, I am not inclined to entertain the writ petition on the ground of laches also on the part of the petitioner in approaching this Court.

11. That apart, the Act provides for an appeal and the petitioner has not exhausted that remedy. So on the ground of laches and on the ground of not availing of the alternative remedy, the petition has to fail apart from the reasons given by me supra. There are no merits in the suit petition. Accordingly, it is dismissed.

12. Allegations are made in the affidavit about the Corporation allowing certain persons after retirement to occupy the quarters and that the petitioner alone has been singled out since he belongs to an inferior caste. I am of the firm view that no Government servant or a servant of a Corporation has any right to be in possession after retirement. Persons retiring have to vacate the premises according to the rules, as the new incumbents have to come in and join. If the request of the petitioner is allowed, the Government or Corporation as the case may be, will be put to unnecessary expenditure of building quarters for the existing employees, at the same time allowing the retired employees to continue further. As has been held by the Delhi High Court, it is only a licence and as soon as the Government servant or a Corporation servant retires, he has to vacate the premises. I do hope that the respondent Corporation will follow the same scale with regard to others also and see that no retired employee continues in the premises of the Corporation unnecessarily so that a complaint of the present nature will not be repeated before this Court in future.