

(1977) 04 OHC CK 0010

In the Orissa High Court

Case No : Original Jur. Case No. 1241 of 1975

Sheik Khalilur Raheman

APPELLANT

Vs

Estate Officer and Others

RESPONDENT

Date of Decision : 12-04-1977

Acts Referred:

Orissa Public Premises (Eviction of Unauthorised Occupants) Rules, 1988 — Rule 3, 4, 5(2)
Constitution of India, 1950 — Article 226
Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 4, 4(1), 4(2), 4(3)

Citation : AIR 1977 Ori 201 : (1977) 43 CLT 622

Hon'ble Judges : S.K. Ray, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : R.C. Patnaik and P.K. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Ray, J.—This is an application by a lessee of the State of Orissa to quash Annexure 1 (final order of O. P. No. 1) and Annexure 4 (appellate order) passed in eviction proceedings under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act).

The petitioner obtained lease of a piece of land measuring 45 ft. x 80 ft. in extent comprised in plot No. 15A situated in Unit" No. 1 at Bapuji Nagar from the State of Orissa. The lease deed was executed on 20-9-1970 and possession was delivered through the Revenue Inspector of P. & S. Department on 9-2-1971. At the time of allotment a plan of the leasehold premises was prepared which in this case is drawing No.C.5417. According to it the leasehold property was bounded as follows:--

North -- Plot No 15-B South -- Plot No. 15 East -- Govt. land and road, and West -- 18" wide lane.

2. It is admitted that the usual procedure at the time of delivery of possession of the leasehold property is to make out a possession report signed by the allottee and the Revenue Inspector of P. & S. Department and a copy of such report is delivered to the allottee and another copy is retained by the lessor in the relevant lease-case record. State Government's copy is not forthcoming on the ground that it is not traceable. The petitioner has extracted relevant portion of it in para 2 of his petition, apparently from his copy, which runs as follows:--

"Demarcation of shop-cum-residence plot No. 15-A in shop-cum-residential site in Unit No. 1 Bapuji Nagar taken from the Estate Officer and ex-officio Deputy Secretary to Government, P. & S. Department on the 9th day of February, 1971 in accordance with the registered lease deed and drawing No. C-5417. The size of the plot is 45" x 80" and bounded by:

on the North -- Plot No 15-B on the South -- Plot No. 15 on the East -- Road on the West -- Conservancy lane Handed over by Taken over by R. I. of P. & S. Sk. Khalilur Rahe- Department man lessee, on 9-2-71. on 9-2-71."

3. After getting delivery of possession, the petitioner constructed a shop-cum-residential building on the leasehold premises with prior permission from all appropriate authorities, viz.. Special Planning Authority, Bhubaneswar, Estate Officer, Bhubaneswar, and the Notified Area Council, Bhubaneswar and let it out to Allahabad Bank with effect from 1-11-1973 who uses it as a residence-cum-office.

4. An eviction proceeding was initiated against the petitioner on 30-3-1974 under the Act which was registered as O. P. P. Case No. 66 of 1974 and notice u/s 4 (1) thereof was directed to be issued and the matter was directed to be put up on 22-4-74. Without serving any notice on the petitioner as required by Section 4 of the Act the final order of eviction was passed holding the petitioner to be in unauthorised occupation of the Government land (Annexure 1) and notice of eviction u/s 5 (1) of the Act was directed to be issued.

5. The petitioner became aware of the eviction proceeding on 16-1-75, when some personnel of the Political & Services Department arrived at the spot to dismantle a part of the building pursuant to notice u/s 5 (1) of the Act, and filed an appeal before the opposite party No. 2 from Annexure 1 on 30-1-75. The opposite party No. 2 dismissed the appeal both on merits as well as on the ground of limitation. The petitioner has thereafter filed the present writ application to quash Annexures 1 and 4.

6. The main ground of attack is that as no notice had been served on him as required by mandatory provisions of Sub-sections (2), (3) and (4) of Section 4 of the Act, Annexure 1 is void and of no legal effect and consequently Annexure 4 is also liable to be quashed along with it. The petitioner asserts that he constructed his building on the plot of land delivered to him by the Revenue Inspector in pursuance of the allotment order and if notice had been served on him, he could have shown that there had been no encroachment by proving the possession

report. The sole question for consideration, therefore, is whether provisions of sub-sections (2), (3) and (4) of Section 4 of the Act are mandatory in nature and have not been complied with, as a result of which principles of natural justice and fair play have been violated to the utter prejudice of the petitioner.

7. Section 4 of the Act prescribes for issuance of notice and mode of its service. It reads as follows:--

"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, 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 fifteen days from the date of service thereof.

(3) The Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such manner if any, 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 reason 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."

8. The notice contemplated in Sub-section (1) of Section 4 of the Act must comply with requirements of Sub-section (2) which commences with the expression "The notice shall". Sub-section (1) requires the Estate Officer to issue notice in writing to all persons concerned. Sub-section (2) deals with contents of such notice and indicates also that such notice is to be served not only on the person in occupation of the encroached Government land but also on persons who claim or may claim interest therein. Sub-section (3) requires that notice shall in any case also be served by affixture on the outer door or some other conspicuous part of the public premises in the manner prescribed. Sub-section (4) also requires that notice is to be served on all persons in occupation of the public premises which shall be without prejudice to the provisions of Sub-section (3).

9. The State Government have framed Rules called the Orissa Public Premises

(Eviction of Unauthorised Occupants) Rules, 1962 (hereinafter referred to as the Rules) in exercise of powers conferred by Section 13 of the Act. Rules 3 and 4 which are relevant for the present purpose are extracted hereinbelow:--

"3. Form of notices and orders-- A notice or order under the Act shall be in one of the appropriate forms appended to these rules.

4. Manner of service of notices and orders-- (1) Where the person on whom a notice under Sub-section (1) of Section 4 or Sub-section (1) of Section 6 of the Act is to be served cannot be found a copy of such notice shall, in addition to any other manner of service specified in the Act, be fixed in a conspicuous part of the last known place of business of such person or be delivered to some adult member of his family.

(2) The Estate Officer may also proclaim the contents of any notice in the locality by beat of drum."

Form A is the notice under Subsection (1) of Section 4 of the Act and such notice is to be issued directly to the person against whom proceeding is initiated. Only where the person on whom notice u/s 4 (1) of the Act is to be served cannot be found, a copy of such notice shall, in addition to any other manner of service specified in the Act, be fixed in a conspicuous part of the last known place of business of such person or be delivered to some adult member of his family.

10. Construing all the provisions of Section 4 of the Act and of Rules 3 and 4 of the Rules read with Form A, the only possible conclusions are:--

(a) Notice under Sub-section (1) of Section 4 shall be served on the person who is sought to be evicted at his known address and if he is not found at that address, then a copy of that notice is to be fixed in a conspicuous part of the last known place of business of such person or be delivered to some adult member of his family. This alternative mode of service is in addition to any other manner of service specified in the Act, that is to say, in addition to the manner of service contemplated under Sub-sections (3) and (4) of Section 4 of the Act.

(b) A notice must be served by affixture on the outer door or some other conspicuous part of the public premises in the manner prescribed for such service as provided in Sub-section (3) of Section 4.

(c) Over and above all the aforesaid manner of service, if the Estate Officer has reason to believe that any person is in occupation of the public premises in respect of which eviction proceeding u/s 4 has been started, then, without prejudice to the provisions of Sub-section (3), he shall cause a copy of the notice to be served on every person in occupation by delivering or tendering a copy to that person.

11. It is next to be seen whether all or any of these requirements have been complied with in the instant case. It appears from Annexure 2, a report submitted to O. P. No. 1 on the basis of which the proceeding for eviction was

initiated, that O. P. No. 1 was aware not only of the home address of the petitioner but also of his office, address. Further, the petitioner has asserted in para 8 of his petition that O. P. No. 1 was also aware that quarter No. 34/2 Type IV Unit-I had been allotted to him for his occupation and that the said allotment had been made by O. P. No. 1 himself. But the opposite parties except saying that the court of the Estate Officer had no information that the petitioner was staying in quarter No. 34/2 etc., did not expressly deny that the Estate Officer had allotted that quarter to him and that he was aware of it. It is also not denied by the opposite parties and it also appears from Annexure 1 the final order of eviction passed in the proceeding, that no attempt was made to serve notice on the petitioner either at his home or official address or at his village address, all three of which were known to opposite party No. 1, and that no service also was effected on the Bank, the occupant of the bulletin, and that the only mode of service was as envisaged under Sub-section (3) of Section 4 of the Act. There can be no escape from the conclusion that except effecting substituted service as envisaged in Sub-section (3) of Section 4 no attempt had been made to serve notice in the manner indicated by Sub-sections (1) and (4) read with Rules 3 and 4 of the Rules and Form A.

12. The next question to consider is whether these provisions are mandatory and must be fully complied with or solitary compliance of Sub-section (3) of Section 4 would be sufficient to confer validity on the eviction proceeding, notwithstanding that other modes of service have been completely ignored. From the plain and unambiguous language of the provisions of Sub-sections (1), (2) and (3) of Section 4 read with Rules it appears to me that all the provisions are mandatory. They confer jurisdiction and authority on the Estate Officer to evict unauthorised occupants of Government land only after giving such occupants an adequate opportunity to be heard against eviction. His decision is final because Section 14 of the Act bars a suit and other proceedings in respect of matters or disputes for determining or deciding which provision is made in the Act. Since these provisions oust the jurisdiction of the Civil Court and Rule 5 (2) of the Rules makes the procedure before the Estate Officer summary in nature, strict compliance of Sub-sections (1) (2) and (3) of Section 4 of the Act and of the relevant rules is thereby indicated to be essential. The general principle is that where an Act enjoins upon a specified authority that a particular act has to be done in a particular manner so that it may have jurisdiction to act further in the matter, the act must be done in that manner in order to be considered valid, and confer on the authority such further jurisdiction. Since, as indicated already, the far-reaching effect of the final order of the Estate Officer acting under the provisions of the Act is to deprive a person of his property right, at the same time debarring him from agitating the matter in the Civil Court, the aforesaid principle must have its full play and the Estate Officer cannot skip over some of the provisions of Section 4 of the Act and of the Rules relating to service of notice, at his option, to appropriate jurisdiction,

13. Our ultimate conclusion from the aforesaid discussion is that Section 4 of the

Act is mandatory and all its requirements must be complied with strictly, so also the requirements of Rules 3 and 4 of the Rules. In the present case, excepting Sub-section (3) of Section 4 other provisions of the Act and Rules have not been complied with. Annexures 1 and 4 are, therefore, liable to be quashed.

14. Mr. Patra, learned counsel for the opposite parties, contends that this writ application is not maintainable as the petitioner has not been able to show any legal right to maintain it. Assuming that the petitioner is in unauthorised occupation of the Government land, his eviction therefrom must be in due course of law. None of the opposite parties have any right in law to evict the trespasser in high-handed manner or by resort to police force. The Act has been enacted to provide the procedure which must be complied with before eviction is ordered and enforced. Even a rank trespasser is entitled to maintain his possession, unless dispossessed in due course of law. A person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. He can maintain possession and recover possession if dispossessed by a third party on the basis of his possessory title. If he is in possession, even the rightful owner cannot take law into his own hand and throw him out by force. The rightful owner has to sue for recovery of possession, in which case the person in possession can have no defence against him. It follows from these principles that the petitioner being in present possession of the Government premises can maintain the present writ application, even though he may lack legal right in the sense of an absolute owner of the property.

15. In the cast of *Guru Nanak Society v. "State*, AIR 1972 Punj and Har 83, at page 96 (para 24), the aforesaid view has been taken. It will be appropriate to extract the passage from that paragraph:--

".....The view that an unauthorised occupant of land has no locus standi to move this Court under Article 226 of the Constitution against being, dispossessed in an unauthorised manner can no longer be upheld in view of the authoritative pronouncement of their Lordships of the Supreme Court in *Mohan Lal v. The State of Punjab*, Civil Appeal No. 1024 of 1967, D/- 25-11-1969 (SC). It was observed by Hegde, J. (who prepared the judgment of the Court) as follows:--

"Mr. Keswani, learned counsel for the Gram Panchayat contended that as the High Court has come to the conclusion that the appellants are in unauthorised occupation of the suit properties, they are not entitled to invoke the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This contention has no merit. Under our jurisprudence even an unauthorised occupant can be evicted only in the manner authorised by law This is the essence of the rule of law.'" To the same effect is the decision in the case of *Ngurohiezao Apgami v. Sub-divisional Officer* AIR 1971 A & N 74, where their Lordships held:--

".....In view of the provisions of Articles 21 and 31 of the Constitution, and the Rule of law which is the guiding principle in a welfare State like ours, the

Government may not evict persons in possession of Government land either as tenants or as trespassers by using force except by authority of law."

and allowed the petition against the notice for eviction for unauthorised occupation by the petitioners.

18. From the aforesaid decisions it is clear that the petitioner can maintain the present writ application under Article 226 and the objection of non-maintainability must be negated.

17. For the aforesaid reasons this writ application is allowed, Annexures 1 and 4 are quashed and the case is sent back to the Estate Officer to dispose of the case afresh in accordance with law. Mr. Patnaik on behalf of his client stated that he takes notice of the eviction proceeding before the Estate Officer and that it is no longer necessary for that officer to issue fresh notices under Sub-sections (1) and (4) or Rules 3 and 4. He has only to issue a notice to the petitioner giving him some time to show cause against the proposed eviction and then to proceed to dispose of the matter in accordance with law.

The petition is, accordingly, allowed, but in the circumstances, there will be no order for costs.

Mohanti, J.

18. I agree.