

(2004) 05 AHC CK 0167
In the Allahabad High Court
Case No : C.M.W.P. No. 9821 of 1987

Smt. Suman Purohit and Another APPELLANT
Vs
VIIIth Addl. District Judge and Others RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 2(1), 5(1)

Citation : (2004) 3 AWC 2630

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : K.L. Grover, K.L. Gupta and Romesh Singh, for the Appellant; A.K. Singh, R.C. Yadav, S.C. and N.B. Singh and B.N. Singh, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri K.L. Grover, assisted by Sri Ramesh Singh on behalf of the petitioner and Sri A. K. Singh on behalf of the respondent.

2. This writ petition is directed against the order passed by the Military Estate Officer under Section 5(1) Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as Act) dated 5th November, 1984 as also against the order passed by the Additional District Judge, Agra, in appeal u/s 9 of the Act, 1971, dated 24th April, 1987.

3. I have heard counsel for the parties and have gone through the record of the writ petition.

4. Firm Bharat Gas Agency, of which the petitioner claims to be the proprietor, was granted licence in respect of the land situate in Survey No. 400, total area 1325 sq. feet, on payment of rent of Rs. 462.04 p. per month for the period between 30.3.1973 to 23rd March, 1974. The aforesaid allotment letter was termed as licence for occupying the site.

5. Admittedly, the term of the licence expired on 29th March, 1974, Thereafter a detailed correspondence took place between the petitioner and Military Estate Officer for grant of the lease of the aforesaid land in favour of the firm. The said request of the petitioner was considered by the Government of India and the Government sanctioned grant of lease in favour of the petitioner vide letter dated 7.7.1980 on payment of damages of Rs. 30,408.08 and rent of Rs. 9,970 with premium of Rs. 49,850. The petitioner did not accept the aforesaid terms for grant of lease and entered into further correspondence with the Government for reduction of premium, etc., Since the term of the lease could not be finalised between the parties, the Military Estate Officer issued a notice to petitioner u/s 4(1) of the Act, dated 6th March, 1983.

6. By means of the said notice the petitioner was called upon to show cause as to why an order of eviction may not be passed against him. The petitioner submitted a reply to the said notice. The said reply was considered by the Military Estate Officer and not being satisfied with the reply of the petitioner an order dated 5th February, 1984 was passed u/s 5(1) of the Act, for eviction of the petitioner from the premises.

7. Feeling aggrieved by the aforesaid order of the Military Estate Officer, the petitioner filed appeal u/s 9 of the Act, before the District Judge, which was registered as Misc. Appeal No. 329 of 1984. The appeal filed by the petitioner has also been dismissed by means of the order dated 24th April, 1987. Hence the present writ petition.

8. On behalf of the petitioner it is contended that the licence/lease, which was originally granted in favour of the petitioner vide letter dated 4th August, 1973 was never determined as such the petitioner cannot be said to be an unauthorised occupant in view of the Section 2(g) of the Act. According to petitioner unless and until there is determination of lease by an order in writing, the petitioner shall continue to be the lease holder of the premises on the principle of holding over. It is further contended that the notice u/s 4 of the Act was issued by the Military Estate Officer and he himself has decided the notice so issued, by means of the order dated 5th February, 1984, consequently the order is liable to be set aside on the ground of bias inasmuch as no person can be Judge of his own cause.

9. Lastly, it is contended that the premises in question is not covered by the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as it is cantonment land. The provisions of the said Act were not applicable to the land belonging to the Cantonment Board. Reference in that regard was made to the amendment made in Section 2(e), 2(viii), which has been added to the Act by the Amending Act No. 7 of 1994 by which for the first time in 1994 the land belonging to Cantonment Act have been brought within the purview of the said Act. Prior to the said date (when the Amending Act was enforced) the land belonging to the Cantonment Act was not within the purview of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and as such the entire

proceedings which have been initiated against the petitioner in the year, 1983 are wholly without jurisdiction.

10. On behalf of the respondent it is contended that the land in question belongs to the Central Government and, therefore, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were fully attracted in view of the Section 2(e)(1) of the Act. It is also submitted that since under the Act the authority mentioned for issuing notice u/s 4 and for deciding the objections filed thereto has been provided as the Military Estate Officer, referred to in Section 3 of the Act, the Military Estate Officer was competent to issue the notice as well as to decide the objections filed thereto u/s 5. The concept of bias is not attracted in view of the aforesaid statutory provisions.

11. Lastly it is contended that in view of the provisions of Section 2(g), the petitioner answers the description of unauthorised occupants and since the term of the licence/lease, which was granted in favour of the petitioner, had expired and petitioner continued in occupation of the premises even thereafter, it is not necessary that in such cases the lease of the petitioner be determined by any other notice/order in writing.

12. The contentions raised on behalf of the petitioner have no merit. The first contention raised on behalf of the petitioner is based on non-consideration of the definition of unauthorised occupants as contained in Section 2(g), which reads as follows :

" "Unauthorised occupant", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

13. From the aforesaid section it is apparently clear that any person occupying a public premises after the authority, whether by way of grant or any other mode of transfer under which he was allowed to occupy the premises, has expired, comes within the definition of unauthorised occupants. The Clause (e) has been determined for any reason whatsoever is an independent clause which does not regulate the first clause of the said Section 2(g). Since, admittedly, the petitioner was put in occupation of premises under licence for a period between 30th March, 1973 to 30th March, 1974 and since, thereafter, the occupation of the petitioner was after the expiry of the term for which the lease/licence was granted, his continuance in possession of the premises after 30.3.1974 is squarely covered under the definition of unauthorised occupation as contained in Section 2(g) of the Act.

14. In view of the aforesaid, it is not necessary that there must have been some other order in writing determining the lease of the petitioner in the facts of the case. The petitioner in support of his contention has placed reliance upon the

judgment of the Hon'ble Supreme Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . The judgment relied upon by the petitioner is clearly distinguishable inasmuch as para 87 of the said judgment held as follows :

"The Express Buildings constructed by Express Newspapers Pvt. Ltd., with the sanction of the lessor, i.e., the Union of India, Ministry of Works and Housing on Plot Nos. 9 and 10, Bahadurshah Zafar Marg" demised on perpetual lease by registered lease deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government u/s 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd., u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under subsection (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor, i.e., the Union of India, Ministry of Works and Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease."

15. From the said para, it is apparently clear that the Express Newspaper Pvt. Ltd. was granted perpetual lease by the registered lease. Since in the case of Express Newspapers Private Limited the lease was perpetual, it was necessarily to be determined by an order in writing. The case of Express Newspaper was not the case where lease stood determined automatically by the expiry of term for which the lease was granted in favour of the person concerned.

16. The second contention raised on behalf of the petitioner that the Military Estate Officer, who had issued the notice, had himself decided the objection filed by the petitioner and, therefore, the entire proceedings were hit by the principle of bias, is totally unfounded.

17. u/s 21 of the Act notice is required to be issued by the Estate Officer before passing an order of eviction against an unauthorised occupant and the objection filed to the notice are required to be decided by the Estate Officer himself u/s 5 of the Act. In view of the aforesaid statutory provision, the contention of bias is without any basis and is accordingly rejected. If law requires something to be done in a particular manner, it is to be done in that manner alone.

18. The last contention raised on behalf of the petitioner to the effect that the land in question is not covered by the provisions of the Act, 1971, cannot be accepted in view of the fact that in the licence dated 30.3.1973, whereby petitioner was put in occupation, itself it was mentioned in paragraph 4 that after expiry of term of the licence, the land shall become the property of the Central Government and further under para 8 of the licence it has been mentioned that the Central Government shall not be liable to pay any compensation on determination of licence. It is established beyond doubt that the land in question belongs to Central Government and the said premises is squarely covered by the

provisions of Section 2(e)(1), The land was only put under management of the Cantonment Board, therefore, the amendment made by Act No. 7 of 1994 has no application in the facts of the present case.

19. In view of the aforesaid, since the premises in question belongs to Central Government and it was only under the management of Cantonment Board, the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, were fully applicable and the proceedings have rightly been initiated against the petitioner. Thus, none of the contention raised on behalf of the petitioner have force.

20. The Military Estate Officer as well as appellate authority have recorded findings of fact that the petitioner have continued in occupation of premises without any authority of law even after expiry of licence. The order of eviction of petitioner from the said premises belonging to Central Government, has rightly been passed. No interference is called for in the writ proceeding,

21. The writ petition is, accordingly, dismissed. No order as to costs.

22. At this stage it is requested by the counsel for the petitioner that he may be granted some reasonable time to vacate the premises in question as Gas Cylinders belonging to petitioner are lying in the premises in question which cannot be shifted without there being adequate premises for the safe custody of the said Gas Cylinders.

23. In view of the aforesaid, the petitioner is granted six months period from today to vacate the premises in question subject to the following conditions :

(a) He shall hand over peaceful possession of the premises in question to Military Estate Officer on or before 31st October, 2004 ;

(b) He shall file an undertaking to that effect before the Additional District Judge, Agra, by 15th June, 2004 ;

(c) He shall deposit in advance the damages for use or occupation of premises for the period up to 31st October, 2004, latest by 31st July, 2004, with the Military Estate Officer through a bank draft.

24. In case the petitioner commits breach of any of the conditions mentioned hereinabove, he shall not be entitled for benefit of this order.