

(2015) 03 UK CK 0043

In the Uttarakhand High Court

Case No : Writ Petition No. 210 of 2007 (M/S)

State Bank of India

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 3, 4, 4(1), 5(1)

Transfer of Property Act, 1882 — Section 106

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 2(1)(a)

Citation : (2015) 2 RCR(Rent) 361

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : D.S. Patni, for the Appellant; A.K. Joshi, Addl. C.S.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alok Singh, J—Present petition is filed by the State Bank of India, assailing the order dated 27.01.2006 passed by Estate Officer under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in Case No. D-66 of 2003, Life Insurance Corporation of India v. State Bank of India, whereby petitioner was held to be unauthorized occupant and was directed to handover peaceful possession of the premises to the L.I.C. within 15 days from the date of publication of the order and was further pleased to direct the petitioner to pay arrears of rent from 01.04.2002 to 20.12.2012 @ Rs. 1,04,000/- per month and damages @ Rs. 1,04,000/- per month from 21.12.2002 to 27.01.2006 total Rs. 47,70,581/- and to pay further damages & Rs. 1,04,000/- per month till the date of handing over the possession and to pay 9% per annum simple interest till full realization as well as order and judgment dated 12.03.2007, passed by the Additional District Judge, Dehradun in P.P. Appeal No. 22 of 2006, whereby appeal filed by the petitioner was dismissed upholding the judgment and order passed by the Estate

Officer. Undisputed brief facts of the present case, inter alia, are that L.I.C., vide notice dated 15.11.2002, under Section 106 of the Transfer of Property Act, sent through Registered Post A.D. as well as under the postal certificate, was pleased to determine the tenancy of the petitioner herein and was further pleased to direct the petitioner to handover the vacant peaceful possession after the expiry of the period of notice i.e. 30 days from the date of receipt of notice and was further pleased to call upon the petitioner to pay arrears of rent amounting to Rs. 15,60,000/- @ Rs. 1,90,000/- per month from 01.04.2002 to 20.12.2002 and damages thereafter @ Rs. 1,95,000/- per month for unlawful occupation and use of said premises; when petitioner failed to make compliance of the notice dated 15.11.2002, L.I.C. moved an application before the Estate Officer under Section 5(1) read with Section 7 of the Act; having perused the application so moved by the L.I.C., learned Estate Officer was pleased to issue notice on 21.11.2003 to the petitioner herein under Sub-section (1) of Section 4 and Section 7(3) of the Act annexing therewith copy of the application moved by the L.I.C. mentioning therein as to why order of eviction and payment of arrears of rent and damages be not passed against the petitioner on the ground that tenancy of the petitioner stood terminated vide legal notice. Notice was also affixed on the premises in question on 13.12.2003.

2. Copy of the notices issued under Section 4(1) and 7(3) of the Act dated 21.11.2003 are handed over in the Court by Mr. Siddharth Bisht learned counsel for the L.I.C., which are taken on record. Correctness of the copy of the notice(s) is not disputed by the learned counsel for the petitioner.

3. Undisputedly, building in question was acquired by the L.I.C. in the year 1960, however, Bank was in possession thereof as a tenant much prior to the acquisition of the building by the L.I.C. in the year 1960.

4. Service of notice under Section 106 of Transfer of Property Act, dated 15.11.2002 as well as under Section 4(1) and 7(3) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are not in dispute.

5. As per Section 2(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, any building of which the Government or Local Authority or Public Sector Corporation or Cantonment Board is the landlord, provisions of the U.P. Rent Act, 1972 shall have no application. It is not in dispute that Life Insurance Corporation is a Public Sector Corporation, therefore, Section (2)(1)(a) has full application in the present case and tenancy, in question, is not governed by the provisions of U.P. Rent Act, 1972.

6. "Public Premises" is defined under Sub-section (e) of Section 2 of the Act, which reads as under:--

"Section 2 - Definitions

[(e) "public premises" means:

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member or the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of:

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty one percent, of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra- Beas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924; and];

(3) in relation to the, [National Capital Territory of Delhi],

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee [and]

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;] [and]

[(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory]"

7. As per Clause (ii) of Sub-section (e) of Section 2 of the Act, any premises belonging to any corporation established by or under a Central Act and owned or controlled by the Central Government shall be a public premises. Learned

counsel for the petitioner does not dispute that life Insurance Corporation was established under the Central Act. Learned counsel for the petitioner does not dispute that in view of non-applicability of U.P. Rent Act, 1972, Public Premises Act, is applicable in the present case. He, however, contends that in view of guidelines issued by the Central Government, L.I.C. instead of invoking provision of Public Premises Act, ought to have referred the dispute to the Dispute Redressal Committee constituted by the Central Government.

8. The Central Government framed guidelines to prevent the arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions, which were published in the Gazette of India, Part I, Seal dated 08.06.2002, which read as under:--

"1. The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/financial institutions has been under consideration of the Government for some time past.

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under section 3 of the PP (E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [P.P. (E) Act, 1971] should be used primarily to evict totally unauthorized occupants of the premises of public authorities or sublettees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the P.P. (E) Act, 1971 should not be restored to either with the commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Further, the contractual agreement shall not be wound up by taking advantage of the provisions of the P.P. (E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a

change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises of change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the Public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect."

9. As per Clause (iii) of Clause (2) of the guidelines, a person in occupation of any premises should not be treated or declared to be an unauthorized occupant merely on service of notice of termination of tenancy; It will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession; in other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants. As held hereinbefore, in view of Section 2(1) (a) of the U.P. Rent Act, 1972, the premises, in question, is not covered by the provisions of the U.P. Rent Act, 1972, therefore, Clause (iii) of Clause 2 of the guidelines has no application in the present case.

10. Mr. D.S. Patni, learned counsel for the petitioner Bank contends that as per the policy of the Central Government, at present dispute is pending disposal before the Dispute Resolution Committee of the Central Government, wherein proposal was made by the State Bank of India to handover the first floor of the building to the L.I.C. for establishing its office and to execute fresh lease in favour of the Bank of the ground floor for further period, on payment of rent, as settled by the intervention of the Dispute Resolution Committee.

11. In the present case, tenancy of the petitioner was terminated by a valid notice under Section 106 of Transfer of Property Act, issued by the L.I.C. which was duly received by the petitioner. Therefore, after expiry of the period of notice under Section 106 of Transfer of Property Act, petitioner falls within the definition of "unauthorized occupant". Moreover, in the present case the Estate Officer has made full compliance of the provision of Section 4 and 7 of the Act before passing final order of eviction and payment of arrears of rent and damages. Therefore, order passed by the Estate Officer as well as Appellate Authority do not call for any interference.

12. Be that as it may, but the fact remains that the tenancy of the petitioner was determined by the landlord-L.I.C. vide legal notice dated 15.11.2002 issued under Section 106 of the Transfer of the Property Act, therefore, after the determination of the tenancy, even if, petitioner is holding over such public premises, petitioner shall be deemed as unauthorized occupant. No other point is

pressed by Mr. D.S. Patni, learned counsel for the petitioner before me.

13. For the reasons discussed hereinbefore, order impugned does not call for any interference. However, it is clarified that orders impugned shall be subject to the decision of the Dispute Resolution Committee. Both the parties shall be at liberty to file detailed representation before the Dispute Redressal Committee of the Central Government of India for expediting the resolution of their dispute by amicable settlement, if any. Petition stands disposed of accordingly.