

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+ WRIT PETITION No.4254 of 2008

%14.11.2017

Smt. B.Chandravathi, W/o.B.Satyanarayana Murthy,
Aged 53 years, Occ: Housewife,
R/o.1-8-147/5, Mallikharjuna Nagar,
Alwal, Ranga Reddy District PETITIONER

AND

The Estate Officer, ADRM, Hyderabad,
Hyderabad Division, Behind Sanchalan Bhavan,
Secunderabad, and 3 others

.....RESPONDENTS

! Counsel for the Petitioner : Sri A.Sudershan Reddy

^ Counsel for the respondent No.1: Sri Bhaskar Poluri

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> Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.4254 of 2008

ORDER:

Order dated 5.2.2008 passed by the 1st respondent-Estate Officer vide proceedings No.YW/277/WV/Eviction/08 under sub Section-1 of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is under challenge in the writ petition.

According to the petitioner, he purchased a constructed residential house, for an extent of 150 sq.yards in Sy.No.171 bearing Plot.No.51, H.No.8-147/5(old.No.8-68/51), situated at Mallikarjuna Colony, Alwal Municipality, Vallabh Nagar Taluq, Ranga Reddy District. It is stated in the writ petition that the petitioner herein purchased the said property by way of registered sale deed bearing document No.2058 of 1998 dated 30.7.1998.

The 1st respondent-Estate Officer issued a notice under Section 4(2)(b)(ii) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter called 'the Act') vide proceedings dated 13.7.2007. In response to the said show cause notice, the petitioner herein submitted explanation on 4.9.2006. Thereafter, the 1st respondent-Estate Officer passed the questioned order dated 5.2.2008 under Section 5(1) of the Act directing the petitioner herein to vacate the said premises. In the above background, the present writ petition came to be filed.

This Court while ordering *rule nisi*, granted interim order in the year 2008.

A counter affidavit is filed by the 1st respondent, denying the allegations in the affidavit filed in support of the writ petition and in the direction of justifying the impugned order.

A reply is also filed by the writ petitioner.

Heard Sri A.Sudarshan Reddy, learned counsel for the petitioner and Sri Bhaskar, learned standing counsel for Railways for the 1st respondent, apart from perusing the material available on record.

It is contended by the learned counsel for the petitioner that the questioned order is highly illegal, arbitrary, unreasonable and is passed contrary to the spirit and object of the provisions of the Act. It is the further submission of the learned counsel that though the petitioner herein submitted a number of documents before the 1st respondent herein in response to the show cause notice, the 1st respondent herein did not consider the same and passed the order under challenge in a mechanical manner. It is also the submission of the learned counsel that without holding enquiry and without affording any opportunity to the petitioner herein, the 1st respondent passed the impugned order, in contravention of the mandatory provisions of the Section-4 of the Act.

On the contrary, it is vehemently contended by Sri P.Bhaskar, learned Standing Counsel appearing for 1st respondent that the very writ petition filed by the petitioner is not maintainable in view of effective alternative remedy of appeal under Section 9 of the Act. It is further submitted that only after giving reasonable opportunity to the petitioner herein, the 1st respondent-Estate Officer passed the impugned order and as such, the same cannot be faulted on the ground of violation of principles of natural justice.

In the above background, now the issues that arise for consideration of this Court under Article 226 of the Constitution of India are:

- 1) Whether the writ petition is liable to be dismissed on the ground of availability of alternative remedy of appeal under Section 9 of the Act?
- 2) Whether the impugned order in the present writ petition is in accordance with the provisions of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971?

Issue No.1: In order to answer this issue, it would be appropriate to refer to the provisions of Section 9 of the Act which reads as under:

“9. Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under 4[section 5 or section 5B] 7[or section 5C] or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,—

*(a) in the case of an appeal from an order under section 5, 8[within twelve days] from the date of publication of the order under sub-section (1) of that section; 9****

(b) in the case of an appeal from an order 1[under section 5B or section 7, within twelve days] from the date on which the order is communicated to the appellant; 2[and]

2[(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:]

3[Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.]

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

[Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.]

5[(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.]

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.”

It is evident from the above provisions of law that an order passed by the Estate Officer under Section 5 of the Act is appealable before the District Court. As noted above, this Court, as long back as in the year 2008, admitted the writ petition and granted interim order and the matter is pending adjudication before this Court for nearly one decade. At this length of time, this Court does not find any justification in directing the petitioner to avail alternative remedy of appeal. Yet another reason for rejecting the contention of the learned standing counsel is that though the petitioner herein submitted explanation on 4.9.2006 in response to the show cause notice dated 13.7.2006 and also enclosed certain documents, the 1st respondent-Estate officer did not undertake any exercise to consider either the contents of the explanation or documents submitted along with the explanation. It is also the submission of the learned counsel for the petitioner herein that without holding any enquiry as contemplated under section 5 of the Act and without affording any personal hearing to the petitioner, 1st respondent passed the impugned order. In the considered opinion of this Court, the impugned action is also in violation of principles of natural justice in view of the above reasons. Therefore, on this ground also, the contention of the learned standing counsel as to non-maintainability of writ petition is liable to be rejected.

Therefore, issue no.1 is answered in favour of the petitioner and against the respondents herein.

Issue No.2: The 1st respondent-Estate Officer initiated the impugned action by pressing into service the provisions of Section 4 of the Act. Therefore, in order to ascertain as to whether the 1st respondent adhered to the mandatory provisions of Section 4 of the Act, it may be essential to extract Section 4 of the Act, which reads as follows:

“4. Issue of notice to show cause against order of eviction.- [(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.

(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.]

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

²[(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,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not ³[later than] seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they

intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(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 other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.”

It is very much obvious from a reading of the above provision of law that it is incumbent and obligatory on the part of the 1st respondent-Estate Officer to specify the grounds on which the order of eviction is proposed in the show cause notice. In the present case, in the considered opinion of this Court, the 1st respondent herein followed the said mandatory provision of law in breach. It is also the specific contention of the learned counsel for the petitioner that in the show-cause notice dated 13.7.2006, the 1st respondent did not even indicate specific particulars of the property. A perusal of the show-cause notice dated 13.7.2006 clearly demonstrates that except indicating the extent of land, the 1st respondent herein did not indicate the other particulars of the properties such as survey number and location. In the considered opinion of this Court, the same is fatal to the case of the respondents.

It is also required to be noted that Section 5 of the Act imposes obligation on the 1st respondent to afford personal hearing to the affected parties and it is also obligatory on the part of the 1st respondent to record the reasons in the final order of eviction. A reading of the impugned order dated 5.2.2008 reveals that the 1st respondent herein neither held enquiry as stipulated under Section 5 of the Act nor recorded any reasons for arriving at the impugned conclusion. Therefore, in the considered opinion of this Court, the impugned order passed by the 1st respondent would not

sustain in the eye of law and the impugned action is contrary to the provisions of Sections 4 and 5 of the Act.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 1st respondent vide proceedings dated 5.2.2008. However, this order will not preclude the respondents from issuing notice afresh and to proceed in accordance with law.

As a sequel, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

14.11.2017

Note:
L.O.R. copy to be marked.

B/o
Vlk/gs



