



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **M. GOVINDARAJ**

WEB COPY

W.P. (MD) No.12563 of 2018**and****W.M.P. (MD) No.11458 of 2018**

G.Rajesh

: Petitioner

Vs.

The Estate Officer -cum-
Municipal Commissioner,
Nagercoil Municipality,
Kanyakumari District.

: Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the respondent in his proceedings in Roc.No.2520/2005/F1, dated 06.06.2018 and quash the same as illegal.

For Petitioner

: Mr.M.Ajmal Khan,
Senior Counsel,

For M/s.Ajmal Associates

For Respondent

: Mr.P.Authimoola Pandian,
Standing Counsel for Municipality

ORDER

The respondent has issued a notice under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 [hereinafter referred to as 'the Act'], calling for explanation as to why the petitioner should not be evicted. Challenging the same, the petitioner is before this Court with the present Writ Petition.

2. The learned Senior Counsel appearing for the petitioner would contend that the notice does not conform to the mandatory requirements of Section 4 of the Act and he would rely on the judgment reported in **AIR 1980 Jammu and Kashmir 16 [Dr.Yash Paul Gupta vs. Dr.S.S.Anand]**, wherein, it was held as follows:

"8. The learned single Judge, it appears, was also conscious of this infirmity in the notice. This defect was, however, considered by him as totally inconsequential as according to him, the appellant was otherwise having full knowledge of the grounds upon which his eviction was proposed. In other words, the



learned Judge was of the opinion, that where a person proceeded against under the Eviction Act was otherwise in the know of the grounds upon which his eviction was proposed, mere failure to mention those grounds in the notice served upon him under Sub-section (3) was immaterial, which did not render the notice invalid. We are unable to fall in line with the learned single Judge in taking this view of Sub-section (2). The provisions of this sub-section are mandatory and not merely directory in character, for the simple reason, that failure to make an effective reply to the notice for eviction as a consequence of absence or even vagueness of the grounds of eviction to be specified in the notice, may result in loss of the occupation of the premises. Furthermore, by construing Clause (a) of Sub-section (2) in such a manner, we would be indeed reading the words "unless otherwise known to him" in it which in fact are not there. Reliance of the learned single Judge on a Special Bench decision of the Calcutta High Court in *Standard Literature Co. Pvt. Ltd. v. Union of India*, AIR 1968 Cal 1, in coming to the conclusion that not mentioning the grounds in the notice was inconsequential, was in our opinion clearly misplaced. It appears that the learned single Judge merely noticed the ground urged by the petitioner in support of the writ petition without noticing the finding recorded by the Court in respect thereof. The ground specified in the notice in the case which came before the Special Bench of the Calcutta High Court (*supra*) was that since the notice for eviction under the Transfer of Property Act determining the tenancy of the petitioner had been served upon him, but the petitioner had failed to vacate the premises despite the expiry of the period mentioned in the notice, he was an unauthorised occupant of the public premises. Reliance was placed upon an earlier Bench decision of the same Court in *Sankar Lal Saha v. Supdt, Gun & Shell Factory, Cossipore*, (1965) 69 Cal WN 1035 to urge, that merely stating that notice determining the tenancy was served upon the occupant was not sufficient compliance with Clause (a) to Sub-section (2). The Special Bench held that a tenant of a property belonging to Government being in a somewhat worse position than a tenant occupying a private property, and that the Act being aimed at taking speedy action against unauthorised persons in occupation of Govt. properties, once the tenancy of the occupant of Govt. property was validly determined by a notice of eviction, no other defence was available to him against his eviction from such property. The Special Bench, therefore, held that



merely stating the facts in what manner his tenancy was determined tantamounted to specifying the grounds on which his eviction was proposed within the meaning of Clause (a) of Sub-section (2). The Special Bench overruled the Division Bench decision in (1965) 69 Cal WN 1035 and Sinha, C. J. speaking for the Special Bench held as under:

"I shall first of all deal with the point which does not relate to the constitutionality of the Act, namely the challenge to the notice under Section 4. The wording of the relevant notice under Section 4, dated 18th of August 1964 has been set out above. In the notice to quit given on the 22nd April, 1964 (Annexure 'C' to the petition) the reason for eviction of the company has been expressly mentioned namely that the portion of the premises held by the company was urgently required by the Government of India for its own use for allotment to the Central Govt. Offices after remodelling the building. In the notice under Sub-section (1) of Section 4 however, the only ground that has been mentioned was that a notice to quit had been given and the tenancy had been terminated. If the Division Bench judgment (1965) 69 Cal WN 1035, is correct, then this notice is invalid. In our opinion that decision is not correct and should be overruled upon this point. In so far as S. K. Dutta, J. held that a person cannot be in unauthorised occupation by virtue of the said Act but because of the existence of the factors mentioned in Clause (e) of Section 2, no exception can be taken. But in so far as the learned Judges have held that in a notice under Section 4 (1) the grounds specified must be something other than the service of a notice to quit and the expiry of its terms, it has been wrongly decided. A tenant of properties belonging to Government is in a somewhat worse position than a person holding private lands. The proviso to Section 1 of the West Bengal Premises Tenancy Act, 1956 states that the 1956 Act does not apply to any premises belonging to Government. Therefore, where the tenancy of a person has been properly determined under the Transfer of Property Act, then in the case of lands belonging to Government, there is no defence to eviction. All that Sub-section (2) of Section 4 requires is that the notice under Sub-section (1) should specify the grounds on which the order of eviction was proposed to be made. If a notice to quit has been validly served and the period specified therein has expired then the person served is in "unauthorised occupation" as defined under Clause (e) of Section 2(1) of the said Act. I do not see why this



should not be a sufficient ground for an order of eviction under the said Act. In such a case the person concerned has no defence, and all that was happening is that the machinery of eviction was being expedited. This ground, therefore, is not of substance."

Ratio of the aforesaid Calcutta case would have equally applied to the present case as well, had it been stated in the notice that the appellant's tenancy had been determined by the Supdt. SMGS Hospital by virtue of his letter dated 19-2-1974 as has been held by respondent No, 4 in the impugned order."

3. In support of the contention, the learned Senior Counsel appearing for the petitioner would also rely on another judgment reported in AIR 1992 Bombay 375 [Minoo Framroze Balsara Vs. Union of India], wherein it was observed as under:

"34. The provisions of the Eviction Act, 1971, can be applied to persons who are in unauthorised occupation of public premises. A person, by reason of Section 2(g), is in unauthorised occupation if his occupation is without authority. He is in unauthorised occupation if he continues to occupy public premises after the authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act. The provisions of Sections 4 and 5 of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made.



It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction. This is clear also from the provisions of Section 8 which vest in the Estate Officer the powers of a Civil Court in regard to the summoning of witnesses and examining them on oath and the discovery and production of documents."

4. As per the above judgments, it is mandatory to set out the grounds for eviction and set out the reasons for the occupant to submit his objections against the show cause notice.

5. A reading of Section 4(2)(a) of the Act mandates that the Estate Officer shall specify the grounds on which the order of eviction is proposed to be made.

6. In the instant case, the impugned notice does not set out the grounds for eviction and the imminent requirement for eviction. Therefore, the notice as such is not in compliance with Section 4 of the Act. In such circumstances, this Court is inclined to set aside the notice impugned herein.

7. In fine, the Writ Petition is allowed and the impugned notice in Roc.No.2520/2005/F1, dated 06.06.2018 is, hereby, set aside. However, it is always open to the respondent to issue a fresh notice in conformity with Section 4 of the Act and proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 68078

SML

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Order made in
W.P. (MD) No.12563 of 2018
Dated: 13.06.2018