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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 30.08.2019

+ W.P.(C) 9457/2019

LODGE JUMAN

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Mohinder Singh with Mr. Ankur Goel and Mr. Lovekesh Aggarwal, Advocates.

For the Respondents: Ms. Suparna Srivastava, CGSC with Ms. Neha Garg and Ms. Nehul Sharma, Advocates for respondent Nos.1 to 3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.38894/2019 (exemption)

Exemption is allowed subject to all just exceptions.

W.P.(C) 9457/2019 & CM APPL.38893/2019 (stay)

1. Issue notice. Notice is accepted by learned counsel appearing for the respondents.

2. Petitioner *inter alia* seeks quashing of notices issued under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Public Premises

Act) by the Estate Officer, L& DO seeking eviction of a premises measuring 0.159 measures known as Jamuna Lodge, Civil Lines, Delhi.

3. Grievance raised by the learned counsel for the petitioner primarily is that after a reply was filed there is an apprehension that no hearing or an opportunity to produce evidence is going to be granted to the petitioner.

4. Learned counsel for the petitioner submits that the L&DO relied on the earlier proceedings initiated under the Public Premises Act against Masonic Club. He submits that the petitioner has no concern with Masonic Club, which is an organisation independent of the petitioner and since the petitioner was not a party to the earlier proceedings, no order passed in those proceedings can prejudice the petitioner and petitioner has taken appropriate objections to the said effect in his reply filed before the Estate Officer.

5. Section 5 (1) of the Public Premises Act reads as under:-

“5. Eviction of unauthorised occupants.—

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be

specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.”

6. Section 5(1) of the Public Premises Act stipulates that if after considering a cause, if any, shown by any person in pursuance to a notice under Section 4 and any evidence produced by him in support of the same and after personal hearing, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the Estate Officer shall make an order of eviction for reasons to be recorded therein.

7. Section 7 (3) of the Public Premises Act reads as under:-

“7. Power to require payment of rent or damages in respect of public premises.—

*(1) ******

*(2) ******

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

8. Section 7(3) of the Public Premises Act lays down that no order

under sub Section (1) and sub Section (2) shall be made against any person until after issuance of a notice in writing calling upon him to show cause as to why the order should not be made and until his objections, if any, and any evidence he may produce in support thereof has been considered by the Estate Officer.

9. Reading of Section 5(1) and Section 7 (3) of the Public Premises Act shows that no order of eviction and for recovery of rent and damages can be made unless a person has been given a show cause notice and if a reply has been filed and cause has been shown unless an opportunity of producing evidence and hearing has been granted.

10. In that view of the matter, I am of the view that apprehension expressed by the learned counsel for the petitioner is mis-founded at this stage.

11. The Estate Officer is obliged under Section 5(1) and Section 7(3) of the Public Premises Act to afford an opportunity of hearing to the petitioner and in case a cause is shown to produce evidence in support of the cause shown. Further, the Estate Officer cannot pass an order without giving the said opportunity as stipulated by Section 5(1) and 7(3) of the Public Premises Act. The order has to be a speaking order and to be passed after grant of a personal hearing.

12. In this view of the matter, the objections raised by the petitioner shall be duly considered by the Estate Officer, in accordance with law,

prior to passing any order.

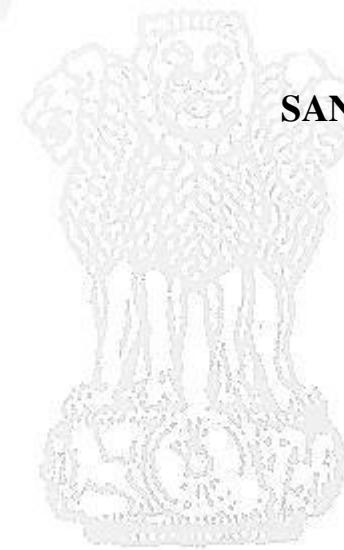
13. Petition is, accordingly, disposed of with the above directions.

14. It is clarified that this Court has neither considered nor expressed any opinion on the merits of the contention of either party. All rights and contentions of the parties are reserved.

15. Order *Dasti* under signatures of the Court Master.

AUGUST 30, 2019/st

SANJEEV SACHDEVA, J



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