

ORDER SHEET
A.P.O. No. 87 of 2020
W.P. No. 250 of 2020
I.A. No: G.A. No.1 of 2020
(Old No: G.A. No. 1229 of 2020)
I.A. No: G.A. No.2 of 2020
(Old No: G.A. No. 1230 of 2020)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

Kusum Products Ltd. & Anr.
Versus
Life Insurance Corporation of India & ORS.

BEFORE:
The Hon'ble JUSTICE SAHIDULLAH MUNSHI
-And-
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 16th September, 2020.

For Appellant : Mr. Suman Dutt with Mr. Biswajit Ghosh,
Mr. Ritesh Kr. Ganguly & Ms. Puspita Sahoo, Advs.

For Respondent nos. 1-4 : Ms. Tanushree Dasgupta, Adv.

For Respondent no. 5 : Mr. Shuvasish Sengupta with
Mr. Soumyajit Mishra, Advs.

(1) This appeal is directed against a judgment and order dated September 03, 2020, dismissing the writ application.

(2) An eviction proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "1971 Act") was initiated by the respondent No. 1 against the respondent No. 5 – M/S East India Development Company who was a lessee under respondent No. 1.

- (3) The writ petitioners – appellants sought to be impleaded in the said eviction proceedings claiming to be a sub-lessee under the respondent no. 5.
- (4) The writ petitioners – appellants suggest that the relevant Estate Officer, before whom the said application for addition of party was filed, refused to adjudicate the said application and did not pass any order on the said application. The writ petitioners – appellants approached this court against such refusal by the relevant Estate Officer seeking a direction upon the said Estate Officer to entertain and adjudicate the application for addition of party.
- (5) The learned Single Judge by the impugned order dismissed the said writ application without calling for affidavits observing, inter alia, as follows:

“Parties admit that the eviction proceedings have now, after a span of four years, reached the stage of arguments. Although it is argued that subletting is permissible to a maximum of two tenants and further argued that the notice connected to the eviction proceedings require all persons concerned who may be affected by the eviction an opportunity to show cause, this court is not in a position to accept the proposition being now advanced by the writ petitioner, assuming that their status as sub – lessees under the respondent No. 5 is correct in law, that knowledge of the eviction proceedings was acquired by the petitioners only in August, 2020.

The above theory advanced on behalf of the petitioners is, to the mind of this court, only for gaining time in the eviction

proceedings which is now at the stage of arguments. It is trite that law is for the vigilant.”

(6) The writ petitioners-appellants contend that a notice under Section 4 of the 1971 Act ought to have been served on it since the writ petitioners-appellants are in possession of the premises by virtue of a sub – lease given by the respondent No. 5. The relevant Estate Officer should have allowed the application for addition of party to defend the eviction proceedings.

(7) Respondent nos. 1 – 4 submit that it was not necessary to issue a separate notice to the writ petitioners – appellants since the said notice under Section 4 of the 1971 Act was affixed on the relevant premises. respondent nos. 1-4 relied upon paragraph 5 of the judgment reported at **AIR 1988 Delhi 174 (Bhagat Singh – Vs- Delhi Development Authority)** to contend that it was not at all necessary to notify all the unauthorised occupants separately since a notice under Section 4 of the 1971 Act not only apprises the person named in the notice, but it is meant to apprise all the occupants of the particular public premises. The proceeding for eviction, therefore, has commenced with the knowledge of the writ petitioners-appellants and as such they were not entitled to be added in the eviction proceedings at a belated stage to delay and frustrate the proceedings.

(8) Respondent nos. 1 – 4 also rely upon a judgment passed in W.P. No. 678 of 2017 (Future Retail Ltd. and another –Vs- Life Insurance Corporation of India and Others) by a Single Judge of this Court to contend that writ petitioners were not entitled to be served upon a notice under section 4 of the 1971 Act.

(9) Future Retail (Supra) has also been relied upon by the writ petitioners-appellants to contend that the relevant Estate Officer ought to have entertained the application for addition of party filed by it.

(10) We are unable to pursue ourselves to accept the submission of the respondent Nos. 1 – 4 with regard to the issuance of a notice under Section 4 of the 1971 Act upon an unauthorised occupant.

(11) A notice under Section 4 of the 1971 Act has to be mandatorily issued upon an unauthorised occupant of any public premises so as to enable to defend effectively the eviction proceedings sought to be initiated against him.

Section 4 of the 1971 Act is quoted below:

“Section 4 – **Issue of notice to show cause against order of eviction** – (1) If the Estate Officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling

upon all persons concerned to show cause, why an order of eviction should not be made.

(2) The notice shall –

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

(4) Where the Estate Officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.”

(12) As per Sub-section 3 of Section 4 of the 1971 Act, 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 given to all person concerned.

(13) Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 provides for manner of service of notices. The relevant part of Rule 4 is reproduced below:

“4. Manner of service of notices and orders:- (1) In addition to any mode of service specified in the Act [a notice issued under sub-section (1) of Section 4 or sub-section (2) of Section 5-A or sub-section (1) of Section 5-B or sub-section (1) or sub-section (1-A) of Section 6 or an order issued under [Section 3-A or] sub-section (1) of Section 5 or sub-section (1) or sub-section (2) or sub-section (5) of Section 5-B or sub-section (1) or sub-section (2) of Section 5-C or sub-section (1) or sub-section (2) of Section 7 of the said Act shall be served by delivering or tendering a copy of the notice or order, as the case may be.] to the person for whom it is intended or to any adult member of his family, or by sending it by registered post acknowledgement due in a letter addressed to that person at his usual or last-known place of residence or business.”

(14) As per said rule in addition to any mode of service specified in the Act, a notice issued under Section 4 shall be served by delivering or tendering a copy of the notice or order as the case may be, to the person for whom it is intended or to any adult member of his family, or by sending it by a registered post acknowledgement due in a letter addressed to that person at his usual or last known place of residence or business.

(15) A Statutory form being FORM A has been provided in the said rule which requires the concerned estate Officer to address a particular unauthorised occupant and furnish grounds of eviction against him.

The said FORM A is reproduced bellow:

[FORM – A]

Form of notice under sub-section (1) and clause (b)(ii) of sub-section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To

Shri/Smt/Km.....

.....

Whereas, I the undersigned, am of opinion, on the grounds specified below that you are in unauthorized occupation of the public premises mentioned in the Schedule below and that you should be evicted from the said premises:

GROUND

Now, therefore, in pursuance of sub-section (1) OF Section 4 of the Act, I hereby call upon you to show cause on or before thewhy such an order or eviction should not be made.

And in pursuance of clause (b) (ii) of sub-section (2) of Section 4, I also call upon you to appear before me in person or through a duly-authorised representative capable of answering all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown, onat.....for personal hearing. In case, you fail to appear on the said date and time, the case will be decided ex parte.

SCHEDULE

Date.....

Signature and seal of the Estate Officer

(This date should be a date not earlier than seven days from the date of issue of the notice)]

(16) The statutory scheme as above makes it clear that issuance of a notice under Section 4 is not a mechanical process without application of mind. Before issuance of a notice under Section 4 by the Estate Officer must possess the information that any person is in unauthorised occupation of any public premises and that he should be evicted. A notice should particularly be addressed to an unauthorised occupant for his eviction furnishing the grounds of eviction. A general notice cannot meet the said statutory requirement since grounds may vary from case to case.

(17) A plain reading of Section 4 of the 1971 Act read with Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 makes it clear that in addition to affix a notice on the outer door or some other conspicuous part of the public premises, it is also necessary to serve a notice by registered post.

(18) It is not the case of the respondent No. 1-4 that they have served a notice upon the writ petitioners- appellants by way of registered post, and in absence of such service of notice it cannot be presumed that the writ petitioners - appellants had the knowledge of proceedings even if it is accepted that a notice under section 4 of the Act addressed to respondent no 5 was affixed on the premises.

(19) The writ petitioners – appellants in the application for addition of party have made out a case that they are in possession and occupation of premises in question on the strength of a sub lease created with consent or knowledge of the original lessor and the parent lease deed provides for creation of such sub – lease. It was also pleaded in the application that they became aware of the proceedings in the month of August 2020. It was imperative for the relevant Estate Officer to decide the said application on merit upon examining the veracity of such claim.

(20) Simply because the application was filed at the argument stage of the proceedings, cannot be a ground to decline to adjudicate the application. A party can be added at any stage of the proceedings if such addition is necessary for effective and complete adjudication and to prevent miscarriage of justice.

(21) In Bhagat Singh (Supra) the eviction order was quashed on the ground that description of the premises was defective in Section 4 notice. The said judgment cannot be read to be an the authority of the proposition that a notice under Section 4 of the 1971 Act need not be served upon an unauthorised occupant individually.

(22) Similarly the judgment delivered in **Future Retail** (supra) is of no assistance to respondent No. 1-4. In that case the eviction order was

passed against a company. The agent of the company sought to resist eviction on the ground of non service of notice under Section 4 of the 1971 Act. It was held that in the facts of the case it was not necessary to serve a notice under Section 4 upon the said agent. The facts of the case in hand, as already discussed above, are entirely different.

(23) We are, therefore, of the opinion that the learned Single Judge was not justified in dismissing the writ application solely on the ground that the writ petitioners-appellants filed the application for addition of party belatedly.

(24) It is not necessary for us to decide the merit of the application in view of the adjudicatory mechanism provided in the 1971 Act. We direct the concerned Estate Officer to decide the said application for addition of party on merit within a period of three weeks from date upon providing due opportunity of hearing to the writ petitioners-appellants. Since the eviction proceeding is pending for a considerable period of time, it is expected that the concerned Estate Officer will conclude the entire proceedings as expeditiously as possible.

(25) For the reasons above, the order of the learned Single Judge dated September 03, 2020 is set-aside. As a consequence, W.P.O. No. 250 of 2020 is allowed with the aforesaid directions.

(26) A.P.O No. 87 of 2020 is allowed accordingly without any order as to costs.

(27) Urgent website copies of this judgment be supplied to the parties, if applied for, upon compliance with necessary formalities.

(SAHIDULLAH MUNSHI, J.)

(KAUSIK CHANDA, J.)