

AD. 17.
January 20, 2022.
MNS.

(Through Video Conference)

WPA No. 163 of 2022

Colonel Samarjeet Kumar Pal

Vs.

Union of India and others

Mr. Sandip Kumar Bhattacharya

...for the petitioner.

Mr. Vipul Kundalia,
Mr. S. Majumder,
Mr. Anurag Roy

...for the Union of India.

The present writ petition has substantially been filed challenging a proceeding initiated under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short 'the 1971 Act) by the respondent-authorities against the petitioner.

Learned counsel for the petitioner argues that the proceeding was initiated against the petitioner *de hors* the law, by giving a go-bye to the communication dated July 5, 2019, which specifically stipulated that the petitioner, during his study leave, would be staying within the precincts of the army accommodation. It is submitted that in view of such specific direction, the respondent-authorities acted *de hors* the law and without jurisdiction in initiating the proceeding for eviction of the petitioner from the premises-in-question.

Learned counsel further submits that the respondent-authorities have been deducting amounts from the petitioner's salary in connection with the accommodation-in-question.

Learned counsel appearing for the respondent-authorities places reliance on the communication dated October 25, 2020, annexed at page 25 of the writ petition, to indicate that in view of the petitioner's failure to comply with a final order of eviction already passed against the petitioner under Section 5 of the 1971 Act, the deductions have been made. It is submitted that, in the absence of any challenge to the final order of eviction, the present writ petition is not maintainable. It is further submitted that the remedy of the petitioner lay before the concerned District Court by way of an appeal against the order of eviction, which has been sought to be bypassed by filing the present writ petition.

Learned counsel for the petitioner controverts such contentions and, by placing reliance on the averments made in the writ petition, argues that although the petitioner approached the concerned District Court with an appeal against the eviction order, within the purview of Section 9 of the 1971 Act, the District Court did not entertain the same in view of no inked signed copy of the eviction order having been filed by the petitioner, despite no such inked signed copy having been served on the petitioner at all.

It appears upon hearing both the parties that the language of Section 9 of the 1971 Act is not confined to a particular form of the order, which is to be impugned under Section 9, signed and inked or otherwise. As such, even without going into the merits of the matter, it will be evident that the petitioner has a right to prefer an appeal and it is the incumbent duty of the District Court, if such an appeal is preferred, to decide the same on merits in accordance with law and subject to the law of limitation. Since the relief of the petitioner against the eviction order passed under Section 5 of the 1971 Act is provided specifically by way of an appeal as envisaged in Section 9 of the said 1971 Act, there is no scope of interference in the present writ petition with the said order of eviction or the proceeding leading to the same.

As such, WPA No. 163 of 2022 is disposed of with liberty to the petitioner to approach the District Court with an appeal against the order passed by the respondent-authorities against the petitioner under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 with the photostat copy of the said order. If so approached, the District Court will entertain the same on merits, subject to limitation and in accordance with law without being prejudiced in any manner by any of the observations made herein.

It is made clear that all questions, including the question of limitation, are kept open to be agitated by the

parties before the concerned District Court in such appeal, if preferred.

The petitioner shall prefer the appeal, if any, along with an application for condonation of delay in preferring the same (if the latter is deemed necessary) on or before January 28, 2022.

If no such appeal/application is filed on or before January 28, 2022, this order shall be deemed to stand automatically vacated without further reference to the Court.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)