

8th February,
2022
(AK)
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W.P.A 428 of 2022

Sri Om Prakash Shaw
Vs.
The Union of India and others

(Via Video Conference)

Mr. Sanjib K. Mukhopadhyay
...for the petitioner.

Ms. Debjani Ghosal
...for the respondent no.1.

Mr. Indrajeet Dasgupta
...for the respondent nos.2, 3 & 4.

Learned counsel for the petitioner argues that the writ petition ought to be entertained on the ground of inherent lack of jurisdiction of the Estate Officer in issuing a notice against the petitioner under Sections 4 and 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and subsequent eviction order against the petitioner.

Learned counsel, by placing reliance on *Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer*, reported at (2014) 4 SCC 657, argues that certain guidelines were mentioned therein.

Placing specific reliance on paragraph 56 at page-686, it is argued that the provisions of the 1971 Act should be used primarily to evict totally unauthorized occupants of the premises of public authorities or sub-

lessees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

In the present case, it is submitted that the petitioner purchased the property with permission from the owners, that is, the Cantonment Board and, as such, cannot be labelled as a totally unauthorized occupant of the premises.

In the absence of termination of such lease in appropriate manner and/or without any valid ground, eviction notice was issued and subsequently the eviction order was passed against the petitioner.

Learned counsel appearing for the respondent authorities submits that the petitioner, although with the permission of the Cantonment Board, had purchased the property from a previous lessee of the premises and, as such, there was no irregularity in issuing the eviction notice and instituting the subsequent eviction proceedings against the petitioner.

That apart, it is argued that sufficient alternative efficacious remedy lies in the form of an appeal before the appropriate authority against the order of eviction, in view of the provisions of the 1971 Act.

Upon hearing learned counsel for the parties, it is evident that mixed questions of fact and law are involved in the adjudication of the matter.

Although the petitioner might have purchased the property from the erstwhile lessee, such purchase could

not arrogate the petitioner to a status greater than the petitioner's predecessor-in-interest/lessee.

Hence, it cannot be said that the purported "ownership" of the petitioner *ipso facto* denuded the Cantonment Board or the Estate Officer of jurisdiction to issue and follow up an eviction notice under the 1971 Act.

However, the petitioner may have several grounds on facts and law for resisting the eviction order and the preceding eviction notice.

However, it could be appropriate if, instead of usurping the jurisdiction of the appellate forum, thereby depriving the parties of a forum, this court relegates the matter to the appropriate appellate authority.

In such view of the matter, WPA 428 of 2022 is disposed of by granting liberty to the petitioner to approach the competent appellate authority with the challenge against the eviction order passed under the 1971 Act against the petitioner, if necessary, also assailing the notice on which the said eviction proceeding was initiated as a ground of the appeal.

If such an appeal is preferred, the appellate authority shall decide the same independently, in accordance with law, upon giving appropriate opportunity of hearing to both sides, without being prejudiced and/or influenced in any manner by any of the observations made herein, subject to the law of limitation.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)