



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

Date of Order: 26th August 2022

+ W.P.(C) 5241/2019, CM APPL. 23162/2019, CM APPL. 46387/2019 & CM APPL. 6663/2021

INSPECTOR RAJ KUMAR Petitioner

Through: Appearance not given

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar
Mishra, Mr. Sagar Mehlawat and
Mr. Alexander Mathai Paikaday,
Advocates for R-1/UOI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking *inter alia* the following reliefs:

“(a) a writ of certiorari for quashing show cause notice dated 04.01.2019 issued by the respondent no. 2 under sections 4(1) of the public premises (eviction of unauthorised occupants) act, 1971;

(b) a writ of certiorari for quashing show cause notice dated 31.01.2019 issued by the respondent no. 2 under sections 4(2)(b) of the public premises (eviction of unauthorised occupants) act, 1971;



(c) Writ Of Mandamus directing the respondents not to dispossess the petitioner's family from the quarter being no. K 242, sarojini nagar, new delhi, till such time that an alternate accommodation, as per the guidelines for compulsory shifting, is provided to the petitioner;

(d) A writ of Mandamus directing the Respondents to allot an alternate accommodation at Lodhi Colony or R K Puram while considering the various reasons specified by the Petitioner in her several request letters....”

2. The background of the instant writ petition reveals that the petitioner, being a CRPF Sub-Inspector, was allotted an accommodation, bearing address K-242, Sarojini Nagar, New Delhi (Type 3 Quarter), on 3rd April 2006 by the respondent no. 2 and the family of the petitioner has been living at the said premises since.

3. In the year 2016, the respondent no.1/Ministry of Housing & Urban Affairs through the respondent no. 2/Directorate of Estates decided to redevelop seven GPRA colonies including Sarojini Nagar through the National Building Construction Corporation. In pursuance of the said, redevelopment the respondent no. 2 vacated all quarters falling under the Scheme, including the accommodation of the petitioner, in a phased manner and also provided alternate accommodation to the allottees so evicted under the Compulsory Shifting Scheme. The said allottees were given the opportunity to exercise their options for alternate accommodation in three bidding rounds through an online process.

4. The petitioner also exercised this option and furnished his preferences for Lodhi Colony and R K Puram, however, none of his bids



were successful. Subsequently, the petitioner made requests to the respondents for allotment of alternate accommodation in his preferred areas, however, on 1st August 2017 he was allotted an alternate accommodation in Vasant Vihar, New Delhi.

5. The respondent no. 2 issued Notice dated 31st August 2017 under Section 4(1), 4(2)(b) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter “PP Act”) to the petitioner and directed him to appear before the concerned authority on 27th September 2017, with respect to the cancellation of allotment at Sarojini Nagar due to fresh allotment made at Vasant Vihar. On the date of the hearing, the wife of the petitioner appeared before the concerned Estate Officer and was informed that since they had been allotted a fresh accommodation under the Compulsory Shifting Scheme, they had to vacate the accommodation in Sarojini Nagar.

6. On 22nd November 2017, the respondent no. 2 once again issued Notice under Section 4(1) of the PP Act and the petitioner was asked to appear in person or through any representative before the Estate Officer on 14th December 2017. Several representations were made by the petitioner and his wife regarding allotment of alternate accommodation in the preferred areas and extension of the Sarojini Nagar accommodation. The Commandant CRPF of 82 battalion also addressed communications to the respondent no. 2 requesting them to allot an alternate accommodation in favour of the petitioner at the preferred locations, that is, Lodhi Colony or RK Puram and the respondent no. 2 also sought information and documents from the Commandant CRPF in relation to



the postings of the petitioner.

7. The respondent no. 2 issued a letter dated 31st October 2018 to the Deputy Commandant CRPF, New Delhi, stating that that the Petitioner had been posted at the IGP, RAF, Headquarters office at New Delhi, (the Petitioner was posted in the said office from 13th May 2016 till 28th March 2017 i.e. for a period of 10 months) and had thereafter been posted 82 Battalion at Jammu & Kashmir, however, since Rapid Action Force (hereinafter “RAF”) is allegedly considered by them as an ineligible office for allotment of GPRA, he is considered an unauthorised occupant by the respondent no. 2. The letter also stated that proceedings under the PP Act would be initiated against the petitioner. On 21st June 2018, the respondents cancelled the allotment of the petitioner due to non-payment of the license fee, however, the same was withdrawn subsequently.

8. On 21st December 2018, the respondent no. 2 again sent a letter to the Deputy Commandant, CRPF, New Delhi, wherein it was reiterated that the petitioner was being considered an unauthorised occupant and the Deputy Commandant was asked to order the petitioner to vacate the house at Sarojini Nagar. The letter also stated that respondent no. 2 had initiated proceedings under PP Act against the petitioner.

9. Meanwhile, the wife of the petitioner approached several authorities and also made written representations before various governmental authorities. However, ultimately, the respondent no. 2 issued Show Cause Notices dated 4th January 2019 and 31st January 2019 (hereinafter “impugned Notices”) to the petitioner asking him to show cause as to why he should not be evicted since he was occupying public



premises even after the allotment was cancelled. The petitioner and his wife again approached the respondent no. 2 requesting them to consider the reasons given for allotment of alternate plot in the preferred locations, however, it is the case of the petitioner that the respondent no. 2 threatened them to vacate the accommodation of Sarojini Nagar within 7-10 days failing which forceful removal from the accommodation was anticipated.

10. The petitioner is aggrieved by the Notices dated 4th January 2019 and 31st January 2019 and is seeking directions to the respondents to not dispossess the petitioner and his family from the quarters at Sarojini Nagar and to allot alternate accommodation at Lodhi Colony or RK Puram.

11. Learned counsel appearing on behalf of the petitioner submitted that the actions of the respondents were arbitrary, biased, harsh and considerate. It is submitted that no cancellation of allotment of accommodation or notices under the PP Act were ever communicated to the petitioner and only the impugned Notices were served upon the petitioner.

12. Learned counsel for the petitioner submitted that the impugned notices did not set out, in its contents, the grounds for issuing the show cause. The respondents were required to specify the reasons for which the eviction was sought and such an inaction was not accordance with the law.

13. It is submitted that it was only on 31st October 2018 that the respondents for the first time took the stand that the petitioner was



considered ineligible for allotment of GPRA because he had been posted at RAF and there was no mention before this point about the same.

14. It is submitted that the respondents did not cancel the allotment of the alternate accommodation at Vasant Vihar. Moreover, in its letter dated 31st October 2018 and 21st December 2018, the respondents said that proceedings under PP Act would be initiated against the petitioner, however, neither were these proceedings initiated nor did the petitioner hear from the respondents regarding his requests.

15. It is further submitted that the respondents failed to appreciate that as per the direction of the Ministry the Compendium of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 at serial no.s 394, 395 and 396 of Appendix III, as well as the respondents own OM dated 28th April 2017, Office of IGP RAF, R K Puram, New Delhi and personnel who are on the strength of the Headquarter CRPF are eligible for GPRA. On one hand the respondent no.2 initiated action against the petitioner for declaring him an unauthorised occupant of the GPRA at Sarojini Nagar and on the other hand it recognised the petitioner as an authorised occupant of the said accommodation when it allowed him to participate in the bidding process open to the authorised occupants of seven GPRA colonies found eligible under the Compulsory Shifting Scheme.

16. It is submitted that the wife of the petitioner made several requests and written representation to the respondents, as well as other authorities of the Country throughout 2017-19, however, the respondents did not do anything to give any relief to the petitioner and his family.



17. It is submitted that the respondents have acted arbitrarily, illegally and in an unjust manner by not considering the various communications/requests made by the petitioner for re-allotment of a quarter at Laxmi Bai Nagar owing to her special/peculiar circumstances relating to (i) the education of her children who are currently studying in Class IX and Class VI in Navy Children School, Nausena Bagh, Chanakyapuri, New Delhi, re-allocation of the quarter at some far off place would severely prejudice the studies of her children, (ii) the proximity of her proximity of her husband's work place.

18. It is submitted that in the light of the aforesaid, the relief sought by the petitioner before this Court may be allowed and the Show Cause Notices may be quashed.

19. *Per Contra*, the learned CGSC appearing on behalf of the respondents vehemently opposed the submissions made on behalf of the petitioner and submitted that there arises no cause of action to be challenged before this Court since no action has been taken by the respondents against the petitioner and only Notices had been issued asking him to show cause.

20. It is submitted that the office of the petitioner, vide letter dated 28th July 2018, informed the respondent no. 2 about the postings of the petitioner and it was found that the petitioner had been posted outside Delhi since 2007 and was required to inform the respondent regarding such postings outside of Delhi, however, he failed to do so for 11 years and only thereafter informed the respondents about the same. Further, the petitioner was posted in Delhi in an ineligible office, however, he did not



inform the respondents, as per the mandate, and hence, his quarter was cancelled. It is further submitted that the respondent no. 2 had initiated the project of redevelopment of seven colonies however, the redevelopment of nearly fifty quarters of the K block alone had been put to a halt because the quarter no. K-242 has been illegally occupied by the petitioner.

21. It is submitted that the petitioner had already been allotted an alternate accommodation, that is, House No.- 28C, Vasant Vihar, pending decision in the instant matter. Moreover, the petitioner, upon his request, was asked to select one out of two flats in R K Puram and as per his choice Q no. 12, Sector-1, R K Puram has been allotted to hi on 5th March 2021, the physical possession of which he has taken on 26th March 2021, therefore, further no cause of action is left to be adjudicated upon. Therefore, the instant petition is liable to be dismissed for being devoid of merit.

22. Heard learned counsel for the parties and perused the record. This Court has also perused the impugned Notices.

23. The petitioner has challenged the Show Cause Notices dated 4th January 2019 and 31st January 2019 and sought directions to the respondents with respect to the allotment of alternate plot in the preferred areas by the petitioner.

24. The relevant portion of the said impugned Notices is reproduced hereunder for perusal:-

Notice dated 4th January 2019



“Whereas, I, the undersigned, am of the opinion on the grounds specified below that you are in the unauthorized occupation of the Public premises mentioned in the SCHEDULE below and that you should be evicted from the said premises.

GROUND.

You have been continuing to occupy public premises as specified in the SCHEDULE below even after it's allotment stands cancelled and the period for which you were allowed to retain the instant premises has also expired.

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 the date specified below, why such an order of eviction should not be made.”

Notice dated 31st January 2019

“With refrence to the above case pending against you under Section 4(1) the Public Premises Eviction of Unauthorised Occupants) Act, 1971, the case has been fixed on date and time given below for personal hearing. If you want to urge anything, you may appear in person or through a duly authorised representative competent to answer to all material questions connected with the matter on the date and time specified below, and on your behalf.

In case, you or your authorised representative fail to appear on the said date and time, the case will be decided ex-part.”

25. It is an admitted position by the petitioner that pursuant to the letters of the respondents as well as its impugned Show Cause Notices, neither any proceedings were initiated by the respondent no. 2 nor did the petitioner hear anything from them. The only challenge before this Court is to the impugned Notices issued. However, the precedents clarify the



position of law with regard to the question whether any Show Cause Notice would give rise to a cause of action that can be challenged before a court of law.

26. When an authority issues a Show Cause Notice, it is merely giving the recipient an opportunity to make his case and show as to why an action should not be taken against him in the background of the facts and circumstances of his case. At the stage of issuing a Show Cause Notice, there is no adverse action that has been taken against the recipient of the Notice and hence, no cause of action has actually arisen for it to be challenged at that stage. Such a challenge to a Show Cause Notice, especially does not lie as a matter of routine under a writ jurisdiction since a Court exercising its powers under Article 226 of the Constitution of India is already limited to the extent of adjudicating upon the illegality or errors apparent on the very face of record and hence, has limited scope of interference in the impugned order or in this case, a Show Cause Notice. Therefore, a challenging a Show Cause Notice invoking a court's writ jurisdiction is not only premature but is also discouraged by the mandate of the law, as has been interpreted by the Hon'ble Supreme Court.

27. The Hon'ble Supreme Court in ***Special Director vs. Mohd. Ghulam Ghouse*** 2004 3 SCC 440, the Hon'ble Supreme Court while adjudicating upon a similar question has observed as under:-

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts



with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court...”

28. In ***Union of India & Anr. vs. Kunisetty Satyanarayana*** (2006) 12 SCC 28, while setting aside a High Court judgment allowing the writ challenging a Show Cause Notice, the Hon’ble Supreme Court has observed as under:-

“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or



show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

29. Reiterating the principles laid down in ***Kunisetty (Supra)***, the High Courts while entertaining Show Cause Notices under the PP Act have observed as under:-

The Calcutta High Court in ***Kishen Lall vs. Deputy Commissioner, 2012 SCC OnLine Cal 2803*** observed as follows:-

“It is settled by a catena of decision of the Hon'ble Supreme Court that a writ petition against a show



cause notice issued by a statutory functionary shall not be entertained unless the High Court is satisfied of the nullity of such notice or want of jurisdiction of the authority concerned to even investigate the facts. The point of jurisdiction of the Estate Officer has been answered above, and therefore, every other point that the petitioner seeks to agitate in respect of validity of the show cause notice including the point that it does not contain the grounds must be raised by him after his appearance before the Estate Officer. Reference in this connection may be made to the decision of the Supreme Court reported in AIR 1961 SC 1615: Carl Still G.m.b.H v. The State of Bihar, (2004) 3 SCC 440: Special Director v. Mohd. Ghulam Ghouse and AIR 2007 SC 906: Union of India v. Kunisetty Satyanarayana.”

The Bombay High Court in ***JM Financial Asset Reconstruction Company Pvt Ltd vs. Board of Trustees of the Port of Mumbai & Ors.*** 2016 SCC OnLine Bom 5355 held as reproduced under:-

“14. On the other hand, the PP Act was brought into force to provide for eviction of unauthorized occupants from public premises and for certain other incidental matters. Originally, the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 was enacted to provide for a speedy machinery for eviction of unauthorized occupants of public premises. Section 5 of the Act provided for taking possession of public premises which were in unauthorized occupation and section 7 provided for recovery of rent or damages in respect of public premises from persons who were in unauthorized occupation thereof. The vires of certain provisions of the 1958 Act were challenged in different Courts all over country as being unconstitutional, and which challenges were upheld. Since, these Court decisions



had created serious difficulties for the Government and it had become impossible for the Government to take expeditious action, even in flagrant cases of unauthorized occupation of public premises, it was therefore considered imperative to restore a speedy machinery for eviction of persons who were in unauthorized occupation of public premises. Accordingly, it was proposed to reenact the Public Premises Eviction (Unauthorized Occupants) Act, 1958, as amended from time to time, after removing the vice which led to it having been declared as void. This is how the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the PP Act) came on the Statute Book. There have been several amendments to the PP Act thereafter which are not really germane to decide the issues raised in this Writ Petition.

19. Having held so, we also find considerable force in the argument of Mr Bharucha that the present Petition is premature and not maintainable. In the present case, what has been challenged are the 2 SCNs issued by the 4th Respondent. These SCNs do not per se decide any rights of the Petitioner, but merely call upon noticees to show cause before the Estate Officer (4th Respondent) as to why they ought not to be evicted. The practice of challenging SCNs by way of a Writ Petition has been deprecated time and again as clearly spelt out by the Supreme Court in the case of Kunisetty Satyanarayana, (2006) 12 SCC 28 : AIR 2007 SC 906 (1).

20. As can be seen from the aforesaid decision, the Supreme Court has in clear terms stated that ordinarily no writ lies against an issuance of a SCN. The reason why ordinarily a writ petition should not be entertained against the issuance of a mere SCN is that at that stage, the writ petition may be premature.



A mere SCN does not give rise to any cause of action, because it does not amount to an adverse order which affects the right of any party, unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the SCN or after holding an inquiry, the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere SCN does not infringe the right of any one. It is only when a final order imposing some punishment or penalty adversely affecting a party is passed, that the said party is said to be having some grievance. This being the clear enunciation of the law, we have no hesitation in holding that the present Petition is clearly premature as it merely challenges the SCNs issued by the 4th Respondent (the Estate Officer)."

A coordinate bench of this Court in ***Maruti Suzuki India Ltd. vs. India Tourism Development Corporation Ltd., 2013 SCC OnLine Del 1647***, while making reference to the aforesaid landmark judgment noted as under:-

"19. We find the Supreme Court also in Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28 : AIR 2007 SC 906 to have reiterated that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature — a mere show cause notice does not give rise to any cause of action because it does not amount to an adverse order which affects the rights of a party unless the same has been issued by a person having no jurisdiction to do so and because it is quite possible that after considering the reply to the show cause notice or after holding an inquiry the authority



concerned may drop the proceedings. It was held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting a party is passed that the said party can be said to have any grievance. The Supreme Court held that the writ jurisdiction being discretionary should not ordinarily be exercised by quashing a show cause notice.

20. This Court in Seasons Catering Services Pvt. Ltd. v. Delhi Development Authority applied the aforesaid principles to a notice under Section 4 of the PP Act and held that even if there is any deficiency in the notice it will be irrelevant, if the noticee is aware of the ground for eviction and has given a detailed reply on merits.”

30. Further, in **Ministry of Defence vs. Prabhash Chandra Mirdha, (2012) 11 SCC 565**, the Hon’ble Supreme Court, reiterating the principles, held as under:-

*“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action.
...”*

31. Therefore, it is clear that a challenge does not lie against a Show Cause Notice unless there is an action taken in pursuance of such Notice, in which case also the challenge would lie against the action and not the



Notice itself. A Show Cause Notice can only be interfered with under the writ jurisdiction in the rare event of there being an absolutely illegal, improper, erroneous finding or action on the part of authority issuing such it.

32. In the instant matter, the petitioner challenged the impugned Notices and also admitted that no action was taken by the respondents in pursuance to the said Notices. Therefore, it is found that the petitioner has approached this Court prematurely, since there is no cause of action that has arisen yet.

33. Moreover, as per the contents of the Counter Affidavit filed on behalf of the respondents, it is found that the petitioner has already taken possession of an alternate plot in R K Puram on 26th March 2021 and the grievance of the petitioner has been addressed to the effect that he has been allotted an alternate accommodation in his preferred area, hence, in light of this fact as well nothing survives in the matter.

34. In light of the above facts and circumstances, the submissions made on behalf of the parties, the contentions raised in the pleadings as well as the observations made in the foregoing paragraphs, this Court does not find merit in the instant petition.

35. Accordingly, the instant writ petition is dismissed.

36. Pending applications also stand disposed of.

37. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 26, 2022/dy/ms