

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**Present :-**

**The Hon'ble Justice Moushumi Bhattacharya**

W.P.A 15166 of 2022

Anup Saxena

vs.

The Estate Officer under the  
Public Premises (Eviction of Unauthorised Occupants)  
Act, 1971, Eastern Railway and Another

For the petitioner : Mr. Ratnanko Banerji, Sr. Adv.  
Ms. Manju Bhuteria, Adv.  
Ms. Tanvi Luhariwala, Adv.  
Mr. Abhishek Jain, Adv.

For the respondents : Mr. Amitabha Nayak, Adv.

Last Heard on : 27.04.2023.

Delivered on : 10.05.2023.

**Moushumi Bhattacharya, J.**

1. The petitioner is the sole proprietor of 'We Care' Nursing Home in Uttarpara in the district of Hooghly, West Bengal. The petitioner seeks a mandamus on the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Secretary, Ministry of Railways to cancel a notice issued by the Estate Officer on 29.3.2022 and an order passed

by the Estate Officer on 23.6.2022. By the impugned notice dated 29.3.2022 the petitioner was asked to show cause as to why the petitioner should not be evicted from the public premises mentioned in the schedule to the notice. The impugned order dated 23.6.2022 directed the petitioner to remove the building / immovable structure from the alleged public premises.

2. The petitioner has challenged the impugned notice and order primarily on the ground of jurisdiction of the authorities to issue the said notice and order. The petitioner has also taken the point of the premises not being “public premises” within the meaning of section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The reason given is that the said land was purchased by the predecessors in interest of the petitioner through a sale effectuated by the Calcutta High Court through the official receiver. The petitioner says that a notice under section 4 (1) of the 1971 Act can only be issued in respect of a land which comes within the meaning of section 2(e) and qualifies as public premises.

3. With regard to the point of jurisdiction, the impugned notice dated 29.3.2022 makes it clear that the said notice was issued under section 4(1) of the 1971 Act. The Estate Officer called upon the petitioner to show cause in pursuance of section 4(1) of the Act, as specifically mentioned in the notice. Section 4(1) comes into operation where the Estate Officer has the information that any person is in unauthorised occupation of any public premises and that he should be evicted. The Estate Officer shall thereafter issue in the prescribed

manner a notice in writing with regard to the unauthorised occupation within 7 days from the date of receipt of information and call upon the person to show cause as to why an order of eviction should not be made. The framework of the Act indicates that a show-cause issued under section 4(1) is followed by eviction of unauthorised occupants under section 5(1) of the Act which specifically provides that the Estate Officer, after considering the cause shown by any person in pursuance of a notice under section 4 and any evidence produced by the person in support of the cause, shall give the person a personal hearing under section 4(2)(b)(ii). If after taking the aforesaid steps the Estate Officer is satisfied that the public premises are in unauthorised occupation, the Estate Officer shall make an order of eviction directing the public premises to be vacated on the date specified in the order but not later than 15 days from the date of the order. The reasons for making the order of eviction shall be recorded in the order and a copy of the order shall be affixed in the manner as provided under section 5(1).

4. In the present case, the show-cause notice under section 4(1) was not followed up by an order under section 5(1) as prescribed under the 1971 Act. The Estate Officer instead issued the impugned order dated 26.3.2022 under section 5-A(2) of the Act referring to the show-cause notice directing the removal of the immovable structure from the public premises. The impugned order is headlined as an order passed under section 5-A(2) of the Act and also mentions the alleged contravention of section 5-A(1) of the Act on the part of the petitioner.

5. Section 5-A relates to the power to remove unauthorised constructions and prohibits persons from erecting or raising any building or doing such other activities as provided under Clauses (1)(a)- (c) of section 5-A(1) of the Act. Section 5-A(2) authorises the Estate Officer to serve a notice on the person requiring the person to remove or show cause as to why he shall not remove the immovable structure erected on the public premises in contravention of section 5-A(1) within the period specified in the notice which shall not be less than 7 days. The Estate Officer may by order remove or cause to be removed the building / structure / fixture from the public premises and recover the cost of the removal from the person as an arrear of land revenue where the Estate Officer is of the opinion that the cause shown is not sufficient and where the recipient of the notice refuses to show cause or refuses to remove the structure from the public premises.

6. It is clear from the Scheme of the Act that a show-cause notice served upon a person under section 5-A(2) must be preceded by a contravention under 5-A(1). To put it simply, the 1971 Act contemplates two sets of procedures, one, under section 4(1) followed by section 5(1) relating to eviction of a person in unauthorised occupation of a public premises and the other under section 5-A(1) followed by section 5-A(2) with regard to removal of unauthorised constructions. Both sets of procedures involve issuing of a show-cause notice, the requirement of reason to believe and only thereafter an order to remove the person from unauthorised occupation or the unauthorised construction. Giving an opportunity of hearing is contemplated under 4(2)(b)(ii).

7. In the present case, the Estate Officer has mixed up the two sets of procedures by issuing the impugned notice under section 4(1) and thereafter passing the impugned order under section 5-A(2) of the Act. The impugned notice and order have been issued under the provisions of the Act which have been clearly mentioned therein.

8. The other contentions raised on behalf of the petitioner with regard to the notice issuing authority not being the Estate Officer has not been gone into since there is a clear lack of jurisdiction of the Estate Officer in the present case for the reasons as discussed above.

9. The respondents have taken a point of the writ petition not being maintainable on the ground of adequate alternative statutory remedy being available to the petitioner under section 9 of the 1971 Act whereby it is provided that an appeal shall lie from every order of the Estate Officer made in respect of any public premises under section 5, 5-B or 5-C or 7 to an Appellate Officer who shall be the District Judge of the District in which the public premises are situated.

10. Section 9(1) provides for an appellate authority while section 9(2) delineates the time period within which the appeal shall be filed under each of the sections mentioned in 9(1). The impugned order has admittedly been issued under section 5-A(2) of the Act of 1971. Section 9 specifically mentions the sections under which an order may be the subject matter of an appeal. Section 5-A(2) has not been included under section 9(1). This point was

considered by a three-Judge Bench of the Allahabad High Court in *Yogesh Agarwal vs. Estate Officer; AIR 2016 All 41*. The Allahabad High Court dealt with this point and held that section 9 does not provide for any appeal against an order of the Estate Officer made under section 5-A. It was further held that even though an appeal has not been provided against an order under section 5-A, the legality of such an order can be made subject to judicial review under Article 226 of the Constitution. The Allahabad High Court accordingly answered the reference by holding that an order passed under section 5-A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not appealable under section 9 of the Act.

11. Relying on the above decision, this Court is accordingly of the view that the contention with regard to the petitioner having an adequate alternative statutory remedy does not have any basis and is hence rejected.

12. The foregoing reasons persuade this Court to hold that the impugned notice dated 29.3.2022 and the impugned order dated 23.6.2022 suffer from a lack of statutory mandate and should accordingly be quashed and cancelled for that reason. The impugned notice and orders are accordingly quashed and cancelled and WPA 15166 of 2022 is allowed and disposed of on that basis.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**