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

Date of decision: 28th August, 2023

+ W.P.(C) 11084/2015 & CM APPL. 28724/2015
DELHI JAL BOARD

..... Petitioner

Through: Ms. Kanika Agnihotri, ASC with Ms.
Garima Khanna, Advocates.

versus

JAI KISHAN GUPTA

..... Respondent

Through: Mr. Pranchal Panwar, Advocate.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

By way of the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/Delhi Jal Board ('DJB') seeks quashing of order dated 04.06.2015 passed by the learned Additional District Judge-II, Central District, Tis Hazari Courts ('ADJ') while disposing-of 03 appeals under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('PP' Act) bearing PPA No. 01/2013, PPA No. 02/2013 and PPA No. 03/2013.

2. The learned ADJ has allowed PPA No. 01/2013 under section 9 of the PP Act; thereby setting-aside eviction order dated 11.11.2003 passed by the Estate Officer, Delhi Jal Board under section 4 of the PP Act, by which the respondent was evicted from premises bearing Shop No. 1, Wazirabad, Water Works, Delhi ('subject premises').



3. Notice on this petition was issued on 02.02.2016; whereupon counter-affidavit dated 13.10.2016 has been filed by the respondent; following which a rejoinder dated 27.03.2017 has also been filed. Furthermore, an additional affidavit dated 03.12.2022 has also been filed by the respondent.
4. Briefly, the relevant facts that are required for deciding the present petition are the following :
 - 4.1. The subject premises is stated to be owned by the petitioner. The respondent was allotted the subject premises *vide* allotment letter dated 17.07.1990 *w.e.f.* 01.08.1990 issued by Water Supply & Sewage Disposal Undertaking, subject to execution of the necessary agreement and payment of the requisite license fee at the rate of Rs.1,720/- per month.
 - 4.2. Since the respondent failed to pay the requisite license fee, and also failed to vacate the subject premises pursuant to a notice dated 01.11.1994 issued by the Assistant Commissioner (L&E), *vide* eviction order dated 11.11.2003 passed by the Estate Officer on a petition under section 4 of the PP Act, the respondent and all persons in possession were directed to vacate the subject premises within 15 days of the date of publication of that order. Furthermore, the eviction order also cautioned that in the event of their omission to vacate the subject premises within the time granted, they would be liable to be evicted therefrom by use of force, if found necessary.
 - 4.3. By a separate order dated 24.09.2004 passed by the Estate Officer, deciding a petition under section 7 of the PP Act, the



respondent was also directed to pay to the petitioner the sum of Rs.1,30,032/- for the period from 01.02.1995 to 31.01.1998 at the rate of Rs.1,892/- per month towards damages for unauthorised occupation of the subject premises, within 15 days from the service of that order; with a further narration that respondent would also be liable to pay simple interest at 18% per annum on the above referred sum from the date the amount became due till the date of final payment; and that on refusal or failure to make payment, the amount will be recoverable as arrears of land revenue.

- 4.4. By yet another order dated 24.09.2004, passed by the Estate Officer, on a petition under section 7 of the PP Act, the respondent was also held liable for damages of Rs.68,112/- for the period from 08.01.1990 to 31.01.1995 assessed at Rs.1,892/- per month as damages for unauthorised occupation of the subject premises, within 15 days from the service of that order; with a similar narration that the respondent would also be liable to pay simple interest of 18% per annum on the above sum from the date the amount became due till the date of final payment; and that on refusal or failure to make such payment, the amount will be recoverable as arrears of land revenue.
- 4.5. The said 03 orders became subject matter of 03 separate appeals under the PP Act, viz. PPA No. 01/2013, PPA No. 02/2013 and PPA No. 03/2013 respectively; which have now come to be dealt-with by way of the impugned order.



5. Ms. Kanika Agnihotri, learned counsel appearing for the petitioner submits that the principal plank of the argument canvassed by the respondent, based on which the impugned order has come to be passed, was that he never received notices dated 07.01.1993, 05.03.1993 and 01.11.1994 which were issued by the Assistant Commissioner (L&E), and which formed the foundation of all subsequent proceedings resulting in the passing of orders of eviction and for recovery of damages against the respondent. It is pointed-out that in the impugned order the learned ADJ has recorded as follows :

*“(7) ... None of the above notices, allegedly dispatched, show that they were ever been dispatched and served upon the appellant. There is no proof of dispatch or service in the form of RC receipt or UPC Receipt etc. nor there are any orders reflecting service vide affixation or beat of drum in respect of any of the **alleged notices dated 7.1.1993, 05.03.1993 or 01.11.1994** allegedly issued by the respondents. In this regard I may observe that the provisions of Public Premises (Eviction of Unauthorized Occupants) Act are mandatory in nature and are required to be meticulously followed. While on the one hand the Act provides the special speedy procedures, whereas on the other hand there is an insistence upon strict and meticulous compliance of the clear guidelines imposed upon the Authorities upon whom the duty of eviction of unauthorized occupants has been conferred. In case of any procedure not having been followed or a violation of the same, the entire proceedings are required to be struck down. The notices so issued under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act are obligatory and mandatory and it is necessary that the said notices should be served upon the person alleged to be in unauthorized occupation. Only thereafter can he be evicted after he has been issued a Show Cause as to why the order of eviction of the public premises may not be passed against him. ...”*

(emphasis supplied)



6. This, counsel submits, is the essential basis on which all three appeals have been disposed-of, setting-aside the eviction order as well as the orders for recovery of damages passed by the Estate Officer.
7. Ms. Agnihotri points-out however, that a perusal of the copies of the notices in question would show the following :

Date of Notice	Issued By	Position as to service on respondent
07.01.1993	Assistant Commissioner (L&E)	Dispatched by Registered Post-AD
05.03.1993		Dispatched by Registered Post-AD; another copy sent by hand and signed in receipt on 16.03.1993 by Manoj Kumar.
01.11.1994		---
15.03.1995 under section 4 PP Act	Estate Officer, Delhi Jal Board	Signed in receipt on 21.03.1995 by Naveen Kumar; with a noting that Naveen Kumar is son of Jai Kishan Gupta.
15.03.1995 under section 7 PP Act		Signed in receipt on (<i>illegible</i>).03.1995 by Naveen Kumar; with a noting that Naveen Kumar is son of Jai Kishan Gupta.
21.04.1998 under section 7 PP Act		Signed in receipt on 23.04.1998 by Naveen Kumar; with a noting that Naveen Kumar is son of Jai Kishan Gupta, though signed differently from above notices.

8. Accordingly, it is argued that of the 06 notices issued, 04 were duly received in-person by two individuals, viz., Manoj Kumar and Naveen Kumar. Furthermore, it is pointed-out, that most importantly, the statutory notices required under sections 4 and 7 of the PP Act, were received by Naveen Kumar, who is verily believed to be the son of the respondent Jai Kishan Gupta.



9. It is pointed-out, that the plea that the person upon whom the requisite statutory notices were served was not the respondent's son, has never been raised in any earlier proceedings and is being taken for the first time in the present proceedings. It is also pointed-out that the respondent is seeking to support this plea by placing on record certain electricity bills, Voter ID card, Ration Card and PAN Card of one 'Naveen Mittal' s/o 'Jai Kishan Mittal', which appears to be no answer at all inasmuch as the respondent in the present proceedings is 'Jai Kishan Gupta' (not 'Jai Kishan Mittal'); and it is the petitioner's case that respondent's son - also named Naveen - had signed in receipt of the notices in question.
10. It is further submitted that as the record shows, in fact the respondent gave a written reply dated 14.07.1995 *under his own signatures*, contesting the proceedings arising from notice dated 15.03.1995 issued under section 7 of the PP Act, which again belies the stand taken by him that he had not received such notice.
11. It is also argued that the respondent participated in the proceedings under section 4 of the PP Act before the Estate Officer, who, in eviction order dated 11.11.2003 recorded the following :

"The respondent contested the petition and he filed the written statement stating that the petition was not filed by the proper person.

* * * * *

"I have perused the pleadings, documents, evidence and arguments submitted by the petitioner. I have also perused the written statement of the respondent. Respondent was asked to file his evidence by way of filing an affidavit but inspite of several opportunities granted to him respondent failed to submit his evidence. Hence, respondent's evidence was closed on 16.10.2003



and the case was fixed for arguments on 31.10.2003. Respondent filed an application enclosing therewith a medical certificate and stated that he was ill and, therefore, prayed that order dated 16.10.2003 be recalled.

“I have observed that the medical certificate submitted by the respondent does not bear the signature of the doctor. Hence, not maintainable and his application was accordingly rejected on 31.10.2003. Respondent did not prefer any argument on 31.10.2003. The respondent also failed to pay the license fee and continued withholding the possession of shop. The petitioner has proven by documents and evidence that the respondent is an unauthorized occupant since 01.09.1992 and further that despite the notice dated 01.11.1994 he has failed to hand over the possession. The case of the petitioner stands proved. I am satisfied that the respondent is an unauthorized occupant and is liable to be proceeded u/s 4 of P.P. Act.”

12. Ms. Agnihotri contends that the impugned order proceeds on a complete mis-appreciation of the evidence on record when it holds that the notices under the PP Act were not served on the respondent, since in so observing, the learned ADJ has been unable to distinguish between notices dated 07.01.1993, 05.03.1993 and 01.11.1994 issued by the Assistant Commissioner (L&E) on the one hand, and the statutory notice dated 15.03.1995 issued under section 4 and two notices dated 15.03.1995 and 21.04.1998 issued under section 7 of the PP Act, which have been duly received by the respondent's son. Counsel submits, that what is mandatory under the PP Act is the service of notices under sections 4 and 7 issued by the Estate Officer; and the notices issued by the Assistant Commissioner (L&E) as referred to in the impugned order are of no relevance in that regard.



13. It is pointed-out that the learned ADJ has also omitted to appreciate that the respondent had appeared before the Estate Officer on multiple dates; had contested the proceedings before the Estate Officer; and at no point had the respondent raised the objection that the statutory notices under the PP Act had not been received by him.
14. It is further argued that as recorded in eviction order dated 11.11.2003, the respondent had failed to file evidence despite repeated opportunities; and when his right to file evidence was closed, he moved an application seeking recall of that order, based on some medical certificate, which plea was rejected by the Estate Officer.
15. It is also argued that the learned ADJ has incorrectly observed in the impugned order, that in view of the appeal PPA No. 01/2013 having been allowed, the other two appeals bearing PPA No. 02/2013 and PPA No. 03/2013 were not being pressed since they had become infructuous, thereby disposing-of the same without prejudice to the rights of the respondent “...to challenge the enhancement as and when levied by the respondent (i.e. DJB) in appropriate proceedings before the Competent Forum.”
16. Ms. Agnihotri invites attention to the decision in ***Jatinder Singh Chawla vs. Delhi Development Authority & Anr.***¹, in which case a Co-ordinate Bench of this court has given its imprimatur to the position that where a person appeared before the Estate Officer but failed to file any written objections, the argument that no statutory notice was served on the person was misconceived and would fail. It

¹ 2022 SCC OnLine Del 2926



is accordingly argued that, in effect and substance, the Co-ordinate Bench has held that the allegation of non-service of the statutory notice loses meaning if the party concerned participates in the proceedings before the Estate Officer.

17. On the other hand, Mr. Pranchal Panwar, learned counsel appearing for the respondent submits, that there is no error in the impugned order, inasmuch as the learned ADJ has correctly concluded that the statutory notices under sections 4 and 7 of the PP Act which are mandatory, were never served upon the respondent; thereby holding that the entire proceedings under the PP Act would fail. Counsel accordingly submits that the impugned order is correct in allowing PPA No. 01/2013 and setting-aside eviction order dated 11.11.2003.
18. Counsel further contends, that to ascertain the factual position as regards service of statutory notices, the learned ADJ had summoned the case file from the petitioner; and on perusal found that there was no proof of dispatch or service like speed-post receipt, registered AD etc., a fact which was not disputed by the officers of the petitioner present before that court. The impugned order recorded the same in the following words :

“(10) I may observe that in the present case the file of the department had also been produced before this Court and as specifically noted by this Court in the proceeding sheet dated 28.5.2015 that it did not contain any proof of dispatch or service like speed post receipt, registered AD etc. and the Ld. Counsel for the appellant has pointed that there was no such proof of notice, a fact which was not disputed by the officer of the respondent present in the Court which included Sh. Jaidev Sarangi, Member (Administration); Sh. Amit Jain, Assistant Commissioner (L&E); Sh. Vilas Rampal, Administrative Officer and Sh. Ram Swaroop, Head



Clerk. In the entire file of the Estate Officer there is no proof of dispatch or even deemed service of show cause notices so issued by respondents under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act (i.e. notices dated 07.01.1993, 05.03.1993 and 01.11.1994). Service of the notice is not a mere formality and is a mandatory requirement so that an effective opportunity is accorded to the alleged Unauthorized Occupant to show cause and place his case before the competent authority for appropriate hearing, which has not been done in the present case.
... ”

(emphasis supplied)

19. As for the argument that notices were served upon one ‘Manoj Kumar’ and ‘Naveen Kumar’, counsel submits that the respondent has no sons named ‘Manoj Kumar’ or ‘Naveen Kumar’, which can be verified by the ration card of the petitioner filed under the cover of an Additional Affidavit dated 03.12.2022 in the present petition. Counsel further submits, that even otherwise, notice dated 05.03.1993, which has purportedly been served upon ‘Manoj Kumar’, is not a statutory notice under the PP Act.
20. It is further argued that once the eviction order is set-aside, the question of imposition of damages does not arise, which is why the respondent never pressed PPA No. 02/2013 and PPA No. 03/2013, which appeals were therefore rendered infructuous and disposed-of as such.
21. Upon a conspectus of the submissions made by the parties and on a perusal of the documents on record, in particular the impugned order, this court is persuaded to accept the following :



- 21.1. The record shows that statutory notice dated 15.03.1995 issued under section 4 of the PP Act was received by one 'Naveen Kumar' on 21.03.1995 on behalf of the respondent.
- 21.2. Notice dated 15.03.1995 under section 7 of the PP Act seeking recovery of damages of Rs.1,05,828/- was also received by the same person 'Naveen' as evidence by the signatures.
- 21.3. A second notice dated 21.04.1998 issued under section 7 of the PP Act seeking recovery of damages of Rs.1,30,032/- was also issued; and a signature appears on it in evidence of receipt of the notice. This signature is different from the ones inscribed by the within-named Naveen on the other two notices, though the person serving the notice records that it was the same Naveen son of Jai Kishan Gupta, who received this notice as well.
- 21.4. Regardless of the objection taken in these proceedings that the person who signed in receipt of the said notices, viz. Naveen Kumar or Naveen is not the respondent's son, the fact remains that in the proceedings arising from the notice under section 7, the respondent did file a reply before the Estate Officer and contested those proceedings.
- 21.5. Most importantly, on a plain reading of the impugned order it is clear that the learned ADJ proceeded on the basis that there was no evidence of service of notices dated 07.01.1993, 05.03.1993 and 01.11.1994 upon the respondent, *on the assumption that those were the statutory notices under sections 4 and 7 of the PP Act*. The learned ADJ accordingly recorded the following :



“ ... In the entire file of the Estate Officer there is no proof of dispatch or even deemed service of show cause notices so issued by respondents under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act (i.e. notices dated 07.01.1993, 05.03.1993 and 01.11.1994). ...”

(emphasis supplied)

- 21.6. However, this is erroneous on point of fact, inasmuch as the notices referred to above were *not* the statutory notice at all, but were notices issued earlier-on by the Assistant Commissioner (L&E). Therefore, the learned ADJ's conclusion that statutory notices under sections 4 and 7 of the PP Act were never served upon the respondent, is *ex-facie incorrect*.
- 21.7. Even otherwise, the respondent participated and contested the proceedings before the Estate Officer under section 4 and even sought opportunity to file evidence, which was closed since the respondent omitted to file evidence despite several opportunities being granted to him.
22. It must be observed at this point, that a perusal of the impugned order shows that even though other grounds challenging the respondent's eviction may have been taken in PPA No.01/2013, none of those grounds was pressed in the appeal and no other ground has been dealt with in the impugned order. Nor has any ground, other than non-receipt of the statutory notices, been canvassed in the present proceedings either. This court cannot therefore enter upon any discussion or decision on any other grounds in its writ jurisdiction.



23. In the above circumstances, the impugned order is clearly erroneous insofar as it has allowed PPA No. 01/2013 setting-aside eviction order dated 11.11.2003.
24. Accordingly, the present petition is disposed-of setting-aside order dated 04.06.2015 insofar as it relates to PPA No.01/2013; and thereby upholding eviction order dated 11.11.2003 made against the respondent.
25. That being said, the question still remains as to what would become of the other two appeals, viz. PPA No.02/2013 and PPA No.03/2013, which are also part of the impugned order. In this regard, the following paras of the impugned order are relevant :

*“(13) The appellant has disputed his liability to pay the enhanced license fee and claimed that he had deposited the amount from time to time. The appeals are pending since the year 2004 i.e. for the last ten years. At the stage of final arguments, the record of the department had been called and duly perused by this Court. The Calculation Sheets which are **Ex.C-1** and **Ex.C-2** which have been placed on record by the competent officer of the respondent reveal that the appellant has already deposited a total sum of **Rs.5,63,876/-** which obviously includes the subject matter of the present appeals i.e. a sum of **Rs.1,30,032/-** and **Rs.68,112/-** which was the issue before the Estate Officer. It is in this background, that the Ld. Counsel for the appellant has submitted that he is not pressing both the appeals bearing **PPA No.2/2013** and **PPA No.3/2013** the same having become infructuous in view of the said deposits but reserve his rights to challenge the enhanced rate of damages/ license fee, if being claimed by the department, before the competent forum/ court in appropriate proceedings. The statements of the appellant and Sh. Ram Swaroop, Head Clerk (Land & Estate Department) have been recorded separately.*

*“(14) In view of the above, both the appeals bearing **PPA No. 2/2013** and **PPA No. 3/2013** are hereby disposed off without*



prejudice to the rights of the appellant to challenge the enhancement as and when levied by the respondent in appropriate proceedings before the Competent Forum.

* * * * *

“(16) In so far as the appeals bearing **PPA No. 2/2013** and **PPA No. 3/2013** are concerned, they are disposed off having become infructuous and not being pressed by the appellant in this background as the amount involved stood deposited. The said appeals have been disposed off without prejudice to the rights of the appellant to challenge the enhancement as and when levied by the respondent in appropriate proceedings before the Competent Forum.”

(emphasis supplied; bold in original)

26. It is seen therefore, that though the respondent disputed his liability to pay enhanced license fee, he had in any case deposited that amount from time-to-time; and though PPA No.02/2013 and PPA No.03/2013 remained pending for more than a decade, the respondent did not press the appeals before the learned ADJ, submitting that those appeals had become infructuous since the deposits had already been made. The respondent reserved his right to challenge the enhanced rate of license fee before the competent court/forum in appropriate proceedings and his statement to that effect was recorded by the learned ADJ. In this backdrop PPA No.02/2013 and PPA No.03/2013 were disposed-of as not pressed, without prejudice to the rights of the respondent “...to challenge the enhancement as and when levied by the respondent in appropriate proceedings before the Competent Forum”(emphasis supplied). It is also seen that neither did the petitioner press for the respondent to pay any additional sum towards



license fee/arrears/damages for unauthorised occupation; nor did the respondent ask for refund of the amounts that had been deposited by him.

27. Not only were the said two appeals not pressed before the learned ADJ, no submissions have been advanced by either of the parties in relation to PPA No.2/2013 and PPA No.3/2013 in the present proceedings either.
28. Since the issue of levy, rate and quantum of damages has not been addressed by either of the parties in the present proceedings, this court makes no observations on that issue. The rights and contentions of both parties in relation to the levy, rate and quantum of damages for unauthorised occupation are left open, to be dealt with in appropriate proceedings before the competent court/forum, in accordance with law.
29. The present petition is disposed-of in the above terms.
30. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 28, 2023/ak

(Released on : 11th September, 2023)