

21.04.2025
(D/L 29)
Ct.-17
(Susanta
Samar)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**
APPELLATE SIDE

W.P.A. 1135 of 2025

Ramakrishna Vivekananda Mission & Anr.

-Vs-

The Union of India & Ors.

Mr. Kishore Datta, Sr. Adv.,
Mr. Siddhartha Banerjee,
Mr. Vivekananda Bose,
Mr. Jaydeb Ghorai,
Mr. Ratikanta Pal,
Mr. Diptesh Ghorai,

.... For the Petitioners.

Mr. Sahasrangshu Bhattacharjee,
Mr. Indrajeet Dasgupta,
Mr. T. P. Acharya,

.... For the Union of India.

Mr. Indrajeet Dasgupta,
Mr. Gourab Maiti,
Mr. Shirsendu Pal,

.... For the Cantonment Board, Barrackpore.

A notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the “*said act of 1971*”) is under challenge, *inter alia*, on the grounds that the subject premises is not a “Public Premises” within the meaning of Section 2(e) thereof.

Mr. Kishore Datta, learned senior advocate for the petitioners submits that the subject property belongs to the petitioner no.1 and there is a chain of title deeds to prove such ownership. The eviction proceeding under the said Act of 1971 being summary in nature, and the Estate Officer since has a limited jurisdiction, the issue of title of the subject property cannot be decided in such a proceeding; as such, the initiation of the said eviction proceeding cannot be sustained. To fortify such argument, he places reliance on the decision of the Hon’ble Supreme Court in the case of ***Kaikhosrou (Chick) Kavasji Framji Vs. Union of India & Anr.*** reported in **(2019) 20 SCC 705.**

He further submits that the impugned notice does not specify the grounds of eviction; as such, it is not in conformity with the Form-A prescribed under the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971 rendering the notice incurably defective.

Mr. Dasgupta, learned advocate for the cantonment board submits that the petitioners are yet to bring materials on record to justify their claim of title over the subject property; in fact, they have not yet replied to the impugned notice.

He further submits that in the notice, it has been mentioned that the petitioner no.1 is in unauthorized occupation of the subject public premises, which itself is sufficient compliance of the requirement of sub-section 2(a) of section 4 of the said act of 1971.

Mr. Sahasrangshu Bhattacharjee, learned advocate for the Union of India submits that mere claim of title over the subject property would not vitiate the eviction proceeding.

Heard learned advocate(s) for the parties, perused the materials-on-record.

The challenge to a notice to show-cause is always prematured. The petitioners though have sought to make out a defence of title over the subject property, but such defence has not yet been taken in the eviction proceeding inasmuch as reply to the show-cause has not yet been filed.

It is always open to the petitioners to set up a title over the subject property as a defence and if such defence is taken, the Estate Officer is obliged to address the same.

The reliance on the decision of the Hon'ble Supreme Court in ***Kaikhosrou (supra)*** is entirely misplaced in the facts and circumstances of the present case inasmuch as in the said decision, the Hon'ble Supreme Court, while deciding the appeal arising out of the final judgment and order of the

Hon'ble High Court at Bombay passed in connection with the order of eviction passed under the said Act of 1971, had observed that:

“...50. Keeping in view of the statement of law laid down by this Court in cited decisions supra, when we examine the facts of the case in hand, we have no hesitation in holding that the appellants have raised a bona fide dispute on the question of ownership of the suit property qua Respondent 1 (Union of India).

A notice to show-cause under section 4 of the said Act of 1971 mandates that the recipient of such notice must respond to it within 7 days from the date of issue. In the impugned notice, **January 16, 2025** was the date within which the petitioner no.1 should have responded to it but has failed to do so; however, Mr. Sahasrangshu Bhattacharjee and Mr. Indrajeet Dasgupta jointly submits that time to file reply to the said notice may be extended. In view of such concession, time to file reply to the impugned show-cause notice is extended for a further period of **seven days** from date; in default, the Estate Officer shall proceed *ex parte* against the petitioner no.1.

W.P.A. 1135 of 2025 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)