

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 28.04.2025
DELIVERED ON: 28.04.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**M.A.T. 621 of 2025
With
I.A. No. CAN 1 of 2025
Ramkrishna Vivekananda Mission & Anr.
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Vivekananda Bose
Mr. Joydeb Ghorai
Mr. Diptesh Ghorai
Mr. Ratikanta Pal.....for the appellants**

**Mr. Saharangshu Bhattacharyya
Mr. Tirtha Pati Acharyafor the Union of India**

Mr. Indrajit Dasgupta.....for the respondents 2 to 6

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated April 21, 2025 in W.P.A. 1135 of 2025. The said writ petition was filed by the petitioners challenging a notice issued under section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for brevity 'the Act'). The petitioners questioned the said notice as being defective inasmuch as the grounds on which section 4 was invoked, were conspicuously absent in the notice, which was challenged in the writ petition.
2. The learned Single Bench by the impugned order, was of the opinion that the challenge to the show-cause is premature and 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 notice has not yet been filed. Therefore, the learned Single Bench observed that 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.

3. On behalf of the State, reliance was placed on the decision in the case of ***Kaikhosrou (Chick) vs. Kavasji Framji Vs. Union of India & Anr.*** reported in **(2019) 20 SCC 705**, which, in the opinion of the Hon'ble Single Bench, was not fully applicable to the facts and circumstances of the case. Accordingly, the writ petition was disposed of by directing the appellants to file a reply to the notice issued under section 4(2) of the Act, for which time was extended. Aggrieved by such order, the writ petitioners have filed the present appeal.
4. We have elaborately heard the learned advocates appearing for the parties and carefully perused the materials placed on record.
5. Section 4 of the Act deals with issue of notice against order of eviction. Sub-section (1) of section 4 of the Act specifies that if the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner provided under the Act, a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.
6. Sub-sections (1A) and (1B) will not have application to the facts of this case. Sub-section (2) states that notice shall— (a) specify the grounds on

which the order of eviction is proposed to be made. Under the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, Rules have been framed in exercise of the powers conferred under section 18 of the Act. Rule 3 would be relevant for the purpose of this discussion, which deals with form of notices or orders. It states that a notice or order under the Act shall be in one of the appropriate Forms appended to these rules.

7. Form A is the form of notice under sub-section (1) and clause (b) (ii) of sub-section (2) of section 4 of the Act. It is not in dispute that the notice, which was impugned in the writ petition, has adopted Form-A, which has been prescribed in the Rules. However, the statutory form after first paragraph mentions the 'Grounds'. This, pre-supposes that the authority, who is issuing the notice has to specify the grounds on which the order of eviction is proposed to be made. This is a statutory mandate in terms of section 4(2)(a) of the Act. However, the estate officer, while issuing the notice has missed out on giving the ground on which the order of eviction is proposed to be made. Therefore, it is a case, where the notice impugned in the writ petition is defective for such reason alone.
8. With regard to the other grounds, which have been canvassed by the learned advocate for the appellants, those are all touching upon the merits of the matter. We fully subscribe to the view taken by the learned Single Bench that the appellants, though, sought to make out a defence over the title of the subject property but such defence has not been taken in the eviction proceedings inasmuch as the reply to the show-cause notice has not yet been filed. Therefore, all arguments, which have been made by the writ petitioners touching upon the merits of the matter cannot be gone into

at this stage except to state that the notice impugned in the writ petition dated January 6, 2025 is defective.

9. If such is the position, the respondent, namely the estate officer should be empowered to issue a fresh notice removing the defect, which has been pointed out above.
10. For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is allowed to the extent by setting aside the notice issued under section 4(2) of the Act dated January 6, 2025 with a direction to the estate officer to specify the grounds on which the order of eviction is proposed to be made.
11. Such revised notice be issued by the estate officer within 30 days from the date of receipt of server copy of this order and after giving an opportunity to the appellants to submit their reply, the estate officer shall proceed to take action in accordance with law.
12. It is made clear that the merits of the contentions, which have been raised by the appellants/writ petitioners have not been gone into. It will be well open to the appellants to raise all contentions in response to the notice that has been directed to be issued by the estate officer.
13. No costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)