

Item No. **08-21**

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

HEARD ON : 04.03.2025

DELIVERED ON : 04.03.2025

CORAM:

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS),J.)

CO/2447/2015

(Assigned)

with

CAN/1/2019(Old No.CAN/7533/2019)

Union of India & Anr.

Vs.

Biju Mech

With

CO/1991/2013

with

CAN/1/2019(Old No.CAN/7532/2019)

Union of India

Vs.

Smt. Shanti Thapa & Anr.

With

CO/2448/2015

with

CAN/1/2019(Old No.CAN/7530/2019)

Union of India & Anr.

Vs.

Budhiman Damani

with

CO/2452/2015

with

CAN/1/2019(Old No.CAN/7534/2019)

Union of India & Anr.

Vs.

Soma Limbu

With

CO/2453/2015

with

CAN/1/2019(Old No.CAN/7535/2019)

Union of India & Anr.
Vs.
Pushpa Chhetri
With
CO/2454/2015
with
CAN/1/2019(Old No.CAN/7553/2019)
Union of India & Anr.
Vs.
Suraj Chhetri
With
CO/2455/2015
with
CAN/1/2019(Old No.CAN/7551/2019)
Union of India & Anr.
Vs.
Sukh Bahadur Alle
With
CO/2456/2015
with
CAN/1/2019(Old No.CAN/7550/2019)
+
CAN/2/2024
Union of India & Anr.
Vs.
Babu Ram Chhetri
With
CO/2457/2015
with
CAN/1/2019(Old No.CAN/7549/2019)
Union of India & Anr.
Vs.
Kamal Lohar
with
CO/2458/2015
with
CAN/1/2019(Old No.CAN/7548/2019)
Union of India & Anr.
Vs.
Man Singh Tamang
With
CO/2459/2015
with
CAN/1/2019(Old No.CAN/7547/2019)
+
CAN/2/2024

Union of India & Anr.
Vs.
Ganesh Subba
With
CO/2460/2015
with
CAN/1/2019(Old No.CAN/7562/2019)
Union of India & Anr.
Vs.
Darman Sangma
With
CO/2461/2015
with
CAN/1/2019(Old No.CAN/7546/2019)
Union of India & Anr.
Vs.
Balkrishna Thapa
With
CO/2466/2015
with
CAN/1/2019(Old No.CAN/7543/2019)
Union of India & Anr.
Vs.
Saran Daimari

Appearance:-

Mr. Kumar Jyoti Tewari, Sr. Adv.
 Mr. Sunil Kumar Singhania
 Mr. Rahul Sarkar, Adv.
 Ms. Dipika Sarkar, Adv.

...For Petitioners

Mr. Soumya Majumder, Sr. Adv.
 Mr. Ranjan Saha, Adv.

...For Opposite Party

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Justice CHAITALI

CHATTERJEE (DAS), J.)

In Re. CO 2447 of 2015 with CAN 1 of 2019 (Old No.CAN 7533 of 2019)

1. This application under Article 227 of the Constitution of India arises out of the judgement and order dated 26th February, 2013 passed by Shri Kamal Roy, Additional District Judge, Paschim Medinipur in Misc. Appeal No.73 of 2012 (Biju Mech Vs. Union of India) under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short “the Act of 1971”) is taken up for hearing analogously with other similar revisional applications filed by the Union of India against the opposite parties being the appellants before the Appellate court, as stated in the cause title. The Learned advocates are representing the opposite parties in all the cases.

2. The crux of the matter in a nutshell is that one notice was issued by the Estate Officer, Salua Air Force on 12.10.2011 upon the present opposite parties under Sub Section (2) of Section 51A of the Act of 1971 directing all the opposite parties to remove the buildings, structure, fixtures erected, goods displayed/spread on the public premises mentioned in the schedule before 9.11.2011 and/or to show cause as to why the same should not be removed on or before the above mentioned date. Upon receiving the said notice, the reply was given by the opposite parties on 31.10.2011 to the Group Captain, Estate Officer, Air Force Station, Salua intimating specifically that they are residing in the above place since 1975 and presently at least 500 families are residing there very peacefully and the total population comprises of Gorkha, Asamia, Tribals, Santals, out of

which 40% is SC, 10% is ST and 50% is general caste. In the year 1996 one notice for eviction was served upon them by the Station Commandant, Air Force Station, Salua, Kharagpur, Midnapur (West) however on the basis of the representation made by the local inhabitants/opposite parties no action was taken. Subsequently, in the year 2009 another notice was served for eviction but on the basis of the representation filed by the opposite parties along with other inhabitants no step for eviction was taken. It is contended on behalf of the petitioner that the disputed area is densely populated and they are residing since long in the aforesaid mouzas by raising construction of dwelling houses. Personal hearing by the Estate Officer was given on 15.11.2011 and after taking into consideration the statements and documents, by an order dated 5th May, 2012 direction was given to demolish the building/structure within a period of 15 days from the receipt of the order.

Being aggrieved thereby an appeal was filed by the opposite parties under Section 9 of the Act of 1971 before the learned Court of Additional District Judge, Paschim Medinipur and the matter was heard by the Court of the learned Additional District Judge, being Misc. Appeal No.51 of 2012. The Union of India/Petitioner /the present petitioners filed written objection to the said petition.

The learned Appeal Court after hearing both the parties was pleased to deliver the judgement on 26th February, 2013 whereby the order dated 5.5.2012 passed by the Estate Officer was set aside.

3. The learned Senior advocate appearing on behalf of Union of India represented by the Station Commandant draws the attention of this Court to the relevant part of the judgement wherefrom it reveals that the learned Court proceeded with the notion that no notice under Section 4 of the said Act of 1971 was ever served upon the present opposite parties though an order of eviction had been passed by the Estate Officer. Attention of this Court is drawn to the memorandum of appeal filed before the learned District Court where appellants specifically took the ground that 'no eviction proceeding under Section 4(1) of the said Act of 1971 is maintainable and no notice of eviction was served upon the appellant or on other inhabitants of that area and, therefore, the inhabitants of the aforesaid mouzas have built up their dwelling houses in permanent nature and has also obtained ration card, voter identity card, electricity and telephone connection in their own name since long'.
4. Per contra Mr. Soumya Majumder the Learned Senior advocate appearing on behalf of the batch of opposite parties tried to impress upon the Court that the said provision of Section 5(A)(2) was incorporated in the Act of 1971 by way of amendment in the year 1980 and the present opposite parties are residing there much prior to the amendment came into effect. It

is further contended that the possession of the petitioner is traceable since last 50 years which is evident from various documents issued by the Government Department. However, the learned Estate Officer was incorrect in arriving at the decision of removal of construction when it was specifically observed 'on perusal of documents relating to land mutation copies submitted by the opposite parties that some amount of land is in favour of the petitioner but she has occupied more than the land specified in the documents submitted by him which has not been by permission of the Air Force Authority, who is the rightful owner of the land.' It is further argued that the appellants never disputed the status of the area occupied by the petitioner (including the people related) as public premises, as observed by the Estate Officer in his order. He further argues that the order of the Estate officer in a way amounts to an order of eviction which is beyond the scope and ambit of the power to be exercised the officer.

5. Heard the submissions of both the Learned Advocates
6. The genesis of the case rest upon the notice dated 12.10.2011 served upon the opposite parties u/s 5 A (2) of the Act 1971. Therefore let the said provision be revisited only to ascertain the cause and purpose of serving such notice.

Section 5A (2) reads as follows; Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure

or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days ,as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

7. The Notice as served upon the opposite party is clear that the Estate officer being the Authority concern was of the opinion that the building /structures /fixture erected on the public premises mentioned in the said areas in contravention of section (1) of Section 5 A of the Public Premises (Eviction of Unauthorized Occupants) Act ,1971and those should be removed.
8. The disputed land is a public premises under Government of India ,Ministry of Defence as claimed where in 1942 an aerodrome was made operational for the allied forces and Central Government acquired a vast tract of land measuring 2336.22 acres amongst others in Mouza Salua marked as Radder. In 1951 by executing a deed of conveyance the Government of India in Ministry of defence transferred an area of 752 acres from said 2336.22 acres to the State of West Bengal to establish a camp for

Eastern Frontier Rifles (EFR). An area measuring 12.55 acres of land has been transferred in Refugee Relief and Rehabilitation (R.& R.R) Department ,Government of West Bengal on October 26,1989 and retained 1571.67 acres of land therefrom . Later on the abandon runway between 1983 and 1987 within the fenced area from existing 1571.67 held by Air Force, gradually encroached upon by the retired EFR personnel and civilians. and they raised construction which poses a threat to the security to the strategic installation in the air force base at Salua .

9. So the very foundation of the case rests on the point that no Notice was served upon the opposite parties under section 4 of the said Act which speaks about issuance of Notice to show cause against order of eviction.
10. The learned Appellate Court was of the view that “Estate Officer has passed the impugned order of eviction under Sub-Section 1 of Section 5B of the Public Premises Eviction of (Unauthorized Occupant) Act, 1971 without complying with the provisions of Section 4 of the said Act. Sub-Section 4 of Section 4 of the Act speaks where the Estate Officer needs or has reason to believe that any person is in occupation of the public premises; then he shall serve the notice on those persons or persons for the purposes of this Act”.
11. The learned Court further observed that “the area of land from which the appellant is alleged to be evictable is not also defined and appears to be

vague. The Estate Officer also does not describe the premises definitely and correctly in the impugned order of eviction. The entire proceeding started against the occupation is against the provisions of Statute and hence the petitioner/appellant cannot be evicted from the said premises on the strength of the said proceeding". The above observation clearly shows that the finding of learned trial Court was that the order was passed by the Estate Officer for eviction of the present opposite parties when the order clearly speaks about demolition of construction raised there. The further observation of the Learned Appellate court in the impugned judgment that "It is only ,if procedure under section 4 is complied with the eviction of the unauthorized occupants under section 5 cannot takes place' completely de hors the intention of the legislature though the Learned court's finding established act the Act of 1971 is a special Act and is very much technical categories in application .It goes without saying that the Learned Appeal Court's observation was based on the grounds taken in appeal filed by the opposite parties.

12. In the above facts and circumstances, this Court is of the view that the entire matter needs further consideration and to be heard afresh by the Learned Appellate Court.

Accordingly this revisional application alongwith other revisional applications by virtue of this common judgement stands allowed .The impugned order passed by the Learned Court of Additional District Judge

passed on 26th February, 2013 is hereby set aside. The matter is remanded back to the Learned Appellate Court with a direction to hear the appeal afresh after giving an opportunity of hearing to both the parties and to dispose of the same independently as expeditiously as possible without being influenced by any of the observations made by this court. It is further directed that during pendency of the proceeding no coercive action shall be taken by the present petitioner/Union of India in terms of Section 5B order of the Estate Officer.

13. There will be however no order of cost.
14. The CAN applications filed in the respective revisional applications for expeditious hearing of the matters are also disposed of.
15. Urgent Photostat certified copy of this judgement if applied for, be given to the parties on priority basis, upon compliance of all formalities.

(CHAITALI CHATTERJEE (DAS), J.)