(2012) 07 SHI CK 0023

High Court of Himachal Pradesh

Case No: CWP No. 1104 of 2010-B

Joginder Singh		APPELLANT
	Vs	
State of Himachal Pradesh		RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

- Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 - Section 14, 2(d), 4, 5, 7
- Trade and Merchandise Marks Act, 1958 - Section 49(3)

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: B.S. Chauhan, for the Appellant; Vikas Rathore, D.A.G., for the Respondent

Judgement

Rajiv Sharma, Judge

1. Respondent No.2, i.e., Collector-Cum-Divisional Forest Officer, Forest Division, Rohroo, District Shimla (HP) issued a notice to the petitioner on 01.08.2006 under Sub-section (1) of Section 4 of the Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as "the Act" for the sake of brevity). According to the notice, the petitioner was in unauthorized occupation of Khasra Nos. 124, 135, 139, 140, 141, 146, 152, 161, 164 and 441, measuring 2-89-31 hects. The respondent No. 2 passed an order of eviction on 28.07.2008. Petitioner preferred an appeal before the Divisional Commissioner, Whether the reporters of the local papers may be allowed to see the judgment? Yes.Shimla, Division Shimla against the order dated 28.07.2008. The Divisional Commissioner, Shimla, Division Shimla-2 dismissed the appeal on 21.12.2009. Mr. B.S. Chauhan, learned counsel for the petitioner has strenuously argued that respondent No. 2 has not complied with mandatory provisions of Section 4 of the Act. He then contended that the petitioner has been served with a cyclostyle notice and there is no application of mind by respondent No. 2. He then argued that it was necessary for respondent No. 2 to

form an objective opinion before issuing a show-cause notice to the petitioner and specific grounds were required to be mentioned in the affidavits. In other words, his submission is that the notice was vague and sketchy and not capable of being replied.

2. Mr. Vikas Rathore, learned Deputy Advocate General has supported the orders passed by the Collector-Cum-Divisional Forest Officer, Rohru Forest Division, Rohru, dated 28.07.2008 and Divisional Commissioner, Shimla Division, Shimla, dated 21.12.2009.

3. I have heard the learned counsel for the parties and gone through the pleadings carefully.

4. Section 4 of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 reads thus:

4. Issue of notice to show cause against order of eviction.-(1) If the Collector is of opinion that any persons are in unauthorized occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The Collector shall cause the notice to be affixed on the outer door or some other conspicuous part, of the public premises, or of the estate in which the public premises are situate, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Collector knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

5. A bare perusal of Sub-section(1) postulates that the Collector has to form his opinion that a person is in unauthorized occupation of any public premises situate in his jurisdiction and he should be evicted. According to Sub-section (2) of Section 4, the notice must specify the grounds on which the order of eviction is proposed to be made. The respondent-State has framed the Rules called the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Rules, 1971. Rule-3 deals with

form of notices and orders. Form of notice under Sub-Section (1) of Section 4 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 is prescribed by form ''A''.

6. What has been mentioned in Annexure P-1, dated 1st August, 2006, is that a report has been received from the field staff of Khashdhar Range that the petitioner is in unauthorized occupation. It is not evident from Annexure P-1 whether respondent No. 2 has gone through the report and thereafter has formed his independent opinion that the petitioner is in unauthorized occupation. He ought to have applied his independent mind after the report was received from the field staff of Khashdhar Range. The opinion could only be formed after discussing the report, though not in great detail. Notice in the present case was not precise and was not capable of being replied effectively. It has come in the order dated 28.07.2008 that the Tehsildar Chirgaon has submitted the demarcation report on 16.09.2004. It is not borne out from the record that the petitioner was associated at the time when the demarcation report dated 16.09.2004 was prepared by the Tehsildar, Chirgaon. The petitioner should have been involved at the time of preparation of the demarcation report and the material collected behind the petitioner could not be used against him. There is a detailed procedure the manner in which the demarcation has to be carried out. The respondent No. 2 has mentioned the names of Sh. Devinder Singh, Forest Guard, Shri Bhadru Mall, Dy. Ranger and Shri Munish Ram Pal, F.R., R.O. Chirgaon, who according to him have deposed in the matter. Their statements have not been discussed at all by respondent No. 2. The Collector-Cum-Divisional Forest Officer, Rohru, Forest Division, Rohru by giving the names of officers/officials merely could not give a positive finding that the petitioner has encroached upon the forest land. He has also stated that he has gone through the documents. However, what was contained in the documents, has not been discussed. He has not even discussed what is contained in the demarcation report. Learned Appellate Authority has also overlooked these aspects while dismissing the appeal preferred by the petitioner against the order dated 28.07.2008. It was the duty of the Appellate Authority to discuss the entire evidence led by the parties. The Appellate Authority has also not even discussed the statements made by Shri Devinder Singh, Bhadru Mall and Shri Munish Ram Pal.

7. Their Lordships of the Hon''ble Supreme Court in Wire-Netting Stores and Another Vs. The Delhi Development Authority and Others, have held that it is only after the procedure u/s 4 is complied with, the eviction of unauthorized occupants u/s 5 can be made. Their Lordships have held as under:

It is only after the procedure in this section is complied with that the eviction of unauthorised occupants u/s 5 can take place. It appears that the Estate Officer did not follow the procedure of Section 4, nor did he give a notice which would comply with its terms and that is the reason why the notice has not been produced before us for our perusal. The petitioners said that they had mislaid the notice and could

not produce a copy which probably is also not true. In any case, both sides seem to have suppressed the notice from the court. In this view of the matter we can hold that the procedure laid down by Section 4 was not followed, for it was the burden of the authority to establish to our satisfaction that they were acting in accordance with the law. In any case, no opportunity appears to have been given to the petitioners for showing cause against the proposed eviction. This is contrary not only to the law laid down but also to the principles of natural justice. In these circumstances, we have no option but to allow the petition. The action of the Authority appears to have been most high-handed on the facts of the case as brought outbefore us. If the Authority wished to evict the petitioners from the occupation of these premises it behaved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil court should be so oblivious to their own duties as laid down in the Act. We accordingly allow the petition and order the restoration of the premises to the petitioners and return of all the machinery and other goods and parts of their factory which have been seized from them.

8. In Sheik Khalilur Raheman Vs. Estate Officer and Others, , the Division Bench has held that the provisions of Section 4 of Orissa Public Premises (Eviction of Unauthorized Occupants) Act (7 of 1972) and Orissa Public Premises (Eviction of Unauthorized Occupants) Rules (1962) are mandatory. The Division Bench has held as under:

12. The next question to consider is whether these provisions are mandatory and must be fully complied with or solitary compliance of sub-sec. (3) of S. 4 would be sufficient to confer validity on the eviction proceeding, notwithstanding that other modes of service have been completely ignored. From the plain and unambiguous language of the provisions of sub-secs. (1), (2) and (3) of Sec. 4 read with Rules it appears to me that all the provisions are mandatory. They confer jurisdiction and authority on the Estate Officer to evict unauthorized occupants of Government land only after giving such occupants an adequate opportunity to be heard against eviction. His decision is final because S. 14 of the Act bars a suit and other proceedings in respect of matters or disputes for determining or decising which provision is made in the Act. Since these provisions oust the jurisdiction of the Civil Court and R. 5 (2) of the Rules makes the procedure before the Estate Officer summary in nature, strict compliance of sub-secs. (1) (2) and (3) of S. 4 of the Act and of the relevant rules is thereby indicated to be essential. The general principle is that where an Act enjoins upon a specified authority that a particular act has to be done in a particular manner so that it may have jurisdiction to act further in the matter, the act must be done in that manner in order to be considered valid, and confer on the authority such further jurisdiction. Since, as indicated already, the far reaching effect of the Final Order of the Estate Officer acting under the provisions of the Act is to deprive a person of his property right, at the same time debarring him from agitating the matter in the Civil Court, the aforesaid principle must have its full play

and the Estate Officer cannot skip over some of the provisions of Sec. 4 of the Act and of the Rules relating to service of notice, at his option, to appropriate jurisdiction.

13. Our ultimate conclusion from the aforesaid discussion is that Section 4 of the Act is mandatory and all its requirements must be complied with strictly, so also the requirements of Rules 3 and 4 of the Rules. In the present case, excepting sub Sec. (3) of S. 4 other provisions of the Act and Rules have not been complied with. Annexures 1 and 4 are, therefore, liable to be quashed.

9. In Dr. Yash Paul Gupta Vs. Dr. S.S. Anand and others AIR 1980 J and K 16, the Division Bench has held that Section 4 of the Public Premises (Eviction of unauthorized Occupants) Act, 1959 was mandatory. In this case, the only notice served upon the petitioner was:

You have occupied Govt. Quarter unauthorisedly.

The Division Bench has held as under:

7. The only ground of eviction which the notice specifies is, that the appellant occupied the Govt. quarter mentioned in the notice unauthorisedly. This statement in our opinion cannot be characterized as a ground of eviction by any stretch of logic. This may be at the most an inference of unauthorized occupation based upon some ground other than the fact that the appellant was an unauthorized occupant of the public premises. How his occupation of the premises which at its inception was admittedly lawful became unauthorized, must have been the outcome of some supervening circumstances. What were those supervening circumstances, the appellant had every right to know, as it would be those circumstances alone which would constitute the ground for his eviction within the meaning of Cl. (a) of sub-s. (2). How could it be said, that merely telling the appellant that he was an unauthorized occupant because he occupied the Govt. quarter unauthorisedly tantamounted to specifying the grounds on which his eviction was proposed? Such a statement in the notice could hardly constitute a ground as already observed.

9. Even otherwise also we are clearly of the opinion that the learned single Judge was not right in holding that the appellant had knowledge of the fact that his allotment of the Government quarter had been cancelled by the Supdt. SMGS Hospital, Jammu, as early as on 19.2.1974. The appellant had categorically denied on oath that he had ever received the said letter. The respondents did not produce this letter in the Court even after the appellant denied in his rejoinder affidavit that no such letter was ever received by him. The reply affidavit of the respondents too does not go any further beyond stating that "the petitioner was asked by the Supdt. SMGS Hospital, Jammu, vide his Order No. E-1/10199 dated 19.2.1974 to vacate the quarter in question." Nothing has been shown or even alleged as to how and in what manner this letter was served upon the petitioner. We have, therefore, nothing before us beyond the ipse dixit of the respondents that this letter was served upon

the appellant. Even the notice issued by respondent No. 1 on 11.7.1974 does not indicate that the allotment of the appellant was cancelled by the Supdt. SMGS Hospital on 19.2.1974. We are further of the opinion, that the other circumstance relied upon by the learned single Judge, that the file of the Supdt. SMGS Hospital, Jammu, contained letters written by the appellant to the authorities for reconsidering their decision to cancel his allotment of the Govt. Quarter also indicated that the appellant had knowledge of the earlier letter dated 19.2.1974, could not have been taken notice of for more than one reason. To begin with, all those letters which were relied upon by the learned single Judge were never put to the appellant for admitting or denying their execution. Secondly, not even a Single letter out of those letters was either relied upon by the respondents or even alluded to by them in their reply affidavit. It was for the respondents to make out a case for themselves by making specific pleadings in their reply affidavit, or by enclosing all those letters alongwith their reply affidavit in order to give even a remote indication to the appellant as to what they would like to establish at the trial, and not for the Court to come to their rescue by looking into those letters and taking them as proved against all canons of the law of evidence. We are pained to express so much disagreement with the learned single Judge but we find ourselves helpless in avoiding the same. It is well settled that a party cannot be allowed to prove what it has not actually pleaded. Unlike ordinary suits where the evidence, oral and documentary, is adduced by the parties in support of their respective cases, writ petitions are decided merely and mainly on the basis of affidavits which makes it a fortiori necessary that pleadings in writ petitions must be far more explicit to be in ordinary suits. The conclusion is, therefore inescapable that there was no compliance with the mandatory provisions of Cl. (a) of sub-s. (2) which vitiated the entire subsequent proceedings. As the other ground as to whether or not there was also sufficient compliance with cl. (b) of sub-s. (2) in so far as the time gap between the receipt of the notice and the date of the proposed eviction is concerned, has not been pressed before us, we do not deem it necessary to express our opinion in regard to the finding recorded by the learned single Judge in that behalf.

10. In J.M.A. Industries Ltd. and Another Vs. Union of India and Another, the Division Bench has held that the administrative authorities exercising powers under statutory provisions should realize that whether they are issuing a show cause notice why a certain action should not be taken or are communicating the reasons for decisions, it is not sufficient merely to recite the language of the statutory provisions but it is also necessary that the actual facts on which action is proposed to be taken or on which the decision is based should also be indicated. The Division Bench has held as under:

1. It is high time that the administrative authorities exercising powers under statutory provisions should realized that whether provisions should realize that whether they are issuing a show cause notice why a certain should not be taken or are communicating the reasons for decisions, it is not sufficient merely to recite the

language of the statutory provisions but it is also necessary that the actual facts on which action is proposed to be taken or on which the decision is based should also be stated or indicated. The truth of this observation is borne out by this observations is borne our by this case in relation to Section 49 (3) of the Trade and Merchandise Marks Act, 1958 (The Act), and Rule 86 of the Trade and Merchandize Marks Rules, 1959.

10. If the matter had remained there, there could be no valid defence to the writ petition praying that the impugned decision be quashed. But the counter-affidavit filed by he Government disclosed that the order of rejection passed by the Government was a fully reasoned by order. The only mistake committed by the Government was not to communicate the order which was passed on the application of the petitioners, but only the conclusion that the real reasons for the rejection of the application fell under the guidelines set out for the Government in Section 49 (3). It is this tendency of administrative authorities of informing the petitioners only of the conclusion and not the reasons for the conclusion which creates dissatisfaction and which compels the affected persons to challenge the orders of the Government in courts. This habit is reminiscent of what used to be done by administrative authorities and is still done by arbitrators. Knowing that the remedy by way of a certiorari goes against the record of the order of the administrative authority, it was once believed that if the record contained no reasons for the administrative order or action, then no relief by way of certiorari could be given. Similarly, the arbitrators often give a bare award without reasons, so that no judicial review of it is possible. While the arbitrators still enjoy this protection, the administrative authorities no longer do so. In spite of Section 12 of the (English) Tribunals and Inquiries Act, 1958 which requires that certain specified Tribunals shall furnish the statement of reasons for the decision if requested on or before giving of the decision, Professor S. A. de Smith could still say as late as 1969 that "there is no general rule of English law that reasons must be given for administrative (or indeed judicial) decisions". (Judicial Review of Administrative Action, 2nd edition, P. 133). Fortunately, the courts in India were not handicapped by the technicalities which hindered the development of case law in England requiring quasi-judicial authorities to give reasons for decisions.

11. Their Lordships of the Hon''ble Supreme Court in Nasir Ahmad Vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, , while dealing with a case of Administration of Evacuee Property Act, 1950 have held that it was essential to state the particulars to enable the appellant to answer the case against him before declaring him evacuee. Their Lordships have further held that Section 7 of the Act requires the Custodian to form an opinion that the property in question is evacuee property within the meaning of the Act before any action under that section is taken and also, under Rule 6 the Custodian has to be satisfied from information in his possession or otherwise that the property is prima facie evacuee property before a notice is issued. Their Lordships have further held that where the

authority concerned did not apply his mind to the relevant material before issuing the notice u/s 7 the notice is not valid. Their Lordships have held as under:

3. The facts stated above clearly show that the notice and the declaration that followed are both invalid. The notice called upon the appellant and his brother to show cause why they should not be declared evacuees under cl. (iii) of Section 2 (d) of the Act and the ground mentioned in the notice was also based on that clause yet the Assistant Custodian found that they were evacuees under clauses (i) and (ii) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on cl. (iii) was vague and the notice was defective so far as that ground was concerned, but that was the only case the appellant was called upon to answer. The foundation of a proceeding u/s 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the appellant was an evacuee under clauses (i) and (ii) of Section 2 (d) of the Act must be held invalid.

4. Under Rule 6 the notice u/s 7 must be issued in the prescribed form and contain the grounds on which the property is sought to be declared evacuee property. As stated earlier, the notice that was issued in this case merely reproduced the form without mentioning the particulars on which the case against the appellant was based. It was essential to state the particulars to enable the appellant to answer the case against him. Clearly therefore the notice did not comply with Rule 6 and could not provide a foundation for the proceedings that followed.

5. What is said in the preceding paragraph makes it plain that the authority concerned did not apply his mind to the relevant material before issuing the notice. The same thing is apparent from another fact. It has been stated that on November 29, 1952 the Deputy Custodian, Deoria, dropped the proceeding seeking to declare the appellant an intending evacuee and that on the same day he directed the initiation of a proceeding u/s 7. Section 7 requires the Custodian to form an opinion that the property in question is evacuee property within the meaning of the Act before any action under that section is taken. Also, under Rule 6 the Custodian has to be satisfied from information in his possession or otherwise that the property is prima facie evacuee property before a notice is issued. On November 29, 1952 no evidence was found to support a declaration that the appellant was an intending evacuee. There is no material on record to suggest that on that very day the authority had before him any evidence to justify the initiation of a proceeding to declare the appellant an evacuee and his property ass evacuee property. The notice u/s 7 thus appears to have been issued without any basis. The Assistant Custodian General who found no merit in the revisional application preferred by the appellant overlooked these aspects of the case. We are therefore unable to agree with the High Court that the Assistant Custodian General''s order did not suffer from any error.

Accordingly, in view of the observations and discussions made hereinabove, Annexure P-1, dated 01.08.2006, Annexure P-2, dated 28.07.2008, Annexure P-3, dated 21.12.2009 are quashed and set aside. However, it shall be open to the respondents to proceed with the matter in accordance with law. No costs