

(2004) 07 SHI CK 0017

High Court of Himachal Pradesh

Case No: Civil Writ Petition No. 527 of 1993

Ravinder Singh and
Others

APPELLANT

Vs

State of Himachal
Pradesh and Others

RESPONDENT

Date of Decision: July 16, 2004

Acts Referred:

- Constitution of India, 1950 - Article 227
- Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 - Section 2, 4

Citation: (2004) 2 ShimLC 351

Hon'ble Judges: R.L. Khurana, J

Bench: Single Bench

Advocate: Sandeep Kumar and Ankush Sood, for the Appellant; M.S. Chandel, A.G. and Ashutosh Burathoki, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

R.L. Khurana, J.

The Petitioners have approached this Court by way of the present writ petition under Articles 226 and 227 of the Constitution of India, inter-alia, praying for the issuance of appropriate writ and/or direction for quashing the order dated 27.7.1989 (Annexure-PA) passed by the Sub Divisional Officer (Civil), Hamirpur, exercising the powers of Collector under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971, (for short: the Act) and the order dated 23.4.1992 (Annexure-PB) passed in appeal by the Commissioner u/s 9 of the Act.

2. Briefly, the facts leading to the present petition are these. Proceedings under the Act were initiated against Petitioners No. 2 to 5 for their eviction before the Collector. Petitioners were alleged to be in unauthorised occupation of different portions of the

building located in the land measuring 1 kanal 7 marlas comprising of khasra No. 1308 in Sujampur, District Hamirpur. Admittedly, the building was earlier being used as a "SARAI" and subsequently converted into a "BAL ASHARAM". As per the complaint, Petitioners No. 2 to 5, were alleged to be in possession of different portions of the building as under:

Ramen
of
Unauthorised
Possession
Tariok
and
Chand
Tariok
and
Mansha
Ram
Pratap
Singh
Bir
Singh

3. The above-named four Petitioners while resisting the proceedings pleaded that they were tenants in respect of the portions in their occupation under the management of the SARAI and have been paying rent therefore to Petitioner No. 1 Major Dhani Ram, the representative of the management of SARAI. Alternatively, they asserted adverse possession and claimed to have acquired title thereto by virtue of such adverse possession.

4. The Collector on consideration of the material placed before him held Petitioners No. 2 to 4 to be in unauthorised possession of the public premises, belonging to the State, and ordered their eviction vide order dated 27.7.1989 (Annexure-PA). The appeal preferred by the Petitioners No. 2 to 4 u/s 9 of the Act was dismissed by the Appellate Authority, namely, the Commissioner on 23.4.1992 vide order as at Annexure-PB. Hence the present writ petition.

5. In assailing the impugned orders, it has been contended that the whole proceedings before the Collector stood vitiated for the reasons that:

- (a) No opinion was recorded by the Collector before issuing notices u/s 4 of the Act;
- (b) The notices issued were bad since neither the grounds on which the order of eviction was proposed to be made was specified therein nor the premises were specified therein;
- (c) The Petitioners were alleged to be in separate unauthorised possession of different parts of the building. Each such different and separate part of building constitute separate premises within the meaning of Section 2(c) of the Act. Therefore, separate proceedings were required to be initiated against each of the four Petitioners No. 2 to 5. Joint proceedings against all were bad.

6. The learned Additional Advocate General, on the other hand, has contended that proceedings were validly initiated, notices were properly issued and served and that the impugned orders are valid and legal.

7. Section 4 of the Act, in so far as it is material for the purpose of the present case, provides:

4(1). If the Collector is of opinion that any persons one in unauthorised 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)

(4)

8. A bare perusal of the provisions contained in Section 4(1) of the Act, quoted above, shows that before ordering the issuance of notice to show cause, the Collector has to form an opinion that the person(s) to whom the notice(s) are to be issued is/are in unauthorised occupation of public premises situate within his jurisdiction and he/they should be evicted.

9. A perusal of the record shows that on a petition having been laid before the Collector for the eviction of the Petitioners No. 2 to 4, the Collector on 6.9.1986 had called for the office report in the following terms:

Presented today by Distt. Welfare Officer, Hamirpur, a case under Public Premises Act. Kept for office report. Ahlmad to give detail also whether the Court has power under the said Act or not. After office report the case to come up for further proceedings on 16.9.1986.

10. The requisite report was made by the office on 15.9.1986 and the case was taken up on 17.9.1986 when the Collector directed the issuance of notices by an order, which reads:

"Case taken up today instead of 16.9.1986. Supdt. on behalf of District Welfare Officer, Hamirpur. The Respondents be summoned on payment of P.F. and the case to come up on 4.11.1986.

11. From the two orders dated 6.9.1986 and 17.9.1986, quoted above, it is apparent that while directing the issuance of notices to the Petitioners No. 2 to 4 u/s 4 of the Act, the

Collector had failed to form an opinion or record its satisfaction that such Petitioners were in unauthorised occupation of public premises and that they should be evicted.

12. A Division Bench of the High Court of Bombay in [Minoo Framroze Balsara Vs. The Union of India and others](#), dealing with Sections 4 and 5 of the Central Act, namely, Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the provisions of which correspond to the provisions contained in Sections 4 and 5 of the Act, has held:

The provisions of Sections 4 and 5 of the Eviction Act, 1971, deal with the procedure for the eviction of an unauthorised occupant and must be read together. Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two-fold; firstly, that the addressee is in unauthorised occupation of public premises, and secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation. He also cannot show effective cause unless he knows why his eviction is proposed.

13. Therefore, on the failure of the Collector to form an opinion or to record his satisfaction that Petitioners No. 2 to 4 are in unauthorised occupation of public premises and that they should be evicted therefrom, the notices issued u/s 4 of the Act are bad thereby the entire proceedings stood vitiated.

14. Section 4(2) of the Act further requires that the notice directed to be issued u/s 4(a) of the Act should specify (a) the grounds on which the order of eviction is proposed to be made, and, (b) require the person(s) concerned to show cause, are 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 of issue thereof.

15. The notice purported to have been issued to each of the four Petitioners No. 2 to 4, reads:

IN THE COURT of Collector Sub Division, Hamirpur.

Rent recovery and eviction Act,

Notice under Sub-section (i) and Clause(b)(ii) of Section 2 of Section 4 of the Public premises.

To Shri Trilok Chand son of Shri Sher Singh

Shri Mansha Ram s/o Shri Birja Ram

Shri Partap Singh son of Shri Dulo Ram

Shri Bir Singh s/o Major Dhani Ram

all the residents of Tika Sujanpur near bus stand.

Whereas I the undersigned am of opinion on the ground specified below that are in unauthorised occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises.

Now therefore in pursuance of Sub-section (i) of Section 4 of the Act, I hereby call upon you to show cause on or before the 20.10.1987 why such an order of eviction should not be made.

And in pursuance of Clause (b)(ii) of Sub-section (2) of Section 4 also call upon you to appear before me in person or through a duly authorised representative capable to answer all material questions connected with the matter alongwith the evidence which you intend to produce in support of cause shown on 20.10.1987 at 10 a.m. for personal hearing. In case, you fail to appear the said date and time the case will be decided ex parte.

Schedule

Sd/-

Collector,

Sub Division, Hamirpur.

16. Though in the above notice it is mentioned "I the undersigned am of the opinion on the grounds specified below that are in unauthorised occupation of the public premises mentioned in the Schedule below", neither the grounds nor the public premises from which the eviction is to be ordered have been mentioned. The "schedule" to the notice has been left blank.

17. In *Amulya Chandra Sutradhar and Anr. v. Estate Officer* AIR 1964 Trip 9, the notice purported to have been issued u/s 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, which corresponds to Section 4(1) of the Act, did not contain the description of the public premises in respect of which eviction proceedings were initiated. It was held:

.... When proceedings are to be taken under Act 32 of 1958, the public premises in respect of which action is going to be taken must first be ascertained by the Estate Officer. The first notice u/s 4(1) must clearly mention in respect of what public premises eviction proceedings are being taken. Thus the description of property in the first notice must not be indefinite. This is necessary for the reason that if a person is to be evicted

from any premises in his possession which is claimed to be public premises, he must be told clearly by the description in the notice what the premises are. It is only after knowing what the premises are that he can show cause against such eviction.

18. It was further held that it is for the Estate Officer (Collector in the present case) to describe the premises correctly in the original notice sent u/s 4(1), and in case it is not so done, the entire proceedings taken will have to be declared as illegal and against the provisions of the statute and hence the persons alleged to be in unauthorised occupation of the public premises could not be evicted from such premises on the strength of the said proceedings.

19. Similarly, in [Bhagat Singh Vs. Delhi Development Authority](#), the description of the premises to which the notice pertained was not given in the notice. Such notice was held to be invalid and the order of eviction passed was quashed. While holding that a notice u/s 4(1) of the Act is mandatory, it was further held:

It is also well settled that a notice u/s 106 of the T.P. Act can always be waived whereas it is mandatory requirement of law that a proper and valid notice u/s 4 of the Act must be served. Such a notice cannot be waived and any apparent illegality in a notice issued u/s 4 of the Act can be highlighted by the aggrieved party at any stage of the proceedings. It is also clear in law that a notice u/s 4 of the Act not only appraises the person named in the notice but it is meant to apprise all the occupants of the particular public premises that proceedings are being commenced for their eviction from this public premises. For this reason as well, it is absolutely necessary that notice u/s 4 must meet with the provisions of law. Hence, a notice u/s 4 must contain the description of the public premises clearly so that all concerned should know what particular premises this notice pertains to. Therefore, this notice cannot be upheld. On this short ground alone the eviction order as well as the appellate order confirming the said eviction order are liable to be quashed.

20. The High Court of Jammu and Kashmir in [Dr. Yash Paul Gupta Vs. Dr. S.S. Anand and Others](#), where the grounds of eviction were not stated in the notice issued u/s 4(1) of the Act, has held that Section 4(2)(a) of the Act is mandatory and in case the grounds of eviction are not mentioned in the notice, such notice would be invalid and the eviction order passed in pursuance of such notice would be bad.

21. Since in the present case in the notice issued u/s 4(1) of the Act neither the grounds of eviction have been spelt out nor the public premises have been defined, the same is bad and as such the two impugned orders as at Annexures PA and PB cannot be sustained and are liable to be set aside.

There is yet another significant aspect of the case. Section 2(d) of the Act defines "premises" as under:

"premises" means any land, whether used for agricultural or non-agricultural purposes, or any building or part of a building and includes,-

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building, and (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

22. In view of the above definition a part of a building (public premises) would fall within the ambit of "premises".

23. Admittedly, Petitioners No. 2 to 4 are in separate and individual possession of separate and specific parts/portions of the building belonging to the State. Therefore, they would be deemed to be in occupation of separate "premises". In such circumstances separate proceedings ought to have been initiated against each one of them qua the "premises" respectively found in their individual and separate possession. They could not have been proceeded against in one single eviction proceedings in respect of such separate "premises". On this count also the impugned orders cannot be sustained.

24. Resultantly, the present petition is allowed. The impugned orders as at Annexures PA and PB respectively passed by the Collector and the Commissioner are quashed and set aside leaving the parties to bear their own costs.

It is, however, clarified that this order shall not preclude the State Respondent from proceeding against Petitioner Nos. 2 to 5 afresh in accordance with law for their eviction.