(2017) 10 AHC CK 0039

ALLAHABAD HIGH COURT

Case No: 36279 of 2017

Smt. Asha Rani Bhatia, & Ors.		APPELLANT
	Vs	
The Xv Addl. District Judge, Kanpur Nagar, & Ors.		RESPONDENT

Date of Decision: Oct. 31, 2017

Acts Referred:
Transfer of Property Act, 1882, Section 106, Section 108, Section 110, Section 105, Section 109, Section 107 - Duration of certain leases in absence of written contract or local usage. - Rights and liabilities of lessor and lessee - Exclusion of day on which term commences - Lease defined - Rights of lessors transferee - Leases how made#Companies Act, 1956, Section 3 -#Public Premises (Eviction of Unauthorized Occupants) Act, 1971, Section 5(1), Section 7(1), Section 5, Section 7, Section 2(3), Section 2(g), Section 7(2), Section 7(2A), Section 2(c), Section 2(e) - Eviction of unauthorised occupants - Power to require payment of rent or damages in respect of public premises - Eviction of unauthorised occupants - Power to require payment of rent or damages in respect of public premises - Definitions - Definitions - Power to require payment of rent or damages in respect of public premises - Power to require payment of rent or damages in respect of public premises - Definitions - Definitions#Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, Rule 8

Citation: (2017) 10 AHC CK 0039

Hon'ble Judges: Mahesh Chandra Tripathi

Bench: Single Bench

Advocate: Ramendra Asthana, Manish Goyal, Prakash Padia

Final Decision: Dismissed

Judgement

1. Heard Shri Ramendra Asthana, learned counsel for the petitioners and Shri Prakash Padia, learned counsel for the Life Insurance Corporation

of India.

2. Smt. Asha Rani Bhatia and two others are before this Court assailing the judgment and order dated 29.5.2017 passed by learned 15th

Additional District Judge, Kanpur Nagar dismissing Misc. Appeal No.31 of 2009 (K.L. Bhatia and ors vs. the Estate Officer and another) and the

order dated 21.2.2009 passed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1972 in Case No.K-

2/2007 (LIC of India vs. K.L. Bhatia and others) and for direction commanding the respondent nos. 1 to 3 not to draw any proceedings or pass

any order on the basis of the aforesaid orders.

3. Record in question reflects that the petitioners alongwith proforma respondent nos. 4, 4/1, 4/2 & 4/3 were the tenants of House No.4, Free

India Estate No.15/116, Civil Lines, Kanpur Nagar area 2250 sq. feet on monthly rent of Rs.81.69 plus water tax & drainage tax amounting

Rs.11.44 & Rs.3.27 respectively. The tenancy in question was a monthly tenancy commencing from the first day of each English calender month

and expiring on the last day of that month. The aforesaid premises is situated on land belonging to State of U.P. On 9.9.1932 a lease deed was

executed by the Collector in respect of Nazul Land (Plot No.34) for a period of 30 years with effect from 31.8.1932 with a condition that the

premises in dispute shall be used only for residential purpose. The aforesaid lease deed expired on 30.8.1962 and it was never renewed thereafter.

In the year 1935 the lease was granted in favour of Sri M.N. Bhargava and the same was registered in his name. He constructed large number of

the building over the same known as Bhargav estate. In the year 1940 Sri M.N. Bhargav transferred the lease right of the aforesaid property in

favour of M/s Free India General Insurance Company Ltd. which was subsequently succeeded by Life Insurance Corporation of India after

nationalization in the year 1956.

4. The Life Insurance Corporation of India, North Central Zonal Office, Kanpur (in short, the Corporation) filed a composite application dated

19.5.2007 before the Estate Officer for initiating proceedings under Sections 5 and 7 of Public Premises (Eviction of Unauthorized Occupants)

Act, 1971 (for brevity, the Act of 1971) against the petitioners for their eviction from the premises in question and recovery of arrears of rent and

taxes and damages for the period of unauthorized occupation of the premises on the ground that the Corporation owns the premises in question.

The petitioners were habitual defaulters in payment of revised rent, taxes to the Corporation and despite repeated requests, they did not make

regular payment of taxes of the premises. Consequently the tenancy of the petitioners was terminated by a registered notice dated 13.11.2003 and

the said notice was served on the petitioners but they did not hand over the vacant possession of the premises in question till expiry of the notice

period on 18.2.2004. The Estate Officer passed the impugned order dated 21.2.2009 for eviction of the petitioners and also saddled the liability to

pay arrears of rent and damages etc. Aggrieved with the aforesaid order, the petitioners preferred an Appeal No.31 of 2009. By the impugned

judgment and order dated 29.5.2017 learned 15th Additional District Judge, Kanpur Nagar dismissed the appeal, giving rise to the writ petition.

5. Shri Ramendra Asthana, learned counsel for the petitioners submitted that the premises in question situated over the Nazul Plot No.34 forming

part of premises No.16/116. The petitioners were lawful tenants of the premises in question and they were not defaulters in payment of the rent

and other dues. There was no prima facie case for issuing notices under Sections 5 (1) and 7 (1) (2) and (2A) of the Act of 1971. After issuance

of the notice dated 13.11.2003 the Corporation had not only accepted the rent from the petitioners but also demanded the rent @ Rs.27,000/-

per month as against the present rent of Rs.81.69 per month apart from water tax and drainage tax. The act of the Corporation in enhancing the

rent from Rs.96.40 to Rs.27,000/- per month is not justified and sustainable. The provisions of the Act of 1971 are not applicable retrospectively.

Admittedly the tenancy stood commenced in the year 1936 prior to applicability of the Act of 1971 and as such, the provisions of the Act of 1971

were not attracted in the present matter. The Estate Officer had not afforded any opportunity to the petitioners to cross-examine the witnesses.

The Estate Officer had no right or jurisdiction to entertain and decide the matter. The Corporation was nationalized in the year 1956 and became

lessor of the property in question only in the year 1956. In the present case, the lease deed was executed in the year 1932 and therefore, the entire

proceedings initiated under Act of 1971 is illegal and without jurisdiction. Since the entire land was not declared as freehold land, the Corporation

had no right to initiate the proceedings under the Act of 1971.

6. Shri Prakash Padia, learned counsel appearing for the Corporation, on the other hand, submitted that the Corporation is a statutory body

incorporated under an Act of Parliament (Act No.XXXI of 1956) and owns the premises in question being a Public Premises as defined under

Section 2 (3) of the Act of 1971. The petitioners were tenants in the premises in question at a monthly rental of Rs.81.69 plus water tax and

drainage tax. The tenancy of the said premises was monthly commencing from the 1st day of each English calender month and expiring on the last

day of that month. The tenancy of the petitioners was terminated by means of the registered notice dated 13.11.2003. The said notice was served

upon the petitioners and they denied the compliance of the notice through reply/notice dated 19.1.2004 but they did not hand over the vacant

possession of the premises in question till expiry of the notice period on 18.2.2004. The petitioners are in unauthorized occupation of the said

premises w.e.f. 19.2.2004 and they are liable to be evicted under Section 5 of the Act of 1971 and pay damages @ Rs.12/- per sq. ft. till the date

of delivery of vacant possession of the Public Premises to the Corporation. The premises in dispute is a public premises as defined in the Act of

1971 and situated within the limit of Nagar Mahapalika, Kanpur.

7. Shri Prakash Padia further submitted that the petitioners were habitual defaulters in payment of revised rent and despite repeated requests they

have not paid the rent and taxes of the said accommodation since 19.2.2004. Consequently, the Corporation filed the compromise application

dated 19.5.2007 for eviction of the petitioners and the recovery of rent and taxes in arrears and damages for the period of unauthorized

occupation of the premises in question. Finally, an order was passed by the Estate Officer on 21.2.2009 whereby the petitioners were directed to

make payment of Rs.8,12,478/- towards arrears of rent, arrears of taxes and damages upto 3.12.2009. Against the aforesaid order, the statutory

appeal was filed by the petitioners in the Court of District Judge, Kanpur Nagar. The said appeal was finally decided by the Additional District

Judge, Court No.15, Kanpur Nagar on 29.5.2017 and the order of the Estate Officer was affirmed. At present, the petitioners are liable to pay a

sum of Rs.33,22,430/- towards the rent and damages upto the period 31.7.2017. In support of his submission, he has placed reliance on the

judgments of this Court in Writ C No.591 of 2000 (Vishnu Dutt Tripathi vs. 6th Additional District Judge and ors) decided on 8.8.2012; Civil

Misc. Writ Petition No.66705 of 2010 (S.P. Mehra and another vs. Additional District Judge, Court No.9, Kanpur Nagar) decided on 18.1.2011

and Writ C No.17937 of 2015 (M/s Singer India Limited and another vs. Life Insurance Corporation of India and another) decided on

21.7.2015.

8. Heard learned counsel for the parties and perused the record.

9. In order to appreciate respective arguments, Section 2(c); Section 2(e) and Section 2(g) of Public Premises (Eviction of Unauthorized

Occupants) Act, 1971 are being looked into.

Section 2(c) - ""Premises"" means any land or any building or part of a building and includes-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of building and

(ii) any fittings affixed to such building or part of a building for the ore beneficial enjoyment thereof;

Section 2(e)- ""public premises"" means-

(1) any premises belong to, or taken on lease or requisition by, or on behalf of, the Central Government, and includes any premises

which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of

Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for

providing residential accommodation to any member of the staff of that Secretariat.

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(1) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent. Of the

paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the

first-mentioned company, (II) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (1 of

1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government, and (2) in

relation to the Union territory of Delhi-----

(i) any premises belonging to the Municipal Corporation of Delhi or any municipal committee or notified area committee, and

(ii) any premises belonging to the Delhi Development Authority whether such premises are in the possession of, or leased out by, the

said Authority;

(f) ""rent"", in relation to any public premises, means the consideration payable periodically for the authorised occupation of the

premises, and includes-----

(i) any charge for electricity, water or any other services in connection with the occupation of the premises.

(ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Central

Government or the corporate authority;

Section 2 (g)- "" unauthorized occupation"", in relation to any public premises, means the occupation by any person of the public

premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after

the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has

expired or has been determined for any reason whatsoever.

10. Bare perusal of the provisions quoted above would go to show that Section 2(c) of the Act of 1971 defines ""premises"" and Section 2 (e) of

Act of 1971 defines ""public premises"" as any premises belonging to, or taken on lease or requisition by, or on behalf of any corporation (not being

a company) established by or under a Central Act and owned or controlled by the Central Government. Sub-section (2) of Section 2(e) Clause II

includes premises belonging to, or taken on lease by, or on behalf of any corporation (not being a company established by or under a Central Act

and owned or controlled by the Central Government. Section 2(g) defines ""unauthorized occupation"" and unauthorized occupation in relation to

any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the

continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired

or has been determined for any reason whatsoever.

11. In the present case, there is no dispute about the fact that the premises in question belongs to the Corporation, which is owned and controlled

by the Central Government and thus the premises in question will fall in the definition of ""Public Premises"" as provided under Section 2 (e) of the

Act of 1971. The dispute regarding applicability of the Act of 1971 raised by learned counsel for the petitioners is without any substance.

12. An identical controversy came up before this Court in the case of Vishnu Dutt Tripathi (supra) and learned Single Judge of this Court had

dismissed the writ petition filed by the tenants on 8.8.2012. Another identical controversy came up before this Court in respect of premises

No.16/116 situated on Nazul Plot No.34 of Block No.16, Civil Lines, Kanpur in the case of S.P. Mehra (supra) and in the said case the

petitioners had taken grounds that the land in question is a Nazul land and as such, the proceedings should not be initiated under the Act of 1971.

Further objections were taken in that writ petition that since the entire land was not declared as freehold land, the Corporation had no right to

initiate proceedings under the Act of 1971. Learned Single Judge had proceeded to dismiss the writ petition on 18.1.2011 with following

observations:-

Nazool plot over which structures in question are standing has been leased out by the State Government. Said structures in question

have been erected and has been leased out to the petitioner initially by M.N. Bhargav followed by M/s Free India General Insurance

Company Ltd which has been succeeded by Life Insurance Corporation of India after nationalization. This is accepted position that

State Government has taken policy decision for converting the nazool land into free hold land and pursuant thereto big chunk of land

has already been converted into free hold and the premises in question wherein petitioner''s structures are standing qua the same also

for converting nazool land into free hold land. State Government has been approached by Life Insurance Corporation of India and

said application remains un-disposed of.

Question is that once lease period of M/s Free India General Insurance Company Ltd succeeded by Life Insurance Corporation of

India has come to an end and same has not been renewed then can it be ipso facto treated that same has ceased to be leased

property of Life Insurance Corporation of India.

Lease has been defined under Section 105 of Transfer of Property Act, as a lease of immovable property i.e. transfer of a right to

enjoy such property made for a certain time, express or implied or in perpetuity, in consideration of price paid or promised. Section

106 of the Act, deals with duration of certain leases in absence of written contract or local usage. Section 107 of the Act provides as

to how leases are to be made. Section 108 deals with rights and liabilities of lessor and lessee. Section 109 deals with rights of

lessor''s transferee and Section 110 deals with exclusion of day on which term commences. Section 111 deals with determination of

lease and Section 115 deals with effect of surrender and forfeiture on under-leases. Section 116 of the Act deals with effect of

holding over.

In the present case accepted position is that State Government in its turn till today has not taken any action whatsoever against Life

Insurance Corporation of India as per the terms and condition of lease and to the contrary record in question reflects that under free

hold policy floated by the State Government, steps has been undertaken for converting the nazool land into free hold land wherein in

phased manner exercise has been undertaken and qua Phase-1, and Phase-II details mentioned at page 35 of the counter affidavit

has been converted into free hold and qua properties described in Phase-III, 2629.80 sq meters has already been made free hold

and for balance land which is inclusive of the premises rented to petitioner proceedings for converting the land in question into free

hold is still pending.

Original lease period is for thirty years, said lease deed contains stipulation for renewal of lease of thirty years, and maximum period

of renewal ninety years has also been provided for. Rate has also been provided for to be assessed by the Collector with right of

Appeal also. In such a situation and in this background, the tenant who admittedly had taken public premises on rent cannot be

permitted to raise question of premises not being taken on lease by the Life Insurance Corporation of India. For taking proceedings

under 1971 Act, by Life Insurance Corporation of India is not necessary to substantiate that premises actually belongs to

Corporation concerned and in cases where premises has been leased by Corporation concerned qua the same proceedings are liable

to be undertaken and form the said public premises unauthorized occupant is liable to be evicted. Provisions of 1971 Act are special

provisions providing for eviction of unauthorised occupants from public premises and for certain incidental matters and collaterally

petitioners cannot be permitted to dispute the status of lessor specially when inter se State Government and Corporation concerned

there is no dispute and lessee has been paying rent the provisions of Transfer of Property Act and the judgment in the case of

Bhawanji Lakhamshi and others Vs. Himatlal Jamandas Dani and others reported in 1972 AIR, SC 819 will not at all help the

petitioner in the facts of present case.

Once Life Insurance Corporation of India is lessor and admittedly has been leased out to the petitioner, in such a situation once

premises in question has to be accepted as public premise and as valid notice has been given, and petitioner has failed to vacate the

premises in question, as such petitioners'' status that of unauthorised occupant.

Hon''ble Apex Court in the case Jiwan Dass Vs. Life Insurance Corporation of India reported in 1994 Supp. (3) SCC 694; 1995

ARC 326; 1995 SCFBRC 195 held that Section 106 of the Transfer of Property Act does not contemplate of giving any reason for

terminating the tenancy. Equally the definition of ""unauthorized occupation"" as given in Section 2(g) of the Act of 1971 postulates that the tenancy has been determined for any reason whatsoever and therefore, when the Statute itself has given wide power to the public

authorities under the Act of 1971 to determine the vacancy. It is not permissible to cut width of the powers by reading into it the

reasonable and justifiable grounds for initiating action for terminating the tenancy under Section 106 of the Transfer of Property Act.

The extract of para-4 of the reports is reproduce below:

........If it is so read Section 106 of T.P. Act and Section 2(g) of the Act would become ultra vires. The statute advisedly

empowered the authority to act in the public interest and determine the tenancy or leave or licence before taking action under Section

5 of the Act. If the contention of the appellant is given acceptance he would be put on a higher pedestal than a statutory tenant under

the Rent Act. Take for example that a premises is let out at a low rent years back like the present one. The rent is unrealistic. With a

view to revise adequate market rent, tenant became liable to ejectment. The contention then is, action is violative of Article 21

offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own

way profitable in its use and occupation. A public authority is equally entitled to use the public property to the best advantage as a

commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot

discriminately be extended to the area of commercial operation. Therefore, we do not find any substance in the contentions of the

appellant. The appeal is accordingly dismissed. No costs.

Hon''ble Apex Court in the case of M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India reported in AIR

1981 SC 670, has considered the scope and effect of Section 2(g) of the Act of 1971 and has held that procedure under the said

Act is summary in nature and therefore, the law as held in this case still holds field and it being the special Act will override all other

Acts. Para 8 of the reports is reproduced below:

8.In the light of the principles laid down in the aforesaid cases we would test the position in the present case. So far as the Premises

Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets

of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has

a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public

premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which

constitute a class by themselves. That the authorities to which the Premises Act applies are a class by themselves is not disputed by

the counsel for the appellant as even in the case of Northern India Caterers Pvt. Ltd. & Anr. v. State of Punjab & Anr. 1967 (3)

SCR 399 such authorities were held to form a class and, therefore, immune from challenge on Art. 14 of the Constitution. Similarly,

the summary procedure prescribed by the Premises Act is also not violative of Art, 14 as held by this Court in Maganlal Chhagganlal

(P) Ltd. v. Municipal Corporation of Greater Bombay & Ors.1975 (1) SCR 1.

This Court in the case of Life Insurance Corporation of India Vs. Advani & Company, Kanpur & others reported in 2002 (2) ARC

62; Shree Bhagwan Goel (Shri) (deceased) represented by Smt. Kamia Goel Vs. Life Insurance Corporation of India Agra and

others reported in 2008 (1) ARC 734 and Om Prakash Ashwani Vs. Life Insurance Corporation of India and another reported in

2010 (1) ARC 456 has taken similar view to this effect.

On the parameter as set out, once premises in question is public premises within the meaning of Section 2(e) of the Public Premises

(Eviction of Unauthorized Occupants) Act, 1971 and valid notice has been given and petitioners have failed to vacate the premises in

question then petitioners have to be accepted as unauthorised occupant, in this background Estate Officer as well as Appellate

Forum, has rightly passed order against the petitioner.

Consequently, present writ petition is dismissed.

13. Against the aforesaid judgment, a Special Leave to Appeal (Civil) No.14569 of 2011 was filed by the tenant namely S.P. Mehra and Hon''ble

Apex Court has refused to interfere with the order passed by the High Court and dismissed the said SLP on 8.1.2013.

14. In the case of M/s Singer India Limited and another (supra) this Court has dismissed the writ petition filed against the orders passed in the

proceedings under the Act of 1971 on the ground that the challenge to the computation of damages for unauthorized use and occupation of the

premises after 30 days of notice could not be substantiated on the basis of any cogent material. The Estate Officer assessed the damages as per

Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 and the rent has been determined on the basis of exemplars

produced by the Corporation. Merely because the damages have been computed at a higher rate of rent, it could not be a ground to interfere in

the computation made by the Estate Officer.

15. After appreciating the submissions of the learned counsel for the parties and perusal of the aforesaid judgments, this Court is of the view that

since the controversy involved in the present case is squarely covered by the judgment of this Court in the case of S.P. Mehra and another vs.

Additional District Judge, Court No.9, Kanpur Nagar (supra), which has been affirmed by Hon''ble Supreme Court in Special Leave to Appeal

(Civil) No.14569 of 2011 (S.P. Mehra (D) through Suresh Mehra vs. The Estate Officer, L.I.C. & ors (supra), and therefore, no interference is

required in the judgment and order dated 29.5.2017 passed by the 15th Additional District Judge, Kanpur Nagar in Misc. Appeal No.31 of 2009 as also the order dated 21.2.2009 passed by the Estate Officer under Section 5 (1) of the Public Premises (Eviction of Unauthorised Occupants)

Act, 1971.

16. Consequently, the writ petition is dismissed.