

(2016) 08 MAD CK 0131

MADRAS HIGH COURT

Case No: C.R.P.(NPD). No. 837 of 2014 and M.P. No. 1 of 2014

Jaishankar

APPELLANT

Vs

Selvaraj

RESPONDENT

Date of Decision: Aug. 18, 2016

Acts Referred:

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4, 5

Citation: (2016) 168 AIC 615 : (2016) 3 MadWN(Civil) 189 : (2016) 6 MLJ 548

Hon'ble Judges: Mr. M. Duraiswamy, J.

Bench: Single Bench

Advocate: Mr. P.S. Ganesh, Advocate, for the Petitioners; Mr. V.G. Suresh Kumar,
Advocate, for the Respondents

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. M. Duraiswamy, J.—The above Civil Revision Petition arises against the judgment and decree passed in C.M.A.No.122 of 2012 on the file of the Principal Judge, City Civil Court, Chennai.

2. The revision petitioner was an employee in Integral Coach Factory (ICF). While the petitioner was in service, he was allotted a Type-II Quarters in South Colony for him to reside. On 22.08.2012, he was dismissed from service and was asked to vacate the Quarters within one month from the date of dismissal. By letter dated 25.08.2012, he was asked to handover vacant possession of the Quarters on or before 22.09.2012 without fail. As he failed to vacate the Quarters, the allotment of the said Quarters was cancelled by order dated 22.09.2012 and his occupation was treated as un-authorised. As per the said communication, the petitioner was asked to vacate the Quarters immediately. Further, he was also informed that eviction proceedings under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would be initiated against him, if he failed to vacate the

Quarters.

3. On 03.10.2012, Form-A Notice was issued by the respondent to the petitioner under Section 4 of the Act calling upon him to show cause on or before 11.10.2012. The petitioner was also called upon to appear before the Estate Officer for personal hearing on 18.10.2012 to produce evidence in support of the show cause. The petitioner attended the personal hearings before the respondent. The Estate Officer, by order dated 29.11.2012, passed under Section 5(1) of The Public Premises (Eviction of Unauthorised Occupants) Act, direct the petitioner to vacate the Quarters within fifteen days from the date of publication of the order. Aggrieved over the order dated 29.11.2012 passed by the respondent, the petitioner preferred an appeal before the Principal Judge, City Civil Court, Chennai in C.M.A.No.122 of 2012. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the appeal. Aggrieved over the judgment and decree passed in C.M.A.No.122 of 2012, the erstwhile employee of ICF has filed the above Civil Revision Petition.

4. Heard Mr.P.S.Ganesh, learned counsel appearing for the petitioner and Mr.V.G.Suresh Kumar, learned counsel appearing for the respondent.

5. The contention of Mr.P.S.Ganesh, learned counsel appearing for the petitioner is that the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were not followed by the respondent while ordering eviction. Further, the learned counsel submitted that the order of dismissal dated 22.08.2012 was also challenged by the revision petitioner in a Writ Petition in W.P.No.25376 of 2012 before this Court and therefore, the petitioner should not be evicted from the premises before the disposal of the Writ Petition.

6. In support of his contentions, the learned counsel relied upon the following judgments:

(i) AIR 2008 Supreme Court 876 [New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr.] wherein the Hon"ble Supreme Court held as follows:

"34. Procedure laid down for recording evidence is stated in the Rules. The Estate Officer being a creature of the statute must comply the same. When a Notice is issued, the occupant of the public premises would not only be entitled to show cause but would also be entitled to produce evidence in support of the cause shown.

35. The procedural aspect as to who should lead evidence first, thus must have to be determined on the basis of the issues arising in the matter. When we say so, we do not mean that the procedure involved being a summary one, the issues are required to be specifically framed but that which is the principal issue(s) between the parties must be known to the Estate Officer."

(ii)(2008) 9 Supreme Court Cases 177 [Meera Sahni v. Lientenant Governor of Delhi and others] wherein the Apex Court held as follows:

"35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection, we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] wherein it was held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63 IA 372 : AIR 1936 PC 253 (2)] who stated as under:

"where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh [AIR 1954 SC 322] and again in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527]. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [AIR 1964 SC 358] and the rule laid down in Nazir Ahmad Case [(1936) 63 IA 372 : AIR 1936 PC 253 (2)] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

(iii) 2010 (5) CTC 449 [1. Sheeba Philominal Merlin 2. Esther Evelyne v. 1. The Repatriates Co-op. Finance & Development Bank Ltd., (Govt. of India Enterprise), No.33, North Usman Road, T.Nagar, Chennai - 600 017 and others] wherein a Division Bench of this Court held that when a statute contemplates a particular thing should be done in a particular manner, then it should be done only in that manner and not in any other manner.

(iv) 2010 (4) CTC 445 [Tamilaruvi Manian v. The Government of Tamil Nadu, rep by its Secretary to Government, Housing Department, Fort St. George, Chennai-9 and others] wherein this Court held that when materials produced disclosed that Housing Board did not initiate any such action against other tenants who are guilty of same fault, the order of the Authority under Article 12 in matters of eviction should also stand the test of reasonableness and the order of Housing Board found to be discriminatory and the order was quashed.

(v) 1999 (III) CTC 588 [N. Govindan v. The Chief Personnel Officer, I.C.F., Madras-38 and another] wherein this Court held as follows:

"24. A glance at the Notice dated 24.11.1994 issued to the petitioner, excepting to contend that the petitioner is in unauthorised occupation of the premises from 1.11.1994 beyond the permitted period of four months from the date of his retirement on 26.6.1994, and, therefore, in exercise of his powers as Estate Officer, under Section 4(1) of the Act, he has issued the Notice thereby calling upon the

petitioner is show cause on or before 3.12.1994 as to why such an order of eviction should not be passed? Section 4(2)(a) of the Act warrants to specify the grounds of which the order of eviction is proposed to be made. Section 4(2)(b) contemplates that the Notice should require all persons concerned, that is to say, all persons who, or may be, in occupation of, or claim interest, in the public premises and Section 4(2)(b)(ii) requires that the Notice shall specify such occupant or occupants to appear before the estate officer on the date specified in the Notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired. The mandatory procedures laid down by Section 4 of the Act have not at all been followed by the respondents, nor any opportunity appears to have been given either to the petitioner or the other occupants of the Quarters, which is mandatory and the show cause Notice since having been issued contrary to law and the principles of natural justice as rightly held in the judgment reported in *M/s. Wire-Netting Stores v. Delhi D.A.* 1969 (3) SCC 415. The show cause noticed issued in this case is hereby held a nullity based on which no order of eviction should have been passed.

25. The next point that is to be discussed and decided is that there was no opportunity afforded for the petitioner to be heard, which is not only against the procedures contemplated under Sections 4 and 5 of the Act, but also against the cardinal principles of natural justice and hence, in this score, the very eviction order and Notice passed by the respondents become liable to be set aside."

(vi) AIR 1992 Bombay 375 [*Minoo Framroze Balsara v. The Union of India and others*] wherein the Bombay High Court held as follows:

"34. ...

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 addressess of the Notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the 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.

...

35. Under Section 5 the Estate Officer must consider the cause that is shown by the addressee. Plainly, he must consider the addressee's case on both grounds, viz.,

whether he is in unauthorised occupation of public premises and whether he should be evicted. Even if he finds that the addressee is in unauthorised occupation, the Estate Officer is not obliged to make an order of eviction; he "may" make it. It is, therefore, that he has to consider whether the addressee should be evicted. He is obliged, if he makes an order of eviction, to record his reasons. The Estate Officer's order must, therefore, I, state why he is satisfied that the addressee is in unauthorised occupation of the public premises and why he should be evicted therefrom. The validity of the Estate Officer's conclusions would be tested in appeal, which is before a District Judge or equivalent judicial officer."

(vii) AIR 2005 Delhi 7 [Sudhir Goel v. M.C.D.] wherein the Delhi High Court held as follows:

"38. In these circumstances the writ petitions are allowed and the impugned Order of eviction passed by the Estate Officer and affirmed by the ADJ is set aside. This decision could have been arrived at without alluding to the proceedings under the PP Act, by simply exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution. However, it is necessary to record the opinion that wherever complicated questions arise, the Authorities should refrain from initiating proceedings under the PP Act and should instead take recourse to the ordinary civil proceedings. The MCL should have terminated the lease in accordance with law, since the petitioners possess the legal attributes of a tenant. The MCD cannot be a judge in its own cause and adjudicate upon the legality of the Notice. Therefore the filing of a civil suit is necessary. Even if a Notice to quit under Section 106 of the Transfer of Property Act is not necessary, the decision to eject the petitioners after such a long period must be taken after granting a meaningful opportunity to the petitioners of being fully heard. The decision which would follow should clearly disclose the reasons which have weighed in the mind of the authority in terminating the tenancy. Failure to adhere to the essentials of audi alteram partem render the decision to terminate the lease as legally unsustainable. The Estate Officer must assume that the lease of the petitioners has been legally terminated since he is precluded from adjudicating on this issue. Otherwise he could not have come to the conclusion that the petitioners had become unauthorised occupants. He could also not have gone into this question for the reason that his jurisdiction commences and continues on the premise that the termination Notice and the subsequent decisions were legally taken. On the showing of both the MCD as well as ASI the Red Fort had ceased to belong to the MCD and came to belong to ASI from the date of Notification. The Ancient Monuments Act does not make it imperative for the ejectment of all occupants. The said Act envisages the preservation of an ancient monument and, therefore, empowers the ASI to prescribe conditions which must be adhered to by the occupants. The occupants will render themselves liable to prosecution in case of their failure to comply with any of the conditions imposed by the ASI. Only in very extreme cases the ASI can take over the ownership of the monument. In the circumstances of the case even if the ASI were to have initiated

and concluded the eviction proceedings it would have been non est and illegal. Furthermore, the Estate Officer as also the Learned ADJ ought to have granted sufficient opportunity to the petitioners to lead evidence to prove their defence. Article 14 has been seriously infringed for the reason that whilst the petitioners have been ordered to be evicted from the premises other persons such as the ITDC etc. have been encouraged and permitted to commence commercial activities in the Red Fort itself. The great haste of the respondents has brought about a grave miscarriage of justice."

(viii)AIR 1980 Karnataka 186 [M/s.Blaze and Central (P.) Ltd. v. Union of India and others] wherein the Karnataka High Court held as follows:

"9. The modern concept of the rule against bias is rooted on the well-known principle that "justice should not only be done, but should manifestly and undoubtedly be seen to be done." A man maybe disqualified from sitting in a judicial capacity on one of two grounds. First, a "direct pecuniary interest" in the subject matter; second, "bias" in favour of, one side or against the other. The bias may be actual bias or a real likelihood of bias and mere surmise or conjecture is not enough. Professor Smith has written (Judicial Review of Administrative Action, Second Edition) (1968), at page 244:

"A "real likelihood" of bias means at least a substantial possibility of bias. The court, it has been said, will judge of the matter as a reasonable man would judge of any matter in the conduct of his Own business".

The test of real likelihood of bias which has been applied in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehensions of a reasonable man fully apprised of the facts. It is no doubt desirable that all judges, like Caesar's wife, should be above suspicion, but it would be hopeless for the courts to insist that only "people who cannot be suspected of improper motives" were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people.

Certainly, on the question of bias we cannot proceed on the basis of suspicions of fools or on the whims of unreasonable people. We must proceed on the reasonable suspicion or on the "real likelihood of bias". The tide of judicial opinion in the past was more on "real likelihood of bias" rather than on reasonable suspicion. But, Lord Denning M.R. in Metropolitan properties Co. (F.G.C) Ltd. v. Lannon (1969) 1 QB 577 interwove these principles with the other test, saying:

"The court does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people."And he continue:

"Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: "the Judge was biased"."

What Lord Denning was concerned with in his reference to a real likelihood of bias was perhaps to emphasise the irrelevance of whether the Court or Tribunal was in fact biased. Commenting on these principles, Professor Paul Jackson in his book *Modern Legal Studies "Natural Justice"* 1979 Edition writes at page 52:

"The antithesis between the two tests remains, it is suggested, somewhat unconvincing. It is hard to envisage a court holding that a reasonable man might properly suspect the existence of bias but refusing to interfere because it was not itself convinced of a real likelihood of bias. In the end all turns on the view the court takes on the facts. The Judge who says then, is no real likelihood of bias would just as likely say that any suspicion of bias was unreasonable; a Judge who is prepared to find a reasonable suspicion of bias is hardly likely to deny that there was a real likelihood of bias. Perhaps it is unfortunate that the courts ever tried to improve on Lord Carson's simple test: was there "such a likelihood of bias as entitled the court to interfere"?" (*Frome United Dairies v. Bath JJ.* (1926) A.C. 586, 618.)"

7. Countering the submissions made by the learned counsel for the petitioner, Mr.V.G.Suresh Kumar, learned counsel appearing for the respondent submitted that the petitioner having been dismissed from the service in the year 2012, cannot continue to be in possession of the Quarters, which was allotted to him and the respondent had passed the eviction order only following the procedures contemplated under the Act. Further, the learned counsel submitted that though the petitioner was out of employment, for nearly four years he still continues to hold on to the Quarters, which should not be allowed by this Court.

8. In support of his contentions, the learned counsel for the respondent relied upon the judgment reported in (2005) 1 M.L.J. 453 [*A.Thayal Nayagi v. Union of India* owning Southern Railway, represented by its General Manager, Chennai and others] wherein a Division Bench of this Court held as follows:

"6. Learned counsel for the appellant however argued that the procedure mentioned in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 should have been followed by the authorities, but it was not followed. In our opinion, this argument is based on a total misconception. The object of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is to forcibly evict unauthorised occupants who are deliberately remaining in occupation of public

premises unauthorisedly. Hence, the impugned judgment of the learned single Judge is fulfilling exactly the same object which the aforesaid Act aims at, namely, to forcibly throw out unauthorised occupants from public property. Decent people vacate the premises when the period of lease or license expires. When a person does not behave in a decent manner, the only way left is to forcibly throw him out. It is for this purpose that the aforesaid Act was enacted, and the same object has been achieved by the learned single Judge, namely, to throw out an unauthorised occupant. Hence, we see no reason to interfere with the judgment of the learned single Judge, which is eminently just and fair. The writ appeal is dismissed. Consequently, W.A.M.P.No.179 of 2005 is also dismissed."

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also the judgments relied upon by the learned counsel on either side, it could be seen that the petitioner was an employee of Integral Coach Factory and while he was in service, he was allotted a Quarters viz., No.0579/01, Type II, South Colony. On 22.08.2012, he was dismissed from service and against this order, he has filed a Writ Petition in W.P.No.25376 of 2012 before this Court and the same is pending. Since the Quarters was allotted to the petitioner because of his employment in Integral Coach Factory, when he was dismissed from service on 22.08.2012, he was asked to vacate within one month. By communication dated 25.08.2012, the petitioner was asked to handover the possession of the Quarters on or before 22.09.2012 without fail. Since the petitioner did not vacate the Quarters, a Quarters Cancellation Order was passed on 22.09.2012 and by the said order, he was asked to vacate the Quarters immediately. The petitioner was also informed that proceedings under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would be initiated against him, if he failed to vacate the Quarters. Since the petitioner failed to vacate the Quarters, a show cause Notice dated 03.10.2012 was issued by the respondent to the petitioner under Section 4(2) of the Act calling upon him to show cause on or before 11.10.2012.

10. The learned counsel appearing for the petitioner submitted that the Form-A Notice issued on 03.10.2012 is not valid for the reason that seven days time was not given to show cause. The learned counsel submitted that the Notice was sent on 04.10.2012, which was received by the petitioner on 06.10.2012. As per Form-A Notice issued under Section 4(2) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the petitioner was called upon to show cause on or before 11.10.2012. Further, he was also called upon to appear before the respondent for personal hearing on 18.10.2012. After the receipt of Form-A Notice, the petitioner sent a letter dated 12.10.2012 informing that he had preferred a Writ Petition in W.P.No.25376 of 2012 against the order of dismissal. He has also stated that with an ulterior motive, the respondent had issued a Notice to evict him from the Quarters. The respondent sent a letter dated 18.10.2012 to the petitioner. The petitioner attended the personal hearing on 18.10.2012 and the proceedings was adjourned to

25.10.2012 and he was asked to appear for the personal hearing with all the documents. On 25.10.2012, the petitioner sent a letter requesting for transfer of proceedings to some other officer. The respondent sent communications on 26.10.2012 and 29.10.2012 calling upon the petitioner to make his submissions on or before 06.11.2012. On 06.11.2012, the petitioner sent another letter seeking for fifteen days time to make his submissions. Accordingly, the proceedings were adjourned for personal hearing of the petitioner to 21.11.2012 and the same was informed to the petitioner by the respondent by his letter dated 09.11.2012. Even on 21.11.2012, the petitioner failed to produce any evidence, however, sought for adjournment. Subsequently, on 23.11.2012, the petitioner sent a letter requesting for one year time for vacating the Quarters for the reason that the Writ Petition in W.P.No.25376 of 2012 is pending.

11. Therefore, from the above, it is clear that Form-A Notice was delivered on the petitioner on 06.10.2012 calling upon him to appear only on 18.10.2012. It is also clear that more than seven days time was given to the petitioner to answer the show cause. The personal hearings were also given to the petitioner on 18.10.2012, 25.10.2012 and 21.11.2012. The Quarters Cancellation Order was passed on 22.09.2012 and the Form-A Notice was issued on 03.10.2012 calling upon the petitioner to appear for personal hearing on 18.10.2012. Therefore, the contention of the petitioner that the procedures contemplated under Sections 4 and 5 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were not followed, cannot be accepted.

12. Though the petitioner was dismissed from service on 22.08.2012, even now he is continuing to be in possession of the Quarters meant for the employees of Integral Coach Factory. It cannot be disputed that the property belongs to the Integral Coach Factory. After the dismissal of the petitioner from service, he cannot claim any right to use the Quarters meant for the employees of the Integral Coach Factory. The petitioner's occupation amounts to unauthorised occupation. Continuance in occupation of such public premises by a Government servant after his retirement and service of Notice determining the authority under which or the capacity in which he was allowed to occupy would render the occupation unauthorised. The contention of the petitioner that the Integral Coach Factory authorities have not taken action against several unauthorised occupants and they have taken action only against the petitioner, cannot be accepted for the reason that the petitioner cannot take shelter by stating that the other wrong-doers were allowed to continue in possession of the property and therefore, he should also be allowed to do wrong. When the petitioner was dismissed from service, he has no right to raise such a contention and claim right on par with other wrong-doers.

13. However, the learned counsel for the respondent disputed this contention and submitted that the Integral Coach Factory authorities have taken appropriate legal action against the unauthorised occupants. The object of The Public Premises

(Eviction of Unauthorised Occupants) Act, 1971 is to forcibly evict the unauthorised people, who are deliberately remaining in occupation of public premises unauthorisedly. The Division Bench of this Court in the judgment reported in (2005) 1 M.L.J. 453 [A.Thayal Nayagi v. Union of India owning Southern Railway, represented by its General Manager, Chennai and others] rightly held that decent people vacate the premises when the period of lease or license expires. When a person does not behave in a decent manner, the only way left is to forcibly throw him out. It is for this purpose that the aforesaid Act was enacted and the same object has been achieved by the Lower Appellate Court to throw out an unauthorised occupant.

14. The ratio laid down by the Division Bench of this Court squarely applies to the facts and circumstances of the present case. In spite of requesting for one year time by his letter dated 23.11.2012, the petitioner had not vacated the Quarters till today. The Lower Appellate Court has rightly dismissed the appeal filed by the petitioner and confirmed the order of eviction passed by the respondent.

15. Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel for the petitioner, since the facts and circumstances are completely different, the same are not applicable. The Lower Appellate Court has considered all these aspects and rightly dismissed the appeal.

16. I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connect miscellaneous petition is closed.