

Vijay Kumar and Others Vs. Union of India and Others

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Court : Himachal Pradesh

Decided On : Sep-11-2012

Judge : The Honourable Chief Justice Mr. Kurian Joseph & Dharam Chand Chaudhary

Appeal No. : CWP No. 1665 of 2009 with CWP Nos. 1126, 1316, 1586, 1603, 1615, 1619 to 1621, 1664, 1668, 1669, 2598, 2599, 2654, 2992, 2994 & 4917 of 2009

Appellant : Vijay Kumar and Others

Respondent : Union of India and Others

Judgement :

Kurian Joseph, C.J.

1. The validity of Section 3-A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the validity of the proceedings initiated under the Act for eviction of the petitioners are the subject matter of these writ petitions. All the petitioners have been lessees of Brigade Bazaar in Yol Cantonment in District Kangra. Though, there is dispute on the nature of lease, the fact remains that all of them have been in occupation of the premises. They were all issued notices in the year 2009 under Section 4 of the Act on various grounds including the ground that the land is required for military use. The petitioners had submitted their reply(s), as well. However, without passing any final order under Section 5 of the Act, they

were issued notice under Section 3-A of the Act.

2. Section 3-A of the Act, reads as follows:

3-A. Eviction from temporary occupation.- Notwithstanding anything contained in section 4 or section 5, if the estate officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any persons who were allowed temporary occupation of any public premises are in unauthorized occupation of the said premises, he may, for reasons to be recorded in writing, make an order for the eviction of such persons forthwith and, thereupon, if such persons refuse or fail to comply with the said order of eviction, he may evict them from the premises and take possession thereof and may, for that purpose, use such force as may be necessary.

3. Section 2(fb) defines temporary occupation, which reads as follows:

temporary occupation, in relation to any public premises, means occupation by any person on the basis of an order of allotment made under the authority of the Central Government, a State Government, the Government of a Union territory or a statutory authority for a total period (including the extended period, if any) which is less than thirty days.

4. Unauthorized occupation is defined under Section 2(g), which reads as follows:

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.

5. It needs no elaborate discussion to hold that summary eviction under Section 3-A of the Act can be resorted to only in the case of a person occupying a public premises temporarily as per Section 2(fb), namely, where the period is less than 30 days. Admittedly, in all these cases, the permitted occupation has been for more than 30 days. Therefore, the proceedings under Section 3-A for eviction

cannot be resorted to and such steps are clearly without jurisdiction. In that view of the matter, it is unnecessary for us to go into the vires of Section 3-A and hence that question is left open.

6. All the petitioners have been issued notice under Section 4 of the Act. They have submitted their reply(s) as well. Under Section 4(2) of the Act, they are to be given an opportunity for personal hearing, before passing the final order under Section 5.

7. Learned Assistant Solicitor General of India, submits that since the present place of Brigade Bazaar is required for military purposes and situated in A-1, on security reasons also the land is required by the military. The respondents have constructed a new shopping complex nearby in order also to relocate the occupants and 11 occupants have already vacated and moved to the new complex. It is further submitted that some of the petitioners are not carrying out any activity in the old Brigade Bazaar and the building/sheds are in dilapidated condition as well. It is submitted that the respondents are willing to re-locate these petitioners also as has been done in the case of 11 others. It is further submitted that the military cantonment is badly in need of old bazaar for military purposes, including security reasons. Since personal hearing is to be offered to the petitioners, these offers can be made to them at the time of hearing and in case the petitioners are otherwise willing, naturally order on merits under Section 5 need not be passed since they can be relocated with their consent. In case, any of the petitioners is not willing for re-location, as above, in their cases, order on merits under Section 5 of the Act shall be passed. Appropriate orders in accordance with law in terms of Section 5 of the Act, after affording an opportunity for hearing to the petitioners shall be passed within two months from the date of receipt of a copy of this judgment. Till such time, the status quo with regard to the possession of the premises covered by these writ petitions shall be maintained.

8. with these observations, the writ petitions are disposed of, so also the pending application(s), if any.