

D. Nagaraju Vs. Union of India and Another

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Court : Karnataka

Decided On : Jun-14-1990

Reported in : AIR1991Kant60; 1991(1)KarLJ118

Judge : H.G. Balakrishna, J.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 4(1), 5(1) and 6(1)

Appeal No. : Writ Petn. No. 29374 of 1981

Appellant : D. Nagaraju

Respondent : Union of India and Another

Advocate for Def. : Bapu Heddur Shetti, Addl. Central Govt. Standing Counsel

Advocate for Pet/Ap. : Basavalingappa, Adv.

Judgement :

ORDER

1. The short point for consideration is whether the order passed under Annexure-O purported to be in exercise of the power conferred on the authority under S. 6(1) of the Public Premises (Eviction of unauthorised occupants) Act, 1971, is sustainable and whether the respondents have exercised that power in accordance with law.

2. A reading of Annexure-O simplifies the question for consideration and decision. What emerges from Annexure-O is that on 12-6-1978 a notice under sub-section (1) of S. 4 of the Act was served on the petitioner and in response to the said notice after the petitioner showed the cause, straightway the Estate Officer proceeded to issue the final order under sub-section (1) of S. 6 of the Act calling upon the petitioner to vacate the building within the time limit specified in the said notice and threatening the consequences thereof in the event of non-compliance with the notice.

3. The contention of the learned Counsel appearing for the petitioner is that the condition precedent for issue of the final order under S. 6(1) of the Act is the passing of an order of eviction under sub-section (1) of S. 5 of the Act. According to the learned Counsel such an order of eviction was not passed and, therefore, the impugned order under Annexure-O is unsustainable.

4. Section 5(1) of the Act reads as follows:--

'If, after considering the cause, if any, shown by any person in pursuance of a notice under s. 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of subsection (2) of S. 4, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the a state Officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.'

5. Thus, it is discernible that after a notice under S. 4(1) of the Act is served on the petitioner, if cause is shown by him, the Estate Officer shall consider the same, apply his mind and form an opinion that he is satisfied that the premises are in unauthorised occupation and then only proceed to make an order of eviction supported by reasons. If he is so, satisfied he shall give a direction to the occupant to vacate the premises on such date as may be specified in the order.

6. Annexure-O shows that a notice was issued under sub-section (1) of S. 4 of the Act. The second para of the said annexure shows that the next step taken by the Estate Officer was to exercise his power under S. 6(1) of the Act. Thus, it is seen that there is what may be characterised as leap frogging. Such a procedure is impermissible in view of the mandate S. 5(1) of the Act. Unless there is material on record to show that an order of eviction was, in fact, passed under S. 5(1) of the Act, the Estate Officer is precluded from proceeding to take action under S. 6(1) of the Act. In short, for exercise of power under S. 6(1) of the Act, the condition precedent is the satisfaction of the requirements of S. 5(1) of the Act.

7. The learned Additional Central Gov-Government Standing Counsel Sri Bapu Heddur Shetti submitted that the following sentence appears to give an indication that an order under S. 5(1) was indeed passed. The sentence is to be found as the opening sentence in Annexure-O which reads thus :--

'Where as on the 12th June 1978 you were evicted from the Public Premises described in the schedule which is mentioned in this office letter No. 32/401/77-M dated 17/12/77 (Notice under sub-section(1) of S. 4 of the Public Premises (Eviction of Unauthorised Occupation) Act 1971 was illegally occupied by you.'

8. Though there is an allegation to the effect that the petitioner was evicted on 12-6-1978, as a matter of fact, it is seen from the records that what happened on 12-6-1978 was only a service of notice contemplated under S. 4(1) of the Act. There is absolutely no material on record to show that there was compliance with the requirements of S. 5(1) of the Act. In the absence of an order of eviction, it has to be presumed that the petitioner is justified in his grievance.

9. For the reasons stated above, this writ petition is allowed and the impugned order/notice under Annexure-O is hereby quashed and the rule is made absolute. In the circumstances of the case, there shall be no order as to costs. However, it is open to the respondents to take such action as deemed fit if so advised in accordance with law against the petitioner.

10. Petition allowed.

