

## CIVIL WRIT

Before Bhandari, C.J. and Khosla, J.

GURCHARAN SINGH,—Petitioner

versus

CHAIRMAN, DELHI IMPROVEMENT TRUST—

Respondent

1954

April 23rd

Civil Writ No. 16-D of 1954

*Government Premises (Eviction) Act (XXVII of 1950)—Section 3—Notice of eviction under—Requisites thereof—Landlord and tenant—Relationship of landlord and tenant when created—Constitution of India—Article 226—High Court's power under, when can be invoked.*

*Held*, that a notice is usually issued to a person with the object of informing him that a proceeding has been or is proposed to be instituted against him so that he should take such steps as he thinks fit to appear before the appropriate public authority and have his say in defence of his person, property or rights. The essential qualities of a legal notice are that it should be in writing, that it should be given by the competent authority, that where the statute requires a notice to be given in a particular form it should be in that form and that it should be served on the person to be notified. It is not necessary that every legal notice should give detailed information on every conceivable point but it is necessary that it should give such information as would put a reasonably prudent man on enquiry regarding the interest, claim or right in question and would, if followed up with reasonable care and diligence, lead to the discovery of the true facts.

*Held further*, that the relationship of landlord and tenant is created when a person known as 'landlord' agrees that a person known as 'tenant' should occupy the landlord's premises in subordination to the latter's title. The agreement may be oral or in writing or it may be implied from the acts and conduct of the parties. Rent is a usual, though not an essential, incident of the relationship and payment of rent by the occupier to the owner of premises raises a presumption that the relationship of landlord and tenant has come into existence. The presumption however is a rebuttable one and may be rebutted by showing that the acts and conduct of the parties are inconsistent with its existence.

*Sidebotham v. Holland* (1), and *Harihar Banerji v. Ramshashi Roy* (2), relied on.

Held also, that proceedings under article 226 of the Constitution can be invoked when there is a legal right which has been infringed or is about to be infringed or there is a legal wrong which has been inflicted or is about to be inflicted.

Petition under Article 226 of the Constitution of India, praying as under—

- (i) That the notice, dated 8th July 1953, be quashed;
- (ii) That the respondent be directed to forbear from evicting the petitioner and from demolishing the said house;
- (iii) That the respondent be restrained from carrying out the threat mentioned in the said notice;
- (iv) That the respondent be called upon to show under what authority he has issued the said notice and is acting in the manner indicated by the said notice.

Such other order or direction as may be appropriate in the matter be kindly issued and an interim stay order prohibiting the respondent from evicting the petitioner and demolishing the house be passed and given Dasti to the petitioner.

D. P. BHANDARI, for Petitioner.

BISHAN NARAIN, for Respondent

#### ORDER

BHANDARI, C. J. Two questions arise for Bhandari, C. J. decision in the present case, viz., (1) whether it was within the competence of the Improvement Trust to evict the petitioners under the provisions of the Government Premises (Eviction) Act, 1950, and (2) whether the petitioners have *locus standi* to ask for the issue of a writ under Article 226 of the Constitution.

The Delhi Improvement Trust was executing a development scheme on a plot of land measuring 31.97 acres when in the year 1947, a large number

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(1) (1895) I.Q.B. 378.

(2) I.L.R. 46 Cal. 458.

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of displaced persons from Pakistan, who were unable to find accommodation for themselves, put up as many as 350 unauthorised structures on the said plot. These structures were mostly wooden shacks or *kacha* houses and even the *pucca* buildings were constructed without adequate foundations and without obtaining the sanction of the Delhi Improvement Trust. As these constructions violated the building bye-laws and defeated the object for which the scheme was sanctioned and as the entire plot of land was converted into a slum area, the Improvement Trust sought the intervention of the police and endeavoured to demolish the unauthorised structures. The representatives of displaced persons approached the Government of India and on the 12th July 1948, the Ministry of Relief and Rehabilitation issued a circular letter to Ilaqa Magistrates requesting them to issue instructions immediately to the police not to disallow completion of houses which were in an advanced stage of construction and to inform the public that such houses will be purely temporary and will be liable to be demolished on the expiry of three years. On the 22nd February 1952, that is, after the period of three years had expired, the Ministry of Works, Production and Supply, enunciated certain principles which should be observed in exercising powers under the Government Premises (Eviction) Act, 1950. It directed that where a displaced person has occupied any public land without permission or has constructed any building on such land before the 15th August 1950, he should not be evicted nor should such construction be removed unless the following conditions are fulfilled, that is to say—

(a) that alternative accommodation is provided before the order of eviction is passed;

(b) that an *ex gratia* rehabilitation grant is made to the displaced person in every case in which a construction is demolished or removed;

(c) that in the case of constructions which comply or with suitable modification may be made fairly to comply, with the municipal requirements and Town Improvement plans, the value of the land in unauthorised occupation is assessed on a No-Profit No-Loss basis and that the displaced person is given an option to purchase the site occupied by him against payment in easy instalments of the value of the land assessed and on condition of paying the ground rent for the time being in force; and

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(d) that in the case of constructions which comply with the municipal requirements but not with the Town Improvement plans, such plans should be modified as to avoid as far as practicable the demolition or removal of the construction in consultation with the committee constituted for the purpose.

On the 8th July 1953, the Chairman, Delhi Improvement Trust, issued notices under the Government Premises (Eviction) Act, 1950, calling upon the petitioners to vacate the premises occupied by them within a period of fifteen days from the date of service of the notice. These notices have evoked a number of petitions under Article 226 of the Constitution.

The learned counsel for the petitioners have placed two submissions before us, viz., (i) that the notices issued on the 8th July 1953, were void and of no effect; and (2) that the occupation of the land was not unauthorised or, at any rate, even if the occupation was unauthorised to start with, Government acquiesced in the occupation thereof and are now estopped by their conduct from ordering the eviction of the petitioners.

Section 3 of the Government Premises (Eviction) Act, 1950, runs as follows—

“(1) If the competent authority is satisfied—

(a) that the person authorised to occupy any Government premises has,

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whether before or after the com-  
mencement of this Act,—

- (i) sub-let, without the permission of the Central Government or of the competent authority, the whole or any part of such premises, or
- (ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or
- (b) that any person is in unauthorised occupation of any Government premises, the competent authority may, by notice served by post or otherwise, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within fifteen days of the date of the service of the notice.
- (2) If any person refuses or fails to comply with an order made under subsection (1), the competent authority may evict that person from, and take possession of the premises, and may for that purpose use such force as may be necessary."

The notices which were actually issued to the petitioners were in the following form or in a form to the like effect:—

"Whereas I, the undersigned, am satisfied that you are in possession of the Government premises described in the schedule in contravention of the provisions of section 3 of the Government Premises (Eviction Act, 1950 (XXVII of 1950), I hereby call upon you to vacate the said premises within fifteen days from the date of the service of this notice.

I am to warn you that in case you fail to vacate the said premises within the period specified above, you will be liable to be forcibly evicted therefrom.

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Then follows a schedule which gives the description of the property. In the case of the notice issued to Sundar Das petitioner the description is as follows—

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“Two pucca rooms, verandah, kitchen and bath.”

It is stated on behalf of the petitioners that the notices issued to them are vague and indefinite (1) as they do not state whether the eviction was ordered under clause (a) or clause (b) of subsection (1) or if it was ordered under clause (a), whether it was done under sub-clause (i) or sub-clause (ii) and (2) as the Government premises from which eviction is sought have not been properly described in the schedule.

A notice is usually issued to a person with the object of informing him that a proceeding has been or is proposed to be instituted against him so that he should take such steps as he thinks fit to appear before the appropriate public authority and have his say in defence of his person, property or rights. The essential qualities of a legal notice are that it should be in writing, that it should be given by the competent authority, that where the statute requires a notice to be given in a particular form, it should be in that form and that it should be served on the person to be notified. It is not necessary that every legal notice should give detailed information on every conceivable point but it is necessary that it should give such information as would put a reasonably prudent man on enquiry regarding the interest, claim or right in question and would if followed up with reasonable care and diligence, lead to the discovery of the true facts.

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In *Sidebotham v. Holland* (1), Lindley, L. J., expressed the view that the validity of a notice to quit ought not to turn on the splitting of a straw. In *Harihar Banerji v. Ramshashi Roy* (2), their Lordships of the Privy Council cited with approval certain English authorities and observed that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to relate, but what they would mean to tenants presumably conversant with all those facts and circumstances; and, further, that they are to be construed not with a desire to find faults in them which would render them defective, but in accordance with the maxim "*Ut res magis valeat quam pereat.*"

Judged in the light of these principles the objection in regard to the form of the notice appears to me to be wholly devoid of force. The rules framed under section 10 of the Act of 1950, require that a notice issued under section 3 of the Act, shall be in form "A" and the notices actually issued to the petitioners in the present case are in the said form.

The objection that the notices must be deemed to be invalid on the ground that the property from which the petitioners were sought to be evicted has not been correctly described is equally futile. It is contended that as the structures which had been put up by the petitioners themselves were the property of the petitioners, it was not open to the Trust to require them to vacate these structures although they had full power to require them to vacate the sites on which they had been constructed. This argument also appears to me to be equally futile. In the first place, the plot of land on which the structures had been put up measured

(1) (1895) I.Q.B. 378.

(2) I.L.R. 46 Cal. 358.

about 31 acres and the only method by which the site occupied by a particular person could be described was by giving a description of the structures which had been put up thereon. Secondly, the structures themselves are presumably the property of the Trust, for it has been held repeatedly that if a trespasser puts up a structure on a plot of land belonging to another without the permission of the owner, the structure becomes the property of the owner of the land. Thirdly, even if the material of the structure continued to remain the property of the trespasser, the Trust was at full liberty to require the petitioners to vacate the site and this site could only be vacated if the structures thereon were removed.

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Again, it is contended that although the petitioners were trespassers to begin with, the Trust must be deemed by its conduct to have acquiesced in the trespass and to have recognised and treated them as tenants. This it is alleged is clear from the fact that the petitioners paid, and the Trust unconditionally accepted, rent for the use and occupation of the premises. If the petitioners were accepted as tenants then possession of the premises cannot be regarded as unauthorised and the notices issued to them cannot be regarded as valid in the absence of an allegation that the petitioners had sub-let the premises or had acted in contravention of the terms under which they were authorised to occupy the premises.

The relationship of landlord and tenant is created when a person known as 'landlord' agrees that a person known as 'tenant' should occupy the landlord's premises in subordination to the latter's title. The agreement may be oral or in writing or it may be implied from the acts and conduct of the parties. Rent is a usual, though not an essential, incident of the relationship and payment of rent by the occupier to the owner of premises raises a presumption that the relationship of landlord and tenant has come into existence. The presumption, however, is a rebuttable one and may be rebutted by showing that the acts and conduct of the parties are inconsistent with its existence.



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The presumption which has been raised in the case of some of the petitioners who paid rent to the Trust has in my opinion, been completely rebutted by the facts and circumstances of the case and the acts and conduct of the parties. It is common ground that the petitioners were displaced persons from Pakistan, that they arrived in India in extreme distress, that in view of the scarcity of accommodation they were reluctantly compelled to put up structures of their own, that these structures were put up on a vacant site which was under the management and control of the Improvement Trust and that these structures were put up without the consent of the Trust. It is obvious, therefore, that the petitioners were trespassers. In view of the tragic circumstances in which the petitioners had migrated from Pakistan, Government were prepared to give them all possible help and assistance. It was obviously for these reasons that on the 12th July 1948, the Ministry of Relief and Rehabilitation, actually issued a circular communication in which they directed that no structure put up by a displaced person should be demolished by the police for a period of three years. This letter was followed by a communication, dated the 22nd February, 1952, in which the Ministry of Works, Production and Supply, directed that in the case of constructions which comply, or with suitable modification may be made fairly to comply, with the municipal requirements and Town Improvement plans, the value of the land in unauthorised occupation should be assessed on a No-Profit-No-Loss basis and that the displaced person should be given an option to purchase the site occupied by him against payment in easy instalments of the value of the land assessed. The grant of these concessions did not preclude Government from exercising their own rights of ownership over the property in question. The Trust continued to remain the owner of the Property and the petitioners continued to be trespassers on the said land although they were given every facility to vacate the land as soon as possible. At no stage did Government accept the position that the petitioners were in authorised possession

of the premises and were not trespassers. On the other hand, they declared as early as the year 1948, that the houses were purely temporary and were liable to be demolished after the expiry of three years. The fact that some compensation, wrongly described as rent, was paid by the petitioners for the use and occupation of the land and the fact that certain concessions were shown to the petitioners who were tragically situated would not alter the fact that the petitioners were trespassers all along and could be evicted in accordance with the provisions of the Act of 1950. Notices for their eviction were issued after they had been in unauthorised possession of the land for a period of three years. Government always treated the petitioners as trespassers, never manifested its intention of treating them as tenants and never acquiesced in their unauthorised occupation of the property of the Trust. The criterion in all such cases is the intention of the parties to be derived from all the facts and circumstances of the case.

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Mr. Bishan Narain, who appears for the Delhi Improvement Trust, contends, and, in my opinion, with a certain amount of justification, that the petitioners, have no *locus standi* to invoke the help of this Court for, as pointed out in *Harnam Singh v. The State of Punjab*, (1) proceedings under section 226 of the Constitution can be invoked when there is a legal right which has been infringed or is about to be infringed or there is a legal wrong which has been inflicted or is about to be inflicted. If the petitioners in the present case were trespassers *ab initio*, have continued to be trespassers all along and are in unauthorised possession of the property it is not open to them to complain that they should not be evicted therefrom.

For these reasons I am of the opinion that the following petitions under Article 226 are wholly misconceived and must be dismissed with costs—

Civil Writs Nos 16-D to 103-D of 1954, 155-D, 157-D to 167-D and 207-D and 208-D of 1953.

I would order accordingly.

KHOSLA, J. I agree

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(1) A.I.R. 1953 Pun. 176.