

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT: HYDERABAD  
CORAM:  
\* THE HON'BLE SRI JUSTICE K.LAKSHMAN**

**+WRIT PETITION No. 23768 OF 2022**

**% Delivered on:20-09-2022**

**Between:**

# BHEL MIG Employees Cooperative  
Housing society Limited ..Petitioner

Vs.

\$ The Union of India  
and two others .. Respondents

! For Petitioner : Sri V.Murali Manohar,  
Lr.Counsel, representing  
Sri S.Nagesh Reddy, Lr.Counsel.

^ For respondent No.1 : Ld.Asst.Solicitor General of India

For Respondent Nos.2&3 : Sri Ch.Samson Babu,  
Lr.Standing Counsel.

< Gist :

> Head Note :

? Cases Referred :

1. Manu/GH/0115/1963
2. (1987)SCC OnLine Del; 381
2. AIR 19678 SC 1269
4. Manu/UP/1516/2004
5. (2009) 12 SCC 40
6. (2004) SCC OnLine Del 407
7. (2014) 4 SCC 657
8. (2012) 12 SCC 773
9. In Civil Appeal Nos. 487 and 488 of 2021, dated 18.02.2022

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN****WRIT PETITION No.23768 OF 2022****ORDER:**

This Writ Petition is filed to declare the action of respondent No.2 in issuance of show cause notice dated 20.08.2021 and all consequential proceedings including orders dated 13.05.2022 in Case No.001/ 2021/MIG-I on the file of respondent No.2 under Sections 4 and 5 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act, 1971') , as illegal and consequentially to set aside the said show cause notice dated 20.08.2021 and all the above consequential proceedings.

2. Heard Sri V.Murali Manohar, learned counsel representing Sri S.Nagesh Reddy, learned counsel for the petitioner and Sri Ch.Samson Babu, learned counsel for respondent Nos.2 and 3. Perused the record.

**FACTS OF THE CASE**

3. The petitioner is a society registered under the Societies Act, 1964. It was formed to establish a township for the employees of the Ramachandrapuram unit/3<sup>rd</sup> respondent herein. On the request made by the petitioner, vide G.O.Ms.No.278, Industries and Commerce (INF) Department, dated 19.06.1985, the erstwhile Government of Andhra Pradesh, accorded permission to 3<sup>rd</sup> respondent to surrender

235 acres of land for the purpose of construction of houses to the employees under the Cooperative Housing Scheme. Pursuant to the said permission, 3<sup>rd</sup> respondent had executed two registered conveyance deeds bearing document Nos.6710/1988 for land admeasuring Ac.30.01guntas, Document No.8957/1988 for the land admeasuring Ac.170.22guntas both dated 07.12.1988, 3<sup>rd</sup> respondent conveyed the use of total land admeasuring Ac.200.23guntas to the petitioner society. The said land is situated in Sy.No.26/P of Seri-Nallagandla village, Sy.Nos.180/P, 181/P, 182/P, 183/P of Hanmole Village, Sy.No.322/P of Tellapur Village, Sy.Nos.401/P, 402/P, 403, 404, 405, 406, 407, 408, 409/P, 410/P, 411/P, 412/P, 413, 414, 415, 416/P, 417/P, 418/P, 432/P, 433, 435/P, 436, 437 and 441/P of Nallagandla Village.

4. The petitioner herein had also obtained a lay out from Hyderabad Urban Development Authority (HUDA) vide proceedings dated 04.04.1989. Even as per the said lay out, total land allotted is 200.24guntas. Thereafter, the said Society was split into two societies viz; the petitioner's society and BHEL Employees Cooperative Housing Society Limited, Phase-II, Sanga Reddy. After the lay out has been completed, the GHMC authorities under the Comprehensive Road Maintenance Plan (CRMP) are looking after the roads, parks and maintenance of the petitioner's society.

5. The petitioner's society is allotted plotted area to its Members specifically by following the procedure laid down under the Cooperative Societies Act, 1964 and also its by-laws. While the matter stood thus, 2<sup>nd</sup> respondent had issued a notice dated 08.02.2021 stating that he was appointed an Estate Officer under the provisions of the Act, 1971 to look after the estate of respondent No.3 and that as per the Differential Global Positioning System (DGPS) survey, there is encroachment of BHEL Land, that the total land presently occupied by the petitioner's society is Ac.207.99guntas. Whereas, it was allotted Ac.200.24guntas only and to surrender the excess land of Ac.7.75guntas in which the petitioner's society is in unauthorized occupation, to 3<sup>rd</sup> respondent. In the proceedings vide case No.001/2021/MIG-I, during the course of hearing, 2<sup>nd</sup> respondent had informed that 3<sup>rd</sup> respondent stated that it is in possession of panchanama dated 09.07.1986 through which land was allotted to the petitioner's society. The petitioner herein vide letter dated 11.10.2021 submitted certain documents as instructed by 2<sup>nd</sup> respondent during the course of hearing on 30.08.2021. During the hearing, the petitioner's society had requested 3<sup>rd</sup> respondent to furnish all the documents in support of their notice but 3<sup>rd</sup> respondent failed to submit the same. 3<sup>rd</sup> respondent sought

adjournments on the ground that it requires some time to examine the case in detail.

6. On 12.03.2022, the petitioner's society had filed a memo requesting 3<sup>rd</sup> respondent to furnish all the documents on which it is relying. 3<sup>rd</sup> respondent had provided only four documents. However, 3<sup>rd</sup> respondent failed to produce the alleged panchanama dated 09.07.1986 along with other documents. During the pendency of the said proceedings, 3<sup>rd</sup> respondent proceeded to mark the existing boundary wall of the available open land of the petitioner's society as BHEL land. The same was brought to the notice of 2<sup>nd</sup> respondent on 23.03.2022 and 2<sup>nd</sup> respondent has instructed both the petitioner's society and 3<sup>rd</sup> respondent to maintain status-quo until disposal of the said proceedings. Since there is glaring inconsistencies in the documents submitted by 3<sup>rd</sup> respondent in support of its claim, the petitioner's society submitted an affidavit on 28.03.2022 requesting 2<sup>nd</sup> respondent to direct 3<sup>rd</sup> respondent to submit the certified copies of the DGPS survey, duly attested by the Assistant Director, Survey and Land Records as well as the Mandal Surveyor of the State Government and also the panchanama, dated 09.07.1986. Without considering the said aspects, 2<sup>nd</sup> respondent has passed an order dated 13.05.2022 in Case No.001/2021/MIG-I directing that the petitioner's society and all persons who may be claiming the said scheduled land

or who may be in occupation of the said premises or any part thereof to vacate and to remove structure, if any, within 15 days of the date of publication of the said order. In the said order, it is also mentioned that in the event of refusal or failure to comply with the said order within the period specified therein, the petitioner society and all other occupants are liable to be evicted from the schedule premises.

7. Challenging the said show cause notice, dated 20.08.2021 issued by 2<sup>nd</sup> respondent and consequential orders dated 03.05.2022 in case No.001/2021/MIG-I passed by 2<sup>nd</sup> respondent, the petitioner herein has filed the present writ petition.

**CONTENTIONS OF THE PETITIONER:-**

8. The show cause notice dated 20.08.2021 is vague. The details like extent and survey numbers of the alleged illegal occupation of the public premises are not specifically mentioned in the said show cause notice dated 20.08.2021 and therefore the same is not in accordance with the provisions of the Act, 1971. The petitioner's society and its members are not unauthorized occupants. The initiation of procedure under the Act, 1971, by the respondents is illegal and 2<sup>nd</sup> respondent has no jurisdiction to initiate the said proceedings under the Act, 1971. Property mentioned in the show cause notice, dated 20.08.2021 and in the order dated 13.05.2022 is not specified as defined under Section 2 (e) of the Act and therefore,

the question of unauthorized occupation by the petitioner does not arise. The very issuance of the show cause notice dated 20.08.2021 is without any basis. Despite the specific request including memo filed by the petitioner's society, 3<sup>rd</sup> respondent has not furnished the documents including survey report and panchanama etc. The impugned proceedings had run beyond the prescribed limitation period without any jurisdiction.

9. In the show cause notice dated 20.08.2022, it is mentioned that the petitioner's society had constructed houses/structures in the BHEL land and it is unauthorized occupation of the said excess land. Whereas, in the impugned order dated 13.05.2022, there is no mention about the said structures and only land is mentioned. Boundaries are also different in both the proceedings. The DGPS Survey is not based on a recognized method of identifying and surveying the land. There is violation of principles of natural justice while conducting enquiry by 2<sup>nd</sup> respondent and by passing the impugned order dated 13.05.2022. Though there is alternative and efficacious remedy and the same is not bar to maintain the present writ petition, in view of the violation of the principles of natural justice and also in view of the fact that 2<sup>nd</sup> respondent has not mentioned complete details of the alleged unauthorized occupation of the public premises by the petitioner's society in show cause notice

dated 20.08.2021 and in the impugned order dated 13.05.2022. In the show cause notice, there is no mention of even basic particulars about the extent of land, survey numbers and village etc., Whereas, in the impugned order dated 13.05.2022, 2<sup>nd</sup> respondent had mentioned the property that the total land as Ac.7.30guntas (i.e. Ac.7.75acres) in which land admeasuring Ac.5.36guntas in Sy. Nos. 406(part), 405(part), 407(part), 405(part), 408(part) and the land admeasuring Ac.1.34guntas in Sy.Nos.431(part), 432(part), 433(part), 433(part), by raising a compound wall. Whereas vide conveyance deed, the entire land in Sy.Nos. 431, 432, 433, 407, 408, 405 and 406 of Nallagandla Village is assigned to the petitioner herein. The said fact was not even considered by 2<sup>nd</sup> respondent while conducting enquiry and in the impugned order dated 13.05.2022. Therefore, the impugned order is in violation of the principles of natural justice and contrary to the procedure laid down under the Act. Therefore, the writ is maintainable.

### **CONTENTIONS OF THE RESPONDENTS:-**

10. The writ petition is not maintainable in view of alternative and efficacious remedy under Section 9(1) of the Act. The premises which is in unauthorized occupation of the petitioner is 'public premises' and therefore, 2<sup>nd</sup> respondent is having jurisdiction to entertain the said application and pass impugned order under the



provisions of the Act, 1971. The 3<sup>rd</sup> respondent was authorized to surrender 2.35 acres in favour of the petitioner's society. Whereas, the 3<sup>rd</sup> respondent has surrendered only 200.24 acres of land in favour of the petitioner's society under the above said conveyance deeds. However, the petitioners herein are in occupation of Ac.7.75 acres of land unauthorizedly. The same was known by 2<sup>nd</sup> respondent and on conducting enquiry, passed the order dated 13.05.2022. The petitioner's society had participated in the enquiry on 9 occasions and submitted its reply and therefore, it cannot claim that there is violation of principles of natural justice. 3<sup>rd</sup> respondent supplied all the documents to the petitioner herein. The copies of DGPS survey bore the signatures of the revenue authorities. The petitioner and its members are dumping garbage and construction debris into BHEL lands and is discharging sewerage, contaminated and polluted water into BHEL. With the said submissions, he sought to dismiss the present writ petition

### **FINDINGS OF THE COURT:-**

11. To decide the lis involved in the present writ petition, it is relevant to extract certain provisions of the Act which are as follows:-

**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 a building, and

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

**Section 2(e):-** “public premises” means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such 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,—

- (i) any company as defined in section 3 of the Companies Act, 2013, 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, 2013, or a local authority) established by or under a Central Act and owned or controlled by the Central Government;
- (iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 in which not less than fifty-one per cent. of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.—For the purposes of this item, “metro railway” shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002;

- (iii-a) any University established or incorporated by any Central Act,
- (iv) any Institute incorporated by the Institutes of Technology Act, 1961,
- (v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963,
- (vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966, and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act,

- (vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,
- (viii) any Cantonment Board constituted under the Cantonments Act, 1924, and
- (3) in relation to the National Capital Territory of Delhi,—
  - (i) any premises belonging to the Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 of Delhi, or any Municipal Committee or notified area committee,
  - (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by the said Authority; and
  - (iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory,
  - (iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

Explanation.—For the purposes of this clause, the expression “State Government” occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi;

**Section 2 (g):-** “unauthorised 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.

**Section 4:-** Issue of notice to show cause against order of eviction—

- (1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.

(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not later than seven days from the date of issue thereof, and

(ii) 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.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

**Section 9:-.** Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or section 5C or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,—

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under section 5B or section 7, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.

12. There is no dispute that against the impugned order dated 13.05.2022 passed by 2<sup>nd</sup> respondent under Section 4 of the Act, an appeal lies under Section 9(1) of the Act. However, learned counsel for the petitioner's society would submit that there is violation of principles of natural justice and that 3<sup>rd</sup> respondent has not furnished certain documents sought by the petitioner despite specific request and memo dated 12.03.2022. In the show cause notice dated

20.08.2021, 2<sup>nd</sup> respondent has not specifically mentioned full details of the schedule of property like survey numbers, extent of land, name of the village etc. Only boundaries were mentioned. However, in the show cause notice, dated 20.08.2021, 2<sup>nd</sup> respondent has mentioned that the petitioner's society has encroached the land admeasuring Ac.7.75guntas and constructed houses/structures in BHEL land and therefore, the petitioner is in unauthorized occupation of the said excess land.

13. Whereas, in the impugned order dated 13.05.2022, 2<sup>nd</sup> respondent has mentioned total land as Ac.7.30guntas (i.e. Ac.7.75acres) i.e. land admeasuring Ac.5.36guntas in Sy. Nos. 406(part), 405(part), 407(part), 405(part), 408(part) and the land admeasuring Ac.1.34guntas in Sy.Nos.431 (part), 432(part), 433(part), 433(part), by raising a compound wall. But there is no mention about the name of the village in which the said property is situated. He has mentioned only the boundaries. According to 2<sup>nd</sup> respondent, the petitioner's society had encroached Ac.7.75 guntas. The said extent is also wrongly mentioned. Thus, 2<sup>nd</sup> respondent has not mentioned proper and complete facts in the show cause notice, dated 20.08.2021 and order dated 13.05.2022. Despite specific request by the petitioner's society, including filing of memo dated 12.03.2021, 3<sup>rd</sup> respondent has not furnished certain documents

including panchanama and DGPS Survey report etc. Therefore, according to this Court, there is violation of principles of natural justice and 2<sup>nd</sup> respondent has not followed the procedure laid down under the Act. Therefore, remedy available under Section 9(1) of the Act is not an efficacious remedy and the present writ petition is maintainable.

14. It is relevant to note that Tripura High Court vide its judgment, dated 04.03.1963 in W.Appln.Nos.5 and 6 of 1961 in **Amulya Chandra Sutradhar Vs. Estate Officer**<sup>1</sup> categorically held that no order shall be passed in contravention of the provisions of law. In the said case also, the Estate Officer has not mentioned the details of the property. Therefore, Tripura High Court held that the notice under Section 4(1) of the Act must clearly mention in respect of what public premises eviction proceedings are being taken. Description of the property shall specifically be mentioned in the notice under Section 4(1) of the Act. In the absence of the same, the said notice and consequential order passed is nullity.

15. Following the said principle, the Delhi High Court in **Shri Bhagat Singh Vs. Delhi Development Authority**<sup>2</sup> held that the notice under Section 4 of the Act must contain the particulars of the premises so that the person on whom notice is served is made aware

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<sup>1</sup> Manu/GH/0115/1963

<sup>2</sup> (1987)SCC OnLine Del; 381

clearly as to for what premises he has to show cause. The subsequent correction made in the description of the premises in the ultimate order or eviction passed under Section 5 of the Act does not have the effect of curing the defect appearing in the notice. It further held that notice under Section 4(1) of the Act must contain description of the public premises clearly so that all concerned should know what particular premises this notice pertains to. The same is mandatory in terms of Section 4 of the Act.

16. As stated above in the show cause notice dated 20.08.2021, there is no mention about the survey number, extent of land, village name etc. In the order dated 13.05.2022, there mention about certain extents of land and survey numbers. But the village name is not mentioned. Therefore, there is error in the order dated 13.05.2022.

17. As discussed above, notice under Section 4 of the Act must contain the details of the premises. Whereas, in the present case, there is no mention about the premises in the notice issued under Section 4 of the Act, 1971.

18. It is relevant to note that the Apex Court in **State of Orissa Vs. Binapani Dei**<sup>3</sup> held that a writ petition filed under Article 226 of the Constitution of India challenging the administrative order passed by State having civil consequences without following rules of natural justice is maintainable. It held that Article 226 of the Constitution of

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<sup>3</sup> AIR 1968 SC 1269



India is not precluded from entering upon a decision on questions of fact raised by the petitioner. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution of India before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. It further held that an order passed by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice.

19. In **Sohan Lal Singh Vs. Basic Education Board**<sup>4</sup>, the Allahabad High Court held that whereas, there is violation of principles of natural justice, denial of reasonable opportunity, writ

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<sup>4</sup> Manu/UP/1516/2004

petition is maintainable. Certain paragraphs of the said judgment are relevant and the same are extracted below:-

22. The settled legal proposition, remain that principles of natural justice are in built in the statutory rules and require observance unless the same stand excluded by the rules itself. The adjudicating authority must be impartial and without any interest or bias of any type; where the Adjudication Authority is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub-delegated to any other offices the adjudicating authority must give full opportunity to the affected person to produce all the relevant evidence in support of his case; the adjudicating authority must disclose all material placed before it in the course of the proceedings and cannot utilize any material unless the opportunity is given to the party against whom it is sought to be utilized; the adjudicating authority must give an opportunity to the party concerned to rebut the evidence and material placed by the other side; and in disciplinary proceedings under Article 311 of the Constitution against the civil servants and in cases or domestic inquiries by employers against their employees under the factory laws.

23. The principle of natural justice had to be considered in the context of the fact-situation and in view of the scheme and the rules applicable in a particular case. If an employee, remains absent for more than a stipulated period and statutory rules or standing orders provide for automatic termination of his services in such an eventuality, without holding inquiry or giving opportunity of being heard, observance of principle of natural justice is mandatory proposition. The Supreme Court has categorically held in a catena of decisions that a statutory rule is void if it stipulates for automatic termination of services of an absenting employee after expiry of a stipulated period.

20. In **Umanath Pandey Vs. State of U.P.**<sup>5</sup>, the Apex Court held that if a party is not served with notice of case before any adverse order is passed against him, then it will be grave violation of principles of natural justice. Whereas, in the present case, on issuance of notice, though the petitioner's society has participated in the enquiry, 3<sup>rd</sup> respondent has not furnished the documents as sought by the petitioner's society. The petitioner's society has been making

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<sup>5</sup> (2009) 12 SCC 40

request to furnish documents as sought by it and also filed a memo dated 12.03.2022 seeking the said documents. Even in the impugned order, there is mention about the request made by the petitioner, to furnish documents and also the memo dated 12.03.2022. Thus, there is denial of opportunity to the petitioner herein. Therefore, there is violation of principles of natural justice. Alternative remedy is not a bar to maintain the present writ petition.

21. In **Sudhir Goel vs M.C.D.**<sup>6</sup> the Delhi High Court in paragraph Nos.34 and 35 held as under:-

34. In my opinion the extracted opinion of the Division Bench in Dr. Yash's case (supra) should be followed to the teeth:-

"6. Sub-section (4) makes it obligatory to serve a copy of the notice issued under sub-s. (3) of S.4 on all such persons whom he knows or has reason to believe to be in possession of the public premises. This copy shall be served upon every such person either by post or by delivering or tendering it to that person, or in such other manner as may be prescribed under Rules. The expression "without prejudice to the provisions of sub-s. (3)" makes it abundantly clear that mere failure to serve such a copy on any such person will not in any manner render the service of the notice issued under sub-s. (3) ineffective or invalid. The notice must, however, specify the ground or grounds on which the order of eviction is proposed to be made, and in no case shall the person against whom such a notice is issued be called upon to show cause against the eviction earlier than 10 days from the date the notice has been issued. A person has two options open to him after the notice is served upon him. He may either vacate the premises in case he is convinced that his occupation of the premises is unauthorised. This may very well save him from the tedium and expense of the litigation which he may have to face before the Estates Officer. Where, however, he considers either that the premises from which he is sought to be evicted is not a public premises as defined in S. 2 of the Eviction Act, or that his occupation of the public premises is not unauthorised, he may resist the eviction proceedings. Where he chooses to face the proposed eviction proceedings, equity, good conscience and fair play demand that he should have a reasonable notice of the grounds upon which his eviction is sought, as obviously he would not be in a position to

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<sup>6</sup> (2004) SCC OnLine Del 407

put up his defense without actually knowing what precisely is the case against him. That is why Cl. (a) of sub-s. (2) of S. 4 contains a mandate to the Estates Officer, that he shall specify the grounds on which the order of eviction is proposed to be made. In the instant case a copy of the notice given to the appellant has also been served upon him. There is, however, a significant variance between the copy supplied to the appellant and its original which is on the file of the Estates Officer, inasmuch as no ground whatsoever has been mentioned in the copy, whereas its original contains the ground which is:

"You have occupied Govt. Quarter unauthorisedly." Clearly, therefore, it cannot be said that the copy supplied to the appellant was indeed a copy of the notice served upon him under sub-section (3) of S.4. Why the ground of eviction was withheld from the appellant in serving the aforesaid copy on him is not quite understandable to us, nor any explanation has been tendered by the Estates Officer for this glaring omission. Whether it was a bona fide accidental slip, or it was a calculated design to keep the appellant in the dark may be anybody's guess. Be that as it may, as we have already opined, that even non-service of such a copy would not render the service of notice under sub-s. (3) invalid, we shall confine ourselves to the validity of the original notice served upon the appellant in terms of sub-s. (3).

7. The only ground of eviction which the notice specifies is, that the appellant occupied the Govt. quarter mentioned in the notice unauthorisedly. This statement in our opinion cannot be characterised as a ground of eviction by any stretch of logic. This may be at the most an inference of unauthorised occupation based upon some ground other than the fact that the appellant was an unauthorised occupant of the public premises. How his occupation of the premises which at its inception was admittedly lawful became unauthorised, must have been the outcome of some supervening circumstances. What were those supervening circumstances, the appellant had every right to know, as it would be those circumstances alone which would constitute the ground for his eviction within the meaning of cl.(a) of sub-s. (2). How could it be said, that merely telling the appellant that he was an unauthorised occupant because he occupied the Govt. quarter unauthorisedly tantamounted to specifying the grounds on which his eviction was proposed? Such a statement in the notice could hardly constitute a ground as already observed.

8. The learned single Judge, it appears, was also conscious of this infirmity in the notice. This defect was, however, considered by him as totally inconsequential as according to him, the appellant was otherwise having full knowledge of the grounds upon which his eviction was proposed. In other words, the learned Judge was of the opinion, that where a person proceeded against under the Eviction Act was otherwise in the know of the grounds upon which his eviction was proposed, mere failure to mention those grounds in the notice served upon him under sub-sec. (3) was immaterial, which did not render the notice invalid. We are unable to fall in line with the learned single Judge in taking this view of sub-s. (2). The provisions of this sub-section are mandatory and not merely directory

in character, for the simple reasons, that failure to make an effective reply to the notice for eviction as a consequence of absence or even vagueness of the grounds of eviction to be specified in the notice, may result in loss of the occupation of the premises. Furthermore, by construing cl. (a) of sub-s. (2) in such a manner, we would be indeed reading the words "unless otherwise known to him" in it which in fact are not there. ...."

35. It has been vehemently argued that the Notice under Sections 4, 5 and 7 of the PP Act is liable to be struck down as it contravenes the provisions of Section 4 itself. These Notices have been issued to each of the Petitioners on sundry dates but in all the cases the period permitted for 'showing cause' was less than seven days as mandated by Section 4(2)(b)(i) of the PP Act. This statutory discrepancy or deficiency is sought to be explained away by drawing attention to the repeated adjournments allowed to the Petitioners. These have been reproduced in detail by the learned Additional District Judge in the impugned Judgment, but on its perusal it is manifestly clear that the Estate Officer did not grant an adjournment for a duration in excess of the mandatory period of seven days prescribed by the statute itself. The Estate Officer ought not to have forgotten that he was a creation of that statute and derived each and every power for it. Almost a century ago, in *Nazir Ahmad vs. King Emperor*, it has been enunciated that it is not open to follow any procedure other than that laid down with minute particularity in the provision itself. The Notice was ultra vires and is liable to be struck down on this short ground. What is disturbing is that even after this error was pointed out to the Estate Officer, in his haste to conclude the case, he did not even attempt to make statutory amends by adjourning the hearings for the period stipulated by the Section but instead postponed the case for a couple of days at a time. The attitudinal fault has manifested itself in other aspects of the case including the resolute refusal of the Estate Officer to allow sufficient opportunity to the Petitioners to lead evidence. In India, every lawyer nay every person acquainted or associated with law is aware of the adage that justice hurried is justice buried. The anxiety of the Estate Officer to finish the case with athletic speed can be expected, but it must be deprecated when speed clouds jural attention. Both in their Reply to the Notice issued by the Estate Officer as well as in their Appeal before the learned Additional District Judge the Petitioners' prayer for an opportunity of recording evidence has been ignored. Summary procedure cannot pardon the failure to grant adequate opportunity to defend. The Estate Officer as well as the learned Additional District Judge could not but have been aware that the present case was wholly dissimilar to the run of the mill cases of a licensee overstaying in government residential accommodation. Cases of such genre cannot constitute precedents for the complex question raised in the present case.

22. As discussed supra, there is violation of principles of natural justice and that 2<sup>nd</sup> respondent has not followed the mandatory procedure laid down under the Act. Therefore, alternative remedy of

filing of appeal under Section 9(1) of the Act is not bar to maintain the writ petition. Therefore, the present writ petition is maintainable.

23. It is also relevant to note that vide the aforesaid conveyance deeds, the 3<sup>rd</sup> respondent has conveyed entire land in Sy.Nos. 405, 406, 407, 408, 431 432, 433 in full of Nallagandla Village. Whereas, in the order dated 13.05.2022, 2<sup>nd</sup> respondent has mentioned the property i.e. total land as Ac.7.30guntas (i.e. Ac.7.75acres) in which land admeasuring Ac.5.36guntas in Sy. Nos. 406(part), 405(part), 407(part), 405(part), 408(part) and the land admeasuring Ac.1.34guntas in Sy.Nos.431(part), 432(part), 433(part), 433(part). Therefore, the same is factually incorrect. Thus, 2<sup>nd</sup> respondent has not mentioned the public premises and also the details of the same properly. On the said ground also alternative remedy of availing appeal is not bar to maintain the present writ petition. Therefore, the present writ petition is maintainable.

24. Learned counsel for the petitioner referring to Section 2 (c) and (e) of the Act would contend that the schedule property mentioned in show cause notice, dated 21.08.2021 and the land mentioned in the order dated 13.05.2022 is not a public premises and the petitioner cannot be called as unauthorized occupant. In the writ affidavit itself, the petitioner herein has mentioned that 3<sup>rd</sup> respondent herein is a company registered under the Companies Act and is a

Central Public Sector Enterprise, working under the administrative control of 1<sup>st</sup> respondent/Union of India. 3<sup>rd</sup> respondent is a Maharashtra Company. Section 2 (e ) of the Act deals with the public premises which includes any premises belongs to Central Government and any premises belongs to any Company as defined in Section 3 of the Companies Act.2013. The Apex Court in **Suhas H Pophale Vs. Oriental Insurance Company Limited**<sup>7</sup>, categorically held that premises belonging company/public entity means only premises known by or taken on lease by such entity taken over of management and entity by company/public entity without taking of its ownership is not enough.

25. In **Cantonment Board Vs. church of North India**<sup>8</sup>, the Apex Court held that premises belonged to Union of India which were always covered under the Public Premises Act and were only under management of Cantonment Board, even prior to the amendment. Hence, such premises were always covered under Public Premises Act.

26. In **T.Takano Vs. Securities and exchange Board of India**<sup>9</sup>, the Apex Court in paragraphs No.51 summarized certain conclusions and the relevant conclusion Nos. 'I' to 'iv' are extracted below:-

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<sup>7</sup> (2014) 4 SCC 657

<sup>8</sup> (2012) 12 SCC 773

<sup>9</sup> In Civil Appeal Nos. 487 and 488 of 2021, dated 18.02.2022

- i. The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in *Natwar Singh* (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;
- ii. The Board under Regulation 10 considers the investigation report submitted by the Investigating Authority under Regulation 9, and if it is PART D 48 satisfied with the allegations, it could issue punitive measures under Regulations 11 and 12. Therefore, the investigation report is not merely an internal document. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9;
- iii. The disclosure of material serves a three- fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions;
- iv. A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in *Karunakar* (supra) that the non-disclosure of relevant information would render the order of punishment void only if the aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the outcome and the process.

27. As discussed supra, 3<sup>rd</sup> respondent is claiming that it is owner of the subject land and it was authorized to surrender land admeasuring 235 acres in favour of the petitioner herein. It has approved land admeasured Ac.200.24guntas only and whereas, the petitioner herein is in unauthorized occupation of Ac.7.75guntas of the land. Therefore, according to this Court, the said ‘premises’ is ‘public premises’ within the definition of Section 2 (e) of the Act.



28. Viewed from any angle, the impugned show cause notice dated 20.08.2021 and order dated 13.05.2022 passed by 2<sup>nd</sup> respondent in Case No.001/2021/MIG-I are illegal, in violation of the principles of natural justice and also in violation of the procedure laid down under Section 2 of the Act. The same is liable to be set aside.

29. Therefore, this Writ Petition is allowed. The impugned show cause notice dated 20.08.2021 and order dated 13.05.2022 passed by 2<sup>nd</sup> respondent in Case No.001/ 2021/MIG-I are set aside. However, liberty is granted to respondent Nos.2 and 3 to initiate fresh proceedings against the petitioners strictly in accordance with the procedure laid down under the Act.

Consequently, miscellaneous Petitions, if any, pending, shall also stand closed.

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**K. LAKSHMAN, J**

Date:20.09.2022

**Note: L.R.copy to be marked.**

b/o.Vvr