

**Suresh Kumar Jain s/o ... Petitioner**  
**Kasturchand Jain**

| State of Madhya Pradesh<br>& two others | .... | Respondent |
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**For respondents: Shri A.K.Sethi, learned Sr.Counsel with Shri Harish Joshi, counsel.**

**ORDER**

**BEING** aggrieved with the order dated 18<sup>th</sup> June, 2002 passed by the Competent Officer, M.P. Lok Parisar (Bedakhali Adhiniyam, 1974 (for short “Bedakhali Adhiniyam) and the appellate order dated 11<sup>th</sup> September, 2002 passed by the Commissioner Indore, present Writ Petition has been preferred by the tenant.

[2] In brief, the petitioner is tenant of deity, Gopal Mandir since 1/9/1969 in respect of an area ad-measuring 1554 sq.ft. The rent note dated 24/1/1985 was executed by the petitioner in respect

of the suit land. The respondents No. 1 and 2 had filed an application before the Competent Officer under Section 4 of the Bedakhali Adhinyam for evicting the petitioner in the year 1995. Notice (Annexure P.4) was issued to the petitioner under Section 4 of the Bedakhali Adhinyam. Reply and affidavits in evidence were filed by the petitioner and thereafter the order dated 16/3/1999 was passed by the competent officer, directing eviction of the petitioner from the suit property. Appeal at the instance of the petitioner was allowed by the Commissioner vide order dated 4<sup>th</sup> December 1999 (Annexure P.10) on the ground that the competent authority had passed a cryptic order and the matter was remanded to the competent authority for passing fresh order in accordance with the law. The competent authority passed a fresh detailed order dated 18/6/2002 (Annexure P.12) holding that sufficient material exist for the eviction of the petitioner and directing the petitioner to hand over the possession of the suit property to respondents No.1 and 2. Petitioner's appeal against the said order of the competent authority has been dismissed by the Commissioner by order dated 11<sup>th</sup> September, 2002. Aggrieved with the same, the petitioner has approached this Court.

[3] Writ Petition has been opposed by the respondents by supporting the orders passed by the competent authority as well as the appellate authority.

[4] I have heard the learned counsel for parties at length and have minutely perused the record of the case.

[5] The competent authority, on remand, has passed a detailed, elaborate order, directing eviction of the petitioner from the suit property. The spot inspection was done on 27/4/2002. It has been noted by the competent authority that as per condition 15 of the rent note, the suit property was taken on rent for commercial use by the petitioner but the same was not used for this purpose in past for long period. The west south part of the suit property was lying dirty and that the petitioner was earlier storing the cow dung cakes in the open land and that he has constructed a wall on the western side in full length from north to south in violation of the rent note condition. It is also found that inspite of the request by the respondents for vacating part of the disputed land, the petitioner had not vacated the said area and on expiry of the tenancy period mentioned in the rent note the petitioner did not get the rent deed renewed. Thus, the competent authority on finding that the petitioner had violated condition No.4,5,8,9,15,16 and 17 of the rent note, passed the order of eviction against the petitioner under the Bedakhali Adhinyam. In appeal, the Commissioner re-examined the matter and found that the competent authority had passed the eviction order after examining the pleadings and the evidence and taking note of the spot inspection done in the presence of panch.

The appellate authority found no error in the order of the competent authority and dismissed the appeal.

[6] The first contention of the learned counsel appearing for the petitioner is that the respondents had terminated the tenancy in respect of an area of 789.81 sq.ft which was part of the total rented land ad-measuring 1554 sq.ft, therefore, splitting of tenancy could not be done and eviction order could not be passed. Such a contention of the counsel for petitioner cannot be accepted because no splitting of the tenancy has been done but the competent authority has passed the eviction order in respect of the entire tenanted area of 1554 sq.ft. A perusal of the application under Section 4 discloses that the respondents had earlier given a notice dated 8/10/1993 to the petitioner for vacating southern area of 789.81 sq.ft of the tenanted premises but in pursuance of that notice, the said area was not vacated by the petitioner, thereafter the respondents had filed the eviction petition under Section 4 of the Bedakhali Adhiniyam seeking eviction of the petitioner from the entire tenanted premises. The prayer clause of the eviction application is not restricted to 789.81 sq.ft only. The petitioner, in his reply dated 9/6/1997 filed before the competent authority, had denied the receipt of any such notice dated 8/10/1993 and had not opposed the relief claimed by the respondents on the ground of splitting of the tenancy nor such an issue was raised at any stage before the competent authority or

the appellate authority.

[7] Counsel for petitioner has placed reliance upon the judgment in the matter of Kanwar Behari Vs. Smt. Vindhya Devi reported in AIR 1968 PUNJAB 481, Supreme Court in the matter of Miss S.Sanyal Vs. Gian Chand reported in AIR 1968 SC 438 and in the matter of B.P.Pathak s. Dr.Riyazuddin Haji Mohammad Ali and others reported in 1976 MPLJ 9 in support of his submission but these judgments are not attracted in the facts of the present case since these judgments either relate to eviction of the tenant under the Rent Act in the cases of composite tenancy where eviction is sought for a part of the tenanted premises by splitting of the tenancy or there was a prayer for partial eviction which is disapproved but in the present case neither there is prayer for partial eviction nor any order of partial eviction has been passed.

[8] Learned counsel appearing for the petitioner has raised the second contention that since by the notice dated 8/10/1993 the tenancy was terminated only in respect of 789.81 sq.ft of land, therefore, in terms of the provision contained in Section 4 and Section 2(g) of the Act, the petitioner was not in unauthorised occupation. Section 4 is attracted when a person is in unauthorised occupation of any public premises and unauthorised occupation is defined under Section 2(g) of the Act. It is not in dispute that the petitioner is in possession of the public premises. In the rent note

the petitioner had specifically agreed that the provisions of Bedakhali Adhiniyam will be attracted and in case of violation of any of the conditions of the rent note, the government can get him evicted under the provisions of the Bedakhali Adhiniyam. Thus impliedly it was agreed that violation of the conditions will result into unauthorised occupation. It is also found that by notice dated 8/10/1993 the petitioner was asked to vacate part of the tenanted premises ad-measuring 789.81 sq.ft but the same was not complied with by the petitioner, therefore, he had become an unauthorised tenant. Since splitting of tenancy is not permissible, therefore, the respondents had filed the eviction application for the entire suit land. Even otherwise, it is clearly mentioned in the rent note (Ex.P.1) that it will remain valid up to 31/7/1985 and if the petitioner wanted to continue as tenant, thereafter he was to get the rent note renewed after every 11 months. Undisputedly the petitioner had not got the rent note renewed at any point of time on its expiry on 31/7/1985. Though the petitioner has placed on record some of the rent receipts showing that even thereafter the rent was accepted but that alone is not enough. Even in respect of the payment of rent it has been noted by the competent authority that the petitioner was not regular in payment of rent.

[9] Thus, the conditions of Section 4 read with Section 2(g) are satisfied and the order of eviction does not suffer from the

error of lack of jurisdiction of the competent authority.

[10] Learned counsel for petitioner has raised the third contention that the notice issued under Section 4 of the Act was not a valid notice since it does not state the ground of eviction. Section 4(2) requires the notice issued under Section 4(1) to specify the grounds on which the order of eviction is proposed to be made. In the notice under Section 4, Annexure P.4, it was specifically mentioned that the petitioner had violated the conditions of the rent note and had not given the vacant possession to Gopal Mandir. This notice clearly mentions the ground of eviction. Even otherwise it is undisputed before this Court that the eviction application under Section 4 filed by the respondents was enclosed along with the notice Annexure P.4 and supplied to the petitioner which contains the requisite details of the violation of the different conditions of the rent note. It is also noticed that the petitioner had filed reply to the application under Section 4 of the Act but he had not raised any such objection in the reply that in the notice under Section 4 the grounds of eviction was not disclosed. Such an objection was neither raised by the petitioner at any stage before the competent authority nor it was raised in memo of appeal before the Commissioner or at any stage before the Commission and it has been raised for the first time before this Court. The petitioner has failed to point out that any prejudice is caused to him in this regard. In view of this, such an

objection raised by the petitioner cannot be accepted.

[11] Learned counsel for petitioner has placed reliance upon the judgment of the Jammu & Kashmir High Court in the matter of **Dr.Yash Paul Gupta Vs. Dr.S.S.Anand and others** reported in AIR 1980 J&K 16 wherein it has been held that the tenant should have a reasonable notice of the grounds upon which his eviction is sought to enable him to put up his defence. In that case in the eviction notice, the only ground specified was that the tenant was in occupation of government quarter unauthorisedly. Nothing further was specified, therefore, the Court had rightly interfered but in the present case it was specifically mentioned in the notice under Section 4 that the petitioner had violated the conditions of rent note. Thus, no benefit can be granted to the petitioner on the basis of this judgment.

[12] Learned counsel for petitioner has also submitted that after remand, the competent authority had issued the summons (Annexure P.11) without issuing the fresh notice under Section 4 of the Act. Such an act of the competent authority cannot be faulted since the petitioner was already issued the notice under Section 4 of the Act (Annexure P.4) and on remand, the proceedings were in continuation of the notice which was already issued earlier, therefore, fresh notice under Section 4 of the Act for eviction was not necessary.



[13] Learned counsel for petitioner has raised the last contention that the order has been passed by the competent authority without recording the evidence, therefore, the order cannot be sustained. Section 5(1) of the Act which is relevant in this regard reads as under:-

S.5. "Eviction of unauthorised occupation.-(1) On the date specified in the notice issued under sub-section (1) of section 4, *the competent authority shall take all such evidence as may be produced in support of the cause to be shown. If, after considering the cause, if any shown and any evidence that may be produced and after giving the person concerned a reasonable opportunity of being heard, regarding the alleged unauthorised occupation of the public premises, the competent authority is satisfied that the public premises are in unauthorised occupation, the competent authority 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*".

[14] The aforesaid provision clearly indicates that it is not obligatory for the competent authority to take the evidence in the manner it is done in a civil suit but the obligation of the competent authority is to take all such evidence as may be produced in support of the cause to be shown by the unauthorised occupant, therefore, it was for the petitioner to produce evidence in support of the cause shown by him. This position is also clear from the judgment of this Court in the matter of **Ataullah Khan S/o Abdul Gaffoor Vs. State of Madhya Pradesh and others** reported in 1988 MPLJ 99 where

this Court while examining the constitutional validity of Section 4,5 and 9 of the Bedakhali Adhiniyam had observed as under:-

**Para 7:-** “Sections 4,5 and 9 as substituted by the Amendment Act No.18 of 1981, in our opinion do not suffer from any of the vices pointed out in the case of *Munnawar Ahmad (supra)*. A perusal of Section 4 would indicate that sub-section (1) of Section 4 contemplates issue of notice to show cause against order of eviction. Sub-section (2) provides for the contents of notice to be issued under sub-section (1). Sub-section (3) on the other hand contemplates that the competent authority 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 that it shall also be published in such other manner as may be prescribed. *Sub-section (4) provides that where the competent authority knows or has reason to believe that any persons are in occupation of the public premises then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to the persons or in such manner as may be prescribed. Sub-section (1) of Section 5 on the other hand makes it obligatory on the competent authority to take all such evidence as may be produced in support of the cause to be shown by the person against whom a notice under sub-section (1) of Section 4 has been issued, and it is only if after considering the cause shown and giving reasonable opportunity of being heard to the person concerned that an order for eviction of the said person is to be passed. Sub-section (2) of Section 5 provides that the competent authority may, on an application by the person against whom an order is passed under sub-section (1), grant such time for vacating the premises as it deems fit subject to such conditions as may be imposed. In those cases where the person concerned fails to comply with the order of eviction before the date specified in sub-section (1) or where time is granted under sub-section (2) within the time as granted, such a person has to be actually evicted. Sections 4 and 5 as substituted by M.P. Amendment Act No.18 of 1981, therefore, contain complete safeguard against an arbitrary eviction.....”*

[15] It is not the case of the petitioner that before the

competent authority he had made any prayer for adducing the evidence in support of the cause shown by him and the same was refused by the competent authority. The record indicates that no such prayer was made by the petitioner before the competent authority for examining the witnesses. The petitioner had filed the affidavits of Virendranath Kapoor and Narendra Kumar Jain in support of his case before the competent authority which have been duly considered and taken note of by the competent authority. Thus, the argument raised by the counsel for petitioner in this regard cannot be accepted.

[16] Learned counsel for petitioner has placed reliance upon the judgment of the Karnataka High Court in the matter of M/s. Blaze and Centre (P) Ltd Vs. Union of India and others reported in AIR 1980 KARNATAKA 186 wherein it has been held that the tenant must be given a fair opportunity to correct or contradict statements recorded or evidence collected in his presence or absence. In that case inspite of the written request of the tenant to furnish him a copy of the statements of the witnesses examined on behalf of the landlord in his absence, such statements were not given but were relied upon and they formed the basis of order of eviction. Therefore, the High Court had interfered in the matter. In the present case, there is no allegation of denial of any such opportunity to the petitioner. The reliance of the counsel for petitioner upon the

judgment of this Court in the matter of **Ataullah Khan** (supra) is also misplaced because the petitioner himself had not chosen to adduce any oral evidence in support of the cause shown by him.

[17] The counsel for petitioner has also relied upon the judgment of the Supreme Court in the matter of **M/s. Bareilly Electricity Supply Co.Ltd Vs. The Workmen and others** reported in AIR 1972 SC 330 wherein the general principles of natural justice have been stated but in the present case violation of none of those principles has been found. He has also placed reliance upon the Division Bench judgment of Allahabad High Court in the matter of **Union of India Vs. Babu Lal Gupta and others** reported in 1975 ALJ 373 wherein has been held that the alleged unauthorised occupant is entitled to a reasonable opportunity of being heard and show cause against the threatened move to evict him. In the present case, the petitioner was given opportunity to show cause, he had filed reply in response to the notice and had also filed affidavit in evidence in support of the cause shown by him. Not a single instance has been pointed out when the petitioner had made any request for opportunity to lead evidence and it was denied by the competent authority. Thus, in the present case a reasonable opportunity of hearing and to show cause was given to the petitioner. The respondents by adducing the evidence has discharged the burden of establishing that the petitioner had violated

the conditions of the rent note and he was in unauthorised possession of the suit premises. Thus no ground for interference in the impugned orders is made out.

[18] It is also worth noting that this Court while exercising the supervisory jurisdiction under Article 227 of the Constitution is required to see if the subordinate Court or authority had acted within its jurisdiction but it is not required to examine the matter as a Court of appeal.

[19] Thus, I do not find any merit in the Writ Petition and the same is accordingly dismissed.

**(Prakash Shrivastava)**  
**JUDGE**

**vm**