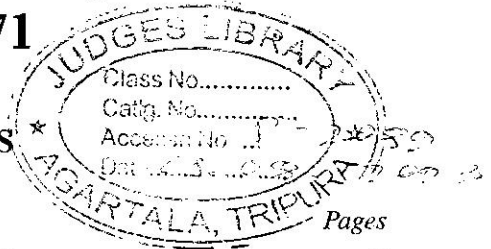


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The Public Premises (Eviction of Unauthorised Occupants) Act, 1971

[Act 40 of 1971]

[23rd August, 1971]

*An Act to provide for the eviction of unauthorised occupants
from public premises and for certain incidental matters*

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows—

Statement of Objects and Reasons.—The Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was enacted to provide for a speedy machinery for the eviction of unauthorised occupants of public premises. Section 5 of the Act provides for taking possession of the public premises which are in unauthorised occupation of persons. Section 7 of the Act provides for the recovery of rent or damages in respect of public premises from persons who are in unauthorised occupation thereof. The Act, as it originally stood, did not debar the Government from taking recourse to civil courts to seek the aforesaid reliefs.

2. In April, 1967, in *Northern India Caterers Private Ltd. v. The State of Punjab* (AIR 1967 SC 1581). The Supreme Court declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (31 of 1959), void on the ground that the section is discriminatory and violative of article 14 of the Constitution, inasmuch as it conferred an additional remedy over and above the usual remedy by way of suit and provided two alternative remedies to the Government, leaving it to the unguided discretion of the Collector to resort to one or the other of the procedures. The object and procedure prescribed by the aforesaid 1958 Act being similar to those in the Punjab Act, there was a risk of the Central Act also being struck down by the Supreme Court if challenged, on similar grounds of discrimination. Subsequently, the Delhi High Court in *Hukum Chand v. S.D. Arya* (Reference No. 1 of 1968) declared Section 7(2) of the 1958 Act as ultra vires the Constitution. The High Court also observed that Section 5 of that Act must also be held to be tainted with same constitutional infirmity which was held to invalidate Section 5 of the Punjab Act referred to above. In order to overcome the decisions of the Supreme Court and the Delhi High Court, the 1958, Act was suitably amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968. By this Amendment Act, Civil Courts were precluded from entertaining any suit or proceeding in respect of the eviction of persons who are in unauthorised occupation of public premises and in respect of the recovery of the arrears of rent or damages from such persons.

3. The vires of Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968, was again recently challenged by way of writ petitions in the Delhi High Court and certain other Courts. By a majority Judgment, the Delhi High Court in *P.L. Mehra v. D.R. Khanna* (Civil Writ No. 431 of 1970) have held the whole of the Act as void under Article 13(2) of the Constitution as it was found to contravene Article 14 thereof. The Court also observed that as the Act of 1958, was void, the amending Act of 1968, was also ineffective. Similar views have also been held by the High Court of Allahabad and Calcutta. The Court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estates Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of

rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in flagrant cases of unauthorised occupation of public premises — and recovery of rent or damages for such unauthorised occupation. It is therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying, with the provision of the Constitution and the judicial pronouncement, referred to above.

4. Accordingly it is proposed to re-enact the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended from time to time, after removing the vice which led to its having been declared as void. The law proposed to be re-enacted is being given retrospective effect from 16th September, 1958, the date on which the 1958 Act aforesaid came into force. It is also proposed to make a suitable validating provision providing that anything done or any action taken or purported to have been done or taken under the 1958, Act shall be deemed to be as valid and effective as if such thing or action was taken or done under the corresponding provisions of the proposed law.

5. The Bill seeks to achieve the above objects.

Statement of Objects and Reasons of Amending Act 61 of 1980.—The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, was enacted to provide for speedy and summary eviction of unauthorised occupants from premises of the Central Government, companies in which not less than fifty one per cent paid-up share capital is held by the Central Government, and Corporations (other than local authorities) established by or under Central Acts and owned or controlled by the Central Government. So far as the Union territory of Delhi is concerned, the Act applies also to premises belonging to the Delhi Development Authority, the Municipal Corporation of Delhi and other municipal bodies.

2. The Act does not at present apply in relation to premises belonging to or taken on lease by or on behalf of autonomous and statutory organisations. Such as the major ports, the Bhakra Management Board, Universities and similar institutions set up under a Central Act or subsidiary of a company in which the Central Government has at least fifty one per cent, of the paid-up share capital. As considerable difficulties have been experienced by these organisations in evicting unauthorised occupants from their premises, it is proposed to amend the Act so as to cover premises belonging to such organisations.

3. It is also proposed to make the following amendments with a view to overcome the difficulties which have been experienced in the working of the Act and to make the administration of the Act more effective—

- (a) amendment of Section 3 of the Act to facilitate the appointment of officers of the secretaries of the Lok Sabha and the Secretariat of the Rajya Sabha as estate officers for the purpose of dealing with public premises under the administrative control of these secretariats;
- (b) amendments of Sections 4, 5 and 9 of the Act for reducing the total period taken in eviction proceedings by reducing the period for showing cause against notice of eviction from 10 days to 7 days, eliminating personal hearing after cause is shown by an unauthorised occupant, reducing the period within which an unauthorised occupant should vacate the premises after eviction orders have been passed from 30 days to 15 days, and reducing the period for filing an appeal against the order of an estate officer from 15 days to 12 days;
- (c) including suitable provisions in the Act to deal with squatting or spreading of goods and removal of unauthorised constructions or encroachments on public premises.

4. It is also proposed to avail of this opportunity to amend Section 18 of the Act suitably so as to bring the rule laying formula in sub-section (3) thereof into conformity with the formula as recommended by the Committees on sub-ordinate legislation of both Houses.

5. The Bill seeks to achieve the above objects.

Statement of Objects and Reasons of Amending Act 35 of 1984.—The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, provides for the eviction of unauthorised occupants from public premises and, for this purpose, the Act provides for appointment of estate officers who have been given power, after necessary inquiry, to pass orders of eviction of such unauthorised occupants. The estate officer has also been given powers to remove, and to order demolition of, unauthorised constructions.

2. Of late, cases of unauthorised occupation in public premises, especially in the Union territory of Delhi, had been on the increase. There had been suggestions from many quarters to strengthen the provisions of this Act by providing for increased penalties and making the offences under the Act cognisable. In order, therefore, to enable the estate officers to exercise their powers under the Act effectively and to remove unauthorised occupants from the public premises, it is proposed to amend the Act.

3. The Bill accordingly provides, among other things, for the following changes in the Act, namely :—

- (i) Under the existing provisions, the estate officer is required to make an order directing the demolition of unauthorised construction within a period of not less than seven days or more than fifteen days to be specified in such order and no such order shall be made unless the person concerned has been given a show cause notice. It is proposed to omit the provision regarding the reference to the specific period to be mentioned in the order for demolition and to provide only for a period of seven days for the show cause notice.
- (ii) It is proposed to empower the estate officer, at any time before or after making an order of demolition of unauthorised construction to make an order to direct the sealing of any unauthorised construction. The sealing of such unauthorised construction in pursuance of an order made by the estate officer can be removed only by him for the purpose of demolishing such construction or in pursuance of an order made by the appellate officer in any appeal made under the provisions of the Act. A provision for appeal against the order of sealing by the estate officer to the appellate officer has also been included.
- (iii) It is proposed to create a new offence of unlawful occupation of any public premises and to make it punishable with imprisonment for six months or with fine up to five thousand rupees. Opportunity has also been availed of to increase the penalty by way of fine now provided for occupying the public premises by an evicted person without authority for such occupation.
- (iv) It is also proposed to make the offences under the Act cognisable.

4. The Bill seeks to achieve the aforesaid objects.

Statement of Objects and Reasons of Amending Act 36 of 2019.—The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the said Act), was enacted to provide for eviction of unauthorised occupants from public premises and for certain incidental matters.

2. Government of India provides residential accommodation to its employees, Members of Parliament and other dignitaries while they are in service or till the term of their office on licence basis. As per the existing allotment rules, after the expiry of the terms and conditions of the licence, the occupants of such residential accommodations become unauthorised for staying in such accommodation and should vacate the same. The said Act confers powers upon the estate officers to evict such unauthorised occupants from “public premises” in a smooth, speedy and time-bound manner. Under the existing provisions, the eviction proceedings of unauthorised occupants from “public premises” take around five to seven weeks time. It may take around four more weeks if the unauthorised occupants file appeal under the said Act. However, eviction proceedings take much longer period than the timeline prescribed in the said Act. Sometimes, it takes years to evict the unauthorised occupants.

3. There are provisions for summary eviction proceedings under Section 3-A of the said Act in case of persons occupying “public premises” temporarily, that is, less than thirty days. Under the summary proceedings, the estate officer does not have to follow elaborate procedure prescribed, for serving notice, show cause, inquiry and hearing as per Sections 4 and 5 of the Act, before passing eviction order. However, these summary proceedings are not applicable to the occupants of residential accommodations given on licence basis. It is, therefore, proposed to apply summary eviction procedure to residential accommodation given on licence basis with a short show-cause notice of three days to the unauthorised occupants by inserting new Section 3-B. It is also proposed to define the expression “residential accommodation occupation” by amending Section 2.

4. It is often seen that the unauthorised occupants do not vacate the government accommodation on expiry of the terms and conditions of the licence as per the rules and uses dilatory tactics to withhold the accommodation, by challenging the eviction order before an appellate officer or before the High Court and by obtaining stay of the eviction order. In order to check this delay, it is also proposed to insert a new sub-section (3-A) in Section 7 of the Act to the effect that if the person challenges the eviction order passed by the estate officer in any court, he has to pay the damages for every month for the residential accommodation held by him.

5. These amendments would facilitate smooth and speedy eviction of unauthorised occupants from residential accommodations, and ensure retrieval of the residential accommodation from the unauthorised occupants without requiring elaborate procedures under Sections 4 and 5 of the said Act. This will further increase availability of residential accommodations to new incumbents and improve the overall satisfaction level.

6. It may be recalled that the Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2017, for the aforementioned purpose, which was introduced and pending consideration and passing in the Lok Sabha lapsed on dissolution of the Sixteenth Lok Sabha. Hence, the Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2019.

7. The Bill seeks to achieve the above objectives.

CASE LAW ► Object.—The object of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is to forcibly evict the unauthorised people, who are deliberately remaining in occupation of public premises unauthorisedly. When a person does not behave in a decent manner, the only way left is to forcibly throw him out. It is for this purpose that the aforesaid Act was enacted and the same object has been achieved by the Lower Appellate Court to throw out an unauthorised occupant, *Jaishankar v. Selvaraj*, 2016 SCC OnLine Mad 11361 : (2016) 4 LW 919.

► **Overriding effect.**—Public Premises (Eviction of Unauthorised Occupants) Act, 1971 overrides Delhi Rent Control Act, 1958 where leased premises covered by both the enactments, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

1. Short title, extent and commencement.—(1) This Act may be called the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 16th day of September, 1958, except Sections 11, 19 and 20 which shall come into force at once.

CASE LAW ► Applicability.—Public Premises Act cannot be applied to premises where occupants came into possession prior to enforcement of 1971 Act i.e. 16-9-1958, *Band Box (P) Ltd. v. Punjab & Sind Bank*, (2014) 16 SCC 321 : (2015) 3 SCC (Civ) 652.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) 1[* * *]
- (b) “estate officer” means an officer appointed as such by the Central Government under Section 3;
- (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) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (d) “prescribed” means prescribed by rules made under this Act;
- 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 the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 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 ³[the Companies Act, 2013 (18 of 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 ⁴[the Companies Act, 2013 (18 of 2013)], or a local authority] established by or under a Central Act and owned or controlled by the Central Government,
 - ⁵(iii) any company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent of the paid-up capital

1. Omitted by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980). Prior to omission it read as:

“(a) “corporate authority” means—

(i) any company or Corporation referred to in sub-clause (1), or

(ii) the Corporation or any committee or the Authority referred to in sub-clause (2), of clause (e) of this section;”

2. Subs. by Act 61 of 1980, S. 2(ii) (w.e.f. 20-12-1980).

3. Subs. for “the Companies Act, 1956 (1 of 1956)” by Act 2 of 2015, S. 2(A) (w.e.f. 22-6-2015).

4. Subs. for “the Companies Act, 1956 (1 of 1956)” by Act 2 of 2015, S. 2(B) (w.e.f. 22-6-2015).

5. Subs. by Act 2 of 2015, S. 2(C) (w.e.f. 22-6-2015). Prior to substitution it read as:

“(iii) any University established or incorporated by any Central Act.”

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 (60 of 2002);

(iii-a) any University established or incorporated by any Central Act,]

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

⁶[(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);]

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act; [* * *]⁷

⁸[(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 (2 of 1924); and] religious function

(3) in relation to the ⁹[National Capital Territory of Delhi],—

(i) any premises belonging to the ¹⁰[Council as defined in clause (9) of Section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of Section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957),] of Delhi, or any municipal committee or notified area committee, ¹¹[* * *]

6. *Subs.* by Act 2 of 2015, S. 2(D) (w.e.f. 22-6-2015). Prior to substitution it read as:

“(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963).”

7. The word “and” omitted by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

8. *Ins.* by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

9. *Subs.* by Act 7 of 1994 S. 2 for “Union Territory of Delhi” (w.e.f. 1-6-1994).

10. *Subs.* for “Municipal Corporation” by Act 2 of 2015, S. 2(E)(a) (w.e.f. 22-6-2015).

11. The word “and” omitted by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

(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]¹²

¹³[(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;]

¹⁴[(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 (18 of 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.]

¹⁵[(4) any premises of the enemy property as defined in clause (c) of Section 2 of the Enemy Property Act, 1968 (34 of 1968).]

(f) “rent”, in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises and includes—

(i) any charge for electricity, water or any other services in connection with the occupation of the premises,

(ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Central Government or the ¹⁶[statutory authority];

¹⁷[(fa) “residential accommodation occupation” in relation to any public premises means occupation by any person on grant of licence to him to occupy such premises on the basis of an order of allotment for a fixed tenure or for a period he holds office, in accordance with the rules and instructions issued in this regard, made under the authority of the Central Government, a State Government, a Union Territory Administration or a statutory authority, as the case may be;]

¹⁸¹⁹[(fb) “statutory authority”, in relation to the public premises referred to in clause (e) of this section, means,—

(i) in respect of the public premises placed under the control of the Secretariat of either House of Parliament, the Secretariat of the concerned House of Parliament,

12. *Ins.* by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

13. *Ins.* by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

14. *Ins.* by Act 2 of 2015, S. 2(E)(b) (w.e.f. 22-6-2015).

15. *Ins.* by Act 3 of 2017, S. 20(a) (w.r.e.f. 7-1-2016).

16. *Subs.* for “corporate authority” by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980).

17. *Ins.* by Act 36 of 2019, S. 2 (w.e.f. 15-9-2019).

18. *Ins.* by Act 61 of 1980, S. 2(iii) (w.e.f. 20-12-1980).

19. *Renumbered* by Act 36 of 2019, S. 2 (w.e.f. 15-9-2019).

- (ii) in respect of the public premises referred to in item (i) of sub-clause (2) ²⁰[and in item (iv) of sub-clause (3)] of that clause, the company or the subsidiary company, as the case may be, referred to therein,
- (iii) in respect of the public premises referred to in item (ii) of sub-clause (2) of that clause, the corporation referred to therein,
- (iv) in respect of the public premises referred to, respectively, in items (iii), (iv), (v) ²¹[(vi) and (viii)] of sub-clause (2) of that clause, the University, Institute or Board, as the case may be, referred to therein, and
- (v) in respect of the public premises referred to in sub-clause (3) of that clause, the ²²[Council, Corporation or Corporations], committee or Authority, as the case may be, referred to in that sub-clause;]

²³²⁴[(fc)] “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;]

- (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.

CASE LAW ▶ “Public premises”.—Nationalised banks are corporations and its premises are public premises, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

The word “premises” is defined to mean any land. Any land will include agricultural land. There is nothing in the Act to exclude the applicability of the Act to agricultural land, *Hari Singh v. Military Estate Officer*, (1972) 2 SCC 239.

Public premises includes both residential as well as commercial premises and inclusion of premises let out for commercial purposes will not render Section 2(e) unconstitutional, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

Nationalised banks are corporations within the meaning of the definition clause and hence its premises are public premises, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

20. *Ins.* by Act 2 of 2015, S. 2(F)(a) (w.e.f. 22-6-2015).

21. *Subs.* by Act 7 of 1994, S. 2 for “and (vi)” (w.e.f. 1-6-1994).

22. *Subs.* for “corporation” by Act 2 of 2015, S. 2(F)(b) (w.e.f. 22-6-2015).

23. *Ins.* by Act 7 of 1994, S. 2 (w.e.f. 1-6-1994).

24. *Renumbered* by Act 36 of 2019, S. 2 (w.e.f. 15-9-2019).

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, *Cantonment Board v. Church of North India*, (2012) 12 SCC 573.

“Premises belonging to” government/public entity means only premises owned by or taken on lease by such entity. Taking over of management of an entity by government/public entity, without taking over its ownership, is not enough, *Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685.

Premises belonging to DDA being, 1971 Act applies to the exclusion of Transfer of Property Act, *DDA v. Anant Raj Agencies (P) Ltd.*, (2016) 11 SCC 406 : (2016) 4 SCC (Civ) 455.

► **“Unauthorised occupation”**.—When there is unauthorised occupation after non-renewal and termination of lease of public premises by DDA, subsequent sale of the premises by such unauthorised occupant would be void ab initio and not binding on DDA, *DDA v. Anant Raj Agencies (P) Ltd.*, (2016) 11 SCC 406 : (2016) 4 SCC (Civ) 455.

Unauthorised occupation covers a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law. Question involving relationship between lessor and lessee does not fall outside the purview of the Act. Mere fact that the Act does not require the Estate Officer to be well versed in law to deal with the question regarding determination of lease which involves legal issues, cannot by itself be a ground for excluding from the ambit of the Act premises in unauthorised occupation of persons who obtained possession under a lease, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

3. Appointment of estate officers.—The Central Government may, by notification in the Official Gazette—

- (a) appoint such persons being Gazetted officers of Government [or of the Government of any Union Territory]²⁵ or officers of equivalent rank of the ²⁶[statutory authority], as it thinks fit, to be estate officers for the purposes of this Act:

²⁷[Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with the Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority; ²⁸[* * *]]

²⁹[Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under Section 3 of the Enemy Property Act, 1968 (34 of 1968) shall be deemed to have been

25. *Ins.* by Act 7 of 1994, S. 3 (w.e.f. 1-6-1994).

26. *Subs.* for “corporate authority” by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980).

27. *Ins.* by Act 61 of 1980, S. 3(ii) (w.e.f. 20-12-1980).

28. The word “and” omitted by Act 3 of 2017, S. 20(b)(i) (w.r.e.f. 7-1-2016).

29. *Ins.* by Act 3 of 2017, S. 20(b)(ii) (w.r.e.f. 7-1-2016).

appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of Section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under Section 3 of the Enemy Property Act, 1968.]

- (b) define the local limits within which or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred and perform the duties imposed, on estate officers by or under this Act.

CASE LAW ▶ Jurisdiction of Estate Officer.—An Estate Officer has to exercise his jurisdiction in relation to public premises falling in local limits specified in notification issued under Section 3 of PP Act, 1971 for exercise of that jurisdiction, *Savatram Rampratap Mills v. Radheysyam*, (2018) 9 SCC 154.

³⁰[**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 unauthorised 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.]

³¹[**3-B. Eviction from residential accommodation.**—(1) Notwithstanding anything contained in Section 4 or Section 5, if the estate officer has information that any person, who was granted residential accommodation occupation, is in unauthorised occupation of the said residential accommodation, he shall—

- (a) forthwith issue notice in writing calling upon such person to show cause within a period of three working days why an order of eviction should not be made;
- (b) cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the said residential accommodation, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been served upon such person.

(2) The estate officer shall, after considering the cause, if any, shown by the person on whom the notice is served under sub-section (1) and after making such inquiry as it deems expedient in the circumstances of the case, for reasons to be recorded in writing, make an order of eviction of such person.

(3) If the person in unauthorised occupation refuses or fails to comply with the order of eviction referred to in sub-section (2), the estate officer may evict such person from the residential accommodation and take possession thereof and may, for that purpose, use such force as may be necessary.]

30. *Ins.* by Act 7 of 1994, S. 5 (w.e.f. 1-6-1994).

31. *Ins.* by Act 36 of 2019, S. 3 (w.e.f. 15-9-2019).

4. Issue of notice to show cause against order of eviction.—³²[(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.

(1-A) 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.

(1-B) Any delay in issuing a notice referred to in sub-sections (1) and (1-A) 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

³³[(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 ³⁴[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.

(4) ³⁵[* * *]

CASE LAW ▶ Eviction from leased public premises.—In *Suresh Narayan Kadam v. Central Bank of India*, (2016) 11 SCC 306 : (2016) 4 SCC (Civ) 657, land in question along with certain buildings constructed

32. Subs. by Act 2 of 2015, S. 3(a) (w.e.f. 22-6-2015). Prior to substitution it read as:

“(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.”

33. Subs. by Act 61 of 1980, S. 4 (w.e.f. 20-12-1980).

34. Subs. for “earlier than” by Act 2 of 2015, S. 3(b) (w.e.f. 22-6-2015).

35. Omitted by Act 7 of 1994, S. 5 (w.e.f. 1-6-1994). Prior to omission it read as:

“(4) Where the estate officer knows or has reasons 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 that person or in such other manner as may be prescribed.”

thereon with an intention of housing families of lower and middle income groups, was leased out to respondent Central Bank of India by Development Authority concerned subject to certain conditions. Flats contained in said buildings allotted by Bank to its lower income employees. As per policy of Bank, allotment of flats was to be made at absolute discretion of management and facility of allotment was not given as a condition of service nor did any right in respect thereof vest in any staff member. Subsequently, pursuant to a redevelopment plan, Bank intended to demolish aforesaid buildings to construct luxury apartments for its managerial staff. Consequently, Bank sought eviction of its aforesaid employees from flats allotted to them. Considering the relevant circulars of Bank, it was held, none of the said employees had any right to retain the allotted premises, more so where such allotment was not a part of conditions of service. Even if there was any violation of provisions of lease deed executed between Development Authority concerned and Bank, it was for Development Authority and Bank to settle their differences, if any. Employees concerned had no locus to raise plea as to violation of provisions of lease deed. Thus, eviction order passed against said employees was confirmed.

► **Fresh Notice.**—Subsequent occupiers of premises who enter into possession after the eviction proceedings are initiated against their predecessor-in-possession, not entitled to fresh notice under Section 4(2) of the 1971 Act. Said section cannot be resorted to, to protect the interest of such unauthorized occupants, *Port of Kolkata v. Kalipada Bhakat*, (2014) 10 SCC 573.

► **Challenge to order of eviction.**—Order of Estate Officer for eviction cannot be challenged on ground of mala fides by a writ petition. Proper remedy is to file an appeal, *Ashoka Marketing Ltd. v. Punjab National Bank*, (1990) 4 SCC 406.

► **Illegal/Unauthorised Occupation/Encroachment of Government Land.**—Summary remedy for eviction cannot be invoked by Government when occupant raises bona fide claim about his right over the premises. Estate Officer will have no jurisdiction to issue notice under Section 4 of the 1971 Act. Proper remedy would be institution of suit for adjudication of dispute regarding ownership right over the premises, *Kaikhosrou (Chick) Kavasji Framji v. Union of India*, (2019) 20 SCC 705.

5. Eviction of unauthorised occupants.—³⁶[(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of Section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall 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 but not later than fifteen days from the date of 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:]

36. *Subs.* by Act 2 of 2015, S. 4(a) (w.e.f. 22-6-2015). Prior to substitution it read as:

“(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of Section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate 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.”

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1-A), as the case may be, of Section 4.]

(2) If any person refuses or fails to comply with the order of eviction ³⁷[on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf ³⁸[may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of the public premises and may, for that purpose, use such force as may be necessary:

• ³⁹[Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.]

CASE LAW ► Constitutionality.—Summary procedure for eviction as provided under the Act, not violative of Article 19(1)(f), *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182.

► **Applicability of Section 5(1).**—In *Rahul Yadav v. Indian Oil Corpn. Ltd.*, (2015) 9 SCC 447 : (2015) 4 SCC (Civ) 630, Public sector undertaking (PSU) permitted dealers to run petrol pump on land obtained on long-term lease wherein dealer was the lessor and PSU the lessee. Dealer lessor who granted said long-term lease to Corporation, on termination of dealership, claimed retention of possession. Admittedly, respondent was a PSU. Appellant whose dealership has been cancelled, cannot claim possession to retain possession on the basis of ownership of the land as the lease was in continuance. Therefore, he is a trespasser. Thus, the provisions of the 1971 Act apply on all fours.

As the status of appellants with respect to land concerned, by virtue of Section 180(2) of U.P. Tenancy Act, 1939, was that of a hereditary tenant, hence held, the basic jurisdictional fact of appellants being unauthorised occupants in order to attract provisions of aforesaid Public Premises Act was lacking in present case, *Parmanand Singh v. Union of India*, (2018) 11 SCC 801 : 2017 SCC OnLine SC 1102.

► **Unauthorised occupation pursuant to non-renewal of lease.**—In case of refusal to grant renewal of lease by DDA, lease stands terminated by efflux of time and status of lessee becomes that of unauthorised occupant. Even if subsequently DDA accepts rent and amount of charges for conversion of property from leasehold to freehold, that would not confer any right on such unauthorised occupant in respect of the property, nor would DDA be estopped from taking plea that there was no renewal, as doctrine of holding over contained in Section 116 TPA not applicable to public premises, TPA being inapplicable thereto, *DDA v. Anant Raj Agencies (P) Ltd.*, (2016) 11 SCC 406 : (2016) 4 SCC (Civ) 455.

37. *Subs.* by Act 61 of 1980, S. 5(ii)(a) (w.e.f. 20-12-1980).

38. *Subs.* by Act 61 of 1980, S. 4(ii)(b) (w.e.f. 20-12-1980).

39. *Ins.* by Act 2 of 2015, S. 4(b) (w.e.f. 22-6-2015).

► **Repugnancy between Central and State Law.**—As the assent of President was given to the Extension Acts of 1981 and 1986 of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 after considering the repugnancy between the Bombay Act of 1947 and Transfer of Property Act as well as Presidency Small Cause Courts Act. Hence, the Bombay Act of 1947 would not prevail qua the repugnancy between it and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 but the latter would prevail over the former, *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182.

► **Cancellation of allotment and eviction from premises for non-payment of instalments.**—Grant of opportunity to make payments of instalments and ground rent after defaults is subject to payment of market value of allotted booth in year 2010, as opposed to price prevailing at time of allotment i.e. in year 1996, *Chandigarh Administration v. Hari Ram*, (2019) 8 SCC 289.

⁴⁰[5-A. **Power to remove unauthorised constructions, etc.**—(1) No person shall—

- (a) erect or place or raise any building or ⁴¹[any movable or immovable structure or fixture],
- (b) display or spread any goods,
- (c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

⁴²[(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought to be kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.]

40. *Ins.* by Act 61 of 1980, S. 6 (w.e.f. 20-12-1980).

41. *Subs.* by Act 35 of 1984, S. 2(a) (w.e.f. 13-11-1984).

42. *Subs.* for sub-section (2) by Act 35 of 1984, S. 2(b) (w.e.f. 13-11-1984).

5-B. Order of demolition of unauthorised construction.—(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order⁴³[* * *]:

Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice⁴⁴[of not less than seven days] served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Section 9.

(3) The estate officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2), to be affixed on the outer door or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.]

⁴⁵**5-C. Power to seal unauthorised constructions.**—(1) It shall be lawful for the estate officer, at any time, before or after making an order of demolition under Section 5-B, to make an order directing the sealing of such erection or work or

43. The words "not being less than seven days or more than fifteen days, from the date of publication of the order under sub-section (3)" omitted by Act 35 of 1984, S. 3 (w.e.f. 13-11-1984).

44. *Ins.* by 35 of 1984, S. 3(b) (w.e.f. 13-11-1984).

45. *Ins.* by Act 35 of 1984, S. 4 (w.e.f. 13-11-1984).

of the public premises in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except—

(a) under an order made by the estate officer under sub-section (2); or

(b) under an order of the appellate officer made in an appeal under this Act.]

6. Disposal of property left on public premises by unauthorised occupants.—(1) Where any persons have been evicted from any public premises under Section 5⁴⁶[or where any building or other work has been demolished under Section 5-B], the estate officer may, after giving fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

⁴⁷[(1-A) Where any goods, materials, cattle or other animal have been removed from any public premises under Section 5-A, the estate officer may, after giving fourteen days' notice to the persons owning such goods, material, cattle or other animal and after publishing the notice in at least one newspaper having circulation in the locality, dispose of, by public auction, such goods, materials, cattle or other animal.

(1-B) Notwithstanding anything contained in sub-sections (1) and (1-A), the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay, and the estate officer may, after recording such evidence as he may think fit, cause such property to be sold or otherwise disposed of in such manner as he may think fit.]

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Central Government or the statutory authority on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the estate officer to be entitled to the same:

Provided that where the estate officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.

46. *Ins.* by Act 61 of 1980, S. 7(i) (w.e.f. 20-12-1980).

47. *Ins.* by Act 61 of 1980, S. 7(ii) (w.e.f. 20-12-1980).

⁴⁸[(2-A) The expression “costs”, referred to in sub-section (2), shall include the cost of removal recoverable under Section 5-A and the cost of demolition recoverable under Section 5-B.]

CASE LAW ▶ Seizure and disposal of goods of third parties/trespassers.—Any person in occupation of the public premises without authority for such occupation is an unauthorised occupant and the expression “spread on any public premises”, contained in Section 5-A(1)(b) in the context also means “lying on any premises”. Further, Section 5-A(3) authorizes the Estate Officer to remove any goods lying on any public premises after an order of eviction has been made under Section 5 and it is immaterial whether the said goods belong to the erstwhile tenant/licensee or to any other party. Further, it is also not necessary that there should be a privity of contract between the Port Trust and the third party to whom such goods and materials belong for disposing of the property by the Estate Officer under Section 6. Section 6 of the PP Act has been enacted with obvious purpose of enabling statutory authorities to take all consequential steps after receiving possession of public premises and for recovery of dues, etc. and the said provision ought not to be interpreted in a way which defeats the very purpose of its enactment. Further, the Estate Officer, under Section 6, is entitled to sell the goods even of a stranger, found in/on the premises under unauthorised occupation, *Port of Kolkata v. APL (India) (P) Ltd.*, (2019) 14 SCC 374.

7. Power to require payment of rent or damages in respect of public premises.—(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments, as may be specified in the order.

⁴⁹[(2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with ⁵⁰[compound interest] at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause ⁵¹[within seven days from the date of issue thereof], why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

48. *Ins.* by Act 61 of 1980, S. 7(iii) (w.e.f. 20-12-1980).

49. *Ins.* by Act 61 of 1980, S. 8 (w.e.f. 20-12-1980).

50. *Subs.* for “simple interest” by Act 2 of 2015, S. 5(a) (w.e.f. 22-6-2015).

51. *Subs.* for “within such time as may be specified in the notice” by Act 2 of 2015, S. 5(b) (w.e.f. 22-6-2015).

⁵²[(3-A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section (2) of Section 3-B in any court, he shall pay damages for every month for the residential accommodation held by him.]

⁵³[(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice.]

CASE LAW ► Damages for unauthorised occupation.—Original lessee after efflux of time and non-renewal of lease remaining in unauthorised occupation, whereafter respondent inducted by original lessee also remaining in unauthorised occupation for long, it was held that both were liable for damages, *DDA v. Anant Raj Agencies (P) Ltd.*, (2016) 11 SCC 406 : (2016) 4 SCC (Civ) 455.

8. Powers of estate officers.—An estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely,—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of documents;
- (c) any other matter which may be prescribed.

9. Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under ⁵⁴[Section 5 or Section 5-B] ⁵⁵[or Section 5-C] 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, ⁵⁶[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 ⁵⁷[under Section 5-B or Section 7, within twelve days] from the date on which the order is communicated to the appellant; and
- ⁵⁸[(c) in the case of an appeal from an order under Section 5-C, within twelve days from the date of such order:]

⁵⁹[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

52. *Ins.* by Act 36 of 2019, S. 4 (w.e.f. 15-9-2019).

53. *Ins.* by Act 2 of 2015, S. 5(c) (w.e.f. 22-6-2015).

54. *Subs.* by Act 61 of 1980, S. 9(i) (w.e.f. 20-12-1980).

55. *Ins.* by Act 35 of 1984, S. 5 (w.e.f. 13-11-1984).

56. *Subs.* by Act 61 of 1980, S. 9(ii)(a) (w.e.f. 20-12-1980).

57. *Subs.* by Act 61 of 1980, S. 9(ii)(b) (w.e.f. 20-12-1980).

58. *Ins.* by Act 35 of 1984, S. 5 (w.e.f. 13-11-1984).

59. *Subs.* by Act 2 of 2015, S. 6(a) (w.e.f. 22-6-2015). Prior to substitution it read as:

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:

⁶⁰[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 Section 5-B 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.]

⁶¹[(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.

CASE LAW ▶ Locus standi to file appeal.—Power-of-attorney holder of tenant, has no locus standi to file appeal after termination of tenancy and eviction order attaining finality, *Port of Kolkata v. Kalipada Bhakat*, (2014) 10 SCC 573.

▶ **Maintainability of letters patent appeal.**—Appellate Officer is not a *persona designata*, but a civil court. Hence, order of Appellate Officer, held, is challengeable before High Court exercising power of superintendence under Article 227 and not under Article 226 of the Constitution. Thus, no letters patent appeal will lie there against, *LIC v. Nandini J. Shah*, (2018) 15 SCC 356.

▶ **Persona designata or court.**—A *persona designata* is a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. When the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter trappings of *persona designata*. Further, the thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who,

“Provided that the appellate officer may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”.

60. *Ins.* by Act 61 of 1980, S. 9(iii) (w.e.f. 20-12-1980).

61. *Subs.* by Act 2 of 2015, S. 6(b) (w.e.f. 22-6-2015). Prior to substitution it read as:

“(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.”.

undeniably, is a pre-existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise, *LIC v. Nandini J. Shah*, (2018) 15 SCC 356.

10. Finality of orders.—Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

CASE LAW ▶ Jurisdiction of civil court.—Jurisdiction of civil court for remedies of fixation of standard rent or maintenance of essential services under Rent Act, not ousted. It is actions covered under Public Premises Act which concern eviction of unauthorized occupants and recovery of arrears of rent for which jurisdiction of civil court is ousted. Act does not speak anything about fixation of standard rent or maintenance of essential services for which no remedy is provided under Public Premises Act. Fact that proceeding for one purpose is provided under one statute cannot lead to an automatic conclusion that remedy for a different purpose provided under another competent statute becomes unavailable, *Banatwala & Co. v. LIC*, (2011) 13 SCC 446 : (2012) 3 SCC (Civ) 587.

11. Offences and penalty.—⁶²[(1) If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continues to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offence.]

⁶³[(2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ⁶⁴[five] thousand rupees, or with both

⁶⁵[(3) Any Magistrate convicting a person under sub-section ⁶⁶[(2)] may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

⁶⁷[11-A. Offences under Section 11 to be cognizable.—The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to an offence under Section 11 as if it were a cognizable offence—

62. *Ins.* by Act 35 of 1984, S. 6(a) (w.e.f. 13-11-1984).

63. *Renumbered* by Act 35 of 1984, S. 6(a) (w.e.f. 13-11-1984).

64. *Subs.* for "one" by Act 35 of 1984, S. 6(b) (w.e.f. 13-11-1984).

65. *Renumbered* by Act 35 of 1984, S. 6(a) (w.e.f. 13-11-1984).

66. *Subs.* for "(1)" by Act 35 of 1984, S. 6(c) (w.e.f. 13-11-1984).

67. *Ins.* by Act 35 of 1984, S. 6 (w.e.f. 13-11-1984).

- (i) for the purposes of investigation of such offence, and
- (ii) for the purposes of matters, other than—
 - (1) matters referred to in Section 42 of that Code, and
 - (2) arrest of a person except on the complaint of, or upon information received from,—
 - (a) a Group 'A' officer as may be appointed by the Central Government, in the case of an offence in relation to the public premises specified in sub-clause (1) of clause (e) of Section 2;
 - (b) an officer equivalent to the rank of a Group 'A' officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the statutory authority in the case of an offence in relation to the public premises specified in sub-clause (2) of clause (e) of Section 2;
 - (c) such Deputy Commissioner, in the case of an offence in relation to the public premises belonging to the Municipal Corporation of Delhi, as may be appointed by the Administrator of the Union Territory of Delhi;
 - (d) the Secretary, New Delhi Municipal Committee, in the case of an offence in relation to the public premises belonging to the New Delhi Municipal Committee;
 - (e) the Secretary of a notified area committee, in the case of an offence in relation to the public premises belonging to that committee;
 - (f) such Director, in the case of an offence in relation to the public premises belonging to the Delhi Development Authority, as may be appointed by the Administrator of the Union Territory of Delhi.]

12. Power to obtain information.—If the estate officer has reason to believe that any persons are in unauthorised occupation of any public premises, the estate officer or any other officer authorised by him in this behalf may require those persons, or any other person to furnish information relating to the names and other particulars of the persons in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

13. Liability of heirs and legal representatives.—(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages ⁶⁸[or for the determination of the amount payable by way of interest on such arrears of rent or damages] is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

68. *Ins.* by Act 61 of 1980, S. 10(i) (w.e.f. 20-12-1980).

⁶⁹[(1-A) Where any person from whom any cost of removal of any building or other structure or fixture, or, as the case may be, any goods, cattle or other animal is to be recovered under sub-section (2) ⁷⁰[or sub-section (3)] of Section 5-A, or any expenses of demolition are to be recovered under sub-section (5) of Section 5-B, dies before any proceeding is taken for the recovery of such cost or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.]

(2) Any amount due to the Central Government or the ⁷¹[statutory authority] from the person whether by way of arrears of ⁷²[rent or damages or costs of removal referred to in Section 5-A or expenses of demolition referred to in Section 5-B or interest referred to in sub-section (2-A) of Section 7 or any other cost] shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

14. Recovery of rent, etc., as an arrear of land revenue.—If any person refuses or fails to pay ⁷³[the expenses of demolition payable under sub-section (5) of Section 5-B or] the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) ⁷⁴[or the interest determined under sub-section (2-A)] of that section or the costs awarded to the Central Government or the ⁷⁵[statutory authority] under sub-section (5) of Section 9, or any portion of such rent, damages ⁷⁶[, expenses, interest] or costs within the time, if any, specified therefor in the order relating thereto the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.

CASE LAW ▶ Collection of arrears.—Collection of arrears must be as arrears of land revenue, *S.D. Bandi v. Karnataka SRTC*, (2013) 12 SCC 631.

▶ Repugnancy between Central and State Laws.—Subjects of fixation of standard rent and restoration of essential services by landlord are covered under Rent Act, not Public Premises Act. Hence, there is no conflict nor repugnancy between Public Premises Act, 1971 and provisions in Maharashtra Rent Control Act, 1995 with respect to fixation of standard rent and requiring landlord to maintain essential services and supplies, *Banawatwala & Co. v. LIC*, (2011) 13 SCC 446 : (2012) 3 SCC (Civ) 587.

⁷⁷[**15. Bar of jurisdiction.**—No court shall have jurisdiction to entertain any suit or proceeding in respect of—

- (a) the eviction of any person who is in unauthorised occupation of any public premises, or

69. *Ins.* by Act 61 of 1980, S. 10(ii) (w.e.f. 20-12-1980).

70. *Ins.* by Act 35 of 1984, S. 8 (w.e.f. 13-11-1984).

71. *Subs.* by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980).

72. *Subs.* by Act 61 of 1980, S. 10(iii) (w.e.f. 20-12-1980).

73. *Ins.* by Act 61 of 1980, S. 11(a) (w.e.f. 20-12-1980).

74. *Ins.* by Act 61 of 1980, S. 11(b) (w.e.f. 20-12-1980).

75. *Subs.* by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980).

76. *Ins.* by Act 61 of 1980, S. 11(c) (w.e.f. 20-12-1980).

77. *Subs.* by Act 61 of 1980, S. 12 (w.e.f. 20-12-1980).

- (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or
- (c) the demolition of any building or other structure made, or ordered to be made, under Section 5-B, or
- ⁷⁸[(cc) the sealing of any erection or work or of any public premises under Section 5-C, or]
- (d) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section, or
- (e) the recovery of—
 - (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A, or
 - (ii) expenses of demolition under Section 5-B, or
 - (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or
 - (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.]

CASE LAW ▶ Nature.—Public premises (Eviction of Unauthorised Occupants) Act, 1971 not expressly providing for retrospective effect, is prospective in nature and did not have the effect of affecting/overriding vested rights, *Suhas H. Pophale v. Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657 : (2014) 2 SCC (Civ) 685.

▶ **Object.**—Section 15 saves the Act from vice of Article 14, *Hari Singh v. Military Estate Officer*, (1972) 2 SCC 239.

▶ **Validity.**—Provides only one procedure for ejection of unauthorized tenant, hence, Article 14 not violated due to availability of procedure under Punjab Tenancy Act, 1887, *Hari Singh v. Military Estate Officer*, (1972) 2 SCC 239.

16. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the ⁷⁹[statutory authority] or the appellate officer or the estate officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

17. Delegation of powers.—The Central Government may by notification in the Official Gazette direct that any power exercisable by it under this Act shall subject to such conditions, if any, as may be specified in the notification, be exercisable also by a State Government or an officer of the State Government.

78. *Ins.* by Act 35 of 1984, S. 9 (w.e.f. 13-11-1984).

79. *Subs.* by Act 61 of 1980, S. 2(i) (w.e.f. 20-12-1980).

NOTIFICATION

Ministry of Urban Affairs and Employment (Directorate of Estates), Noti. No. S.O. 803(E), dated November 21, 1997, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 28th November, 1997

In exercise of powers conferred by Section 17 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) the Central Government hereby directs that the powers exercisable by the Central Government under Section 3 of the said Act for appointment of estate officers for the purposes of public premises shall be exercisable also by a State Government or an officer of the State Government as authorised by that State Government for the public premises belonging to or taken on lease by, or on behalf of that State Government and situated in the National Capital Territory of Delhi or in any other Union Territory.

18. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely,—

- (a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served;
- (b) the holding of inquiries under this Act;
- (c) the distribution and allocation of work to estate officers and the transfer of any proceeding pending before an estate officer to another estate officer;
- (d) the procedure to be followed in taking possession of public premises;
- (e) the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account is assessing such damages;
- ⁸⁰[(ee) the manner in which the sealing of any erection or work or of any public premises shall be made under sub-section (1) of Section 5-C;]
- ⁸¹[(ea) that rate at which interest shall be payable on arrears of rent specified in any order made under sub-section (1) of Section 7, or damages assessed under sub-section (2) of that section;]
- (f) the manner in which appeals may be preferred and the procedure to be followed in appeals;
- (g) any other matter which has to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or ⁸²[in two or more successive sessions, and, if, before the expiry of the session immediately following the session or the successive sessions aforesaid,] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the

80. *Ins.* by Act 35 of 1984, S. 10 (w.e.f. 13-11-1984).

81. *Ins.* by Act 61 of 1980, S. 13(i) (w.e.f. 20-12-1980).

82. *Subs.* by Act 61 of 1980, S. 13(ii) (w.e.f. 20-12-1980).

case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. Repeal.—The Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), is hereby repealed.

20. Validation.—Notwithstanding any judgment, decree or order of any court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958) (hereafter in this section referred to as the 1958 Act) shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act which, under sub-section (1) of Section 1 shall be deemed to have come into force on the 16th day of September, 1958, and accordingly—

- (a) no suit or other legal proceeding shall be maintained or continued in any court for the refund of any rent or damages or costs recovered under the 1958 Act where such refund has been claimed merely on the ground that the said Act has been declared to be unconstitutional and void; and
- (b) no court shall enforce a decree or order directing the refund of any rent or damages or costs recovered under the 1958 Act merely on the ground that the said Act has been declared to be unconstitutional and void.

CASE LAW ► Retrospective operation.—The deeming provision would not cure illegality in any past action which may still be there when tested by the standards and the procedure provided by Act 40 of 1971. That is a logical and natural consequence of using the word “deemed”. The word “supported” was used only to describe or identify past action taken under a repealed Act and it had no effect beyond that. That action would now be deemed to have taken place under Act 40 of 1971. *Hari Singh v. Military Estate Officer*, (1972) 2 SCC 239.
