

CASE NO.:
Appeal (civil) 1033 of 2001

PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA

RESPONDENT:
M/S. CASTLEWOOD (INDIA) RESPONDENT

DATE OF JUDGMENT: 07/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.1033 OF 2001

Aggrieved by the impugned order dated 26.07.2000 passed by the High Court at Calcutta in C.O.No.2729 of 1998 this appeal has been preferred by the Life Insurance Corporation of India.

Heard the parties at length.

Briefly stated the facts are as follows:

Undisputedly, the respondent is in the occupation of the public premises owned by the Life Insurance Corporation of India. The respondent filed application under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter as 'the Act'). Section 7 reads :

"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 installments as may be specified in the order.

...2/-

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(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 installments as may be specified in the order.

(2A)While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears rent or, as the case may be, damages shall be payable together with simple 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.

(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 within such time as may be specified in the notice, 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."

On a cursory reading of Section 7 it clearly appears that the power is exercisable by the estate officer suo moto or on an application of the landlord/owner, and the

occupant of the premises has absolutely no jurisdiction to file an application under Section 7 of the Act. The only right available to the occupant is that under sub-section (3) the authority must issue notice in writing to the occupant calling upon him to show cause within such time as may be specified in the notice, why such order should not be made.

...3/-

: 3 :

In our view, the estate officer has rightly rejected the Section 7 application filed by the respondent herein as not maintainable. The High Court by a strange reasoning allowed the revision petition filed by the respondent herein.

We may at this stage quote the reasoning of the High Court with regard to the interpretation of Section 7 of the Act. This is what the High Court said :

"In my view, section 7 of the Act should be so interpreted enabling a lawful occupier to come before Estate Officer before he is illegally branded as a defaulter and a notice of eviction is served upon him for the intention of the Act is that the dispute referred to in section 7 should not be decided in any other suit or proceeding."

If such an interpretation is accepted it would amount to rewriting the Section which power only belongs to the Legislature not the judiciary.

For the reasons aforesaid the order passed by the High Court is set aside. This appeal is allowed. The estate officer shall now proceed with PP case being No.EO/180/0199 forthwith and pass appropriate orders in accordance with law expeditiously.