

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 5813/2008 & CM No.657/2009**

Date of decision : 18.02.2009

IN THE MATTER OF :

#SH. MOHD. UMAR & ANR. ... Petitioners
! Through :Mr. Chander Shekhar, Adv.

versus

\$ THE ESTATE OFFICER & ORS. Respondents
^ Through : Mr. R.V. Sinha, Adv. for R-1 & 2.
Mr. Rajesh Mahajan, Adv. for R-3.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

HIMA KOHLI, J. (ORAL)

1. The present writ petition is filed by the petitioner against the order dated 15.11.2007 passed by the learned Additional District Judge in an appeal preferred by the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as **"the P.P. Act"**). By the said order the

learned Additional District Judge upheld the order of eviction dated 4.3.2002 passed by the Estate Officer under Sub-Section (1) of Section 5 of the P.P. Act, in respect of Shop No.1, New Central Market, New Delhi.

2. The petitioners herein claimed to be in actual physical possession of the said shop till 17.01.2008 when the respondent/NDMC took over the physical possession thereof from the petitioners, who filed the present petition only in July, 2008.

3. The petitioners have raised a twofold challenge to the impugned order. The first ground taken by the petitioner to assail the impugned order is that no notice under Section 4 of the P.P. Act was served upon them. The other plea taken on behalf of the petitioners is that even if it is assumed that the notice was deemed to have been served upon them, the same falls short of the requirement under Section 4 of the P.P. Act inasmuch as the said notice does not show any application of mind on the part of the Estate Officer, which is a mandatory requirement of the said provision. It is stated that a proper show cause notice ought to have been issued to the petitioners and the Estate Officer was not only wrong in holding that the addressee

was in unauthorized occupation of the public premises, but also erred in arriving at the conclusion that they should be evicted. In support of the aforesaid contentions, counsel for the petitioner relies on the judgment rendered in the case of Minoo Framroze Balsara vs. The Union of India & Ors., **AIR 1992 Bombay 375** and New India Assurance Company Ltd. vs. Nusli Neville Wadia & Anr., **(2008) 3 SCC 279**.

4. Briefly stated, the facts of the case are that the aforesaid shop was allotted on 24.9.1956 to one Shri C.K. Kharbanda on a licence basis. Vide letter dated 7.4.1981, an offer for grant of ownership right/leasehold right was made to the licensee. In response thereto, Shri C.L. Kharbanda, sent his consent and paid capitalized cost on 9.4.1981. However, as per the records, conveyance deed and lease deed were never executed in his favour. The stand of the respondent/NDMC was that the conveyance deed/lease deed was not executed in favour of the licensee on the ground that he had illegally sublet/parted with the possession of the said shop in violation of the terms and conditions of the leasehold/ownership rights, which fact was established even on a subsequent inspection of the shop carried out on 3.12.1993. It is pertinent to note that Shri C.L. Kharbanda expired on

5.10.1984, whereafter there were three claimants to the same shop. The first claimant was his son, Shri Vinod Kumar Kharbanda. The second claimant was Shri K.L. Tandon, who claimed that Sh. C.L. Kharbanda had executed a Will in his favour and transferred the shop to him. The third claimants are the petitioners herein, who state that they are in actual physical possession of the shop, which they purchased by virtue of an Agreement to Sell, Will, Power of Attorney, etc. from Shri Ajay Kumar and Shri Girish Kumar Jaggi, who in turn had purchased the rights in the said shop from Shri C.L. Kharbanda on 24.12.1981.

5. As the vacant possession of the shop was not handed over to the respondent/NDMC upon the demise of Shri C.L. Kharbanda on 5.10.1984, despite cancellation of allotment conveyed vide letter dated 4.8.1998, proceedings for eviction of the shop were initiated by the respondent under the Act and the Estate Officer issued a notice dated 27.10.1998 to all persons concerned, in particular Shri Vinod Kumar Kharbanda and Shri K.L. Tandon, informing them that they were in unauthorized occupation of the public premises and ought to be evicted therefrom and that they had continued to occupy the premises in question after its allotment was cancelled w.e.f. 5.10.1984 by virtue

of the letter dated 4.8.1998 issued by the Department of Estate.

5. Vide order dated 6.11.1998, the addressees were called upon to show cause as to why the order of eviction should not be made. On 23.11.1998, Shri Vinod Kumar Kharbanda, Shir K.L. Tandon and Shri Mohd. Umar, the petitioner No. 1 herein, presented themselves before the Estate Officer and sought time to file reply.

6. A perusal of the original records of the proceedings before the Estate Officer, produced by the counsel for the respondent shows that on the said date, Shri Mohd. Umar, petitioner No.1 herein, appeared and stated that he was in occupation and wanted to file a reply to the notice. The Estate Officer observed that as the notice under Section 4(1) of the Act was to all concerned, he may also file a reply if he so wanted by the next date of hearing. A perusal of the records demolishes the contention of the counsel for the petitioners that no notice under Section 4 of the Act was served upon the petitioners.

7. The very purpose of issuance of a notice is to let the addressee know that he is required to appear before an authority and

is thereafter afforded an opportunity of hearing by the said authority before any orders are passed in respect of the public premises. The said requirement stood satisfied the moment the petitioner appeared before the Estate Officer, pursuant to the show cause notice dated 6.11.1998, addressed to all the person concerned including Shri Vinod Kumar Kharbanda and Shri K.L. Tandon. In the impugned order, the learned Additional District Judge has particularly taken note of the fact that the petitioners filed a reply dated 24.2.1999 through their Advocate and thereafter submitted another reply dated 4.5.1999 stating inter alia that their possession in respect of the shop was lawful and that Shri C.L. Kharbanda was entitled to the shop after deposit of sale consideration by them with the Department. Hence, it was observed that the petitioners took all the pleas on merits as available to them before the Estate Officer.

8. The learned Additional District Judge has also observed in para 4.7 of the impugned order that the petitioners were granted time by the Estate Officer to file their reply on 23.11.1998 and further adjournments were granted to them on 15.12.1998, 12.1.1999 and 2.2.1999 for filing a reply. They were also granted several opportunities to adduce evidence before the Estate Officer, but they

failed to avail of the said opportunities.

9. The order of the Estate Officer was duly examined by the appellate court in the impugned order dated 15.11.2007, wherein it was reiterated that the petitioners had ample opportunity to be represented as also to present their case before the Estate Officer in the proceedings held under the Act. In these circumstances, the plea of the petitioners that no notice under Section 4 of the Act was served upon them is contrary to the record which reflects that sufficient opportunity of hearing was granted to them by the Estate Officer before the order dated 4.3.2002 came to be passed. Hence, the first ground taken by the petitioners is turned down.

10. The second plea of the petitioners that the notice falls short of the requirements of Section 4 of the Act as there was no application of mind by the Estate Officer, has to be examined in the light of the notice issued by the Estate Officer. A perusal of the original records shows that in the aforesaid notice to show cause issued under Section 4(1) of the Act, the Estate Officer stated that the addressees were in unauthorized occupation of the public premises and that they were liable to be evicted from the said premises. The addressees were also

informed that they were continuing to occupy the public premises in question even after the allotment stood cancelled on 5.10.1984, duly communicated by the Department of Estate, vide letter dated 4.8.1998.

11. In these circumstances, the contention of the counsel for the petitioner that the Estate Officer did not fulfill the requirements of Section 4 of the Act by prima facie satisfying himself, is not acceptable. The Estate Officer not only gave an opinion that the addressees were in unauthorized occupation of the public premises, but also specified that they were continuing to occupy the public premises after the allotment stood cancelled on 05.10.1984, which fact was communicated by an earlier letter dated 04.08.1998. Hence, the plea of the petitioners to the effect that notice falls short of the requirements of Section 4 of the Act or that the Estate Officer failed to conduct a multilevel inquiry required to be undertaken by him in terms of the provisions of the Act, are unacceptable. Neither of the judgments relied on by the counsel for the petitioners, are therefore of any assistance in the present case. The petitioners cannot say that the notice issued by the Estate Officer under Section 4 of the Act suffers from the vice of non-application of mind or that they could not

effectively show cause to the notice issued by the Estate Officer.
There is no other argument urged by the counsel for the petitioners.

12. In view of the aforesaid facts and circumstances, this Court declines to interfere in the impugned order dated 15.11.2007 passed by the learned Additional District Judge as the said order does not suffer from any illegality, arbitrariness or jurisdictional error. The writ petition is, therefore, rejected being devoid of merits, along with the pending application.

FEBRUARY 18, 2009
sk/rkb

HIMA KOHLI,J