

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9637/2003 **Date of decision: 15th March, 2010.**
EX.SUBEDAR H.L.MADAN Petitioner
Through Mr. Harpreet Singh, Adv. with
petitioner in person.

versus

UOI & ORS. Respondent
Through Mr. K.P.S. Kohli, Advocates for
the respondent.
Mr. R. Nanavaty, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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1. The petitioner, an ex-serviceman, on 18th November, 1988 was allotted a kiosk at 10, Shastri Bazar, Delhi Cantt. by the Delhi Cantonment Board. By the letter dated 16th March, 1989, the petitioner was informed that the initial allotment was for a period of five years. The petitioner was handed over possession of the kiosk on 15th July, 1989.

2. On 28th August, 1992, the Cantonment Board Executive Officer sent an eviction notice to the petitioner, which was challenged in a civil suit before the Sub Judge, Tis Hazari Court, Delhi. The said suit was disposed of on 12th February, 1993 in view of the statement made by the Cantonment Board Executive Officer that the petitioner would be

evicted after following the due process of law.

3. On 28th December, 1994, the petitioner received a notice issued by the Estate Officer in the eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('the Act' for short) filed by the Army Headquarters. These eviction proceedings were later on withdrawn on 18th June, 1996.

4. Another eviction proceedings under the Act were initiated against the petitioner vide case No.49/1995. These proceedings were also dismissed by the Estate Officer on 17th October, 1998 on the ground that the Army Headquarters had failed to prove their status i.e. whether the land belongs to and was under their control and that they were entitled to initiate eviction proceedings.

5. On 17th May, 2002, eviction proceedings under the Act were initiated against the petitioner vide case No.108/2002. The Estate Officer passed an eviction order dated 22nd February, 2003. By the impugned judgment dated 18th October, 2003, the Additional District Judge dismissed the appeal filed by the petitioner and has upheld the eviction order passed by the Estate Officer.

6. The main and principal contention raised is whether the stall/kiosk in question is located on A-1 land i.e. the land belonging to

the Army authorities and, therefore, the Army Headquarters were competent to initiate eviction proceedings under the Act. It is a contention of the petitioner that the land in question is a category C land, which is under the control and management of the Delhi Cantonment Board and not the Army Headquarters.

7. In view of the objection and the question raised; the respondents i.e. Delhi Cantonment Board and the Army Headquarters were asked to produce the relevant record relating to Kiosk/stall in question and the land records. Pursuant to the directions given by this Court, the General Land Record (GLR) plan was produced and shown. As per the said GLR plan, the Gopi Nath Bazar, Delhi Cantonment is located in survey No.52. The respondent, Delhi Cantonment Board pointed out the location of the kiosk/stall allotted to the petitioner in the GLR plan. It was explained that the kiosk/stall was located on the MES road, which was categorized and allocated Survey No. 179 in GLR plan. All roads are classified as Survey No.179.

8. The respondent, Delhi Cantonment Board has also produced before this Court the GLR Register. As per the said register, the road on which the kiosk/stall is located was resumed from local cantonment board and was included in survey No. 179 vide letter dated 9th

December, 1952 of the Ministry of Defence. The Cantonment Executive Officer, who is the respondent No.3 in the present writ petition, is supporting the stand of respondent No.2 that the land on which the kiosk/stall was/is located, is under the control and management of the Army Headquarters and not the Delhi Cantonment Board.

9. Counsel for the petitioner has relied upon the Resolution No.5 dated 27th October, 1993 and submitted that the contention of the respondent Delhi Cantonment Board, that the land was transferred to the Army Headquarters in 1952, is not correct. I have examined the said resolution. The resolution makes reference to the letter dated 2nd October, 1993 received from the Cantonment Legal Advisor, regarding the eviction of the petitioner/allottee of stall/kiosk. Thereafter, the following resolution was passed:-

“5. The CEO informed the Board that the case filed by Shri. H.L. Madan had been dismissed by the Court of Shri S.S. Handa, Sub-Judge Ist Class, Tis Hazari, Delhi on the plea that the former would not be dispossessed of his stall without due process of law. He pointed out that it would now be necessary to take recourse to the provisions of the PPE Act, 1971.

The CEO confirmed that the stall was not on Class ‘C’ land. Resolved, therefore, that the case for eviction of Shri. H.L. Madan, allottee of Jai Jawan Stall, Shastri Bazar, Delhi Cantonment be

referred to the Station Commander, Delhi Cantt or the Defence Estates Officer, Delhi Circle for eviction depending upon whether the land in question was classified as A-1 or B-4.”

10. I have seen the original register, produced before the Court and have verified that paragraph 2 of the aforesaid resolution is a part of the original record. The resolution filed by the respondent No.1, Union of India with their counter affidavit, by mistake, does not include paragraph 2. It appears that this mistake has happened as the first paragraph is at bottom of the page and the second paragraph of the resolution is pasted on the next page. Resolution No.6 is after recording the second paragraph of the Resolution No.5. It is clear from the above that the kiosk/stall in question was located in a land, which is classified as A-1 or B-4. Land B-4 is under the management and control of the Defence Estate Officer.

11. As stated above, the respondents have produced before this Court, the original GLR register as per which in 1953, the MES roads were put under survey No.179 and registered as A-1 land. The Defence Estate Officer had himself written the letter dated 17th November, 1993 that the kiosk/stall allotted to the petitioner is outside the limit of the Gopi Nath Bazar area on the Berm Garden Road and formed part of

survey No.179 classified as A-1 land.

12. In view of the aforesaid and original documents produced before me, I do not find any merit in the contention raised by the petitioner that the Army Headquarters did not have authority or right to initiate eviction proceedings under the Act.

13. It may be noted that the petitioner was dispossessed from the stall/kiosk in question on 10th March, 2003. The petitioner being an ex-serviceman is of course entitled to allotment of the stall/kiosk in question in accordance with the scheme of allotment/rehabilitation. It is clarified that the present litigation will not be a ground to deny benefit or consideration of the petitioner under any welfare scheme.

14. It may be also noted that the petitioner was allotted kiosk/stall by the Delhi Cantonment Board under a mistake that the said kiosk/stall is on category C land. Due to this mistake, the petitioner today has been deprived of the said stall/kiosk. It will be open to the petitioner to make a representation to both the Army Headquarters and the Delhi Cantonment Board for allotment of a kiosk/stall. If any such representation is made, the same will be considered in accordance with their policy.

The writ petition is disposed of. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

MARCH 15, 2010
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