

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P(C) No. 4152/2007

Judgment delivered on: 5th August, 2010

Naseeruddin

..... Petitioner

Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents

Through: Mr. Vinod Wadhwa, Adv.

W.P(C) No. 4164/2007

Shaffique Ahmed

..... Petitioner

Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents

Through: Mr. Vinod Wadhwa, Adv.

W.P(C) No. 4166/2007

Rajinder Singh

..... Petitioner

Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents

Through: Mr. Vinod Wadhwa, Adv.

W.P(C) No. 4160/2007

Satpal Monga

..... Petitioner

Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents
Through: Mr.Vinod Wadhwa, Adv.

W.P(C) No. 4153/2007

Raja Ram Kamra Petitioner
Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents
Through: Mr.Vinod Wadhwa, Adv.

And

W.P(C) No. 4163/2007

Ansar Ahmed Petitioner
Through: Ms. Shobhna Takiyar, Adv.

Versus

State of Andhra Pradesh & Anr. Respondents
Through: Mr.Vinod Wadhwa, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

1. This order shall dispose of a batch of six writ petitions bearing Nos. W.P.(C) 4152/2007, 4153/2007, 4160/2007, 4163/2007, 4164/2007 & 4166/2007.

2. In these petitions filed under Article 226 of the Constitution of India, the petitioners seek quashing of the common order dated 9.5.2007 passed by the learned ADJ in PPA No. 87/2005 in exercise of appellate jurisdiction conferred under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971. The petitioners also seek quashing of the common eviction order dated 25th April, 2005 passed by the learned Estate Officer in respect of the premises under the occupation of the present petitioners.

3. Brief facts relevant for deciding the present petitions are that in 1947 the petitioners were allotted their respective shops on rent by the Nizam of Hyderabad for running different trades like meat shop, barber shop, tailoring shop, fair price shop, grocery shop, etc. On 2.3.1994, a termination notice was served on the petitioners

on the ground that the said premises were being used for commercial purposes whereas they were allotted for residential purpose. The petitioners had filed a suit for permanent injunction bearing no 240/1994 which was disposed of with the direction of restraining the respondents from taking possession except in accordance with law. Thereafter a notice dated 23.9.2000 under section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was served on the petitioners and consequently an eviction order dated 25.4.2005 was passed by the Estate Officer. The petitioners preferred an appeal against the order of the Estate Officer whereby vide judgment dated 9.5.2007, the learned ADJ upheld the order of the Estate officer. Impugning the order dated 25.4.2005 and judgment dated 9.5.2007, the petitioners have preferred the present petitions.

4. Ms. Takiyar, counsel for the petitioners, submits that both the courts below i.e. Estate Officer as well as the learned ADJ failed to consider the fact that the notice of termination served by the respondent as well as show cause

notice issued by the Estate Officer under Section 4 of the Public Premises Act itself are illegal and void as the only ground disclosed in the legal notice for declaring the petitioners as unauthorized occupants in respect of their premises is that they were using their premises contrary to the letting out purpose. The contention of the counsel for the petitioners is that the premises were let out by the predecessor of the respondent i.e. Nizam of Hyderabad for running of various shops, small time trades, business etc. in favour of the petitioners right from the inception of the letting. Counsel further submits that in the rent receipts the specific trades were duly disclosed. Inviting attention of this court to some of the receipts filed in W.P.(C) 4152/2007 the counsel point out that the letting purpose has been clearly mentioned as running of a meat shop. Similarly in other cases also, counsel submits that the letting purpose has been disclosed indicating the name of the trade for which the shops were let out in favour of the petitioners. Counsel further submits that the petitioners had placed on record these receipts before the Estate Officer as well as before the

Appellate Court and these receipts pertain to the period from 1955 onwards but both the courts below have overlooked the said receipts and wrongly held the letting purpose as residential. Counsel further submits that once the documentary evidence clearly indicating the letting purpose was placed on record, the same could not have been ignored by the courts below. Counsel further submits that no documentary evidence was placed on record by the respondent to contradict or rebut the said documentary evidence placed by the petitioners in the shape of rent receipts. In support of her arguments counsel for the petitioners has placed reliance on the following judgments:

1. M/s. Jain Ink Manufacturing Co. Vs. LIC of India & Anr., AIR 1981 SC 670.
2. Ex. Havaladar Kailash Singh & Sons. Vs. UOI & Anr., 106(2003) DLT 660.
3. Pyare Lal Vs. Estate Officer & Anr., 2006 II AD (Delhi) 28.
4. Dr. Yash Paul gupta Vs. Dr. S. S. Anand & Ors. AIR 1980, Jammu & Kashmir
5. Mrs. S. Premlata Bhatia Vs. Union of India, 108 (2003) DLT 346.

5. Refuting the said submissions of the counsel for the petitioners, counsel for the respondent submits that this court while exercising writ jurisdiction under Article 226 of the Constitution of India will not re-appreciate the findings of facts arrived at by both the courts below. He further submits that in the legal notice the letting purpose was clearly spelled out which was residential and therefore, now the petitioners cannot be heard to say that the letting purpose was commercial. Counsel further submits that the petitioners were admittedly grantees in respect of the shops in question and therefore, their licenses were terminated on account of the breach committed by them. During the course of his arguments counsel has produced photo copy of one draft lease deed and states that the same was executed between Naseerudeen as lessee and the Nizam of Hyderabad as lessor through one Mr. M. Edward. On being questioned as to why this draft lease deed was not placed on record before the Estate Officer and before the Appellate Authority, counsel states that the same being very old, the officials of the respondent with great difficulty could lay their hands on the

same. Counsel further submits that the petitioners were in unauthorized occupation of the premises in question from 2nd March, 1994 when the grant in their favour was revoked by the respondent. Counsel further submits that the learned Estate Officer has carefully gone into the question of letting purpose but did not find merit in the pleas raised by the petitioners. Counsel further submits that both the courts below have gone in depth to deal with the contentions raised by the petitioners and no illegality or perversity can be found in the reasoning given by them.

6. In support of his arguments, counsel for the respondent placed reliance on the following judgments :

1. The Indian Bank Vs. M/s. Blaze and Central (P) Ltd. & Ors. AIR 1986 Karnataka 258.
2. New India Assurance Co.Ltd.Vs. KLM Engineering Co.Pvt. Ltd. & Ors., AIR 2008 SC 876.
3. Hardwari Lal Verma Vs. The Estate Officer & Ors., AIR 1977 Delhi 268.
4. Ruby Advertisers Vs. Delhi Development Authority, 105(2003)DLT 92.
5. Rajvaidya Gune's Shahu Aryoushadi Karnataka Ltd. & Anr. Vs. The Collector of Kolhapur, JT 1996(9) SC 437.

7. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the pleas raised by them.

8. Vide legal notice dated 2nd March, 1994 the Government of Andhra Pradesh, successor-in-interest of the Nizam of Hyderabad called upon these petitioners to hand over the vacant possession of the premises under their occupation within a month's time, whereafter they will be deemed to be considered as trespassers/unauthorized occupants in the premises under their occupation. The main ground for termination of the said lease was that these petitioners have been using the premises under their occupation for running their respective trades although as per the grant/lease, these premises were let out to them for residential purpose only. It would be appropriate to reproduce below the following paragraphs taken from one of the legal notice here:-

"1. By virtue of a lease deed, a quarter behind Dhobi Ghat in the premises of Hyderabad House has been leased out for your own residence on monthly

rental and on such terms and conditions as contained in the said Deed of Lease.

2. xx xx

3. xx xx

4. xx xx

5. xx xx

6. In spite of the fact that the said grant/lease was for your residential purposes only, you had been using the said quarter for running the Meat Shop, in clear violation of the terms of the grant. In spite of the notice earlier issued to you, you have not desisted from using the quarter for running the Meat shop.

7. In terms of the said grant/lease, the Lessor, the Government of Andhra Pradesh shall not wish to allow you to continue in the said quarter."

9. Pursuant to the said legal notice, the Estate Officer issued a show cause notice under Sub-Section (1) and Clause (b)(ii) of Sub-Section (2) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The ground given in one of such notices is reproduced as under:-

1. The grant/lease/licence/permission granted to Shri Naseeruddin to occupy and use the premises mentioned in the Schedule below has been revoked/terminated by the State of Andhra Pradesh; and your present occupation of the said premises is an unauthorized occupation within the meaning of the said Act.

2. Proceeding against you for evicting you from the said premises "by due process of law" is permissible and warranted in law."

10. All these petitioners contested the proceedings before the Estate Officer and vide order dated 25.4.2005, the Estate Officer found all these petitioners to be in unauthorized and illegal occupation of the premises. Accordingly they were directed to hand over peaceful vacant possession of the premises to the respondent within a period of 15 days. Aggrieved with the said order, the petitioners preferred an appeal before the learned Additional District Judge under Section 9 of the Public Premises Act and vide order dated 9.5.2007 the learned ADJ did not find any merit in the said appeals and consequently dismissed the same.

11. The principal contention raised by the counsel for the petitioners is that both the Courts below failed to appreciate that the ground for declaring the petitioners as unauthorized occupants itself was non-existent as the respective premises in favour of the petitioners were let out to them for commercial purposes and, therefore, there was no question

of any kind of breach on the part of the petitioners so far the letting purpose of the same was concerned. Counsel for both the parties did not raise any other controversy, but confined their arguments to the said limited issue as to whether the show cause notice served by the Estate Officer was itself illegal and void as the petitioners could not have been declared unauthorized occupants in respect of the premises under their occupation within the meaning of Section 2 (g) of the Public Premises Act.

12. Before proceeding in the matter further it would be apt to reproduce Section 4 of the Public Premises Act as under:-

"4. Issue of notice to show cause against order of eviction. - (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.

(2) The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(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 before such date as is specified in the notice, being a date not earlier 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 duly given to all persons concerned.”

The aforesaid provision clearly envisages that in a case where the Estate Officer was of the opinion that any persons are in unauthorized occupation of any public premises and they deserve to be evicted then the Estate Officer shall issue notice in writing calling upon such persons to show cause as to why an order of eviction shall not be made against them. The clear mandate of the above provision is that such a notice should specify the grounds based on which the order of eviction is proposed to be made. In the case in hand, the ground given in the notice as reproduced above is that the grant/lease/permission granted in favour of these petitioners

have been revoked/terminated by the State of Andhra Pradesh and, therefore, their occupation of the premises in question became unauthorized within the meaning of the above provision. Clearly no specific ground on which the order of eviction was proposed by the Estate Officer has been mentioned in the said notice. It appears that the formation of such an opinion on the part of the Estate Officer is based upon the legal notice dated 2nd March, 1994 sent by the respondent to the petitioners. Although the notice of show cause issued by the Estate Officer should have clearly spelt out the ground of eviction, but since this issue has not been addressed by the counsel, therefore, this Court is proceeding in the matter taking the said formation of opinion by the Estate Officer based on the legal notice dated 2nd March, 1994 wherein the reason for declaring the petitioners as unauthorized occupants was that they were using the premises contrary to the terms of the grant/lease. As per the legal notice, the premises in favour of the petitioners were let out for their own residence but they started using the premises for commercial purposes in breach of the terms of

the lease. It is not in dispute that the respondent did not place on record any lease deed or any other document to show the purpose of letting being residential. In the legal notice also, it was vaguely mentioned that by virtue of the lease deed, the premises were let out for residential purposes. No date or particulars of such lease deed have been given by the respondent in the legal notice. No such lease deed was also placed on record by the respondent before Estate Officer or the Appellate Court and not even before this Court. It is only during the course of arguments that counsel for the respondent sought to produce a photocopy of the draft lease agreement which too does not inspire any confidence in the absence of any proper details of the premises etc. given in the draft lease deed. The petitioners on the other hand have placed on record the rent receipts wherein the predecessor of the respondent i.e. Nizam of Hyderabad has clearly indicated the purpose for which the premises were let out to the petitioners. For example, in the case of Naseeruddin, petitioner in W.P. (C) No. 4152/2007, in the rent receipts issued in his favour the

purpose spelt out has been for running a meat shop. Likewise, in the case of petitioner Rajinder Singh in W.P. (C) No. 4166/2007 the purpose of letting has been disclosed as running of a tailoring shop. These receipts are old receipts pertaining to the period from 1955 onwards and, therefore, in the absence of any other documentary evidence to the contrary there is no reason to disbelieve these receipts. Even the respondent has not denied the said receipts or to raise any plea contrary to the letting purpose disclosed in the said receipts. It is a settled legal position that in the teeth of documentary evidence, oral evidence contradicting such documentary evidence cannot be looked into unless the party setting up oral evidence successfully proves any novation of the contract between the parties. Once the said documentary evidence was placed on record by the petitioners right from the stage of the proceedings before the Estate Officer, the oral stand of the respondents pleading execution of some lease deed wherein the purpose of letting was disclosed as 'residential' deserves outright rejection.

13. As already discussed above, the only ground for declaring these petitioners unauthorized occupants is that these petitioners were using the premises for commercial purposes in breach of the terms of their lease, but since no such lease was placed on record or any other documentary evidence to substantiate the said plea was produced on record by the respondent, therefore, the legal notice dated 2nd March, 1994 and the show cause notice served by the Estate Officer under Section 4 of the PP Act becomes illegal, void and without jurisdiction. It is quite surprising that neither the Estate Officer nor the Appellate Court have taken any pain to look at these receipts and at least to discuss the import and effect of these receipts on the controversy involved. It would be pertinent to refer to the judgment in the case of ***New India Assurance Co. Ltd. Vs. Nusli Neville Wadia (2008)3SCC 279*** where the Apex Court has held that:

"Where an application is filed for eviction of an unauthorised occupant it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorised occupation of the public premises and that

he should be evicted. When a notice is issued in terms of Section 4 of the Act, the noticee may show cause. Section 5 of the Act postulates that an order of eviction must be passed only upon consideration of the show cause and any evidence produced by him in support of its case also upon giving him a personal hearing, if any, as provided under Clause (ii) of sub-section (2) of Section 4 of the Act.

.....

The Estate Officer with a view to determine the lis between the parties must record summary of the evidence. Summary of the evidence and the documents shall also form part of the record of the proceedings. Procedure laid down for recording evidence is stated in the Rules. The Estate Officer being a creature of the statute must comply with the same. When a notice is issued, the occupant of the public premises would not only be entitled to show cause but would also be entitled to produce evidence in support of the cause shown.

The procedural aspect as to who should lead evidence first, thus may have to be determined on the basis of the issues arising in the matter. When we say so, we do not mean that the procedure involved being a summary one, the issues are required to be specifically framed but that which is the principal issue(s) between the parties must be known to the Estate Officer.

Thus under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the occasion would arise for multi-level inquiry: primary inquiry will be to arrive at a conclusion on "unauthorised occupant", and intermediate inquiry would be as to the eviction of "unauthorised occupant".

The question has been succinctly dealt with by a Division Bench of the Bombay High Court in Minoo Framroze Balsara v. Union of India⁶ wherein Bharucha, J. (as the learned Chief Justice then was) opined: (AIR p. 389, para 36)

"36. ... the government company or corporation must so act not only when terminating the authority of an occupant of public premises of its

ownership to occupy the same but also when, thereafter, it seeks his eviction therefrom.”

The statute, although, does not require a lengthy hearing or a lengthy cross-examination but the noticee should be given an opportunity to file an effective show-cause. An effective show-cause can be filed when eviction is sought for a specified ground and the occupants must know the particulars in relation thereto. For the said purpose, Sections 4 and 5 of the Act must be read together. Even the Rules which are validly framed must be read along with the statutory provisions.”

14. Another contention of the counsel for the respondent was that the High Court in exercise of its writ jurisdiction would not interfere with the findings of facts arrived at by Courts below. It is a settled legal position that in a proceeding under Articles 226 and 227 of the Constitution of India the High Court cannot sit in appeal over the findings recorded by the competent authority or courts below. Undoubtedly the jurisdiction of the High Court, therefore, is supervisory and not appellate. But it is also a settled law that if on a mere perusal of the order of an inferior court if the High Court comes to a conclusion that such a court has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that

on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the court or the court has ignored to take into consideration certain relevant materials, then the High Court will be fully justified in interfering with the findings of the inferior court.

15. Hence, in view of the aforesaid discussion, I find merit in the contention raised by the counsel for the petitioners. The judgments cited by the learned counsel for the respondent are not applicable to the facts of the present case. This Court accordingly allows all these petitions and sets aside the orders passed by the learned Estate Officer dated 25th April, 2005 and order dated 9th May, 2007 passed by the learned ADJ.

KAILASH GAMBHIR, J

August 05, 2010
mg/rkr