

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 4288/2007

Judgment delivered on: 14.09.2010

Krishna Devi

..... Petitioner

Through: Ms. Urmil Sharma, Advocate

Versus

Estate Officer IV & Ors.

..... Respondents

Through: Mr. Yeeshu Jain, Advocate for
the respondent/DDA.

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. Oral:

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned order dated 05.02.2007 passed by the Ld. Additional District Judge thereby dismissing the appeal filed by the appellant under Section 9 of the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971.

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2. Brief facts of the case relevant for deciding the present petition are that the petitioner on 9.1.95 acquired the land bearing no. T -222 Kala Pet, Malka Ganj Road, Sadar Bazar (North) Subzi Mandi, Delhi from one Sh. Kalu Ram, through his son/attorney Sh. Jagan Nath and was running one kiriyana shop there. That a show cause notice dated 19.6.02 was issued to the petitioner u/s 4(2)(1) (b) (ii) of the Public Premises (Eviction of Unauthorized Occupants Act), 1971 and thereafter an eviction order dated 23.9.02 was passed by the learned Estate Officer against the petitioner. Feeling aggrieved with the said order, the petitioner preferred an appeal u/s 9(2) (a) of the Public Premises Act which vide judgment dated 5.2.07 was dismissed by the learned Additional District Judge. Thereafter a sealing order dated 7.5.07 was passed against the petitioner. Feeling aggrieved with the same the petitioner has preferred the present petition.

3. Counsel for the petitioner states that the principles of natural justice have been violated by the Estate Officer as no opportunity was given to the petitioner to represent himself. The contention of counsel for the petitioner is that the son of the petitioner had appeared before the Estate Officer on 11.7.2002, but no date thereafter was communicated to him by the Estate Officer.

Counsel thus submits that the petitioner and her son remained under the bona fide impression that the next date would be communicated by the Estate Officer, therefore, he did not choose to appear before the Estate Officer. Counsel also submits that the petitioner had lawfully purchased the land in question from one Jagan Nath S/o Late Shri Kalu Ram by legally and validly executing the documents and, therefore, based on the said documents the petitioner became an authorized occupant of the said premises. Counsel further submits that the petitioner has been singled out by the respondent for the purpose of initiating the proceedings under the Public Premises Act. Counsel for the petitioner has placed reliance on Section 8 of the Public Premises Act to contend that the Estate Officer being a quasi judicial authority is expected to follow the principles of natural justice. Counsel further submits that the Estate Officer should have given a fresh notice after having proceeded ex parte against the petitioner.

4. Counsel for the respondent, on the other hand, refutes the submissions made by the counsel for the petitioner and submits that the orders passed by both the courts below are well reasoned orders and no illegality or perversity can be found in the same, thus supporting the orders passed by both the courts below.

5. I have heard counsel for the parties at considerable length and gone through the records.

6. The petitioner claims herself to be in lawful and authorized occupation of the Government land in question but has failed to disclose as to how and in what manner she can be treated as an authorized occupant of the same. Admittedly, the petitioner has claimed that she had purchased the shop in question through Agreement to Sell, General Power of Attorney and Will dated 9.1.1995 duly executed by one Mr. Jagan Nath son of L. Sh. Kalu Ram. Indisputably Jagan Nath himself was never the owner of the said shop as he was merely power of attorney holder of one Mr. Kalu Ram who again had purchased the said land in question from one Late Sh. Jagdish son of L. Sh. Chunni Lal. Photocopy of the power of attorney placed on record by the petitioner nowhere discloses the competence of Sh. Kalu Ram to transfer or sell the land in question in favour of the present petitioner. Merely claiming to be an absolute owner of the said shop in such documents by itself cannot give rise to any presumption in favour of the executant that he was the true owner of the said land unless complete details of how and in what manner the person has become the owner are disclosed in the transfer documents. Even in the

agreement to sell nowhere the said Jagan Nath has disclosed his title over the said shop in question. As per the case set up by the respondent, the land in question is a government land and the same is under the management and control of the DDA. The said land was earlier used by one Mr. Yusuf against whom proceedings under Section 4 of the Public Premises Act were initiated in the year 1978 and this Mr. Yusuf had alone sold the said land in favour of one Mr. Kalu Ram and then the notice under Section 4 of the Public Premises Act was issued to Mr. Kalu Ram and after the death of Sh. Kalu Ram the present petitioner was found to be in unauthorized occupation of the said land. The petitioner has not denied the fact that her son had appeared before the Estate Officer in the said proceedings but did not choose to contest the said proceedings and ultimately based on the evidence led by the respondent, the Estate Officer vide order dated 23.9.02 passed the eviction order against the petitioner. The contention raised by the counsel for the petitioner that the Ld. Estate Officer should have directed fresh notice upon the petitioner after proceeding ex-parte against the petitioner is devoid of any merit as once the petitioner had appeared before the Estate Officer through her son then it was obligatory on the part of the petitioner to have contested the said

proceedings. It is correct that being a quasi judicial authority, the Estate Officer must follow the principles of natural justice before finally deciding any case under the Public Premises Act but it is equally true that the violation of the principles of natural justice cannot be complained of by the person who himself does not take an opportunity of pressing his case or to contest the proceedings before the Estate Officer. The Ld. Additional District Judge has rightly placed reliance on the judgment of this court in ***Dr. K.R.K. Talwar Vs. Union of India & Anr (AIR 1977 Delhi 189)***, wherein this court took a view that the rule of audi alteram partem does not mean that a person who himself does not avail the opportunity, an order against him cannot be passed without hearing him. Rules of natural justice are imperative to be followed for assuring justice and fairness in action. Undoubtedly, they cannot be given a go by in ordinary circumstances. But the caveat sounded by Lord Denning, some four decades ago, that the rules of natural justice must not be stretched too far and only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences, still rings true, especially in the present circumstances. In the present case, the circumstances clearly indicate that the rules of natural justice are being used as a

purely technical weapon to undo a decision which goes against the interest of the petitioner. Had the petitioner been really aggrieved by the non issuance of fresh notice by the Estate Officer, it would have immediately taken steps to follow up the proceedings which were initiated against her. In the present scenario, to quash the impugned order on the ground that the petitioner was not given an opportunity of being heard would amount to putting a premium on the cavalier approach of the petitioner. Thus, the contention raised by the counsel for the petitioner is fallacious and devoid of any merit.

7. Coming to the second argument of the counsel for the petitioner this court is not persuaded to accept that the petitioner can be termed as an authorized occupant in respect of the shop in question. Counsel for the petitioner has invited attention of this court to the photocopies of the documents executed by one Mr. Jagan Nath acting as a power of attorney holder of Mr. Kalu Ram in favour of the petitioner. This document comprises of power of attorney, agreement to sell, Will and receipt dated 09.01.1995. As already discussed above, these documents nowhere disclose the authority of Mr. Jagan Nath to sell out the said shop in question in favour of the petitioner and therefore by virtue of these documents

the petitioner cannot be treated as an authorized occupant of the shop in question. This court is of the view that the respondent has succeeded in establishing its title and ownership over the said land in question and the evidence led by the respondent before the Estate Office remained unimpinched and unrebutted. It is a settled legal position that the onus is upon the occupant to show that he is not an unauthorized occupant over the land/property in his occupation and the petitioner in the present case has failed to satisfy this court as to how she claims herself to be an authorized occupant of the said shop in question. Hence, in the light of the above, this court does not find any infirmity or illegality in the impugned order passed by the court below.

8. There is no merit in the present petition. The same is hereby dismissed.

September 14, 2010
rkr/pkv

KAILASH GAMBHIR, J