

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.07.2010
Judgment delivered on: 25.08.2010

W.P. (C) No. 18504/2006

National Textile Corporation (DP&R) Ltd.

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate
With Mr. Sanjay Ghosh and
Mr. Nikhil Bhalla, Advocates

Vs.

Punjab National Bank & Ors.

.....Respondent

Through: Mr. Dhruv Mehta, Sr. Advocate
with Mr. Y.P. Chandana, Ms.
Yashodhara Anand and Mr. Pankul
Nagpal, Advocates.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner seeks to set aside the order dated 23.09.2006 passed by the court of Additional District Judge, Delhi whereby the eviction order passed by the Estate Officer against the petitioner has been upheld.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner was a tenant of the respondent in respect of the property bearing Shop No.11, Punjab National Bank Building, Arya Samaj Road, Karol Bagh, New Delhi. The petitioner was a habitual defaulter in payment of rent of the said premises and hence a legal notice dated 3.6.87 was served upon the petitioner terminating the said tenancy with effect from 30.6.87. Thereafter the Estate Officer served a show cause notice dated 23.7.1987 on the petitioner and an eviction order dated 26.7.1991 was passed by the learned Estate Officer

against the petitioner. Feeling aggrieved with the said order, the petitioner preferred an appeal which was dismissed by the learned ADJ vide order dated 23.9.2006 thereby upholding the order of the Estate Officer. Feeling aggrieved with the abovesaid orders the petitioner has preferred the present petition.

3. Mr. Sandeep Sethi, Ld. Senior Advocate appearing for the petitioner submitted that the petitioner is a statutory tenant under the Provisions of the Delhi Rent Control Act, 1958 and therefore the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 could not have been invoked against the petitioner to seek eviction of the petitioner from the premises under its occupation. Counsel for the petitioner further argued that the eviction of the petitioner also could not have been sought in view of the legal position settled by the Hon'ble Supreme Court recommending settlement of disputes

between two Government Corporations by the High Power Committee of Disputes. The contention of the counsel was that without referring the said dispute to the High Power Committee, the petitioner cannot be evicted from its lawful occupation of the premises by resorting to the Public Premises Act. Counsel for the petitioner also placed reliance on the guidelines issued by the Ministry of Urban Development wherein it has been clearly stated that the genuine tenants from Public Premises under the Control of Public Sector Undertakings/Financial Institutions should not be evicted while resorting to the provisions of the Public Premises Act. Counsel for the petitioner further submitted that the petitioner is a sick company and therefore cannot be burdened to pay the arrears of the damages as claimed by the respondent.

4. Refuting the said arguments of the counsel for the petitioner, Mr. Dhruv Mehta, Ld. Senior Advocate

appearing for the respondent submitted that the petitioner is an unauthorized occupant of the premises under its occupation, due to the non-payment of huge arrears of rent/damages. Counsel for the respondent further submitted that the petitioner, despite grant of numerous opportunities, failed to contest the proceedings before the Estate Officer while the respondents fully established its case based on oral and documentary evidence placed on record. Counsel for the respondent further submitted that the petitioner has already been successful in enormously delaying the matter as proceedings before the Estate Officer were initiated in the year 1987 which led the Estate Officer to pass an eviction order on 26.07.1991 and it is almost for more than a period of 20 years that the petitioner continued to remain in illegal occupation of the said premises. Counsel for the respondent further submitted that the Apex Court in ***Steel Authority of***

India Vs. Life Insurance Corporation of India, (1997)

5 SCC 511 has taken a view that the matter like eviction of public premises cannot be referred to be resolved by the High Power Committee and therefore the plea taken by the petitioner in this regard is an attempt to further delay the proceedings. So far the guidelines issued by the Ministry of Urban Development for not resorting to the Public Premises Act to evict the genuine tenants like public corporations are concerned, the counsel for the respondent placed reliance on the judgment of the Hon'ble Division Bench of this Court in the case of ***M/s L. D. Nayyar & Sons Vs. Punjab National Bank & Ors. LPA No. 350/2008*** wherein the Division Bench took a view that the administrative guidelines cannot supplant the power to invoke a speedy remedy to evict tenants whose arrangements ended almost two decades ago.

5. I have heard counsel for the parties at considerable length and have given my thoughtful consideration to the facts of the case.

6. As per the Preamble to the Act, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is designed to provide for the eviction of unauthorized occupants from the public premises and for certain incidental matters. The scheme of the Act indicates that the central theme of the legislation is to provide speedy procedure in order to evict persons in unauthorized occupation of public premises. It provides for a summary procedure for eviction of those persons who have no authority in law to remain in possession of the land. They may be squatters, persons having no rights whatsoever, etc. The whole essence of the Act is thus to provide a quick resort for eviction of unauthorized occupants.

7. Adverting to the case at hand, eviction proceedings against the petitioner were initiated by the respondent Bank by means of a legal notice dated 3.8.1987. The reasons given in the said termination notice were that the premises were bonafidely required by the respondent bank and also because the petitioner was a habitual defaulter in the payment of the rent in respect of the said premises. It is not in dispute that the said premises are owned by the respondent bank being Public Premises within the meaning of Section 2 (e) (2) (ii) of the said Act. As per Section 2 (g) of the Public Premises Act, unauthorized occupation “in relation to any public premises” means occupation by any person of the public premises without authority for such occupation and includes the continuation in occupation by any person of the Public Premises after the authority (whether by way of grant or by any other mode of transfer) under which he

was allowed to occupy the said premises has expired or has been determined for any reason whatsoever. It is also a settled legal position that the onus to prove the fact that the occupant is not in unauthorized occupation of the premises is on the occupier. It would be worthwhile to refer to the judgment of this court in the case of **Union of India vs. S.M Aggarwal & 31 Ors. 1995(33) DRJ (DB) 371** where it was held that:

*"As noted above, in spite of various opportunities granted to the shopkeepers by the Estate Officer they failed to file written statement and in fact the entire proceedings show that their whole attempt was to delay the proceedings. There was no question of any departmental official being examined beforehand. What section 4 of the Act required was that if the Estate Officer was of the opinion that any person was in unauthorised occupation of any public premises he is to give him a notice to show cause as to why an order of eviction should not be made. **It is, therefore, for the occupant to show that he is not in unauthorised occupation of public premises.** In spite of various opportunities no record of any nature was produced by the shopkeepers and they did not even file any answer to the show cause notice. If it was a case tried in a civil court then the judge would have straightaway struck out the defense of the shopkeepers for having failed to file written statement in spite of adjournments having been granted for the purpose. To be over-zealous to do justice is one thing, but that should not in any way cause injustice to the other party. A public authority as much requires justice to be done to it as any private individual. Perusal of the record by the learned Additional District Judge to come to the conclusion that*

the Estate Officer decided the cases ex parte is superficial and in fact contrary to the record. No fault has been found in the notice issued under sub-section (1) of section 4 of the Act. No cause thereto has been shown by the shopkeepers in spite of various opportunities having been granted to them for the purpose. That being so, there was no question of recording any evidence of the department or for production of the files of earlier cases without there being any answer to show cause notice by the shopkeepers on record.”

8. The petitioner has failed to satisfy this court as to how and in what manner the occupation of the petitioner in the demised premises is authorized occupation. The petitioner has not disputed the fact that its tenancy was terminated through a legal and valid notice served by the respondent vide notice dated 3.8.1987. The petitioner has also not disputed the fact that it did not contest the proceedings before the Estate Officer which ultimately resulted in the passing of an eviction order against it. The plea of the counsel for the petitioner that the court should have referred the dispute between the two Government Corporations to the High Power

Committee of Disputes does not hold good in view of the judgment of the Apex Court in the case of **Steel Authority of India (Supra)**. It would be pertinent to reproduce the relevant para of the said judgment here:

"The petitioner has sought for such a reference and contends the High-power Committee should have been constituted and decided the matter. We find no force in the contention.

3. The object of issuing direction in those matters was to decide the fiscal disputes in case of major policy matters to save the public money and courts valuable time, and disputes could amicably be settled between the Public Sector Undertaking and the Government of India or the State Governments. The intention was not to resolve the disputes like eviction of a Company or Public Undertaking under Public Premises (Unauthorised Occupants) Act; such petty disputes are not directed to be dealt with by the High level officers whose otherwise duty and time is of very important nature. Under these circumstances, the High Court has not committed any error warranting interference."

So far the contention of the counsel for the petitioner with regard to the guidelines of the Ministry of Urban Development is concerned, the Hon'ble Division Bench of this Court in the case of **M/s L.D. Nayyar & Sons (supra)** has taken a view that the administrative

guidelines cannot be fetter on statutory powers conferred under the Public Premises (Eviction of Unauthorized Occupants) Act. The relevant para of the said judgment is referred as under:-

"2. The principal argument of the counsel for the appellant is based on the guidelines issued by the Central Government in 1992 and the subsequent clarifications issued, leading upto 2002 guidelines. In particular, reliance was placed on the following portion of the guidelines:

"Resorting to PP Act to vacate authorized tenants merely to secure possession of the premises to accommodate the PSU's employees, or for commercial redevelopment or to open a branch cannot be totally against the spirit of the guidelines for protecting interests of genuine authorized tenants...."

*3. We are afraid the argument is misconceived. It is well settled that the administrative guidelines cannot supplant the power to invoke a speedy remedy to evict tenants whose arrangements ended almost two decades ago. The guidelines cannot be fetter on statutory powers conferred under the Public Premises (Eviction of Unauthorised Occupants) Act. In **Uttam Prakash Bansal v. Life Insurance Corporation of India** 100 (2002) DLT 97 this Court has held that a tenancy terminated earlier to issuance of the guidelines could not be tested on the basis of its terms and that in any case those guidelines could not supplant statutory power under the Act."*

9. The petitioner has already been successful in delaying the matter for more than 20 years and being a

Government Corporation it was expected of the petitioner to have followed the mandate of the law in handing over the possession of the said premises after it was declared as an unauthorized occupant of the same instead of delaying the matter for such a long time. A tardy approach as that of the petitioner defeats the purpose for which the Public Premises Act was enacted.

10. Hence, in the light of the above, there is no merit in the present petition, the same is hereby dismissed with a cost of Rs.25, 000/-.

August 25, 2010

KAILASH GAMBHIR, J