

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) NO. 6810/2006

Judgment delivered on: 15.12.2010

Thakur Gajinder Singh Pawar Petitioner

Through: Mr. Vinod Diwakar, Adv.

Versus

The NDMC & Anr. Respondents

Through: Ms. Sidhi for counsel for
respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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

KAILASH GAMBHIR, J. Oral:

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 1.4.2006, passed by the learned ADJ, Delhi,

whereby the learned trial court partially allowed the appeal under Section 9 of the Public Premises Act in favour of the appellant.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner was allotted a shop bearing no. 92, SBS Place, Gole Market , New Delhi in 1999 at a monthly licence fee of Rs.16,300/- and had furnished a bank guarantee to the tune of Rs.1,98,624/- and also a deposit of Rs. 66,208/-. That the petitioner failed to pay the licence fee and as a result a show cause notice dated 17.10.2002 was served on him. Consequently, the petitioner offered the respondent to take over the possession of the said shop and also to adjust the outstanding amount against the bank guarantee and advance deposit. However not acceding to the proposal of the petitioner, an eviction order dated 21.2.2005 was passed by the Estate officer, to which the petitioner preferred an appeal which vide judgment and decree dated 1.4.2006 was partially allowed and the matter remanded back to the Estate Officer for reconsideration of the extent of

damages and rate of interest payable by the petitioner. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Counsel for the petitioner has taken a stand that the petitioner vide letter dated 22.10.2002 made a request to the Director of Estates to take over the possession of the shop bearing no. 92, SBS Place, New Delhi. Counsel submits that in the said letter the petitioner had also requested the respondent to adjust the outstanding dues against the amount of Rs.66,208/- deposited by the petitioner towards the advance rent and by invoking the bank guarantee of Rs.1,98,624/-.

4. Based on the said letter dated 22.10.2002, counsel submits that the fault was on the part of the respondent NDMC not to have taken back the possession and therefore the petitioner cannot be made liable to pay the rent/damages for the period w.e.f. 22.10.2002 to 24.6.2005. Counsel for the petitioner further submits that even as per the records of the meter reading of the electricity connection installed in the

said shop placed on record by the respondent, it is quite manifest that the said licenced premises remained locked from 8.1.2002 onwards. Based on this submission, counsel submits that the petitioner is not liable to pay the rent/damages for the period w.e.f. 22.10.2002 to 24.6.2005.

5. On the other hand, counsel for the respondent submitted that no perversity or illegality can be found in the impugned judgment and thus supported the judgments passed by the courts below.

6. I have heard learned counsel for the parties.

7. The proceedings against the petitioner for eviction and recovery of damages were initiated by the Estate Officer with regard to Shop No. 92, SBS Place, New Delhi. The said shop was allotted by the respondent NDMC in favour of the petitioner in the year 1999 at the monthly rent of Rs. 16,300/- with some other additional charges. The appellant had deposited an amount of Rs. 66,208/- towards the advance rent and besides the said deposit the appellant had also deposited the bank guarantee of a sum of Rs. 1,98,624/- in favour of the

respondent NDMC for securing the payment of the monthly licence fee. Since the petitioner defaulted in the payment of the monthly licence fee, therefore, the respondent issued show cause notice dated 17.10.2002, calling upon him to show cause as to why his licence not be cancelled and eviction proceedings not be initiated against him for the realization of the outstanding dues. After receipt of the said show cause notice, the petitioner vide letter dated 22.10.2002 made a request to the Director of Estates, NDMC to take over the possession of the said shop and also to adjust the outstanding dues with the said advance payment of the rent of Rs.66,208/- and the bank guarantee amount of Rs.1,98,624/-. Not agreeing with the proposal of the petitioner, the respondent NDMC initiated eviction proceedings under Section 5 and recovery proceedings under sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The petitioner appeared before the Estate Officer on 3.2.2005 and the matter was then fixed for 16.2.2005. However, the

petitioner was proceeded ex-parte and vide order dated 21.2.2005, the Estate Officer passed the eviction order under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 as well as passed an order under sub-section (2) & 2 (A) of Section 7 of the said Act for the recovery of damages. Both the said orders were challenged by the petitioner before the learned Appellate Court by filing an appeal under section 9 of the Public Premises Act.

8. The learned Appellate Court in the impugned order dated 1.4.2006 has referred to one letter dated 10.1.2005 (10.02.2005) which was filed by the petitioner during the course of the proceedings before the Estate Officer and in fact the Appellate Court has reproduced the said letter dated 10.1.2005 in the impugned order.

9. In the said letter, the petitioner took a stand that on 24.1.2005 he approached the Director of Estates with a request to give him some relief in the interest rate as well as in the damage charges as his business had picked up and he

was in a position to pay a sum of Rs. 1 lac every month towards the arrears of the licence fee along with amount of interest. The petitioner in the said letter dated 10.1.2005, had also admitted the fact of total outstanding dues standing at Rs.. 8.5 lacs. In the said letter the petitioner also submitted that he would clear the entire outstanding dues in equal installments within a period of 7-8 months. The petitioner had even approached the Permanent Lok Adalat to seek redressal of his grievance and the Permanent Lok Adalat vide order dated 29.5.2005 reduced the rate of interest charged by the respondent NDMC from 12% to 6% without interfering in the total demand raised by the respondent NDMC. In the face of the said stand taken by the petitioner in his letter dated 10.1.2005 and also order dated 29.5.2005 passed by the learned Lok Adalat, the petitioner cannot take an absolutely contrary stand that the petitioner had abandoned the premises on 22.10.2002, and therefore he is not liable to pay the damages w.e.f. 22.10.2002 till 24.6.2005. The petitioner was not expected to abandon the said shop

and in fact he should have surrendered the said shop as per the requirements of the respondent NDMC and in terms of the licence deed. Even as per the letter dated 22.10.2002, on which strong reliance is placed by the petitioner, the petitioner merely sought adjustment of the advance amount and the amount of bank guarantee against the outstanding amount. Since the petitioner failed to make full payment towards his outstanding liability, therefore, it was not obligatory on the part of the respondent to have accepted the said offer of the petitioner for taking over the possession of the said shop. The meter reading records placed on record by the respondent although show that the premises remained locked till the same were sealed on 24.6.2005 but the mere fact that the premises remained locked would not given any advantage to the petitioner as the said locked premises remained under the control, power and possession of the petitioner. Hence, this plea of the petitioner is devoid of any merit and thus cannot be accepted.

10. In the light of the above, there is no merit in the present petition and the same is hereby dismissed.

11. The appellate Court vide order dated 1.4.2006, directed both the parties to appear before the learned Estate Officer on 24.4.2006. The matter was remanded back to the Estate Officer to reconsider the extent of damages and rate of interest which is payable by the petitioner according to the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 read with the Public Premises Rules, 1971 and prevailing interest rate as applicable during the relevant period.

12. In view of the said directions, the parties are directed to appear before the learned Estate Officer on 3.1.2011 at 12.30 P.M. The learned Estate Officer shall carry out the directions of the learned Appellate Court in terms of paras 5.6 and 5.7 of the order dated 1.4.2006.

13. With these directions, the petition stands disposed of.

December 15, 2010

KAILASH GAMBHIR, J

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