

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (C) No. 11069/2009

Judgment delivered on: 12.08.2010

Vijay Kumar

..... Appellant

Through: Ms. Babita Seth, Advocate

Versus

NDMC & ors.

..... Respondents

Through: Mr. Manoj K. Singh, Advocate
with Mr. Nilava Banerjee, Advocate

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 quashing of the order dated 15.11.07 passed by the learned Estate Officer and order dated 29.7.2009 passed by the learned District Judge-IV.

2 . Brief facts as per the petitioner and relevant for deciding the present petition are that the petitioner was allotted a shop bearing

no. UG-40, Pallika Place, R.K Ashram Marg, New Delhi by the respondent on 9.9.92 for a period of five years on the basis of a Deed of Licence. That on the expiry of the said five years, the respondent called upon the petitioner vide letter dated 15.10.98 for renewal of the licence subject to completion of all the formalities. Due to the fact that the petitioner failed to pay the amount due towards rent and hence was in huge arrears, proceedings were initiated against him by the respondent before the learned Estate Officer under section 5 & 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 whereby vide order dated 15.11.07 an eviction order was passed against the petitioner. Aggrieved with the said order, the petitioner preferred an appeal under section 9 of the PP Act before the District Judge which vide judgment dated 29.7.2009 upheld the order of the Estate Officer. Feeling aggrieved with the abovesaid two orders, the petitioner has preferred the present petition.

3 . Counsel for the petitioner contends that the petitioner be given another opportunity to represent his case before the Estate Officer. Counsel further submits that the petitioner in fact had appeared and made some payment during the pendency of the proceedings before the Estate Officer but still the Estate Officer

proceeded in the matter to pass an eviction order against the petitioner. Counsel for the petitioner further submits that under the one time policy of 1997 the petitioner had applied for the regularization of his licence in respect of the shop in question but the said request of the petitioner has yet not been considered by the respondent. Counsel also submits that the said policy is still in force and has not been superseded by any subsequent policy of the respondent. Counsel also submits that in similar cases, the respondent has already condoned the breaches committed by the licensees but the petitioner is being discriminated against. Counsel for the petitioner has invited attention of this court to some of the cases referred by the petitioner in his rejoinder. In support of her argument, counsel for the petitioner further contended that the respondent being an instrumentality of the State cannot adopt the pick and choose policy. Counsel for the petitioner further submits that the petitioner has already made almost the entire payment towards rent/damages till the month of May, 2010 and therefore on having received the said payment the license of the petitioner can be renewed by the respondent. Counsel for the petitioner also submits that the respondent has not disclosed any basis for charging

the exorbitant rate of interest and the penalty on the alleged over due amount.

4 . Opposing the present petition, Mr. Manoj K. Singh, counsel for the respondent submits that the license of the petitioner was not renewed on account of non-payment of license fee although the petitioner was called upon by the respondent vide their letter dated 15.10.1998 to get his licence renewed. Counsel thus submits that the license of the petitioner got expired by efflux of time on 8.9.1997. Counsel further submits that the petitioner was a habitual defaulter in making payments of the rent/damages and as on the date of the notice issued by the Estate Officer under sub-section (3) of Section 7 of the Public Premises Act, the petitioner was in arrears of damages to the tune of Rs.1,32,431/- and calculating the interest thereon, an amount of Rs.1,94,809/- was due to the respondent. Counsel further submits that the petitioner became unauthorized occupant as the licence of the petitioner was not renewed and therefore notice under sub-section (2) (b) (ii) of Section 4 of the Public Premises Act was issued and the ground for declaring the petitioner unauthorized occupant was disclosed in the said notice stating that license granted in favour of the petitioner in respect of the shop in question had expired on 8.9.1997 and in the absence of

any further renewal the petitioner will become unauthorized occupant. Counsel further submits that the petitioner remained in arrears of payment of rent/damages for a period of more than a decade. Inviting attention of this court to the statement of account placed on record by the petitioner himself, the counsel points out that the same would show that the petitioner was most irregular in making the payment of the rent/damages. Counsel thus submits that this court while exercising equitable jurisdiction under Article 226 of the Constitution of India would not come to the rescue of such a person. Counsel also submits that under the policy of 1997 only those licensees could have been given the benefit of the scheme the validity of whose licenses was still in existence. Counsel further submits that the eviction order against the petitioner has already been passed and the same was confirmed by the Appellate Court as well. Counsel for the respondent submits that benefit of 1997 policy was available to only those evictees against whom eviction orders were passed by the Estate Officer prior to the date of policy and where the eviction orders were not yet executed in terms of para 5 of the said policy. Counsel thus states that the petitioner cannot take advantage of the 1997 policy in the year 2009. Counsel further submits that in fact the said policy of 1997 also stands superseded

by a subsequent policy of the year 1999. Counsel also submits that the petitioner cannot claim negative equality so as to set up a case of discrimination. In support of his argument counsel for the respondent placed reliance on the following judgments :-

1. Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr. AIR 1995 SC 705
2. Sanjeev Kumar Vs. NDMC, W.P. (C) No. 11354/2009
3. Ashit Kumar Jain Vs. NDMC, W.P. (C) No. 1239/2010
4. Kuldeep Sood Vs. NDMC W.P. (C) No. 1783/2010
5. Ashit Kumar Jain Vs. NDMC, LPA No. 205/2010
6. Kuldeep Sood Vs. NDMC, CM (M) No. 325/2009

5 . I have heard learned counsel for the parties and given my careful consideration to the arguments advanced by them.

6. Indisputably, there was no renewal of the license in respect of the shop in question after the expiry of the initial period of five years and the said five years period came to an end on 8.9.97. No doubt the petitioner had pleaded renewal of the said license but no documentary evidence in this regard has been placed by the petitioner to prove such renewal. Rather the petitioner himself has placed on record a copy of letter dated 15.10.1998 through which the petitioner was called upon to seek renewal of the

license for another period of five years. The petitioner also has not disputed the fact that he did not clear the outstanding dues which was the prerequisite condition to seek renewal of the license deed. In this background of the facts, it is difficult to accept the argument of the counsel for the petitioner that the renewal of the license in fact had taken place but without there being any proper execution of the license deed. Once the petitioner was in huge arrears then without the payment of the same the respondent certainly would not have agreed to grant renewal. The petitioner has placed on record photo copy of the format of the license deed which only contains signatures of the petitioner. This format of the license deed unilaterally signed by the petitioner can neither bind the respondent nor through the said document renewal of the license can be inferred.

7. It is also a matter of record that the petitioner did not contest the proceedings before the learned Estate Officer, even after causing appearance before the Estate Officer. The testimony of the witnesses examined by the respondent remained unchallenged and therefore, once the petitioner himself did not set up the defence of the renewal of license before the Estate Officer the same has

rightly not been accepted by the Appellate Court. Thus, this plea of the counsel for the petitioner merits outright rejection.

8. Counsel for the petitioner laid much emphasis on the one time policy of the respondent announced in the year 1997 which allegedly gave right to the petitioner to seek regularization and renewal of the license deed. The contention of the counsel for the petitioner is that the petitioner had applied under the said scheme vide his letter dated 6.8.2009, but the respondent had not taken any decision on the said request of the petitioner despite the fact that the petitioner had already paid the entire amount as was demanded by the respondent towards the arrears. This argument of the learned counsel for the petitioner looked attractive at the first blush, but the same falls face down after examining the controversy in depth. The said policy of the NDMC was announced in the year 1997 and the same was applicable to all those cases where the eviction orders were already passed but not executed for one reason or the other. Further, all such evictees were called upon to clear all their violations within a period of 30 days and on doing so their cases of allotment were to be regularized by the respondent NDMC. It would be useful to refer to para 5 of the said policy as under:

“.....(a) In all such cases, where eviction orders have been passed by E.O. and the orders could not be executed for one reason or the other, we may give them one time exemption from implementation of the orders of the Estate Officer & provide them 30 days time to clear all violation. If they come forward and remove all violations unconditionally and clear the dues as prescribed/applicable, their cases may be regularized.

(b) Where the occupant fails to comply with the above decision, we may resort to eviction straightway.”

9. Clearly, the petitioner did not approach the respondent NDMC for taking the benefit of the said policy and it is only after a lapse of 12 years, through letter dated 6.8.2009 the petitioner sought regularization of his possession. The benefit of said policy could not have been extended to all those who did not approach the respondent within the stipulated time given in the policy or at least within the reasonable period. The petitioner has not disputed the fact that he remained in arrears throughout the period of his occupation except certain payments were made by him during the course of proceedings before the Estate Officer and the District Judge. The petitioner being a chronic and habitual defaulter cannot take advantage of the said one time policy. This plea of the counsel for the petitioner is also devoid of any merit and thus rejected.

10. Another contention raised by the counsel for the petitioner was that in certain other cases the respondent has condoned the breach and regularized the possession of the defaulters. Undoubtedly, the respondent being an instrumentality of the State is expected to treat all the licensees at par without creating any kind of discrimination. Nevertheless, the petitioner has not brought to the notice of this court any case which stands identical to the facts of the present case, where the respondent has renewed the license or regularized the allotment. The license of the petitioner expired on 8.9.1997 and the petitioner did not take any steps to seek renewal of the said license despite an offer in this regard been made by the respondent vide their letter dated 15.10.1998. The petitioner was also in the arrears of the damages to the tune of Rs.1,32,431/- upto January 2006. Perusal of the statement of account filed by the petitioner himself shows that the petitioner was a habitual defaulter in the payment of rents/damages and thus consequently no amount of discretion can be exercised by this court under Article 226 of the Constitution of India in favour of the petitioner who has been a habitual defaulter. Every licensee or allottee and even an unauthorized occupant is obliged to pay the monthly license fee/damages so long as he is

using the premises under authorized or unauthorized occupation and no undue sympathy can be shown to those who willfully and contemptuously commit persistent defaults in the payment of periodical rents/damages. The petitioner in the present case even failed to take advantage of one time policy announced by the respondent in the year 1997 and now at this stage he cannot claim negative equality on the basis of alleged discrimination or pick and choose policy of the respondent. The petitioner has not brought to the notice of this court any identical case where the respondent has taken a different decision while adopting a discriminatory approach in the case of the petitioner. Some of the instances given by the petitioner may not be of much help to him as there are many more cases where the respondent must have succeeded in evicting such unauthorized occupants similar to the case of the petitioner.

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

13. The respondents are directed not to execute the eviction order for a period of 15 days.

August 12, 2010
pkv

KAILASH GAMBHIR, J