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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Review Petition No. 742/2011 in W.P.(C) 1295/2001

D.D.A. Petitioner

Through: Mr. Ajay Verma, Advocate

versus

M/S.GIAN CHAND KEDAR NATH CO. Respondent

Through: Mr. Anil Airi, Mr. Ravi Kishan
Chandra, Mr. Prityush Sharma &
Mr. Hemant Manjani, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **18.07.2013**

The Appellate Court's order setting aside eviction of respondent from subject premises was quashed and Estate Officer's order evicting respondent from the subject premises in question was restored in petitioner's writ petition allowed by order of 21st November, 2011. The term lease of respondent in respect of subject premises stood expired in the year 1968 on account of its non renewal.

At the hearing of this review petition, learned counsel for reviewist/ respondent had highlighted the scope of review while relying upon Apex Court decisions in *BCCI Vs. Netaji Cricket Club & Ors.* (2005) 4 SCC 741 and *Lily Thomas and Ors. Vs. Union of India & Ors.* (2000) 6 SCC 224. According to learned counsel for reviewist/ respondent, inspection of file pertaining to the property in question was

allowed and it was discovered that Director (Lands) of DDA vide its Note of 3rd December, 2010 had noted that the lease in favour was duly renewed and it was alleged by learned counsel for reviewist/ respondent that the aforesaid Note of 3rd December, 2010 has been deliberately withheld by petitioner- DDA from this Court resulting into setting aside of appellate order. It was also contended on behalf of reviewist/ respondent that petitioner-DDA was bound under the terms of lease to renew it, as petitioner had opted for renewal of lease vide letter of 10th January, 1968 and in terms of the lease, the renewal was to be automatic. To contend so, reliance was placed upon decisions in *Bal Sahyog Vs. UOI & Anr.* 107 (2003) DLT 373; *Jorbagh Association (Regd.) & Ors. Vs. UOI & Ors.* 112 (2004) DLT & *MCD vs. Pradip Oil Corporation & Anr.* 100 (202) DLT 442.

It was also pointed out on behalf of reviewist/ respondent that W.P.C. No. 3728/2010, *Gian Chand Kedar Nath Vs. Delhi Development Authority*, was filed by reviewist/ respondent seeking conversion periodical lease into perpetual lease, as has been done by petitioner- DDA in other similarly situated premises and the said writ petition was disposed of in October, 2010 with direction to DDA to decide respondent's pending Representation by a speaking order and thereafter only well reasoned order was passed by Director (lands) in December, 2010, which has been illegally set aside now by the Lieutenant Governor in February, 2013 by cryptically noting that the order of 21st November, 2011 of this Court is to be executed.

Review of order of 21st November, 2011 is sought by learned

counsel for reviewist/ respondent by submitting that after passing of the judgment by this Court on 21st November, 2011 in the writ petition, respondent had learnt about the aforesaid Note of 3rd December, 2010 of Director (Lands) recommending conversion of term lease to perpetual lease. It was submitted by learned counsel for reviewist/ respondent that Lieutenant Governor of Delhi had allowed respondent's Representation on 2nd May, 2012 to convert the terms lease into perpetual lease of the property in question.

Lastly, it was urged on behalf of reviewist/ respondent that the order of eviction is not in conformity with Notice under Section 4 of the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971* and so, in view of dictum of a Coordinate Bench of this Court in *Jaswant Singh Vs. UOI & anr.* 159 (2009) DLT 596, the Show Cause Notice in question as well as proceedings emanating there-from deserve to be quashed by allowing this petition. Thus, review of order of 21st November, 2011 is sought by reviewist/ respondent.

A strong opposition to the review petition by learned counsel for petitioner is on the ground that there was no concealment by petitioner – DDA from this Court, as it was disclosed to this Court that reviewist/ respondent had made an application seeking renewal of the lease in question but the same was turned down and the renewal deposit made by respondent was returned back and this aspect has been already dealt with by this Court in paragraph No. 8 in order of 21st November, 2011. It was vehemently submitted by learned counsel for petitioner that the ground on which review of order of 21st November, 2011 is sought by respondent

was never urged before this Court when a full-fledged hearing was afforded to the parties on 14th November, 2011 and though liberty was granted to both the sides to file short synopsis but no written synopsis was filed by reviewist/ respondent.

Attention of this Court was drawn by learned counsel for petitioner to an order of 28th April, 2011 of a Division Bench of this Court in RP No. 87/2011 in W.P.(C) No. 5345/1993 wherein the plea taken in the review application was found to be not urged at the main hearing and was thus, not accepted. Much emphasis was laid by learned counsel for petitioner upon the aspect of Note of 3rd December, 2010 by Director (Lands) of DDA was a mere recommendation, which was reconsidered by the same very Director upon being apprised that reviewist/ respondent's prayer for renewal of the lease was not accepted by the DDA. It was urged by learned counsel for petitioner that the question of discrimination or of non-conversion of the lease was urged by respondent while challenging petitioner/DDA's order of February, 2013 and the said writ petition has been already disposed of with liberty to respondent to either get the said writ petition revived or to file fresh one after decision in this review petition is rendered.

Thus, it is submitted by learned counsel for petitioner that neither there is discovery of any new or material fact nor there is any concealment and there is no error apparent on the face of decision rendered on 21st November, 2011 and so, this review petition deserves to be dismissed.

After having deliberated upon the submissions advanced by both

the sides and on perusal of the order of 21st November, 2011, as well as the decisions cited, I find that the plea of discrimination or the challenge to the non-conversion of a term lease in question into a perpetual lease, is alien to the proceedings under the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971*, which is subject matter of this petition. It is for this reason while upholding the Estate Officer's order to evict respondent from the subject premises, purely as an interim measure, twelve weeks' time was granted to respondent to vacate the subject premises so that respondent could avail of the remedy available in law while urging question of discrimination or to make grievance of non-conversion of the lease in question in appropriate proceedings.

This Court is not required to opine as to whether the Note of December, 2010, which already stands superseded by Lieutenant Governor by order of February, 2013 would hold the field or not because this is a matter which needs to be appropriately raised in the writ petition in which challenge to the aforesaid order of February, 2013 was made by petitioner, as respondent is at liberty to urge it in the said writ proceedings and not in proceedings under the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971* herein. Similarly, question of discrimination cannot be urged in these proceedings particularly by way of a review.

So far as the question of eviction order being in conformity with the grounds, as spelt out in Notice under Section 4 of the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971* is concerned, it was not raised by respondent's counsel at the hearing of the writ petition and so,

on this ground review of order of 21st November, 2011 cannot be sought. Thus, reliance placed by learned counsel for reviewist/ respondent upon decisions in *EX. Havaladar Kailash Singh & sons Vs. UOI & Anr.* 106 (2003) DLT 660; *Pyare lal Vs. Estate Officer and anr.* 130 (2006) DLT 208 & *Seasons Catering Services Pvt. Ltd. vs. DDA* 207 ILR 2 Delhi 66 is of no avail.

Otherwise also, a plain reading of Clause- IV (c) of the Lease Deed in question, as noted in paragraph No. 6 of the decision rendered on 21st November, 2011 does not indicate that there is automatic renewal of the lease upon an option being exercised by the lessee. Significantly, the words '*if the lease is extended* ' used in afore-referred Clause-IV (c) of the Lease Deed in question, confer discretion upon DDA to extend the lease or not. In any case, if the lease was not extended in the year 1968, nothing had stopped the petitioner to seek his remedy then against the non-renewal of lease. It is too late in the day now to assail the eviction order on the ground of non-renewal of lease in the year 1968 and that too in the review proceedings.

In the considered opinion of this Court, there is no concealment of any material fact by petitioner and so called discovery of new fact relating to Note of DDA's Director (Land) of December, 2010, was a mere recommendation and its acceptance by the Lieutenant Governor stands reversed and so it would not change the fate of decision rendered by this Court on 21st November, 2011 for the reason that it stands superseded by the Lieutenant Governor by his order of February, 2013. There is no error apparent on the face of 21st November, 2011 warranting

its review. Thus, this review petition is dismissed. However, to enable the respondent to get its writ petition revived or to file a fresh writ petition to effectively challenge Lieutenant Governor's order of February, 2013, four week's time is granted to respondent to vacate the subject premises. Needless to say dismissal of the review petition or upholding of the eviction order qua the subject premises will not stand in the way of concerned authorities if it chooses to reconsider petitioner's case and if the plea of discrimination finds favour with them and they choose to restore the lease of subject premises to respondent and proceed to convert the lease in question into a perpetual lease.

Any observation made in this order shall not be construed to be a reflection on merits when respondent's plea of discrimination or prayer for conversion of term lease into perpetual lease is considered in an appropriate forum.

With aforesaid observations, this review petition is disposed of.

(SUNIL GAUR)
JUDGE

JULY 18, 2013

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