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

+ W.P.(C) 1514/2007

JOGINDER PAL

..... Petitioner

Through: Mr.Rajat Aneja and Mr.Vaibhaw
Jairaj, Advocates

versus

ESTATE OFFICER & ANR.

..... Respondents

Through: Mr.Rajat Katyal and Mr.Anchit
Sharma, Advocates**CORAM:****HON'BLE MR. JUSTICE SUNIL GAUR****ORDER**
16.11.2011

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1. On 9.3.2004, first respondent had issued show cause notice to the petitioner regarding petitioner raising illegal construction in the property as shown in the Schedule of this notice (Annexure P-8) i.e., J-3/221, DDA Flats, New Delhi.

2. In reply dated 25.3.2004 (Annexure P-4), petitioner had stated that no construction has been raised by him in the said premises.

3. Thereafter, eviction order dated 14.6.2004 (Annexure P-10) was served upon the petitioner which indicated that the Provisional Store allotted to the petitioner – resident of J-3/221, DDA Flats, New Delhi stands cancelled.

4. The aforesaid eviction order (Annexure P-10) was challenged by the petitioner by preferring a statutory appeal and vide impugned order of 15.2.2007, petitioner's appeal stands dismissed. The challenge to the impugned order of 15.2.2007 in this writ is on the ground that not only there is

this description of the property in the notice (Annexure P-8)

but no fair opportunity of hearing or of leading evidence was granted to the petitioner to show that there was no illegal construction in the Provisional Store run by the petitioner in the premises of respondent No. 2 i.e., AIIMS. It is also contended on behalf of the petitioner that the provision of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are not applicable as the Provisional Store being run in the premises of AIIMS does not constitute a public premises in view of the letter of the respondent – AIIMS dated 28.9.1980 (Annexure P-1).

5. After having heard both the sides and upon perusal of the impugned order, I find that the initiation of the present proceedings per se is bad in law as it suffers from patent non-application of mind as the schedule in the show cause notice (Annexure P-8) does not correctly describe the petitioner's Provisional Store which was being admittedly run in the premises of respondent – AIIMS and was not being run in the residential colony of DDA flats, as indicated in the notice (Anenxure P-8).

6. It is pointed out by respondent's counsel that though there is a mistake in describing the property in schedule to show cause notice (Annexure P-8), but in paragraph 1 of the show cause notice, it has been indicated that the illegal construction in the Provisional Store by the petitioner is inside the institute premises i.e. AIIMS. Even if it is so, still in view of the reply (Annexure P-9) filed by the petitioner, it was incumbent upon the respondent to have brought on record as to what is the illegal construction and its nature. This is being so said because the petitioner had denied that any construction was raised in the Provisional Store by him. The

impugned order notes that the Estate Officer record reveals that on 29.3.2004, opportunity was granted to the petitioner to produce all material evidence he wanted to produce, but since no evidence was led by the petitioner, therefore, it cannot be said that there is denial of opportunity of fair hearing.

7. The allotment letter of 28.9.1980 (Annexure P-1) indicates that the present Provisional Store was allotted as an alternative site for the Kiosk and it is evident from this memorandum/allotment that the construction was to be raised by the allottee. Be that as it may. The principal ground for eviction has been the illegal construction, which the respondent has failed to substantiate and establish, therefore the impugned order cannot be sustained and is set aside.

8. At this stage, learned counsel for the respondent states that the petitioner is in arrears of rent. This is disputed by learned counsel for the petitioner. Even if it is so, still the respondents would be at liberty to initiate fresh proceedings for eviction of the petitioner from the premises in question in accordance with law. The question raised in the instant proceedings of applicability of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is left open. As and when respondent proceeds to initiate fresh proceedings, petitioner would be at liberty to raise it.

9. With observations as aforesaid, this petition stands disposed of.

10. No costs.


(SUNIL GAUR)
JUDGE

NOVEMBER 16, 2011

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