

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 09.08.2011

+W.P.(C) No.426/2007 and C.M.No.22161/2010

Shri Mohan Prakash Gupta Petitioner

Through: Mr.P.Chakraborty, Advocate.

Vs.

DDA and Another Respondents

Through: Mr.Ajay Verma, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.Oral :

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1 By this petition filed under Articles 226 of the
Constitution of India, the petitioner seeks to challenge the

orders dated 12.10.2006 passed by the learned Estate Officer thereby directing eviction of the petitioner from the premises bearing No.13, Printing Press Complex, Wazirpur Industrial Area, New Delhi in terms of Sub Section 1 of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and order dated 20.12.2006 passed by the learned Addl. District Judge whereby the appeal filed by the petitioner under Section 9 of the Public Premises Act challenging the order of the Estate Officer was dismissed.

2. Brief facts relevant for deciding the present petition are that the petitioner was allotted a plot bearing No.13, Printing Press Complex, Wazirpur Industrial Area, measuring 913.5 sq. mtrs. on 31.10.1995 for a consideration of Rs.40 lacs by the respondent-DDA and a perpetual lease deed for the said plot was executed by the DDA in favour of the petitioner vide lease deed dated 22.12.1995. The said plot allotted in favour of the petitioner was in industrial area and in terms of Clause-II(12) of the lease deed the petitioner as a lessee could use the same only

for carrying on the manufacturing process of running an industry as per MPD-2001 or such other manufacturing or industry as modified from time to time in the said Printing Press Complex. In the year 1999, the petitioner started running a banquet hall on the said plot without seeking any prior permission from the respondent-DDA to start such banquet hall in clear contravention of the terms of the lease deed and in violation of the MPD-2001. That because of this violation made by the petitioner, his lease was cancelled by the DDA on 20.07.2000 and the order of cancellation was duly intimated by the respondent-DDA to the petitioner vide their letter dated 11.09.2000. The said order of cancellation was challenged by the petitioner on 04.10.2000 by filing an appeal/representation before the Lt. Governor of Delhi and the said appeal/representation filed by the petitioner was not acceded to. This cancellation of the lease of the petitioner then led to the initiation of eviction proceedings by the Estate Officer under Section 5(1) of the Public Premises Act (Eviction of Unauthorized Occupants) Act, 1971, which

ultimately led to the passing of an eviction order by the Estate Officer on 12.10.2006. The said order of the Estate Officer dated 12.10.2006 was challenged by the petitioner by preferring an appeal under Section 9 of the Public Premises Act and the said appeal filed by the petitioner was dismissed by the learned Addl. District Judge vide order dated 20.12.2006. Feeling aggrieved with the said two orders, the petitioner has preferred the present petition.

3. The main grievance raised by the petitioner in the present petition is that the petitioner has already paid an amount of Rs.73,96,610/- on 01.04.2010 to the MCD vide receipt No.AE 2803 towards regularization of the misuse of the said plot by the petitioner. The contention of counsel for the petitioner is that once the petitioner has already paid misuse charges, therefore, the petitioner is entitled for the restoration of the lease and the action taken by the respondents to seek eviction of the petitioner on the said ground of misuse has become infructuous. Counsel for the petitioner also submits that the respondent-DDA cannot take

a plea that acceptance of the said misuse charges by the MCD does not concern the DDA as the MCD and DDA both are the agencies of the Central Government to implement the policies of the Government and also the guidelines laid down in the Master Plan. Counsel for the petitioner has also placed reliance on the notification dated 7.9.2006 issued by the Ministry of Urban Development, Government of India wherein in para 10.7 it was clearly provided that the banquet hall shall be permissible only in industrial area and commercial area and not in the residential use zone. Counsel also submits that although some doubts still persisted that whether the said notification dated 7.9.2006 would take effect from the date when the MPD 2001 came into force i.e. in 1990 or from 28.03.2006 when the modification was made in the said Master Plan, but there was no basis for such doubts as the modification necessarily was to take effect from the date when the MPD-2001 came into existence, in view of the fact that the Hon'ble Supreme Court had permitted

continuation of existing mixed land use in the commercial areas subject to payment of conversion charges.

4. The present petition is strongly opposed by Mr. Ajay Verma, counsel representing the respondent-DDA. Counsel submits that the allotment in favour of the petitioner was made by the DDA subject to certain terms & conditions contained in the said lease deed and in terms of Clause-II(12) the petitioner was required to use the plot strictly for running a industry as per MPD-2001 as modified from time to time in the said Wazirpur Printing Press Complex and violating the said terms of the lease deed, the petitioner illegally opened a banquet hall in the said premises. The contention raised by counsel for the respondent is that this Court in exercise of its writ jurisdiction is examining the correctness and validity of the orders passed by the learned Estate Officer and also by the Appellate Court and going by this premise, the counsel for the petitioner has failed to point out any illegality or perversity in the orders passed by the Courts below. Counsel also submits that the jurisdiction of

the Estate Officer is limited as after the termination of the lease deed of the petitioner, it was not within the domain of the Estate Officer to have gone into the issue of correctness of the termination of the lease of the petitioner, more so when the petitioner did not seek any remedy to challenge the said termination of his lease by the DDA which order was also confirmed by the Hon'ble Lt. Governor of Delhi after the rejection of the appeal/representation filed by the petitioner.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. It is not in dispute between the parties that the petitioner was allotted a plot by the respondent-DDA vide perpetual lease deed dated 22.12.1995. It is also not in dispute that the said plot was an industrial plot and in terms of Clause-II(12) of the lease deed, the petitioner was to use the said plot for the purpose of carrying on manufacturing process by running an industry as per MPD-2001 or as modified, but in clear violation of the said terms of the lease deed, the petitioner on his own without seeking any prior

permission from the respondent-DDA, opened a banquet hall in the said premises. For better appreciation, Class-II(12) of the lease deed is reproduced as under:-

(12). The Lessee shall not without the written consent of the Lessor use or permit to be used, industrial plot and in any building thereon for resident or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process of running the industry of as per MPD 2001, as modified, Wazirpur Printing Press Complex..... or such other manufacturing or industry as may be approved from time to time by the Lieutenant Governor or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be nuisance, annoyance or disturbance to the Lessor, and persons living in the neighbourhood.
PROVIDED that, if the Lessee is desirous of using the said Industrial plot or the building thereon for a purpose other than that of the manufacturing process or industry as may be approved from time to time, the Lessor may allow such change of user on such terms and conditions, including payment of additional premium any additional rent as the Lessor may in his absolute discretion determine."

7. It is also an admitted case between the parties that as per the said MPD-2001 also the petitioner could not have opened the said banquet hall on an industrial plot. It is also not in dispute that due to the violation of the said clause of the lease deed and the MPD-2001, the lease of the petitioner was cancelled by the DDA, after show cause

notices dated 5.8.99 and 6.4.2000 were issued by the respondent-DDA in this regard calling upon the petitioner to make the payment of the misuse charges. The representation/appeal filed by the petitioner against the said order of cancellation was also not acceded to by the Hon'ble Lt. Governor of Delhi and no remedy against the said cancellation order was taken by the petitioner any further, thus allowing the said decision of the DDA to become final. It is only after the determination of the lease of the petitioner, the Estate Officer initiated eviction proceedings against the petitioner under Section 5(1) of the Public Premises Act. The Estate Officer in the said order dated 12.10.2006 clearly observed that after cancellation of the lease of the plot in question, Shri Mohan Prakash Gupta and Shri Surender Prakash Gupta i.e. the lessees of the plot are in unauthorized use and occupation of the said plot in question and as such they are liable to be evicted therefrom. The learned Estate Officer further observed that as far as notification of the DDA is concerned, point No.4 of the notification dated 7.9.2006

clearly mentions vis “the following modifications in the said Master Plan for Delhi-2001 with effect from the date of publication of this notification in the Gazette of India” and hence the Estate Officer further observed that it is clear that point 10.7.4 is to guide the future development of Delhi and it cannot be applied for the violations committed by the respondent earlier. In the penultimate paragraph, the Estate Officer further observed that I am fully satisfied that the lease of the plot in question has been cancelled and has yet not been restored in favour of the respondent or anybody else and after cancellation of the lease of the plot in question the respondent or whosoever else is in unauthorized use and occupation of the said premises is liable to be evicted. The learned Appellate Court in para-5 of its order also clearly held that the benefit of notification dated 7.9.2006 cannot be given with retrospective effect to a person who has violated the terms and conditions of the lease since the year 1999 when the first report of misuse was filed with the DDA. The respondent-DDA in the reply-affidavit to the additional

affidavit filed by the petitioner, after referring to MPD-2021, has taken a stand that the draft regulations of the MPD-2021 have been sent to the Ministry of Urban Development for approval and the same have yet not been approved and, therefore, as on date it cannot be said that the banquet hall can be allowed on an industrial plot. The stand taken by the respondent-DDA in the reply-affidavit is that the draft regulations sent by the Planning Committee of the DDA provides "For industrial plots to be used, as Banquet hall, the minimum road width shall be 12m ROW." and therefore in the absence of any specifications/regulations approved by the Ministry of Urban Development, the banquet hall cannot be permitted in the industrial premises as in the MPD-2010 the same can be permitted only subject to specifications/regulations as may be prescribed along with conversion charges. With the said specifications/regulations not being in place, the respondent-DDA also took a stand that the payment having been made by the petitioner to the MCD is of no consequence. The respondent-DDA also took a stand that

it was the DDA who could have regularized the misuse on the payment of conversion charges and the same could have been done only after specifications/regulations were approved by the Ministry of Urban Development and not in the absence of the same. No counter argument was advanced by counsel for the petitioner to rebut the said stand taken by the respondent-DDA and, therefore, this Court cannot take a view that the payment towards the misuse charges was rightly made by the petitioner to the MCD or the same was legally accepted by the MCD. In any case, MCD is not a party before this Court, and this Court is only concerned with the correctness, legality and validity of the orders passed by both the Courts below.

8. As already discussed above, the petitioner had clearly violated the terms & conditions of the lease deed and also the MPD-2001, which act on the part of the petitioner led to the cancellation of the lease deed whereafter proceedings under Section 5(1) of the Public Premises Act were rightly and correctly initiated by the Estate Officer.

9. In the light of the above, this Court does not find any infirmity, perversity or illegality in the orders passed by both the Courts below and the same are accordingly upheld.

10. There is no merit in the present petition and the same is hereby dismissed with no order as to costs.

KAILASH GAMBHIR, J

AUGUST 16, 2011

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