

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No.1485/2006

% Judgment delivered on: 13th May, 2011

Delhi Development Authority Petitioner.

Through: Mr. Ajay Verma, Adv.

versus

Shri Prem Kumar & Ors. Respondents

Through: Mr. J.R. Bajaj, Adv.

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 to set aside the

order dated 29.10.2005, passed by the learned ADJ, setting aside the eviction order passed by the learned Estate Officer.

2. Brief facts of the case relevant for deciding the present petition are that one M/s Mustan Chand Sham Lal was the lessee of the property bearing plot No.C-50 , Azadpur, Subzi Mandi, Delhi allotted to it by the petitioner vide lease deed dated 3.8.71. That the said plot of land was transferred to the present respondents by Mr.Sham Lal Khanna on or about 9.4.1992. That in violation of the terms of the lease deed, an unauthorized construction was raised on the said premises, due to which a show cause notice dated 11.7.95 was served upon on Mr. Sham Lal Khanna, the proprietor of the said firm who vide reply dated 17.7.95 admitted the fact of raising of the unauthorized construction. Consequently, the lease was determined on 13.9.95 and the matter was referred to the Estate Officer for initiation of eviction proceedings and thereafter the Estate Officer passed an eviction order dated 23.4.98. That the

respondents preferred an appeal against the said order of eviction which vide judgment dated 29.10.2005 was set aside by the learned ADJ. Feeling aggrieved with the same, the appellants have preferred the present appeal.

3. Assailing the order of the learned trial court, Mr. Ajay Verma, counsel appearing for the petitioner submits that the learned Trial Court has set aside the order passed by the Estate Officer on the premise that the Estate Officer has no authority or jurisdiction under the P.P. Act to proceed for eviction in view of the decision of the Hon'ble Supreme Court in the case of ***Express Newspapers Pvt. Ltd. vs Union of India AIR 1986 SC 872***. Counsel also submits that the learned trial court has also wrongly held that the Hon'ble Lt. Governor has no authority to administer the lease on behalf of Union of India and if the DDA has any right to initiate the proceedings, the same could only be done by filing a civil suit for alleged right of re-entry, but it had no right to refer the matter to the Estate Officer for eviction of the respondent from the said property. The

contention of counsel for the petitioner is that the case of *Express Newspapers (Supra)* was decided on its own peculiar facts and even in the said case also the Apex Court clearly took a view that in a case where there is admittedly unauthorized construction raised by the lessee on the Government land, then nothing will come in the way of the Government to proceed or to take recourse of the provisions of the Public Premises Act. Counsel also submits that Hon'ble Division Bench of this Court in the case of ***Delhi Development Authority vs Ambitious Gold NIB Manufacturing (P) Ltd. LPA 796/2004 decided on 21.2.2006***, after referring to the said decision of *Express Newspapers (Supra)* and in the case of *Ashoka Marketing Ltd. Vs. Punjab National Bank AIR 1991 SC 855*, clearly took a view that in the Express Newspaper's case the Supreme Court itself has clarified that the Government does have the power to take action under the Public Premises Act where admittedly unauthorized construction is raised by lessee or by any other person on Government land. Mr. Ajay Verma

further submits that even otherwise the respondent is not a lessee of the property in question and in fact the lessee had admitted before the Estate Officer that they had raised unauthorized construction by constructing two additional stories while only a single story building was permissible under the lease deed. Counsel also submits that the lease of the said property was never transferred in favour of the respondent, but still the respondent was given due opportunity of hearing to defend the eviction proceedings before the learned Estate Officer.

4. Opposing the present petition, Mr. J.R. Bajaj, counsel appearing for the respondent submits that the Division Bench judgment in the case of *Delhi Development Authority (Supra)* would not be applicable to the facts of the present case as therein the Hon'ble Division Bench had orally remanded the matter back to the Estate Officer as the challenge was made by the petitioner therein at the stage of show cause notice. Counsel further submits that the learned trial court has rightly placed reliance on the decision of the

Apex Court in the *Express Newspaper case* as in the present case also the DDA has determined the lease hold rights of the lessee on the alleged ground of raising an unauthorized construction.

5. I have heard learned counsel for the parties and gone through the records and have also given my thoughtful consideration to the arguments advanced by both the counsel.

6. It is an admitted case between the parties that one M/s Mustan Chand Sham Lal Khanna was the lessee of Plot No. C-50, New Subzi Mandi, Azadpur, Delhi by virtue of perpetual lease deed executed in their favour by or on behalf of the President of India being the lessor. A show cause notice was served upon the said lessee under sub-Section (1) and clause (b) (II) of sub-Section (2) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants Act), 1971 in respect of the said premises and pursuant to the said show cause notice, Shri Sham Lal, proprietor of the said firm on 22.1.96 appeared before the learned Estate

Officer and admitted the fact of raising the unauthorized construction on the said plot in violation of the terms and conditions of the lease. It is not in dispute that as per the approved lay out plan of the market, the lessee could raise only single story construction but in violation of the terms of the lease deed and the lay out plan, two additional stories were constructed by the lessee over the said single story shop. It is also not in dispute that the lease of the said plot was determined by the order of the Lt. Governor dated 13.7.95, on account of raising of unauthorized construction of two floors and the said order of cancellation was never challenged by the lessee. It is also not in dispute that the said property was sold by Mr. Sham Lal in favour of the respondents by virtue of some sale documents. Due notices were served upon the respondents by the Estate Officer and the respondent had duly appeared before the Estate Office to contest the eviction proceedings. The learned Estate Officer vide order dated 23.4.98 directed eviction of the respondents from the said premises. The learned Estate

Officer held that M/s Mustan Chand Sham Lal Khanna has violated the terms and conditions of the lease deed by parting with the possession of the same in favour of these respondents without seeking prior permission from the lessor i.e. DDA. The learned Estate Officer also found that the lessee had also violated the terms of the lease deed by raising unauthorized construction of two additional floors although in terms of the lease deed and the lay out plan the lessee could raise the construction of only single storey. The said eviction order was challenged by the respondents before the learned Appellate Court and the learned trial court vide order dated 29.10.2005 allowed the appeal, setting aside the order of the Estate Officer. The learned appellate court based its decision primarily on the decision of the Hon'ble Supreme Court in ***Express Newspapers Pvt. Ltd. Vs. Union of India AIR 1986 SC 872***, wherein it has been held that where the property has been allotted on perpetual lease basis, the same cannot be regarded as public premises under Section 2(e) of Public Premises Act

and therefore the learned Estate Officer or any authority under the Act has no jurisdiction to proceed for eviction under the provisions of Section 5(1) of the P.P.Act.

7. The main contention raised by the counsel for the appellant is that in ***Indian Express's case (Supra)***, nowhere it has been held that the government will have no power to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act 1971, where admittedly the lessee has raised unauthorized construction. Counsel for the appellant has strongly placed reliance on the judgment of Division bench of this court in ***Delhi Development Authority Vs Ambitious Gold NIB Manufacturing (P) Ltd. LPA 796/2004.***

8. Mr. Bajaj, learned counsel for the respondent on the other hand has contended that the judgment in ***Indian Express (supra)*** will apply to the facts of the present case with all force as in the present case also there was a perpetual lease in favour of the lessee which was illegally terminated by the lessor. Counsel for the respondent has

also taken a stand that in ***Ambitious Gold's case (supra)***, the learned Division Bench has made some observations while dealing with challenge made by the petitioner at the stage of show cause notice and no final order was passed by the Estate Officer. No doubt before the learned Division Bench in the case of ***Ambitious Gold (supra)*** show cause notice sent by the DDA under the P.P. Act was under challenge but in any event of the matter the facts of the said case are more akin to the facts of the instant case. There also the lessee had parted with the possession of the leasehold property and the lessee had also raised unauthorized construction over the said property without prior permission of the lessor DDA and also the lease of the lessee was determined on account of the said two violations and some other violations as well. In the facts of the present case, the lease of M/s Mustan Chand Sham Lal Khanna was determined by the DDA as the lessee had raised unauthorized construction of two additional stories in violation of the terms of the lease deed and the lay out plan

which permitted construction of only single storey. This violation has been duly admitted by the lessee when Mr. Sham Lal, proprietor of the said firm had appeared before the learned Estate Officer. The lessee has also not challenged the said cancellation of the lease and so far the present respondents are concerned, the lease was never transferred in their favour and therefore they could not have stepped into the shoes of the lessee. In any event of the matter, it is not even the case of the respondents that they challenged the cancellation of the said lease claiming themselves to be the successors in interest of the original lessee. Clause 4 (a) of the perpetual lease clearly forbids sale, transfer, alienation or parting with the possession of the whole or any part of the leased plot by the lessee except with the previous consent in writing of the lessor. No such consent was given by the lessor in favour of the present respondents. The lease of M/s Mustan Chand Sham Lal Khanna was therefore rightly determined by the lessor on account of the said two violations committed by

the lessee and in the absence of any challenge made by the lessee or even by the present respondents, this court does not find any infirmity in the order passed by the learned Estate Officer.

9. So far as the reliance placed by the learned trial court on the judgment of the Apex Court in ***Indian Express's case (Supra)*** is concerned, it is suffice to say that the Hon'ble Division Bench of this Court in ***Ambitious Gold's case (supra)*** clearly held that the Hon'ble Supreme Court took a view that the proceedings under the Public Premises Act are not maintainable because the petitioner had raised the construction on a larger FAR ignoring the fact that subsequently the FAR was reduced. Citing para 88 of the said judgment and after placing reliance on the judgment of the Constitutional Bench of the Hon'ble Supreme Court in ***Ashoka Marketing Ltd. (supra)***, the Division Bench took a view that the government is well within its right to take recourse to the provisions of Public Premises Act where admittedly unauthorized construction

has been raised by the lessee in violation of the terms of the lease deed. Relevant paras of the said judgment are reproduced as under:

"9. The facts of Express Newspapers are totally different from the facts of the present case. In Express Newspapers (Supra) the facts were that the Central Government had granted a lease to Express Newspaper with a larger FAR and Express Newspapers had constructed a building on the larger FAR. Subsequently, the FAR was reduced and on that basis proceedings under the Public Premises Act were sought to be taken against them. On those facts, it was held that proceedings under the Public Premises Act were not maintainable because the construction by Express Newspaper had been raised after obtaining permission from the concerned authority and hence Express Newspapers was not an unauthorized occupant. Moreover, in para 88 of the Express Newspaper case, the Supreme Court observed:

"88. Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 where admittedly there is unauthorized construction by a lessee or by any other person on Government land which is public premises within the meaning of S.2(e) and such person is in unauthorized occupation thereof."

10. Thus in Express Newspapers case itself the Supreme Court has clarified that it has not held that the Government does not have the power to take action under the Public Premises Act where admittedly there is unauthorized construction by a lessee or by any other person on Government land and such person is in unauthorized occupation thereof.

11. The decision in Express Newspaper was given by the a three Judge Bench. Subsequently, the Constitution Bench of the Supreme Court in Ashoka Marketing Ltd. & Anr. Vs. Punjab National Bank & Ors., AIR 1991 SC 855 considered the matter again and in para 30 it observed:

"30. The definition of the expression 'unauthorized occupation' contained in Section 2(g) of the Public Premises Act

is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorized occupation contained in Section 2 (g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

12. In the same decision in para 32 the Supreme Court further observed:

"32. Shri Ganguli has placed reliance on the decision of A.P. Sen, J. in Express Newspapers Pvt. Ltd. v. Union of India, 1985 Suppl. (3) SCC 382: (AIR 1988 SC 872) and has submitted that in that case the learned Judge has held that cases involving relationship between the lessor and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case, A.P.Sen, J. has observed that the new building had been constructed by the Express Newspaper Pvt. Ltd. after the grant of permission by the lessor, and, therefore, the Express Newspaper Pvt. Ltd. was not in unauthorized occupation of the same within the meaning of Section 2(g) of the Public Premises Act. It was also held by the learned Judge that the Express Newspapers Ltd. with the sanction of lessor on plots Nos. 9 and 10 demised on perpetual lease can by no process or reasoning, be regarded as public premises belonging to the Central Government under Section 2(e) of the Public Premises Act, and therefore, there was no question of the lessor applying for eviction of the

Express Newspaper Pvt. Ltd. The aforesaid observations indicate that the learned Judge did not proceed on the basis that cases involving relationship of lessor and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case."

13. Thus the Supreme Court has clearly observed that the second part of the definition of unauthorized occupation in Section 2(g) of the Public Premises Act expressly covers continuance in occupation by any person of public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In the present case, it is alleged by the DDA that on account of violations of the terms of the lease deed, the DDA has determined the lease of the writ petitioner. We are not going into the correctness or otherwise of these allegations of the DDA as that will be decided by the authority under the Public Premises Act but we are certainly of the opinion that it would be pre-mature to entertain such a writ petition at this stage."

10. Thus it would be manifest from the above that there is no bar to take recourse to the provisions of the Public Premises Act for seeking eviction where the person has admittedly raised unauthorized construction on a Government land.

11. Hence, in the light of the aforesaid legal position, this court is of the view that the learned trial court fell in grave error in misconstruing the import of ***Indian Express case (Supra)*** and thus the impugned

order dated 29.10.2005 passed by the learned trial court is set aside.

12. The present petition is accordingly allowed.

May 13, 2011
Rkr/mg

KAILASH GAMBHIR, J