

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

% Order Reserved on: October 31, 2011
Order Pronounced on: November 08, 2011

+ **W.P.(C) No. 4694/2011**
AND
CM No. 9529/2011
CM No. 12462/2011 and
CM No. 11963/2011

M/S PRADEEP OIL CORPORATION Petitioner
Through: Mr. V.K. Gupta & Mr. Jayant
Nath, Senior Advocates, with
Mr.B.C. Pandey, Advocate
versus

UNION OF INDIA Respondent
Through: Mr. Chandan Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | } | No. |
| 2. | To be referred to Reporter or not? | | |
| 3. | Whether the judgment should be reported in the Digest? | | |

SUNIL GAUR, J.

1. The relief sought in this writ petition is of quashing of Notice dated 27.12.2010, which terminates the license of the petitioner in the premises in question and to restrain the respondent from dispossessing the petitioner from the premises at 13, *Rohtak Road, Shakurbasti*, Delhi and to prohibit the respondent from carrying out any demolition therein.

2. Aforesaid impugned Notice of 27.12.2010 terminates the License Deeds dated 15.03.1975 and 03.01.1978 by virtue of which the petitioner was maintaining depot for storage of oil products etc. in the premises in question. Pertinently Clause-9 of the aforesaid License Deeds permits the respondent to terminate the license without assigning any reason but after putting the licensee to 3 months' notice.

3. Challenge to the aforesaid impugned Notice of 27.12.2010 (Annexure P-6) is laid in this petition on the ground that it is illegal, wholly arbitrary and without any basis whatsoever, as the petitioner has not violated any terms of the Memorandum of Agreement of 03.01.1978 (Annexure P-2), which in fact is not a License Deed but is a Lease Deed and to assert so, petitioner places reliance upon a decision of the Apex Court in '**M/S Pradeep Oil Corporation Vs. Municipal Corporation of Delhi & Anr.**', rendered on 06.04.2011 (Annexure P-7).

4. The grievance of the petitioner is that the respondent without initiating ejectment proceedings, on 06.07.2011 in most arbitrary and illegal manner had proceeded to forcibly evict the petitioner from the premises in question and so, the respondent ought to be restrained from dispossessing the petitioner and to carry out any demolition in the premises in question.

5. To controvert the afore-noted assertion of the petitioner, respondent in the counter affidavit had relied upon its Joint Note of 06.07.2011 (Annexure R-10) which discloses that the demolition at the premises in question, in possession of the petitioner, was peacefully completed by

the team of the respondent in the presence of the local police and no material of the occupant had been confiscated. It was categorically maintained by the respondent that the impugned Notice of 27.12.2010 was not replied to by the petitioner and the premises in question was found to be in possession of the tenants of the petitioner, who had peacefully handed over its vacant possession to the respondent on 06.07.2011 and in terms of Clause- 9 of the License Deeds, respondent was well within its rights to terminate the License Deeds in question and to pull down petitioner's steel structures erected therein, but the same have not been dismantled though the respondent has a right to remove them at the cost and expenses of the petitioner.

6. While denying that the petitioner had been evicted from the premises in question without following the due process of law, respondent relied upon on the order of 25.11.2010 in W.P.(C) No. 8071/2008, '**Union Of India vs. M/S Pradeep Oil Corporation**', which was the culmination of the earlier round of the litigation and in the said order, liberty was granted to the respondent to terminate the license of the petitioner herein, in accordance with law i.e. to initiate fresh proceedings.

7. Upon having heard learned counsel for the parties, it emerges that the moot question which falls for determination in this matter is, as to whether without replying to the impugned Notice (Annexure P-6), can the petitioner lay a challenge to it and assert that without initiating eviction proceedings, petitioner cannot be evicted from the premises in question.

8. At the hearing, receipt of the impugned Notice (Annexure P-6) was not disputed by learned Senior Counsel for the petitioner and that it was not replied to. In such a situation, petitioner cannot be heard to now assert that the License Deeds of 15.03.1975 and 03.01.1978 have been interpreted to be Lease Deeds, that too in an altogether different context of payment of property tax to the Municipal Corporation of Delhi. Otherwise also, as per petitioner's own showing, review petition relating to the decision (Annexure P-7) of the Apex Court is still pending adjudication.

9. The first round of litigation between the parties had ended vide order of 25.11.2010 (Annexure P-5) with liberty to the respondent herein to initiate fresh proceedings i.e. to terminate the License Deeds in question which has been done in accordance with the law.

10. Once the petitioner has accepted the termination of the License Deeds of 15.03.1975 and 03.01.1978, then it cannot be legitimately asserted that the aforesaid termination is bad in law. Even otherwise, Clause- 9 of the aforesaid License Deeds permits the termination of these licence deeds without assigning any reason.

11. Learned senior counsel for the petitioner had asserted that even if the termination of license/lease deed is assumed to be correct, still the respondent was obliged under the law to follow the due process of law before dispossessing the petitioner from the premises in question. Reliance is placed upon decisions in (2002) 4 SCC 134, AIR 1961 SC 1570; and (1989)2 SCC 505 in support of the aforesaid submission.

12. To negate the aforesaid submission, it needs to be reiterated that since the petitioner had accepted the termination of the License Deeds in question therefore initiation of the eviction proceedings was not warranted, as the occasion to initiate the eviction proceedings would have arisen only when the petitioner had contested the impugned notice (Annexure P-6). So far as the decisions relied upon are concerned, in none of them, notice of termination was uncontested and so, these decisions do not advance the case of the petitioner.

13. As regards the question of petitioner being evicted by force from the premises in question, it is a question of fact, which requires evidence to establish it, as respondent asserts to the contrary. Therefore, evidence is required to be led, if at all, petitioner chooses to file a suit for damages against the respondent for the purported forcible eviction from the premises in question. In these writ proceedings, no damages have been claimed by the petitioner and rightly so, as they require to be determined in suit proceedings, provided petitioner succeeds in first establishing by leading evidence that dispossession of the petitioner from the premises in question was forcible one. For filing suit for damages, no liberty is required from this court as in law, this remedy is available to the petitioner.

14. For the purposes of the present proceedings, while taking the Joint Note (Annexure R-10) on its face value, it appears that since the issue of the licence deeds in question being lease deeds or not, being sub-judice before the Apex Court, as pertaining to the decision (Annexure P-7) review petition is stated to be pending, therefore, subject

to the outcome thereof, the appropriate course to adopt would be to leave this issue open, to be adjudicated upon in a suit for damages if the petitioner chooses to file it, as it would be pre-mature for this court to deliberate upon this debatable issue now. It is being so said, because the import of the licence deeds in question, which are unregistered ones, cannot be pre-judged in these proceedings. It is also a question of fact as to whether the petitioner was still engaged in the business of trading in oil as the licence deeds in question were user specific. All these issues would obviously fall for consideration not in these writ proceedings, but in the suit proceedings if the petitioner is advised to initiate.

15. The consequential action of the respondent of taking back the premises in question from the possession of the petitioner in the manner as reflected in the Joint Note (Annexure R-10) in the presence of the local police is neither per se arbitrary nor illegal, as it is evident from the aforesaid Joint Note that no material was confiscated and the steel structure of the petitioner at the spot is still there. Since the premises in question was required by the respondent for its coaching terminal and other utility and the construction of the coaching terminal had already started in the premises in question on 07.07.2011, filing of this petition on the same very day was just a vain effort to forestall the consequential action taken in pursuant to termination of petitioner's License Deeds which was not contested by the petitioner.

16. In order to obtain a writ or order in the nature of mandamus, the petitioner has to satisfy about the

existence of a legal right requiring performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalian Singh Vs. State of U.P. AIR 1962 SC 1183). This view has been quoted with approval by a Division Bench of this Court in its recent decision in **“Deepak Khosla Vs. Union of India & Ors.”** 182 (2011) Delhi Law Times 208 (DB).

17. In the instant case, the petitioner has failed to perform legal duty of responding to the Statutory Notice Annexure P-6 issued to the petitioner and, therefore, the petitioner cannot legitimately claim infringement of any legal right of being deprived of participation in the eviction proceedings, which would have been empty formality in this case. It is being so said because petitioner has not disclosed as to what prejudice the petitioner had suffered on this account.

18. In the light of the foregoing factual and legal position, finding no substance in this petition, it is dismissed while expressing no conclusive opinion on the fact as to whether the dispossession of the petitioner from the premises in question was peaceful one or not, lest it may prejudice the petitioner in case suit proceedings are initiated to claim damages on account of purported forcible dispossession of the petitioner from the premises in question. Since the eviction of the petitioner from the premises in question, in principle is upheld, and only the question of it being peaceful or forcible is left open, therefore, the petitioner would be at liberty to remove its steel structure etc. from the premises in question.

19. In the peculiar facts of this case, there shall be no order as to costs. Pending applications are dismissed as infructuous.

(SUNIL GAUR)
JUDGE

November 08, 2011
rs/pkb