

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

Date of decision: 21st November, 2011

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LPA 965/2011

% VIJAY REHAL

..... Appellant

Through: Mr. Pramod Ahuja, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Sangeeta Chandra, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

CM No.21024/2011 (for exemption)

Allowed, subject to just exceptions.

LPA No.965/2011 & CM No.21025/2011 (for stay)

1. This appeal impugns the order dated 4th November, 2011 of the learned Single Judge dismissing *in limine* W.P.(C) No.7854/2011 preferred by the appellant. The said writ petition was preferred by the appellant impugning the order dated 3rd October, 2011 of the District Judge dismissing the appeal preferred by the appellant against the order dated

16th June, 2008 of the Estate Officer, of eviction of the appellant from the portion of Premises No.12-A/20, WEA, Karol Bagh, New Delhi.

2. The proceedings for eviction under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 with respect to the Premises No.12-A/20, WEA, Karol Bagh, New Delhi were initiated after the determination of the lease of the land underneath the said premises. The appellant herein claims to have been a tenant (under the perpetual lessee of the plot of land and owner of the said property) in the said property. The Estate Officer held, that under the terms of perpetual lease, the property was to be used for residential purposes only but was being misused for commercial purposes and hence the lease of the land underneath the same had rightly been determined and all occupants of the property including the appellant were in unauthorized possession/occupation.

3. The District Judge vide order dated 26th May, 2011 dismissed the appeal preferred by the appellant holding, that after determination of the perpetual lease, the premises were “public premises” and the Estate Officer was empowered to pass an order of eviction with respect thereto; that the protection of the Delhi Rent Control Act, 1958 was not available with

respect thereto; that the perpetual lease of the land underneath the property was determined for the reason of misuse of the whole of the property by all the occupants thereof and hence the plea of the appellant that commercial use by him of the portion admeasuring 20 sq.m. in his occupation, was within the permissible limit, had no merit.

4. Aggrieved therefrom the appellant earlier preferred W.P.(C) No.4236/2011 and during the hearing whereof, the appellant confined the challenge to non-consideration by the District Judge of Circular/Notification dated 7th September, 2006. The said writ petition was disposed of vide order dated 6th June, 2011 and the matter remanded to the District Judge to consider the said plea of the appellant. Upon remand, the District Judge vide order dated 3rd October, 2011 held that since the entire property was being misused, the Circular/Notification dated 7th September, 2006 did not come to the rescue of the appellant. Aggrieved therefrom W.P.(C) No.7854/2011 was preferred and from the order of dismissal whereof, this appeal arises.

5. The learned Single Judge has rightly held that the appellant, in the earlier writ petition having confined the challenge on the basis of

Circular/Notification dated 7th September, 2006, was precluded from taking any other plea. The learned Single Judge has agreed with the reasoning of the District Judge that the misuse being of the entire property, the Circular/Notification permitting a small shop in a residence, was of no help to the appellant. The learned Single Judge further held that the Apex Court in ***M.C. Mehta Vs. Union of India*** (2006) 9 SCALE 634 having directed action against misuse of residential properties, order in contravention thereof could not be issued.

6. The counsel for the appellant has at the outset contended that the learned Single Judge had erred in dismissing the writ petition *in limine* when W.P.(C) No.4680/2011 preferred by another occupant of the property namely M/s Udipi Restaurant was still pending consideration and in which also the plea with respect to the Circular/Notification dated 7th September, 2006 had been taken. He contends that owing to the pendency of the said writ petition with respect to the same property, the writ petition ought not to have been dismissed *in limine* and ought to have been clubbed along with other writ petition and eviction of the appellant ought to have been stayed.

7. We are unable to agree; merely because another writ petition with respect to the same property is pending, is no ground for entertaining the writ petition filed by the appellant especially when the appellant had on an earlier occasion confined the scope of challenge and when no merit was found in the same. It cannot be lost sight of that the appellant is but an assignee (tenant) of the perpetual lessee of the land and which lease stands determined. On enquiry, we are told that the perpetual lessee of the land has not even challenged the order of eviction. We entertain serious doubts as to the locus of the appellant, as a tenant of the perpetual lessee and with whom the superior lessor does not have any privity, to challenge the order of eviction. It cannot also be lost sight of that the matter entails public premises. It is not as if the other writ petition owing to the pendency whereof, it is contended that the writ petition preferred by the appellant ought to have been entertained, stood admitted. The same is merely at a show cause stage. Merely because a notice has been issued in another petition, cannot be the basis for interfering with the orders of eviction with respect to the public premises especially in exercise of powers of judicial review and when directions have been issued by the Supreme Court for

stopping misuser and when misuser is admitted.

8. Coming to the merits of the appeal, we are in agreement with the reason which has prevailed with the District Judge as Appellate Authority under the Public Premises Act and with the learned Single Judge. The Circular/Notification dated 7th September, 2006 cannot be interpreted to allow the entire property meant for residential purposes to be carved into small shops. If the same were to be permitted, it would tantamount to permitting the change of user of the entire property and which is not the purport of the said Circular/Notification. The perpetual lease of the land was determined for the reason of misuse of the entire property and not misuse by the appellant alone.

9. There is thus no merit in the appeal which is accordingly dismissed.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 21, 2011

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