

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

Reserved on: September 17, 2012

Pronounced on: October 11, 2012

+ **W.P.(C) No. 4498/2000 & C.M. No. 4073/2011
& C.M. No. 4074/2011**

DELHI AUTOMOBILES LTD. & ANR. Petitioners

Through: Mr.Girdhar Govind, Ms.Neha Bhateja
and Ms.Reena Jain Malhotra,
Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr.Ruchir Mishra, Advocate for
respondent No.1
Mr.Arjun Mitra, Advocate for applicant
- Suresh Soni.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Petitioner- company through its Chairman i.e. the second petitioner, on the basis of General Power of Attorney in his favour in respect of Property No.1, at Sikandra Road, New Delhi (*henceforth referred to as the 'subject premises'*) had sought its mutation, which was declined by second respondent- Land & Development Officer (L & D.O.) of first respondent, vide its Communication of 18th September, 1992 (*Annexure-H*), as subject premises was already re-entered by contesting respondents w.e.f. 9th July, 1970 and intimation of re-entry was already conveyed to the lessee vide letter of 30th July, 1970.

2. Lessee – Gagbir Singh had sought withdrawal of re-entry and the

contesting respondents vide Communication of 12th July, 1993 (*Annexure-J*) had agreed to withdraw re-entry order in respect of subject premises subject to payment of charges/ penalty to the tune of ₹8,46,716/- within stipulated period of forty five days while clarifying that this Communication will not act as waiver to recover damages found payable.

3. Petitioners had contested respondent's aforesaid Communication by asserting in its response of 20th July, 1993 (*Annexure-K*) that penalty imposed is not recoverable and had sent to respondents nominal payment, i.e, ground rent of the leased out subject premises. Vide Communication of 31st March, 1994 (*Annexure-L*) contesting respondents had informed second petitioner that request for withdrawal of re-entry order is under consideration and the terms and conditions for novation of lease in question would be issued in due course.

4. During the period from April, 1994 till April, 2000, the matter of withdrawal of re-entry remained dormant. Vide respondents' Communication of 27th April, 2000, petitioners were informed that offer to withdraw re-entry order stands cancelled and intimation of 31st March, 1994 regarding withdrawal of re-entry being under consideration of the lessor also stands withdrawn/cancelled, as petitioners had not complied with the terms and conditions of aforesaid offer made on 12th July, 1993.

5. Petitioners' response to aforesaid impugned Communication of 27th April, 2000 (*Annexure-M*) is of 3rd July, 2000 (*Annexure-N*), wherein it was disclosed that petitioners had waited since April, 1994 to know about terms and conditions for novation of lease but they had not

received any reply except the impugned Communication (Annexure-M) in June, 2000. In the response (*Annexure-N*), it was pointed out by petitioners that alleged misuser was during the period when subject premises were under occupation of previous lessee and despite court decree of May, 1994, M/s Economy Sales had continued misuser of portion of subject premises, which had forced petitioners to initiate contempt proceedings wherein M/s Economy Sales had undertaken not to misuse the subject premises, which was under their occupation. As per petitioners, steps were taken to seek eviction of M/s Economy Sales by resort to civil proceedings and petitioners had agreed to pay normal penalty @ 1% only on account of misuser of a portion of subject premises. Thereafter, instant writ petition was filed in which status quo orders were passed.

6. The second respondent - L&DO, i.e, the contesting respondent in its counter has refuted that by issuance of communication of 12th July, 1992 (*Annexure – J*), right of re-entry by the respondents does not stand waived as neither payment of charges/penalty was made by petitioners nor the breaches as pointed out in the Inspection Report of 3rd March, 1993 were rectified and that after the re-entry order, eviction proceedings were initiated against petitioners resulting in passing of eviction order of 17th July, 1990 by the third respondent, i.e, Estate Officer concerned. Objection of delay and laches was also taken which has not been met in the rejoinder filed by petitioners.

7. In terms of order of 12th March, 2002, contesting respondent had placed on record Affidavit of 23rd October, 2002 disclosing the details of misuse and damage charges. In compliance of directions issued by

this Court, inspection of subject premises was carried out by contesting respondent on 9th March, 2005 which revealed that the following breaches still existed:-

“A. That an area measuring about 11 feet 10 1/2 inches x 19 feet 6 inches was being misused as a furniture shop by one Mr. Soni.

B. Unauthorized construction of one ACC Tin shed measuring about 29 feet x 52 feet and another unauthorized construction measuring 13 feet x 15 feet in front of the servant quarters.

C. Unauthorized construction of one pucca kitchen measuring about 20 feet 10 inches x 17 feet + 21 feet 6 inches x 9 feet 9 inches.

D. Open court yard had been unauthorisedly covered with pucca construction measuring about 12 feet 8 inches x 8 feet 6 inches.”

8. Copy of Inspection Report of 9th March, 2005 alongwith Affidavit of 18th August, 2006 of concerned officer of contesting respondent is on record. Again on 21st September, 2010 inspection of subject premises was carried out in terms of orders of 3rd November, 2006 and 15th September, 2010 and Inspection Report of 21st September, 2010 points out the existing breaches in the subject premises, which has been also placed on record alongwith respondent's Affidavit of 11th November, 2010. Objections of 8th July, 2011 to the aforesaid Inspection Report of 21st September, 2010 by petitioners are also on record regarding there being no definite observation whether furniture workshop of applicant - Mr. Suresh Soni is being run on 600 Sq. ft. of area from subject premises or not. When this matter became ripe for hearing, applicant - Mr. Suresh Soni came up with application

for impleadment in these proceedings in March, 2011 while asserting to be a lawful tenant of three rooms in the subject premises under the then owners of subject premises since the year 1972 and asserted that suit for possession filed by petitioners against him in respect of a portion in subject premises is still pending and he had come to know about this matter after inspection of subject premises was done in September, 2010.

9. Impleadment of applicant - Mr. Suresh Soni in these proceedings is resisted by petitioners by asserting that applicant - Suresh Soni is an unauthorized occupant in the subject premises. Above said application for impleadment of applicant - Mr. Suresh Soni was also heard when this matter was finally heard and is being also disposed of alongwith the main matter.

10. When this matter was finally heard, it was vehemently asserted by learned counsel for petitioners that in view of the decision of Apex Court in *Express Newspaper Pvt. Ltd. & ors. Vs. Union of India & ors.* AIR 1986 SC 872, petitioners can be evicted only by resort to civil proceedings and not in proceedings under *Public Premises (Eviction of Unauthorized Occupants) Act, 1971* (henceforth referred to as *Public Premises Act*). It was also asserted on behalf of petitioners that where necessary action is taken by the lessee for setting right the breaches by the occupant/trespassers then leased out premises cannot be re-entered and in the instant case steps have been already taken against the unauthorized occupant in subject premises and so levy of misuser charges is unwarranted. Reliance was placed upon an order of this Court in W.P.(C) No.2204/2006 *M/s. Ashoka Builders & Promoters Vs.*

UOI & ors. rendered on 9th July, 2012 wherein following Apex Court decision in *Express Newspaper* (Supra), the parties were relegated to avail of civil remedies. Thus, it was asserted by learned counsel for petitioners that re-entry order and consequential eviction order are rendered unsustainable and be quashed.

11. To counter aforementioned assertions, learned counsel for contesting respondent pointed out that under the *Public Premises Act*, lands which are leased out by the Government or its instrumentalities are also governed by the definition of “public premises” and would thus come within the ambit of *Public Premises Act* and the Apex Court decision in *Express Newspaper* (Supra) has been already distinguished in a later decision of the Apex Court rendered by Constitution Bench in *Ashoka Marketing Ltd. & ors Vs. Punjab National Bank & Ors.* as reported in AIR 1991 SC 855 followed by Division bench of this Court in *LPA No.976/2004 DDA Vs. Ambitious Gold Nib Mfg Co. Pvt. Ltd.* rendered on 21st February, 2006, and so there is no bar to resort to the *Public Premises Act* and neither the re-entry order nor eviction order suffers from any infirmity and so this petition deserves rejection.

12. Upon considering the submissions advanced, impugned order, material on record and the aforementioned decisions, petitioners’ plea of non-applicability of *Public Premises Act* is outrightly rejected as a bare perusal of the definition of ‘premises’ in *Public Premises Act*, makes it abundantly clear that respondent’s leased out land with superstructure thereon comes within definition of ‘premises’ in the *Public Premises Act*, to which there is no worthwhile challenge and so the decision of this Court in *M/s. Ashoka Builders* (supra) which relies upon another

single bench decision of this Court in *Vikas Jain* (supra) following the Apex Court decision in *Express Newspapers* (supra) is rendered per incuriam in view of the later decision of a Division Bench of this Court in *LPA No.976/2004 DDA Vs. Ambitious Gold Nib Mfg Co. Pvt. Ltd.* rendered on 21st February, 2006, followed by subsequent Division Bench decision of this Court in *Escorts Heart Institute & Research Centre Ltd. Vs. DDA & Anr.* reported in AIR 2008 Delhi 70, which also takes into consideration the Apex Court decision in *Express Newspapers* (supra).

13. Factually speaking, inspite of eviction order of the year 1990, contesting respondent had offered to withdraw the re-entry order in respect of the subject premises and to temporarily regularize the breaches upto January, 1994 vide its Communication of 12th July, 1993 (*Annexure – J*) upon payment of restoration and misuser charges. So, neither the re-entry order nor consequential eviction order stands in the way of withdrawing the re-entry order provided petitioners who have stepped into the shoes of erstwhile owner of subject premises, come forward to promptly pay the restoration and misuser charges.

14. Though contesting respondent vide its Communication of 31st March, 1994 (*Annexure – L*) had disclosed to second petitioner that request for withdrawal of re-entry is under consideration and the terms and conditions for novation of lease in respect of subject premises would be issued in due course but respondent Communication (*Annexure – L*) does not give a long rope to petitioners to have slept over this matter of withdrawal of re-entry order from April, 1994 till April, 2000. No worthwhile explanation is coming forward from

petitioners to explain aforesaid inordinate delay. Even the contesting respondent – L&DO does not explain its silence during the period from April, 1994 till April, 2000. Therefore, on the ground of delay and latches, this petition cannot be thrown out. However, response (*Annexure – N*) of petitioners to impugned Communication (*Annexure – M*) leaves much to be desired as petitioners cannot get away by simply asserting that penalty/misuser charges @ 1% only be imposed as it is not shown as on what basis petitioners claim that normal penalty chargeable for misuse is @ 1% only.

15. Otherwise also, when petitioners had stepped into the shoes of erstwhile owner of subject premises in the year 1992, there was already a re-entry order in respect of leased out subject premises, followed by eviction order of the year 1990. That is to say, misuser of subject premises was already there when the petitioners had come into possession of the subject premises and petitioners had infact taken steps to get the misuser removed by filing a suit for possession against applicant - Mr. Suresh Soni, occupier of portion of subject premises and the said civil suit is said to be pending. But this by itself does not give any right to petitioners to assert that they are not liable to pay misuser charges because when misuser continues, liability to pay misuser charges cannot be avoided. Such a view has been taken because if permissible, in the event of petitioners succeeding in obtaining eviction of applicant – Mr. Suresh Soni from a portion of subject premises, even the misuser charges levied can be recovered by petitioners from him, provided petitioners deposit the misuser charges as now claimed by contesting respondent alongwith current misuser charges till date or till

the misuser continues.

16. In light of the aforesaid, impugned Communication of 27th April, 2000 (*Annexure – M*) withdrawing the offer to recall re-entry order is rendered unsustainable. It is so said because even contesting respondent had remained silent from April, 1994 till April, 2000 after telling second petitioner that request for withdrawal for re-entry is under consideration and terms of novation of lease would be issued in due course. In the absence of fresh terms for novation of lease being put forward by contesting respondent, reliance cannot be placed by the contesting respondent upon its earlier Communication of 12th July, 1993 (*Annexure – J*). Anyhow, contesting respondent is bound by its Affidavit of 23rd October, 2002 whereby it had undertaken to regularize the breaches/misuser temporarily upto 14th July, 2002 upon petitioner's paying the misuser charges, details of which are reflected in the aforesaid Affidavit and the misuser charges payable till then were infact reduced to ₹6,10,904/-. Still, petitioners have not come forward to effectively contest the aforesaid misuser charges payable, apart from restoration charges except that by way of interim order they were called upon to deposit at least ₹25,00,000/- and it is not shown as to whether aforesaid amount has been deposited by the petitioner or not.

17. Apart from purported misuser of subject premises by applicant – Suresh Soni for commercial purpose, as per latest Inspection Report of 21st September, 2010 of subject premises placed on record alongwith Compliance Affidavit of 11th November, 2010, misuse of subject premises continues as there are two Chowkidar huts at front gate, unauthorized tin sheet shed in the servant quarter at the back of main

building, unauthorized pucca kitchen, unauthorizedly covered pucca area in open old courtyard, unauthorized bath/toilet near servant quarters, etc. Even aforesaid breaches invite imposition of misuser charges, till the aforesaid breaches are rectified. Misuser charges to the tune of ₹6,10,904/-, apart from restoration charges, ground rent, etc. as detailed in respondent's Affidavit of 23rd October, 2002 have not been shown to be erroneous or not leviable and so petitioners are required to pay it upto date within four weeks, failing which contesting respondent would proceed to execute eviction order of 17th July, 1990 on the strength of re-entry order in respect of the subject premises.

18. Impleadment of applicant - Suresh Soni in the present proceedings is uncalled for, as civil litigation between petitioners and aforesaid applicant – Suresh Soni are stated to be pending, wherein applicant - Suresh Soni asserts being a lawful tenant of erstwhile owner of subject premises. So, without commenting upon the status of applicant – Suresh Soni, his application for impleadment in these writ proceedings is dismissed.

19. In aforesaid terms, this petition and pending applications stand disposed of, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

October 11, 2012
rs/mk