

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

Reserved on: August 30, 2012

Pronounced on: September 17, 2012

+ **W.P.(C) No. 5118/2011**
&
C.M.No. 10377/2011

BALAJI ENTERPRISES Petitioner
Through: Mr. J. R.Bajaj & Mr. D. R. Bhatia,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Manika Tripathy Pandey and Mr.
Ashutosh Kaushik, Advocates for
respondent - DDA

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
JUDGEMENT

1. Petitioner is the sub-lessee of Sohinder Singh who had taken plot no. 20 in Block 12-A, WEA, Karol Bagh, Delhi (*henceforth referred to as 'subject premises'*) on lease from respondent for residential purpose but had created sub-lease of shop no. 3 in the aforesaid subject premises in favour of petitioner for commercial use, which led to the cancellation of the lease deed and the initiation of the proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* resulting in eviction of petitioner from the subject premises.
2. Petitioner had preferred a statutory appeal against eviction order

of 16th June, 2008, which stands dismissed vide detailed impugned order of 26th May, 2011 holding that the so-called conflict between the Apex Court decision in *Express Newspapers Private Ltd. Vs. Union of India AIR 1986 SC 872* and later decision of the Apex Court rendered by the Constitution Bench in *Ashoka Marketing Ltd & Anr. Vs. Punjab National Bank & Ors. reported in AIR 1991 SC 855* stands explained 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 was no scope for contending that the decision in *Express Newspapers (supra)* bars resort to the provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* to seek eviction from the leased out land on which building was constructed by the lessee.

3. At the hearing, learned counsel for petitioner had placed implicit reliance upon an order of 9th July, 2012 of this Court in *WP(C) No. 2204/2006 M/S Ashoka Builders & Promoters Vs. UOI & Ors.* to contend that where building is constructed by lessee on the land leased out by respondent, the remedy is to invoke the jurisdiction of the Civil Court to seek eviction and not to resort to the provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. Thus, quashing of the impugned order confirming the eviction of the petitioner from the subject premises is sought.

4. To rebut afore-noted solitary contention advanced on behalf of petitioner, learned counsel for respondent had placed reliance upon a Division Bench decision of 21st November, 2011 in *LPA No. 965/2011 titled as Vijay Rehal Vs. Delhi Development Authority* upholding the

eviction order passed under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* against a similar sub-lessee from another premises in plot no. 20 in question, while questioning locus of the sub-lessee, when the perpetual lessee of land/premises had not even challenged the eviction order. So, it was contended on behalf of respondent that impugned eviction of petitioner from the subject premises does not suffer from any jurisdictional error and this petition ought to be dismissed.

5. Although, both the sides have referred to the precedents to buttress their submissions but it would be worthwhile to first test the challenge laid on behalf of petitioner to the resort to provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, by referring to the definition of ‘premises’ in the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. The term ‘premises’ has been defined in Section 2 (C) of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* as under:

“(c) “premises” means any land or any building or part of a building and includes-

- (i) the garden, grounds and out houses, if any, appertaining to such building or part of a building, and
- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;”

6. A bare perusal of the afore-noted definition of ‘premises’ in the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*

makes it abundantly clear that respondent's leased out land comes within definition of 'premises' in the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, to which there is no 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 Vs. Union of India & Ors. 2006 V AD (Delhi) 479* following the Apex Court decision in *Express Newspapers (supra)* is rendered *per incuriam* in view of the Division Bench decision of this Court in *Ambitious Gold Nib (supra)* followed by a later Division Bench 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)*.

7. Pertinently, a Division Bench of this Court in *Escorts Heart Institute (supra)* has considered both the decisions of the Apex Court in *Express Newspapers (supra)* as well as *Ashoka Marketing (Supra)* and has maintained the eviction order passed under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. No decision to the contrary has been cited. In view of the ratio of decision of the Division Bench in *Ambitious Gold Nib (supra)*, followed in *Escorts Heart Institute (supra)*, I hold that upon determination of lease of the land by respondent, the remedy to seek eviction therefrom, would be to resort to provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* and respondent cannot be asked to seek its remedy before the Civil Court.

8. Upon perusal of decision of the Division Bench of this Court in

Vijay Rehal (supra), it becomes quite evident that there is a striking similarity between the aforesaid decision and the case in hand as not only the shops of petitioner as well as of *Vijay Rehal* were located on one plot of land but even their status in the premises/shops on the subject land is identical i.e. both are sub-lessees of the original lessee who has not come forward to defend cancellation of the lease of plot no:20 in question and, therefore, reasoning of the Division Bench in *Vijay Rehal* (supra) on this aspect, assumes importance. It reads as under:-

“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.”

10. Afore-noted observations in *Vijay Rehal* (supra) aptly apply to the instant case. The finding returned in impugned order regarding the impact of Circular/Notification of 7th September, 2006 was not assailed before me at the hearing of this petition. However, I find that the impugned order is not only well reasoned on facts but is also sound in law and deserves to be upheld. The challenge to impugned eviction on the strength of aforesaid Circular/Notification of 7th September, 2006 stand repelled by Division Bench of this Court in *Vijay Rehal* (supra) wherein the eviction of similarly placed sub-lessee (*as the petitioner herein*) under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* already stands affirmed.

11. It is indeed difficult to distinguish case of petitioner from the aforesaid case of *Vijay Rehal* whose eviction from the plot in question already stands affirmed by the Division Bench of this Court in *Vijay Rehal* (supra). In the ultimate analysis, finding no palpable error in the impugned order, the eviction of petitioner from the subject premises stands affirmed. Resultantly, this petition and pending application are dismissed with no order as to costs.

(SUNIL GAUR)
JUDGE

September 17, 2012

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