

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

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Date of decision: 29th April, 2013

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LPA No.337/2010

VIJAY KUMAR

..... APPELLANT

Through: Mr. Sudhanshu Batra, Sr. Adv. with
Mr. Manu Nayar, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL RESPONDENT

Through: Mr. Manoj Kumar Singh with Mr.
Milava Banerjee & Mr. Arpan Behl,
Advs.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 16.02.2010 of the learned Single Judge of dismissal of W.P.(C) No.18490/2006 preferred by the appellant. The said writ petition was preferred by the appellant impugning the order dated 19.10.2006 of the Additional District Judge exercising powers as an Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act), dismissing the appeal preferred by the appellant against the order dated 20.07.2006 of the Estate Officer of the respondent NDMC directing the appellant to hand over vacant and peaceful possession of the shop

No.243, Palika Bazaar, New Delhi to the respondent NDMC and to also make payment to the respondent NDMC of Rs.1,50,93,898/- as arrears of Licence Fee, damage and interest for the period 01.02.1982 to 31.01.2006 and subsequent damage at the rate of Rs.40,126/- per month and interest @ 12% per annum on the principal amount of arrears upto 30.06.2006.

2. This appeal came up first on 12.05.2010 when it was ordered that the appellant should first deposit the admitted liability of about Rs.32,00,000/- plus 6% interest thereon as well as the costs imposed by the learned Single Judge with the Registrar of this Court and the appeal will be taken up for consideration thereafter. The subsequent order dated 16.09.2010 records that the amount was deposited by the appellant. Accordingly notice of the appeal was issued and the amount deposited permitted to be withdrawn by the respondent NDMC and NDMC directed to maintain *status quo* as existing on that date with respect to the said shop and which order has continued to be in force. On the next date i.e. 30.11.2010, the writ records were requisitioned. The appeal was admitted for hearing on 21.05.2012 and though was dismissed in default of appearance of the appellant on 05.10.2012, was subsequently restored. We have heard the counsels for the parties.

3. The licence of the aforesaid shop was granted to the appellant in or about January, 1982 for a period of five years only in consequence of the appellant submitting the highest bid of Licence Fee of Rs.17,838/- per month for the said shop. The appellant however instead of paying the monthly Licence Fee for which he had submitted the tender / bid and which was accepted, immediately after coming into use of the shop instituted a suit in the Court of the Civil Judge, Delhi impugning the liability to pay the said Licence Fee. Vide interim order dated 24.06.1982 in the said suit, the respondent NDMC was restrained from recovering from the appellant any amount in excess of the minimum reserved Licence Fee as per the notice inviting tenders. While the said suit was still pending, the respondent claims to have issued a notice dated 15.09.1983 to the appellant to show cause as to why the allotment of the shop in his favour be not cancelled for the reason of the appellant having in violation of the licence condition encroached upon the public passages in front of the shop. In this regard, it may be mentioned that Palika Bazaar, New Delhi where the said shop is situated is an underground air-conditioned market in Connaught Place in the heart of the city of Delhi. The appellant denies receipt of such notice. In consequence of the said

notice, the respondent NDMC vide order dated 06.05.1985 cancelled the allotment of the subject shop in favour of the appellant. The appellant protested against the said cancellation.

4. Shortly prior to the cancellation of allotment aforesaid, i.e. on 04.04.1985, the suit aforesaid filed by the appellant in the Court of Civil Judge, Delhi was dismissed and as a result whereof the interim order restraining the respondent NDMC from recovering the agreed Licence Fee from the appellant also came to be vacated.

5. The appellant preferred an appeal to the Court of Additional District Judge against the order of dismissal of his suit and in which appeal again there was an interim order dated 28.05.1985 restraining the respondent NDMC from dispossessing the appellant from the shop and from realizing Licence Fee in excess of the reserve rate.

6. The respondent NDMC, in pursuance to the cancellation aforesaid of allotment of the shop in favour of the appellant, in the year 1985 itself initiated proceedings under the PP Act against the appellant.

7. The appeal aforesaid preferred by the appellant against the order of the Civil Judge was dismissed on 06.10.1997. The appellant preferred a

second appeal to this Court being RSA No.75/1997 and which was dismissed by a Division Bench of this Court vide order dated 21.10.1997.

8. The Estate Officer of the respondent NDMC, before whom proceedings under PP Act aforesaid had been initiated, vide order dated 20.07.2006 i.e. after nearly 21 years of the initiation of the proceedings, passed an order as aforesaid directing the appellant to vacate the premises and to pay the amount then due of Rs.1,50,93,898/-.

9. The appellant appealed to the Additional District Judge against the aforesaid order of the Estate Officer. However the respondent NDMC in the interregnum, on 25.08.2006, in pursuance to the order of eviction of the Estate Officer took possession of the shop.

10. The Additional District Judge exercising powers of an Appellate Authority under Section 9 of the PP Act dismissed the appeal preferred by the appellant vide order dated 19.10.2006 holding; (i) that the appellant had been granted merely a licence and not a lease of the shop as had been contended by the appellant before the Additional District Judge; (ii) that the said licence granted to the appellant stood cancelled and withdrawn vide order dated 06.05.1985; (iii) this cancellation was not

challenged and had become final; (iv) that the appellant was also admittedly in arrears of Licence Fee; (v) that the licence by its very nature and as per its express terms was determinable at any time by a seven days notice in writing; (vi) that upon the cancellation of licence, the possession of the appellant was unauthorized; and, (vii) that the claims for Licence Fee against the appellant were not time barred, the proceedings under the PP Act having been initiated as far back as in the year 1985 and also for the reason of the stay obtained by the appellant against the respondent NDMC in the civil suit.

11. The learned Single Judge dismissed the writ petition filed by the appellant (challenging the aforesaid order of the Additional District Judge exercising powers as Appellate Authority) holding; (i) that the litigation by some of the other shopkeepers of Palika Bazaar, New Delhi qua Licence Fee stood decided prior to the appellant having submitted his bid for the shop and the appellant thus could not while submitting the bid be under the impression that he would have benefit of the said litigation; (ii) that even the Supreme Court in appeals arising out of the said litigation of other shopkeepers had categorically held that the shopkeepers whose tenders were accepted at the rates offered by them were required to pay

the bid amount and were not entitled to any reductions; (iii) that the challenge by the appellant to the rate of Licence Fee also stood negatived in the civil suit filed by the appellant and which was pursued till the stage of second appeal before this Court; (iv) that the appellant, besides filing the civil suit, had also filed W.P.(C) No.1516/1985 in this Court challenging the said rate but which was ultimately dismissed in default on 28.02.2003; (v) that there was no merit in the contention of the appellant that he was entitled to the benefit as per the judgment of the Supreme Court in the litigation of other shopkeepers of payment of interest on arrears of Licence Fee @ 6% per annum; (vi) that the appellant, even after the judgment dated 06.02.1996 of the Supreme Court in litigation of other shopkeepers and inspite of consequent demand by the respondent NDMC, did not make payment of even the admitted amounts; (vii) that the offer by the appellant before the learned Single Judge to pay the arrears, was too late having been made after more than 10 years; and, (viii) that the respondent NDMC was justified in cancelling the allotment / licence of the appellant for the reason of the appellant continuously encroaching the public passages in front of his shop in violation of Clause 7 of the Licence Agreement.

12. PP Act was enacted to enable Public Authorities, as the respondent is, to expeditiously recover possession of their properties from persons in unauthorized occupation thereof. The challenge to the validity of the said legislation was negated by the Supreme Court. The reason is obvious. The premises belonging to such Public Authorities, as the respondent NDMC is, in fact belong to the public and for various public functions which such Public Authorities are to perform, they need monies and of which accrual from such public premises are an important part and delay in recovery of Licence Fee, rent, user charges etc. qua public premises or delays in removal of unauthorized occupants in occupation of such premises ultimately affects the functioning of such public authorities and interferes with the discharge by such public authorities of functions for the general good of the public and deserving.

13. With the aforesaid motive only, the PP Act provides remedy of only one appeal against the orders of the Estate Officer, though challenge to the judgment of such Appellate Authority in exercise of the supervisory powers under Article 226 of the Constitution of India would be maintainable. However as held in the case of *J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board* (2003) 5 SCC 226, *State of U.P. Vs. Johri*

Mal (2004) 4 SCC 714 and *Bachan Singh Vs. Union of India* (2008) 9 SCC 161, such exercise of supervisory power under Article 226 of the Constitution of India cannot be allowed to, especially in such cases, become a substitute for an appeal. The orders of the Appellate Authority under the PP Act are to be interfered with in exercise of powers under Article 226 of the Constitution of India only to prevent injustice.

14. Once we look at the facts of the present case as emerge from the aforesaid narrative in this light, it can be by no stretch of imagination be said that any injustice is being done to the appellant. Though the appellant came into use of the shop for the reason of his offer / tender to pay Licence Fee of Rs.17,838/- per month being the highest but soon after coming into use of the said shop stopped paying the Licence Fee which he had himself offered and since the year 1982 itself i.e. now for the last more than 30 years embroiled the respondent NDMC into litigation. Such litigation also has been pursued by the appellant at three levels i.e. by filing a civil suit challenging the right of respondent NDMC to recover from the appellant what the appellant himself had offered and agreed to pay and which has been pursued by the appellant in the first and the second appeals arising therefrom, by way of a writ petition and

before the Estate Officer under the PP Act. While the challenge in the civil suit and in the writ petition has attained finality by a judgment on merits and by dismissal in default respectively, the challenge made in the proceedings under the PP Act continues to be pursued by this appeal. By adopting such multi-pronged litigation, the appellant, who became an unauthorized occupant in the shop as far back as in the year 1985, continued to remain in use and occupation thereof for 21 years till 2006. Though the respondent NDMC has as far back as in 2006 succeeded in taking possession of the shop from the appellant but has for the last seven years been unable to deal with the said shop i.e. by putting it to some other use and earning revenue therefrom, owing to the interim stay in these proceedings. The appellant has thus deprived the respondent NDMC of the beneficial use of the said shop for the last nearly thirty years.

15. We are of the view that the appellant for the aforesaid reasons alone does not deserve any indulgence and has been rather the perpetrator instead of the victim of injustice.

16. The Supreme Court in *S.P. Chengalvaraya Naidu Vs Jagannath* (1994) 1 SCC 1 has held that the discretionary jurisdiction under Article 226 of the Constitution of India is not to be exercised to come to the rescue of such land grabbers and perpetrators of illegality and persons depriving the Public Authorities of their just dues and revenues. Though under the order of the Estate Officer more than Rs.1,50,00,000/- were due from the appellant, the appellant under the orders of this Court has deposited approximately Rs.32,00,000/- only. The appellant is thus even today in arrears of more than Rs.1,00,00,000/-. Not only so, though the appellant has not been in use and occupation of the shop since 2006 but would still remain liable to the respondent NDMC for losses arising from preventing the respondent NDMC from earning from the said shop owing to this litigation. Considering that the shop is situated in a premium commercial and business district of the capital city of the country and taking judicial notice of the prevalent letting values in the area being in excess of Rs.100/- per sq. ft. per month, the dues of the respondent NDMC which the appellant is withholding would be a colossal amount of money.

17. The senior counsel for the appellant before us had only one contention i.e. that the proceedings under the PP Act were initiated on the ground of encroachment of public passages in front of the shop but neither was service of any notice in this regard proved nor was cancellation a remedy in case of such encroachment even if any by the appellant. It was argued that the respondent NDMC could have taken action for removal of the said encroachment. It is also argued that there was no evidence whatsoever before the Estate Officer to conclude any such encroachment.

18. Per contra, the counsel for the respondent NDMC has relied on *Ashit Kumar Jain Vs. NDMC* 170 (2010) DLT 311 where a challenge to the order of the Estate Officer was negated only for the reason of the appellant therein despite repeated opportunities being in default of making payment. Attention in this regard is also invited to order dated 18.10.2011 of another Division Bench of this Court in LPA No.525/2011 which was also dismissed for the reason of the appellant therein being a habitual and chronic defaulter.

19. We are unable to agree with the contentions of the senior counsel for the appellant. Cause 7 of the Licence Deed requiring the appellant to keep the public passages in front of the shop free from obstruction or encroachment and not to stack any goods or obstruct the movement of customers therein, clearly provided that upon breach of the said obligation by the appellant, the respondent NDMC shall be entitled to forthwith determine the licence after giving reasonable notice not exceeding ten days to the licensee and also to remove such encroachment as envisaged under Section 173 of the Punjab Municipal Act, 1976 (as was then applicable in NDMC areas).

20. The Estate Officer in his order has held that the plea of the appellant of having not received any notice under Clause 7 is an afterthought. He has further held that in view of the appellant having approached the civil court and owing to the interim order wherein the proceedings before the Estate Officer remained pending, the service of the notice became meaningless.

21. The Appellate Authority constituted under the PP Act has already as aforesaid dismissed the challenge to the order of the Estate officer.

The grounds now urged by the appellant before us are factual in nature and which are beyond the scope of the exercise of supervisory powers under Article 226 of the Constitution of India. As we have already observed above, the supervisory jurisdiction under Article 226 of the Constitution of India cannot take the form of the appellate jurisdiction. In exercise of the said jurisdiction, it is not the function of the High Court to revisit the factual controversies. We are otherwise satisfied on the perusal of the record that the order of eviction and of recovery of monies is justified.

22. There is another aspect of the matter as far as the challenge to the order of eviction is concerned. The appellant has admittedly now for the last more than seven years been out of the premises. The rights of the appellant have been determined by the authorities below to be a licensee only and which licence as aforesaid was for a period of five years only i.e. till the year 1987. The appellant however has remained in occupation of the premises till the year 2006 and for this reason also we do not find any ground to interfere.

23. Before parting with the case, to be not accused of having not taken into consideration the material on record, we may record that the counsel for the appellant has also handed over a written synopsis along with a large number of judgments after the order was reserved. We have gone through the said synopsis and the judgments carefully and in view of the reason given hereinabove, do not find the same to be of any relevance in the facts of the present case and thus, though have placed the synopsis with judgments on record, do not deem it necessary to burden this judgment with details of the same.

24. The appeal is accordingly dismissed with costs of Rs.25,000/- payable to the respondent NDMC within four weeks hereof.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

APRIL 29, 2013

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