

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

% **Date of Decision: 20.05.2013**

+ **W.P.(C) 4680/2011**

UDIPI RESTURANT Petitioner

Through: Ms Manindra Acharya, Sr. Adv with Ms

versus

DDA AND ORS Respondents

Through: Ms Manika Tripathy Pandey and
Mr Ahsutosh Kaushik, Advs.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. Plot No. 20, Block No. 12-A, W.E.A., Bankim Chander Chatterji Marg, New Delhi was leased out by Delhi Improvement Trust, for residential purpose, to one Sohinder Singh, who after construction on the said plot, let out various portions of the building constructed on the aforesaid plot to different persons, including the petitioner-Udipi Restaurant. Admittedly, under the terms of the lease deed, the aforesaid building could not have been used for a non-residential purpose, without prior permission of the lessor. Since the aforesaid building was put to non-residential use, the lease deed came to be terminated on 28.08.1997. Consequent to determination of the lease, proceedings under Public Premises Act were instituted

by the respondent-DDA against various occupants of the said property, including the petitioner-Udipi Restaurant which occupies one shop in the said property.

2. Vide order dated 16.06.2008, the Estate Officer directed eviction of the petitioner from the premises which it occupies in the said building. Being aggrieved from the order passed by the Estate Officer, the petitioner preferred an appeal before the District Judge which came to be dismissed vide order dated 28.05.2011. Being aggrieved from dismissal of his appeal, the petitioner is before this Court by way of this writ petition.

3. This is not in dispute that the building in question was being used for non-residential purpose, in contravention of the terms of the lease. The first contention of the learned senior counsel for the petitioner is that since on account of amendment of Master Plan, the whole of the street, on which building in question is situated is allowed to be used for a commercial purpose, there is no cause for DDA insisting upon use of the said building for a residential purpose. The second contention of the learned counsel for the petitioner is that the proceedings under Public Premises Act were initiated by the landlord of the petitioner in connivance with DDA officers so as to get rid of the tenants who enjoy protection under the provisions of Delhi Rent Control Act, the rent of the premises being less than Rs 3500/- per month. According to the learned counsel for the petitioner though there is a policy of DDA for restoration of the lease, the landlord is deliberately not

seeking restoration of the lease since he wants to get out of the existing tenants and then either sell the vacant property or let it out at a substantially higher rent.

The petition, however, has been contested by respondent-DDA. The plea taken by DDA is that since the terms of the lease, executed by its predecessor-in-interest did not permit use of any part of the building for a non-residential purpose, the lease was rightly determined and consequently the order of eviction passed by the Estate Officer is fully justified. It is also stated in the counter-affidavit of DDA that there is no policy for legalizing misuse of the property contrary to the terms of the lease deed.

4. In my view, even if the MPD, 2021 allows the building in question to be used for a non-residential purpose, as the contention of the petitioner is, that by itself, would not permit the lessee or anyone, acting under the authority of the lessee, to contravene the terms of the lease deed by using the building or any part thereof for a purpose other than residential purpose. The terms of the lease deed being independent of the provisions of the Master Plan, the lessor is entitled in law to enforce such terms irrespective of the provisions contained in the Master Plan. If the lessee of a property which has been leased out by DDA or its predecessor-in-interest for residential purpose cannot use the building constructed on such plot for a purpose other than residential, without prior permission of the lessor, it may be open to him to seek permission of the lessor on the ground that the provisions as

modified by MPD 2021, do permit use for a non-residential purpose, and in the event of permission being denied by the lessor, it would be open to the lessee to challenge the decision of the lessor refusing such a permission *inter alia* on the ground that there was no justification for refusing such a permission considering the provisions of MPD-2021. But, so long as the lease stands cancelled or the permission is not granted by the lessor to use the property for a non-residential purpose, the lessee or any person acting under him would have no right to use the building or any part of it in contravention of the terms of the lease deed.

5. Balaji Enterprises, which was another tenant in this very building using the portion occupied by it for a non-residential purpose, filed a writ petition being WP(C) No. 5118/2011, challenging the order of the District Judge dated 26.05.2011, dismissing his appeal against the order of its eviction passed by the Estate Officer on 16.06.2008. On the said writ petition being dismissed, an appeal was preferred by the said tenant. In that case also, the plea taken by the appellant/petitioner was that the Master Plan permits use of the building for a commercial purpose and he enjoys protection of Delhi Rent Control Act and DDA was acting in connivance with its landlord. Rejecting the appeal preferred by Balaji Enterprises, the Division Bench, *inter alia*, held as under:-

“6. We heard the counsel for the appellant on 23.11.2012 when the appeal came up first. The contention of the counsel for the appellant was that vide Notification dated February, 2007, the street

on which the premises in question is situated was declared as a commercial street with commercial activities being permissible in the properties situated thereon; that the ex-lessee of the land underneath the property and / or his successors in interest are misusing the provisions of the PP Act to evict from the property old tenants in the property who are protected from eviction under the Rent Act, with the intent to after the said tenants had been evicted, apply for restoration of the lease on payment of requisite charges as is permissible vide Circular dated 09.04.2008 of the DDA. It was further his contention that since owing to the subsequent Notification the ground of misuse on which lease had been determined did not persist, the order of eviction should be set aside. It was yet further argued that the abuse of the process of the PP Act is evident from the fact that though the Estate Officer had directed eviction of all the occupants of the property including the ex-lessee from the portion in his / her occupation but DDA was not enforcing the eviction order against the ex-lessee and enforcing the same against the tenants of the exlessee only. It was further contended that the Division Bench in Vijay Rehal (supra) had failed to notice the conversion of the land use of the street in which the property is situated.

7. No merit is found in any of the pleas aforesaid. The lease of the land underneath the property was determined way back in 1998 i.e. much before the date since when it is argued that commercial use is permitted. Moreover, there is no plea of the DDA having changed the conditions on which the lease was granted. The proceedings under the PP Act before the Estate Officer were admittedly pending since the year 1999 i.e. again since before the change of user pleaded. We concur with the learned Single Judge in holding that such

subsequent change of use even if effected, would not alter the position.”

6. Yet another tenant in this very building Shri Vijay Rehal, on eviction order being passed against him by the Estate officer and his appeal having been rejected by the District Judge vide order dated 26.05.2011 preferred W.P.(C) No. 7854/2011, which was dismissed by a learned Single Judge of this Court. He also preferred an appeal against the order passed by the learned Single Judge. Rejecting the appeal, a Division Bench of this Court, inter alia, held as under:-

“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.

XXXXX

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.”

7. The issues involved in this petition is, therefore, squarely covered by the above-referred two decisions in the appeals culminating out of the decisions in two separate writ petitions filed by two other tenants in the same building, and the contentions advanced by the learned counsel for the petitioner have also been

rejected in the case of Balaji (supra). The present writ petition, therefore, is also liable to be dismissed.

8. The learned counsel for the appellant has drawn my attention to paragraphs 8, 9 and 10 in the order of the Division Bench in the case of Balaji Enterprises which read as under:-

8. However we were a little alarmed on that date by the argument of abuse of the process of PP Act for evicting the tenants protected from eviction under the Rent Act and accordingly we had asked the counsel for DDA who was appearing on advance notice on that date to inform the action taken against the other occupants of the property in question and whether the ex-lessee of the plot in question can still apply for withdrawal of re-entry and restoration of lease, after the tenants of the ex-lessee in the property had been evicted under the provisions of the PP Act.

9. The counsel for the DDA has today categorically stated that restoration of the lease is not permissible once eviction order under the PP Act has been passed and the appeal thereagainst has been dismissed. She further assures that action for enforcement of the order of the Estate Officer against all the occupants of the property is being taken.

10. We, on the basis of the aforesaid submission are satisfied that there is no possibility of abuse of the process of the provisions of the PP Act. We bind the DDA to the submission aforesaid.”

The contention of the learned counsel is that the counsel representing DDA made a wrong statement before the Division Bench that restoration of the lease was

not permissible once eviction order under Public Premises Act was passed and the appeal against the said order was dismissed. In this regard, she has relied upon Circular No. F-26(1)/07/Coordn(L.D.)/66 dated 09.03.2009 which reads as under:-

“If lease had been determined and allotment has been cancelled on account of unauthorized construction and misuse, the lease will be restored without insisting on removal of breaches and conversion will be allowed subject to payment of all penal charges. This will also be applicable in the cases wherein GPA and Agreement to Sell has been executed after determination of lease deed or cancellation of allotment”

9. A perusal of the above-referred Circular does not indicate whether it applies or not to the cases where eviction order has been passed by the Estate Officer and the appeal against such an order has been dismissed or not. Assuming, however, that the said circular also applies to the cases where eviction order has been passed by the Estate Officer and appeal against such an order has been dismissed by the learned District Judge, the appropriate remedy for the appellant in LPA No. 760/2012 would be to ventilate its grievance before the Division Bench on the ground that an incorrect statement was made by the counsel representing DDA in the said case. For the purpose of this writ petition, what is relevant is that the property was being used in contravention of the terms of the lease deed, the lease stands determined and the petitioner has no *locus standi* even to seek restoration on

account of the building constructed on the plot lease out for residential purpose having been used for a non-residential purpose.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed.

There shall be no order as to costs.

V.K. JAIN, J

MAY 20, 2013/BG