

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

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Date of decision: 8th March, 2013

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LPA 742/2012

SURESH CHAND GUPTA

..... Appellant

Through: Mr. Vinay Garg with Mr. Lalit Gupta
& Mr. Deepak Agarwal, Advs.

Versus

MCD AND ORS

..... Respondents

Through: Ms. Mini Pushkarna & Mr. S. Tyagi,
Advs. for R-1&2.
Mr. Nand Lal Kedia, Respondent
No.5 in person (also represents R-4).

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 16th August, 012 of the learned Single Judge, of dismissal of W.P.(C) No.811/2002 preferred by the appellant. The said writ petition was preferred impugning the order dated 13th July, 2001 of the Additional District Judge exercising powers as an Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act) dismissing the appeal preferred by the appellant against the order dated 22nd August, 1991 of the

Estate Officer of the respondent MCD of eviction of the appellant from property No.1629, Queens Road (First Floor), Delhi.

2. The counsel for the respondent MCD as well as respondent No.5 Mr. Nand Lal Kedia in person, also claiming to represent respondent No.4, Mr. Pawan Kumar Kedia appeared on advance notice (respondents No.2 & 3 are proforma parties) and considering the nature of the controversy and the challenge in the appeal, we, with consent, heard the counsels finally and reserved judgment. We have also requisitioned the writ record.

3. The order dated 22nd August, 1991 of the Estate Officer records, (i) that the appellant was a tenant of the first floor of property No.1629, Queens Road, Delhi for residential purpose under the respondent MCD; (ii) however the respondent MCD noticed that the said premises were being misused by the appellant for commercial purpose and a portion thereof had been sub-let by the appellant to one Sh. Pawan Kumar Kedia (respondent No.4 herein); (iii) that a show cause notice was issued by the Land & Estate Department of MCD on 29th October, 1987 requiring the appellant to show cause as to why the lease be not terminated; (iv) however no reply was given to the said show cause notice; (v) that thereafter a final show cause notice dated 22nd July, 1988 was given; (vi) that the appellant in reply thereto stated that the

respondent No.4 was a distant relation of his father and was given a part of the premises as a guest but had not removed his complete luggage from the said portion; (vii) that the respondent MCD was not satisfied with the said reply and on site inspection concluded that the sub-tenant still existed; (viii) accordingly, the lease of the appellant was terminated vide order dated 12th September, 1988 and complaint filed with the Estate Officer; (ix) that a notice dated 27th October, 1988 was issued by the Estate Officer requiring the appellant to show cause as to why an order of eviction should not be made; (x) another show cause notice qua damages was issued; (xi) no replies were furnished to the said show cause notices - rather the factum of having allowed the respondent No.4 to use part of the premises was admitted, though as a guest; (xii) that it also transpired that the appellant had initiated proceedings before the Civil Court against the respondent No.4 for recovery of possession of the portion of the premises in occupation of the respondent No.4; (xiii) that the case continued to languish for another three years; (xiv) on 13th August, 1991 the appellant contended that the case could not be decided without evidence; (xv) that though a representation had earlier been made of stay of proceedings before the Estate Officer by the Civil Court but

it subsequently transpired that a wrong statement to the said effect had been made.

The Estate Officer, in the aforesaid scenario held that since it was not denied that the lease of the appellant had been terminated by the respondent MCD and on which termination, the appellant had become an unauthorized occupant, the appellant was liable to be evicted under Section 5 of the PP Act. The Estate Officer accordingly passed the order of ejectment/eviction.

4. The appellant preferred the statutory appeal which was dismissed vide order dated 13th July, 2001. The order of the Appellate Authority additionally records, (a) that the said premises were earlier leased out to one Sh. Dharam Dass Jain for residential purpose and whose daughter had complained to the MCD that the appellant had got the lease thereof transferred to his name by filing some forged and false affidavit and had sought restoration of the said premises to her; (b) that the respondent No.4 herein Sh. Pawan Kumar Kedia also applied to the MCD claiming tenancy rights in respect of the portion in his possession and tenancy rights of which were indeed transferred from the name of the appellant to the name of the respondent No.4 Sh. Pawan Kumar Kedia after inspection revealed that he was in occupation of a portion of the property; (c) that the said inspection

also revealed that the appellant was using the remaining portion for commercial purpose in violation of the terms and conditions of allotment; accordingly the notices mentioned in the order of the Estate Officer were issued.

5. It was the contention of the counsel for the appellant before the Appellate Authority that no sufficient opportunity of being heard had been given to the appellant before terminating the lease and that the respondent No.4 Sh. Pawan Kumar Kedia was in possession of the portion in his occupation even prior to the lease in favour of the appellant.

6. The Appellate Authority found that the appellant was given a show cause notice before cancellation of the lease and it did not lie in the mouth of the appellant to say that he was not heard before passing of the order of termination of lease. It was further held that the job of the Estate Officer was limited to only see that the person sought to be evicted was an unauthorized occupant and the Estate Officer was not to go behind the order of termination. It was yet further held that the order of termination had not even been challenged by the appellant. The Appellate Authority accordingly held the order of the Estate Officer of eviction to be justified and dismissed the appeal.

7. The appellant being not satisfied, filed the writ petition from the order wherein this appeal arises. The learned Single Judge has dismissed the writ petition observing, (i) that the appellant had applied to the MCD to get the name of the respondent No.4 Sh. Pawan Kumar Kedia removed from the MCD records and had thereafter also instituted civil proceedings for recovery of possession of the said portion and in which he had succeeded in the year 2006; and, (ii) that the material on record reveals that besides the portion in occupation of the respondent No.4, the appellant was putting the remaining portion of the premises to commercial use. The learned Single Judge further held that the cancellation of lease was approved after the Inspection Report and the appellant cannot be heard to challenge the same. It has further been observed that it was not a worthwhile challenge to the inspection report.

8. On the plea of the appellant that no opportunity to lead evidence before the Estate Officer had been given, the learned Single Judge held that there was nothing to show that any such opportunity was sought and thus the petitioner could not be heard to make any grievance on the said ground. It has further been observed that no prejudice was shown to have been suffered by the petitioner on this ground.

9. Before we deal with the contentions of the counsel for the appellant, it would be worthwhile to refer some relevant facts.

10. The said premises were let out to Sh. Dharam Dass Jain for residential purpose at a rent of Rs.31.25 per month. The appellant claims that the MCD transferred the said lease to his name in the year 1979 at the same rate of rent. The rent at the time of commencement of the eviction proceedings was Rs.62.50 per month and the Estate Officer awarded damages @ Rs.312.50 per month.

11. The premises are situated in a prime locality of Central Delhi, property values wherein are still very high. Judicial notice can be taken of the fact that the rent of the premises today would be at least a hundred times the rate at which damages have been awarded, if not more. Judicial notice can also be taken of the fact that the rent of the premises even in the year 1979 was much more than Rs.31.25 or Rs.62.50 and the appellant was legally not entitled to have the lease transferred in his name from the name of Sh. Dharam Dass Jain and the same appears to have been got done in collusion with some officials of the MCD.

12. The record of the Estate Officer was requisitioned before the learned Single Judge but was not found. A vigilance enquiry conducted, also proved to be of no avail.

13. We are however not concerned with the said facts and are not returning any findings thereon and have stated the same only to support our decision, of the appellant being not entitled to the exercise of discretion, implicit in a proceeding under Article 226 of the Constitution of India, in his favour.

14. The Division Bench of this Court in judgment dated 11th May 2012 in LPA No. 9/2012 titled ***Indian Institute of Public Opinion Pvt. Ltd. Vs. Life Insurance Corporation of India*** has held that the tenants of statutory corporations/local authorities, as the MCD is, are entitled to continue in the premises only if agreed to by such corporation/authority and the statutory corporation/authority cannot be compelled to continue with the tenants paying rents much below the market rent and which would amount to giving a benefit to a certain class of tenants at the cost of the public exchequer. Relying on ***Centre for Public Interest Litigation Vs. Union of India*** (2012) 3 SCC 1 it was further held that distribution of state resources is to be guided by doctrine of equality, larger public good and rational, transparent

procedures designed to fetch maximum value for enrichment of the public at large and to allow old tenants of statutory corporations/authorities to continue at old rates would amount to giving monetary benefit for all times to come to those who may on first-come basis have come into occupation of such properties and at the cost and prejudice of others. Mention may also be made of *Jiwan Dass Vs. Life Insurance Corporation of India* (1994) Supp (3) SCC 694 laying down that Section 106 of the Transfer of Property Act having empowered the public authorities to act in public interest and determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action of terminating the tenancy.

15. It is well settled law that the provisions of the PP Act supersede the provisions of the Rent Act (see *Ashoka Marketing Vs. Punjab Natinal Bank* (1990) 4 SCC 406). The tenancy of the appellant even though at a rent of less than Rs.3500/- per month, is thus not protected. It is not the case of the appellant that there is any registered lease in his favour whereunder he is entitled to continue as a tenant in the premises. The tenancy of the appellant was at best a month to month tenancy and there is no reason for the State, as the respondent MCD, to not terminate the said tenancy and to evict the

appellant under the provisions of the PP Act and to earn maximum possible rent therefrom.

16. That brings us to the very first argument of the counsel for the appellant, that the termination of the lease is not proper. It is contended that the show cause notices do not terminate the lease and there is no termination of lease within the meaning of Section 106 of the Transfer of Property Act, 1882.

17. We are afraid the aforesaid contention at this stage, after nearly 25 years of initiation of proceedings under the PP Act, cannot be entertained. Attention of the counsel during the hearing was invited to the judgment of the Division Bench of this Court in *Shriram Pistons & Rings Vs. C.B. Agarwal* MANU/DE/2381/2008, where, relying on *Nopany Investments (P) Ltd. Vs. Santokh Singh HUF* (2008) 2 SCC 728, it was held that filing of an eviction suit under general law is itself a notice to quit upon the tenant and that no notice to quit is necessary under Section 106 of the Transfer of Property Act in order to pass a decree for eviction.

18. The appellant as aforesaid, has been contesting the proceedings for the last 25 years and cannot be said to have suffered any prejudice from the

notice in the prescribed form having not been given to him, the purpose of which is only to notify a tenant of the intent of the landlord not to continue the relationship of landlord and tenant.

19. The counsel for the appellant has also urged the aspect of opportunity of evidence having not been given. Reliance in this regard is placed on *New India Assurance Company Ltd. Vs. Nusli Neville Wadia* (2008) 3 SCC 279.

20. Though, undoubtedly no evidence was recorded before the Estate Officer but it cannot be lost sight of that the appellant, for more than three years when the proceedings were pending before the Estate Officer, did not seek any opportunity to lead evidence and on the contrary continued to represent that there was a stay from the Civil Court of the proceedings before the Estate Officer and only when his said bluff was caught, sought an opportunity for leading evidence and which was denied by the Estate Officer in view of the report of inspection before him. The Appellate Authority also held that no prejudice was suffered by the appellant from non-grant of opportunity to lead evidence and the learned Single Judge refused to interfere with the said decision of the Appellant Authority.

21. In view of the aforesaid facts, we, in exercise of appellate jurisdiction under Article 226 of the Constitution of India, do not deem it appropriate to entertain the said argument. It cannot be lost sight of that the PP Act was enacted to provide summary eviction of unauthorized occupants of public premises and the Estate Officers appointed thereunder are not bound by the provisions of Civil Procedure Code, 1908 and the Evidence Act, 1872. It is also not as if there is no material whatsoever before the Estate Officer to come to the conclusion of the respondent MCD being justified in terminating the tenancy of the appellant for the reason of sub-letting and misuser. As far as sub-letting is concerned, the appellant also does not dispute that suit for possession was filed against the respondent No.4 herein. In fact, the respondent No.4 continued to pursue the proceedings till before the learned Single Judge also, asserting his own right in the premises and his brother respondent No.5 was present before us also. As far as the plea of misuser is concerned, plethora of documents on the record of the writ petition show the appellant to be a resident of A-334, Derawal Nagar, Delhi and not of the subject premises. The appellant in the memo of parties in this appeal also has given his alternate address as that of Derawal Nagar, Delhi only. The counsel for the appellant also during the hearing could not deny the

residence of the appellant at Derawal Nagar, Delhi. It is thus quite obvious that the appellant has no need of the subject premises for the purpose of his residence and we fail to see as to how a residential accommodation of the State can be allowed to be retained by a person who already has other residential accommodation and thus has no need therefor.

22. Moreover, the grounds of termination of tenancy are not even relevant as aforesaid. The MCD, as owner/landlord of the premises was/is entitled to terminate the tenancy, which as aforesaid, was a month to month, without even citing any ground/reason therefor and once the tenancy is determined and which can also be by initiation of eviction/ejection proceedings, the possession becomes unauthorized. The Estate Officer thus, cannot be said to have done any wrong in passing the order of eviction. The legislature has provided statutory remedy of one appeal only against the order of the Estate Officer and no further appeals have been provided. The jurisdiction under Article 226 of the Constitution of India cannot partake the character of a second appeal and is intended to only oversee that no injustice is committed. In this case as aforesaid, there is no justification for the appellant to continue in the premises, to the prejudice of the MCD, as MCD is being deprived of earning prevalent rent of the premises.

23. We therefore do not find any merit in this appeal, which is dismissed. Finding the filing of the appeal to be frivolous and vexatious, the appellant is also burdened with costs of Rs.10,000/- payable to the respondent MCD within four weeks hereof.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MARCH 08, 2013
'gsr/bs'