

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

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Date of decision: 10th November, 2014

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LPA No.95/2010

SHRIDHAR GUPTA

.. Appellant

Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. R. K. Modi, Advocate.

Versus

NDMC AND ANR.

..... Respondents

Through: Mr. Arvind Sah, Advocate for
NDMC.

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 19th January, 2010 of the learned Single Judge of this Court of dismissal of W.P.(C) No.985/2008 filed by the appellant.
2. WP(C) No. 985/2008 was preferred by the appellant impugning the order dated 29.01.2008, of the Additional District Judge exercising power as appellate authority under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act), of dismissal of appeal preferred by the appellant against the order dated 17.06.2004 of the Estate Officer of the

respondent NDMC of eviction of the appellant from shop No.122, Yashwant Place, New Delhi.

3. Counsel for the respondent NDMC appeared when this appeal came up first before this Court on 03.02.2010. The learned Single Judge while dismissing the writ petition from which this appeal arises had restrained the respondent NDMC from evicting the appellant for a period of 15 days. Vide the interim order dated 03.02.2010 in this appeal, it was directed that the premises may be sealed by the respondent NDMC. By subsequent order dated 07.10.2010 the said interim order was ordered to continue till the next date of hearing. The appeal was on 02.05.2011 admitted for hearing. The appeal came up for hearing on 10.05.2013 when the same was dismissed in default of appearance of the appellant. However, upon an application for restoration being filed by the appellant, the appeal was restored and again directed to be listed in the category of '*Regular Matters*'. Though the interim order was neither extended after 07.10.2010 nor confirmed nor expressly restored at the time of the restoration of the appeal earlier dismissed in default but it appears that the parties considered the same to be in operation and the premises remained sealed. The appellant in or about September, 2014 moved an application stating that the premises had been de-sealed by the respondents

and the work of repair was going on therein and seeking to restrain the respondent NDMC from selling off, disposing or creating any third party interest in the said premises or parting with possession thereof. The said application came up before us first on 26.09.2014 when we directed the appeal itself to be listed for hearing.

4. We heard the counsel for the parties and reserved judgment.

5. The only argument urged by the senior counsel for the appellant being, that the proceedings before the Estate Officer of eviction of the appellant were rendered meaningless owing to the respondent NDMC in the interregnum having agreed to renew the license of the appellant of the said premises, we do not feel the need to burden this appeal with any facts not relevant for considering the said aspect and which were not even argued, and will confine the discussion hereinafter only to the said aspect.

6. The factual position is as under:-

- (i) the respondent NDMC, with effect from 01.12.1969, allotted to the appellant the aforesaid premises, for a period of five years, for running an Open Air Snacks Bar and Snacks Counter therein;

- (ii) the respondent NDMC vide notice dated 01.02.1980 to the appellant, called upon the appellant to vacate the premises on the ground,
 - a) that the term of the license of the appellant had expired on 30.11.1974 and the appellant was with effect from 01.12.1974 in unauthorized occupation thereof;
 - b) that the appellant even otherwise was in arrears of damages for unauthorized occupation of the premises with effect from 01.12.1974;
 - (c) that the appellant had also carried out unauthorized additions/alterations in the premises and violated the other terms and conditions of allotment;
- (iii) the appellant submitted a representation dated 07.02.1980 to the respondent NDMC;
- (iv) the said representation was rejected vide order dated 21.09.1980 (communicated to the appellant under cover of letter dated 06.11.1980) and the appellant again called upon to vacate the premises and informed that upon his such failure, proceedings for his eviction will be taken;
- (v) upon the failure of the appellant to vacate the premises, the respondent NDMC in or about January, 1982 instituted the

proceedings for eviction of the appellant before the Estate Officer, NDMC;

- (vi) the respondent NDMC vide Resolution No.88 dated 25.03.1981 took a policy decision for renewal of licenses of several markets including Yashwant Place on enhancement of licence fee by 75%; in view of the same, the proceedings before the Estate Officer were abandoned;
- (vii) the said decision was challenged and the matter ultimately reached the Supreme Court but was withdrawn on 08.07.1996 with liberty to make a representation to the NDMC;
- (viii) the respondent NDMC vide notice dated 08.12.1998 to the appellant, communicated to the appellant that the appellant was liable to pay a sum of Rs.3,30,059.42 towards damages and Rs.5,45,535/- on account of interest till November, 1998 and further intimated the appellant that if he did not deposit the said amount within 14 days he would be presumed to be not interested in pursuing the representation made by him in pursuance to the order dated 08.07.1996 of the Supreme Court;

- (ix) the appellant did not make the payment aforesaid and the Estate Officer of the respondent NDMC issued notices dated 07.07.1999 to the appellant under Sections 4(1) and 7(3) of the PP Act;
- (x) it appears that the Yashwant Place Shopkeepers Association again represented and the NDMC acceded thereto and in accordance therewith vide notice dated 19.11.1999 revised the demand on the appellant to Rs.1,34,213.42P towards damages/license fee and Rs.1,26,122.10P on account of interest, totaling Rs.2,60,335.52P and directed the appellant to deposit the same within 10 days;
- (xi) the appellant claims to have deposited Rs.1,43,297/- with the respondent NDMC on 10.02.2000 and Rs.1,44,802/- on 25.9.2000 and further claims to have been depositing further amounts due thereafter from time to time;
- (xii) the appellant claims to have thereafter applied to the respondent NDMC for renewal of license as well as restoration of the water and electricity connection and Health Licence,

from which the appellant had been deprived owing to being an unauthorized occupant of the premises;

- (xiii) the Estate Department of the NDMC on 30.05.2000 gave a No Objection to the issuance of Health Licence to the appellant at the aforesaid premises;
- (xiv) however, the Health Department of the NDMC vide letter dated 06.07.2000 enquired from the Estate Department “whether the cancelled restaurant has been re-allotted to the appellant”;
- (xv) the Estate Department vide letter dated 14.07.2000 to the Health Department stated that the cancelled units were not be re-allotted but their allotment was to be regularized if cause of cancellation was removed as had been done in the case of the appellant; it was also stated that the NDMC had taken a policy decision to revoke cancellation orders of all shop units of Yashwant Place Shopping Complex where cause of violation had been removed and that since up-to-date payment had been received from the appellant, license of the premises

in favour of the appellant shall be renewed after Health Licence had been issued;

(xvi) the respondent NDMC however vide order dated 25th June, 2001 refused to restore electricity supply to the aforesaid premises or to extend / renew the licence of the premises in favour of the appellant;

(xvii) the appellant filed Civil Writ Petition No.4330/2001 in this Court, impugning the said refusal of the NDMC and vide interim order dated 29.05.2002 in the said petition, electricity to the said premises was ordered to be restored;

(xviii) the Estate Officer of the respondent NDMC vide order dated 17.06.2004 (*supra*), recording:-

(a) that the proceedings under the PP Act had been initiated against the appellant because he had failed to avail the opportunity given to him vide notice dated 08.12.1998 (*supra*);

(b) that the appellant had failed to file any written statement to the said proceedings or to examine any witnesses, inspite of opportunity;

(c) that though the appellant during the pendency of the proceedings had filed receipts of payment of arrears to

the NDMC and stated that he had been pleading with the NDMC to renew his license but no report regarding settlement and regularization of the shop had been brought on record;

(d) that the respondent NDMC in its evidence had proved that the appellant was unauthorized occupant and the appellant had failed to cross-examine the said witness;

(e) that the NDMC in its evidence also proved notices dated 03.12.2002 and 13.01.2004 issued to the appellant to remove unauthorized additions/alterations in the premises and for maintaining hygienic conditions in the premises but the appellant had not done so; and

(f) that the appellant had filed written arguments but which could not controvert that the license of the appellant lapsed as far back as in the year 1974 and the possession of the appellant thereafter was unauthorized,

ordered eviction of the appellant from the premises;

(xix) the appellant preferred appeal against the order of the Estate Officer to the Additional District Judge;

(xx) in the meanwhile Civil Writ Petition No.4330/2001 (*supra*) preferred by the appellant came up for hearing on 12.12.2007; the order of the said date, records:-

- A. that the said writ petition had been preferred against the order dated 25.06.2001 of the NDMC of notwithstanding the appellant having paid/deposited Rs.2,88,099/- (supra) refusing to extend/renew the license of the aforesaid premises in favour of the appellant;
- B. that though the appellant during the pendency of the said writ petition had given an undertaking to remove the various violations of the terms and conditions of its allotment but had thereafter been repeatedly challaned for the violation continuing;
- C. that it was the case of the respondent NDMC that the demand made on the appellant of Rs.1,34,234.42P towards damages/license fee and Rs.1,26,122.10P on account of interest was erroneously made and the amount due was Rs.5,30,147/-;
- D. that eviction order dated 17.06.2004 had already been passed against the appellant by the Estate Officer of the respondent NDMC;
- E. that the argument of the appellant that in view of the payment by the appellant of the amounts aforesaid and the no objection given by the Estate Department of the NDMC for issuance/renewal of the Health Licence of the appellant, the license of the premises stood restored, could not be accepted as eviction was not premised

merely on hygiene aspect but also other violations of un-authorized structure, which were impediment in extending the licence;

- F. that the violation of the hygiene aspect also persisted;
- G. that thus, the appellant was not entitled to the exercise of discretion under Article 226; and,
- H. that the counsel for the appellant at that stage sought liberty to withdraw the petition and approach the respondent NDMC with a representation to extend the license; accordingly the writ petition was dismissed as withdrawn giving liberty to the appellant to approach the respondent NDMC for renewal of the license and with a direction that in case such a representation was made, the same shall be considered and appropriate order passed thereon,

and the writ petition was disposed of in above terms;

- (xxi) the appeal preferred by the appellant to the Additional District Judge against the order of the Estate Officer was dismissed as aforesaid vide order dated 29.01.2008; the Additional District Judge in the said order noted that the breaches/grounds for issuance of notice under Section 4(1) of the PP Act continued to exist and owing to which the license of the premises in favour of the appellant had not been renewed.

7. The only argument, as aforesaid, of the senior counsel for the appellant is that in view of the payment in the year 2001 by the appellant as aforesaid, the proceedings under the PP Act initiated prior thereto ought not to have continued. It was argued that initiation of the proceedings under the PP Act was on the basis of the appellant having not made the payment in accordance with the demand notice dated 08.12.1998 but this demand stood superceded by the demand dated 19.11.1999 and which had been complied with and pursuant whereunto the Estate Department of the NDMC had also stated that the revocation of the license stood withdrawn and given its No Objection for issuance of Health Licence. It was argued that owing to the said events subsequent to the initiation of the proceedings under the PP Act, the eviction order is clearly misconceived.

8. Though the aforesaid argument may have been worth considering but what we find is that the appellant had filed Civil Writ Petition No.4330/2001 with exactly the same grievance, i.e., of refusal of the NDMC to renew the license of the premises notwithstanding the payment aforesaid by the appellant. The appellant during the hearing of the said writ petition, as aforesaid, was clearly unable to satisfy this

Court that he, owing to the payment of the said amounts, was entitled to restoration/renewal/extension of the license of the premises. On the contrary, this Court in order dated 12.12.2007 noted that the appellant was not entitled to the relief claimed in the writ petition. Though undoubtedly the appellant at that stage sought liberty to withdraw the petition but the learned Single Judge, though so allowing the appellant to withdraw the petition, nevertheless retained the findings on merits of the petition and disposed of the petition “in the above terms”. It was thus not a case of withdrawal simplicitor of the petition and in which case it could have been said that the matter was not adjudicated or that the findings on the same argument as addressed today and raised in the said earlier writ petition also are not to be considered. Not only so, though by that time the Estate Officer had also passed an order of eviction against the appellant and the appeal of the appellant to the District Judge was pending but the appellant did not withdraw CWP 4330/2001 (as he very well could have and in which case it would have been open to the appellant to challenge the decision in appeal, even if against him) to pursue the said remedy of the appeal but to approach the respondent

NDMC “with a representation to extend the licence upon such terms and conditions as may be agreeable” and which liberty was granted.

9. We, during the hearing, enquired from the senior counsel for the appellant whether any such representation was made by the appellant. The senior counsel for the appellant stated that though such representation was made but no order/decision has been communicated to the appellant.

10. However, we, in this appeal, are not concerned with the said representation. If the appellant had any grievance against the respondent NDMC not passing appropriate order on the said representation, the appellant ought to have applied for violation/contempt by the NDMC of the order dated 12.12.2007 in the Civil Writ Petition No. 4330/2001 directing the NDMC to pass order thereon. We are in this appeal only concerned with the validity of the order of eviction of the appellant.

11. Seen in this light, the sole argument raised by the senior counsel for the appellant has no merit. Not only has the said argument to be rejected, the matter cannot be urged to be re-agitated. This is clearly a case of re-litigation. The appellant is in fact found to be further abusing the process of this Court by indulging in forum shopping. The order

dated 12.12.2007 in Civil Writ Petition No.4331/2001 shows that the matter was fully heard and judgment dictated in open court. When the appellant found the judgment to be against him, he withdrew the matter. The order dated 12.12.2007 in the earlier writ petition has attained finality. The appellant cannot be allowed to take his chance before another Bench.

12. The appeal is thus thoroughly misconceived and is dismissed with costs of Rs.25,000/- payable by the appellant to the respondent NDMC within four weeks.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 10, 2014
'An'..