



2024:DHC:5539-DB



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

% Judgment reserved on: 16.07.2024
Judgment delivered on: 29.07.2024

+ LPA 591/2024, CM APPL. 39293/2024 & CM APPL. 39294/2024
SANJAY KUMAR & ORS Appellants

versus

UNION OF INDIA THROUGH ITS
SECRETARY & ORS Respondents

Advocates who appeared in this case:

For the Appellants : Mr. Rajiv Khosla, Advocate.

For the Respondents : Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Varun Rajawat, Mr. Varun Pratap Singh and Mr. Ranjeev Khatana, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the judgment dated 9th July, 2024 passed by the learned Single Judge of this Court dismissing the W.P.(C) 3307/2024 titled "*Sanjay Kumar & Ors vs. Union of India & Ors.*" filed by the appellants.
2. The facts germane to the present appeal, shorn of unnecessary details and culled out from the appeal, are as under:

- a) The appellants claim to be the lawful occupants of Khyber Pass Hostel Hutments/ servant quarters. The appellant nos. 5 & 7 are

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allottees, who claim to have been lawfully inducted and the other appellants are permissive occupants for many decades. The appellants also state that the rent was also paid by the appellant nos. 5 & 7 till 2001, and thereafter no one collected any rent from them.

- b) It is the case of the appellants that the area in question, where the appellants are residing is controlled by respondent no. 2/Ministry of Defence. A demolition notice dated 1st March, 2024, was pasted on the wall of Khyber Pass Hostel directing the appellants to vacate the hutments and remove illegal constructions from their lands before 4th March, 2023. Though, there were 200 servant quarters/ hutments, however, due to extreme urgency and constraint of time, the present appellants had filed the underlying writ petition before the learned Single Judge. The demolition notice dated 1st March, 2024 was a general notice without specifying the name and address of the occupants and the area of demolition etc.
- c) Since the respondents had requisitioned Police force for the purpose of carrying out the demolition, the appellants filed the writ petition bearing W.P.(C) No. 3307/2024 whereby the learned Single Judge passed an interim order dated 3rd March, 2024, restraining the impending demolitions. However, by the impugned judgement, the learned Single Judge had dismissed the petition. Hence the present appeal.

CONTENTIONS OF THE APPELLANTS:-

3. Mr. Rajiv Khosla, learned counsel appearing for the appellants submitted that the demolitions which have been carried out after the notices



were pasted are wholly illegal, unjust and unconstitutional. He submitted that the notices which were issued and the subsequent action of demolition were carried out by an agency which was neither the land owning agency nor an authority which had statutory duty in respect of building regulations. As such, the whole action of issuance of eviction notice coupled with the demolition action is not only arbitrary but wholly unconstitutional. According to learned counsel, the appellants are entitled to restitution of their plots.

4. Learned counsel vehemently argued that the subject lands were under the occupation of the Ministry of Defence (hereinafter referred to as "*the MoD*") since time immemorial and, if at all, it could be only the said Ministry of Defence which could have some authority to issue any such notices. In any case, he submitted that even if such notices were issued by the MoD, no action for demolition could still have been carried out without hearing the appellants. By referring to various licence fee bills from the year 1952 till the year 2001, he submitted that the grandfathers and predecessors-in-interest of the appellants were licence holders of the said hutments and as such their legal heirs could not have been forcibly thrown out of the said hutments and that too without as much as a hearing. He strenuously contends that such licencees and their legal heirs could not be termed rank trespassers/encroachers and deserved hearing as per the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "*the PP Act*").

5. Learned counsel drew our attention to the minutes of the Review Meeting of the officials of the MoD and Land and Development Office (hereinafter referred to as "*L&DO*") dated 13th March, 2024. According to



him, clause (b) sub-para (i) and (ii) of para 3 of the said minutes clearly demonstrate that the subject land and the hutments thereon belonged to the MoD which was also administratively controlling the said area. He contended that it is clear from the documents placed on record by the appellants that it was the MoD which owned and administratively controlled the subject lands and as such no action could be undertaken by any other authority. He also further argued that the L&DO does not dispute that subject land was under the control of MoD which used the same for the purposes of accommodating Officers and the hutments were constructed to accommodate the staff of such Officers. In such an admitted situation, he submitted that the action of demolition by the L&DO is wholly unconstitutional and unsustainable both, on facts as well as on law.

6. Learned counsel also referred to the photograph of the E-Dharti Portal of respondent no. 3/ Ministry of Housing and Urban Affairs to submit that the lands which fall within the domain of MoD or Defence Forces, are excluded from the purview and control of the L&DO. According to learned counsel, the said document excluded the jurisdiction of L&DO from the subject lands and as such the action of demolition was wholly without jurisdiction. He submitted that on that score the appellants are entitled to restitution of their plots of land. Moreover, he submitted that the respondents had failed to place on record any document of transfer of the subject land from MoD to the L&DO. In the absence of such crucial documents, he contended that no such power, authority or jurisdiction can be read in favour of the L&DO for either issuing illegal notices or carrying out the demolition action. He argued that such being the position, the entire exercise is *ex facie*



illegal, unjust and unconstitutional and ought to be held so and the appellants be restituted their individual plots of land/hutments.

7. Learned counsel submitted that even assuming, though without admitting, that the appellants are unauthorized occupants, they cannot be declared rank trespassers/encroachers and can only be evicted by the competent department i.e. MoD. As the appellants were paying rent, they cannot be ousted without following the due process of law i.e., appellants should have been issued notice by the competent department under the PP Act. To support his contentions, learned counsel relied upon the judgments of the Supreme Court in *Sharada Dayadhish Shetty vs. The Director, CSIR-NCL & Anr*, Civil Appeal No. 223/2022 decided on 07.01.2022 and the judgement of this Court in *Bharati Shivaji & Anr vs. Union of India & Anr*, reported as 2022 SCC OnLine Del 622.

8. On the basis of the aforesaid contentions, learned counsel sought setting aside of the eviction notices as also the impugned judgement. He also sought positive directions in the nature of restitution of the subject land/hutments to each of the appellants.

CONTENTIONS OF THE RESPONDENTS :-

9. Mr. Kirtiman Singh, learned counsel for the respondents argued at the outset that the alleged grandfathers/predecessors-in-interest of the appellants were license holders though no proper records have been filed. He submitted that even if it were assumed that the grandfathers of the appellants were indeed licensees, once the period of license gets over or expires or is revoked, no right in such premises passes over to the legal heirs. On facts, he submitted that the entire area was being used for the purposes of providing



accommodation to the serving officers of the armed forces, akin to a hostel. He stated that the last of such serving officers left the said hostel sometime in the year 1993. Since then, the hostel is not being used for the purpose it was stipulated.

10. Learned counsel further submitted that the appellants were rank trespassers and there is no statutory obligation on the part of the respondents to give any prior statutory notice, though a notice for vacating the subject land/hutments was issued. He thus submitted that the action seeking demolition is an exercise of the rights of the respondents. Thus, he states that PP Act need not be invoked for removing the appellants from the subject lands/hutments. To support his contentions, learned counsel relied upon the judgement of the Full Bench of this Court in ***Chandu Lal vs. MCD***, reported as **1977 SCC OnLine Del 130** to contend that most of the appellants had not shown that they had paid any license fee for the hutments in which they are presently residing in and therefore, they are unauthorized occupants/trespassers. According to him, by way of a license, no interest in the land is transferred to the licensee. The appellants, as per learned counsel, admittedly are not the licensees. In such eventuality, the appellants would only be termed as rank trespassers.

11. Mr. Kirtiman Singh, learned counsel referred to the minutes of the Review Meeting dated 13th March, 2024, especially, clause (b) sub-para (i) of para 3 to submit that the land clearly belongs to respondents. He further submitted that it is for the appellants to prove their title by way of filing a civil suit as they are only the legal heirs of the license holders and not the licensees themselves. Thus, according to learned counsel, the appellants had no legs to stand on and their appeal ought to be dismissed.



ANALYSIS AND CONCLUSION :-

12. This Court has heard the arguments of Mr. Rajiv Khosla, learned counsel for the appellants and Mr. Kirtiman Singh, learned counsel for the respondents, perused the impugned judgement and considered the documents on record.

13. At the outset, we find it relevant to consider the status of the appellants *qua* the subject land/hutments. It is not denied by any of the parties that the predecessors-in-interest and grandfathers of the present appellants were in occupation of the subject land/hutments as licencees. It is also not disputed that the Khyber Hostel was being used as hostel services for the serving officers of the armed forces. It is also not disputed that none of the appellants were inducted into the hutments by way of a licence. As per the learned counsel for the respondents the last of such serving officers had left the hostel in the year 1993. It is also not disputed that the predecessors-in-interest and grandfathers of the present appellants were inducted as licencees in the said subject lands/hutments only for the purpose of serving the officers who were occupying the Khyber Hostel. Thus, it can be safely concluded that post 1993, the services of the original licencees were probably not required further. It has also come on record that barring appellant nos. 5 and 7, no other appellant has been able to demonstrate how they got possession of the said hutments. It is also not disputed that even appellant nos. 5 and 7 admit to have paid licence fee only till the year 2001 and not thereafter. In such factual circumstances, it cannot be said that the licence, particularly in the case of appellant nos. 5 and 7, continued even after the year 2001. So far as the other appellants are concerned, there being



no document in their favour on record, cannot be held to having legal possession of the subject lands/hutments. It is trite that no interest in the land passes over to the licensee under a license. The occupation of a particular area under licence is valid till such license is either revoked or expires by efflux of time. Any such occupation thereafter would be, in the facts of the present case, unauthorized. The license issued to an individual, cannot be transferred by inheritance, unless expressly provided for. Admittedly, the present appellants are the third generation of the original licensees. That being the case, their occupation is not only unauthorized but also tantamount to trespass upon such subject lands/hutment. Thus, the appellants would be rank trespassers on such premises. We are fortified in our view by the judgment of the Full Bench of this Court in **Chandu Lal** (*supra*). It would be apposite to extract the relevant paragraphs hereunder:-

“25. There is a catena of authorities in support of the proposition, that in the case of a license there is something less than a right to enjoy the property in the license; it cannot be exercise by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.



27. The Supreme Court recently in Board of Revenue etc. v. A.M. Ansari etc., (1976) 3 SCC 512 : AIR 1976 S.C. 1813 (10), retreated the position in law in this respect succinctly stating that it is the creation of an interest in immovable property or a right to possess it that distinguishes a lease from a licence. A license does not create an interest in the property to which it relates while a lease does. There is in other words transfer of a right to enjoy the property in case of a lease. Further it was observed as to whether a particular transaction creates a lease or a license is always a question of intention of the parties which is to be inferred from the circumstances of each case."

In view of the authoritative pronouncement of the learned Full Bench, it is, in the facts of the present case, apparent that the appellants would be rank trespassers who would have no right or interest over the subject lands/hutment. To this extent, the action undertaken by the respondents cannot be found fault with.

14. The submission of Mr. Khosla that no action could at all have been undertaken by the respondents except to first proceed in accordance with the provisions of the PP Act, is concerned, suffice it to state that the same is untenable on the facts obtained in the present case. It is apparent that the said submission is predicated on the premise that the appellants are license holders or that being legal heirs/successors-in-interest of their grandfathers, the right and interest of occupation over the subject lands/hutments would enure in their favour. This submission is fallacious. This is for the reason that once the license expires for any reason, no interest over the premises under the license flows or enures to the benefit of the ex-license holder, much less to the successors-in-interest/legal heirs. Once, we have held that the appellants are rank trespassers, the provisions of PP Act would not be applicable *qua* the said appellants. Thus, the submission of learned counsel is noted only to be rejected.



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15. Equally, the minutes of the review meeting dated 13th March, 2024 of the Ministry of Defence with the L&DO officials would not enure or be read to the benefit of the appellants. Mr. Khosla, learned counsel had sought to project as if there is an ongoing dispute between the MoD on one hand with the L&DO on the other in respect of ownership of the subject lands/hutments. It was projected to us as if the owner of the subject lands/hutments is the MoD and if so, then it could, though without admitting, be the only authority which could possibly issue the eviction notices and, if at all, take any consequential action in the nature of eviction or demolition. According to learned counsel, this issue of ownership not being clear, would render the eviction notices as also the consequent demolitions, illegal, unjust and wholly unconstitutional. To this, learned counsel for the respondents had invited our attention to Clause (b) of sub-para (i) of para 3 of the said review meeting which clearly indicated that the land belongs to the Central Government and was in occupation of Defence. We have perused Clause (b) of sub-para (i) of para 3 of the said meeting and find that the ownership of the Central Government over the said area is undoubted. It is clear from the reading of the minutes that the MoD appears to have been permitted to utilize the subject premises for its purposes. The mere fact that the Khyber Pass Hostel and the accompanying hutments were constructed by CPWD out of the defence estimates alone would not indicate that the ownership of the said area or the subject lands/hutments was with the MoD. We find that the learned Single Judge had in para nos. 4 and 5 of the impugned judgment also noted that the entire land situated at Khyber Pass was a part of land acquired by the Government for the public purpose, namely, for the new Capital of India at Delhi *vide* notification No. 775 dated

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21.12.1911. It was further noted that *vide* the letter dated 25.01.1926, the land in question got transferred to the management of Notified Area Committee. Learned Single Judge also observed that *vide* the letter dated 31.03.1958 the Government of India had decided to transfer the said land falling within the jurisdiction of the Notified Area Committee, to the management and care of L&DO. Thus, the action of issuance of eviction notices as also the consequent demolitions appear to have been carried out by the competent authority i.e. the L&DO. In that view too, we hold that the action taken by the L&DO cannot be said to be illegal or unconstitutional.

16. The aforesaid view taken by us regarding the ownership of the land, would also entail rejection of the argument of learned counsel for the appellants based on the E-Dharti Portal of Ministry of Housing and Urban Affairs.

17. So far as the reliance of the appellants on **Bharati Shivaji** (*supra*) judgement is concerned, the same would not be applicable to the facts of the case. In that case, the petitioners therein were inducted into Government residential quarters on account of their being exponents in various artistic fields. Those petitioners were occupying such premises for varying periods. It was on account of the judgement rendered by the Supreme Court in a Public Interest petition, that the Central Government framed policies for providing such residential accommodation under the provisions Allotment of Government Residences (General Pool in Delhi) Rules, 1963. The action of eviction which was initiated against those petitioners was based on the provisions of PP Act, ostensibly, on the premise that those petitioners were licence holders under the said act. Such notices were challenged by way of writ petition before the learned Single Judge of this Court. The learned



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Single Judge while adverting to the various provisions of PP Act and in the facts obtaining to those cases, did not agree with the contentions of those petitioners and had dismissed the writ petitions on merits. In the present case, the appellants admittedly are not the original license holders. Clearly, in view of the aforesaid analysis, there all unauthorized occupants and rank trespassers. In fact, they have been unable to demonstrate by way of documentary evidence their lawful induction into the subject land/ hutments. Thus the reliance on the judgement in **Bharati Shivaji** (*supra*) is misplaced.

18. In view of the aforesaid analysis and findings, we find no reason, much less any cogent reason to interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.

19. Pending applications, if any, stand disposed of.

TUSHAR RAO GEDELA, J

ACTING CHIEF JUSTICE

JULY 29, 2024/rl/aj

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