



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

% **Reserved on : 20th July, 2022**
Pronounced on: 23rd September, 2022

+ **W.P.(C) 213/2010 & CM APPL. 444/2010**

JEPS PHARMA LTD AND ANR Petitioner

Through: Mr. Pawanjit S. Bindra, Sr.
Advocate with Mr. Vinayak
Marwah, Advocates

versus

OFFICE OF COMMISSIONER OF INDUSTRIES AND ANR

..... Respondent

Through: Ms. Anusuya Salwan, Mr. Bankim
Garg, Mr. Shakaib Khan and Mr.
Rachit Wadhwa, Advocates for
DSI IDC.
Mr. Waseem Ahmed, Legal Asstt.
and Mr. Suresh Kumar, Manager
DSI IDC.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil writ petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioners for quashing and setting aside of order dated 6th June 2003, passed under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "PP Act") passed by the Estate Officer concerned, as well as of order dated 30th October 2009 passed by



the learned District Judge, Karkardooma Courts, Delhi (hereinafter referred to as “Appellate Court”) in PPA No. 3/08/03.

FACTUAL MATRIX

2. The following course of events have led to filing on the instant petition:

3. Petitioner no. 1/M/s Jeps Pharma (P) Ltd. (hereinafter “the lessee”) was leased out the premises bearing Plot No. 133, Functional Industrial Estate, Patparganj, Delhi by the Delhi Administration via a perpetual Lease Deed dated 28th January 1993. The petitioner no. 1/lessee sold the premises in question to one Mahesh Kapoor, petitioner no. 2, through its Director Shri Jatinder Singh Kohli, vide Sale Agreement dated 15th March 1995 and petitioner no. 2 became its General Power of Attorney holder (hereinafter referred to as “GPA”) and subsequently, got a building constructed at the premises.

4. In December 1998- January 1999, the petitioner received a Notice under the PP Act for hearing on 5th January 1999 issued in pursuance of an *ex-parte* order of cancellation of Lease Deed of the petitioners dated 27th May 1998 and its corrigendum dated 20th June 1998 passed by the Office of the Commissioner of Industries, GNCTD/respondent no. 1. The petitioner made a representation to the Lt. Governor of Delhi for revocation of the said *ex-parte* order. The petitioner, thereafter, also filed detailed objections on 5th March 1999 with the concerned Estate Officer pursuant to which proceedings under the PP Act were initiated. During



the course of proceedings, the same were transferred from one Estate Officer, namely Sh. H.L. Malik, to another, that is, Sh. C.B. Meshram/respondent no. 2.

5. The matter before the Estate Officer came to a conclusion with the passing of the impugned order dated 6th June 2003, whereby, proceedings for eviction of the petitioner were ordered to be initiated after observing on essentially the grounds, *first*, that reasonable opportunities were given to the petitioner to present their case before cancellation of the lease and completion of these proceedings, however, no response was submitted by them, *secondly*, that the petitioner was not running the industry for the purposes for which the lease was granted and plot was allotted to it and hence, it violated the terms of the lease, and *thirdly*, that none of the directors of the petitioner, or any other person on its behalf, replied to the Notice served under the PP Act.

6. Aggrieved by the said order of the Estate Officer, the petitioner preferred an appeal before the Appellate Court, which also came to be decided against the petitioner by the passing of the impugned order dated 30th October 2009, wherein it was observed that adequate notice was served to the petitioners herein and they were given a fair, just and reasonable opportunity to present their case. It was further observed that the premises in question were in fact a public premise and thus, no grounds were found to interfere with the impugned order of 6th June 2003.

7. During the pendency of the Appeal, a Scheme of Conversion of property from Leasehold to Freehold was introduced by the respondent



(hereinafter “the Scheme”). The petitioner, seeking benefits under the Scheme, approached the Office of Commissioner of Industries where he was told that since the lease deed in question had been cancelled, he could not apply for conversion. The petitioner no. 2 also challenged the rejection of his conversion application, which is the subject matter of W.P. (C) 4250/2007 and has been dealt with in the said matter extensively.

8. Hence, the instant petition has been filed assailing the impugned orders dated 6th June 2003 and 30th October 2009.

SUBMISSIONS ON BEHALF OF THE PARTIES

9. Mr. Pawanjit S. Bindra, learned senior advocate appearing on behalf of the petitioner submitted that the impugned orders have been passed without appreciating the proper facts and circumstances and are therefore, liable to be set aside. *Per Contra*, learned counsels appearing on behalf of the respondents have vehemently opposed and submitted that there is no error or illegality in the impugned orders passed by the Estate Officer as well as the Appellate Court and hence, the instant petition is liable to be dismissed. The submissions on behalf of the parties on the orders impugned before this Court are detailed hereunder:-

A. Qua cancellation order

Petitioner's Submission

10. At the very outset, it is submitted that the lease of the petitioner was cancelled arbitrarily vide the orders dated 27th May 1998 and corrigendum thereto dated 30th June 1998. The petitioner made a



representation for revocation of the *ex-parte* cancellation order and restoration of lease deed with the Lt. Governor, however, did not receive any communication in response. It is submitted that the petitioner did not violate any condition of the Lease Deed, since the Sale Agreement and GPA executed in favour of the petitioner no. 2 was through Shri Jatinder Singh Kohli and the Lease Deed had been wrongly cancelled.

Respondents' Submission

11. On the contrary, it is submitted by the learned counsel of the Respondent that the petitioner has blatantly violated the terms of the Lease Deed dated 28th January 1993. The Lease Deed in favour of the petitioner was executed for the purposes of carrying out activity of manufacturing surgical bandages. However, a report of Estate Manager dated 17th February 1997 revealed that the premises in question was converted into a Banquet Hall. Pursuant to this finding, Show Cause Notices were issued to the petitioner on 26th September 1997 and 23rd February 1998 via registered post to the original allottee/petitioner.

12. It is submitted on behalf of the respondents that as per Clause 5(a) of the Lease Deed, the lessee/petitioner could not have sold, transferred, assigned, sublet or otherwise parted with the possession of whole or any part of the industrial plot except with the prior consent of the lessor in writing. It is submitted that the allottee was required to reply within seven days of issuance of the Notice dated 26th September 1997 and within fifteen days of issuance of the Notice dated 23rd February 1998, however, no reply was received on the said notices.



13. It is further submitted on behalf of the respondents that it was only thereafter, the allotment in the case was cancelled and the lease was determined with the approval of Lt. Governor of Delhi vide Order dated 27th May 1998. It is submitted that by the said Order, the lessee/petitioner was required to hand over the peaceful possession of the said plot to the Estate Officer, Office of the Commissioner of Industries within seven days of receipt of the Order. The lessee also had the liberty to appeal before the Lt. Governor of Delhi within thirty days of the date of issuance of the letter. However, the possession was not handed over to the respondent and therefore, the matter was referred to the Estate Officer for initiation of eviction proceedings, consequent to which the Order dated 6th June 2003 was passed by the Estate Officer directing the petitioner and all persons in the occupation of the plot in question to vacate the same within fifteen days from the date of publication of order.

B. Qua order of the Estate Officer

Petitioner's Submission

14. On behalf of the petitioners, it is submitted that the Lease Deed has been determined by the *ex-parte* order dated 27th May 1998, whereby it was alleged by the respondents that the petitioner was served two Show Cause Notices dated 26th September 1997 and 23rd February 1998, however, the concerned authority failed to appreciate that the respondent witness, R.C. Sharma, has admitted that there was no evidence to show that the said Notices were actually served upon the petitioner. The said witness also admitted that a Lease Deed cannot be cancelled by anyone



below the rank of Lt. Governor of Delhi. However, these facts were also not appreciated by the Estate Officer as well as the Appellate Court.

15. Learned senior counsel submitted that the Lease Deed contained Clause 4 on provisions of re-entry, which clearly spelt out that before any coercive action of re-entry is to be taken, a notice is a must and if the breaches are of remediable nature, then opportunity to remedy the same must also be given to the lessee. It has been admitted by the respondent witness in his cross-examination that in the present case, no Notice under Clause 4 of the Lease Deed was sent by the respondents to the petitioner. Further, the said witness has also confirmed that no notice was sent to the petitioner between 7th April 1998, i.e., the date of inspection report, and 22nd May 1998, i.e., the date of *ex-parte* cancellation order. Under these circumstances, it is evident that the cancellation order dated 27th May 1998 itself is not sustainable in the eyes of law. Reliance has been placed upon ***Express Newspaper vs. Union of India, AIR 1986 SC 872***, wherein it was held that for enforcement of the alleged right of re-entry if any, upon the forfeiture of lease due to breach of term of lease is by way of filing of suit by the lessor and not PP Act proceedings.

16. Learned senior counsel submitted that the proceedings under the PP Act were conducted in a biased manner, since, the petitioner appeared before the respondent no. 2 and summoned two of its witnesses, Estate Manager of respondent no. 1 with inspection report of the premises in question and the Deputy Director, DDA with the Scheme Regulation regarding Banquet Halls on 24th January 2003, however, the respondent no. 2 in blatant violation of principles of natural justice and procedure of



law did not allow examination of these witnesses. Moreover, the respondent no. 2 closed the evidence of petitioner no. 2 abruptly, and without affording opportunity to address the closing arguments on behalf of the petitioner, reserved the matter on the same day. Whereas, the respondents were given a period of two years to adduce their evidence. Ultimately, the impugned order dated 6th June 2003 was passed without the proper appreciation of facts and evidence and hence, the petitioner preferred an appeal against the said order.

Respondents' Submission

17. Learned counsel for the respondents, on the other hand, submitted that the petitioner made a representation before the Lt. Governor of Delhi for restoration of allotment of the plot, however, the same also came to be rejected. Aggrieved by the order of the Lt. Governor, the petitioner filed an Appeal, and the Appellate Court giving the similar observations on violation of terms of the Lease Deed also rightly dismissed the Appeal of the petitioner.

18. The respondents have alleged violation of Clause 5 (a) of the Lease Deed dated 28th January 1993, which stipulates that the lessee shall not sell/transfer the premises in question without prior permission of the lessor, and Clause 13, according to which the premises in question shall not be used for any other purpose than specified in the Lease Deed. It is submitted that the Estate Manager of respondents was summoned by the petitioner who had the inspection report dated 2nd May 2002, appended to the petition as Annexure P-12/13, which showed that there was no misuse of the premises in question. However, the Estate Officer did not allow the



witness to be produced. The said inspection report was also placed on record before the Appellate Court, however, was overlooked.

19. It is submitted by the Respondents that the Notices under Section 4 of the PP Act were duly served and communicated to the petitioner as well as the original allottee before the cancellation of the Lease Deed. It was observed by the Appellate Court that the Notices were sent on the leased premises and on the address of the original allottee at Shalimar Bagh. Yet no reply was received and eventually, the Lease Deed was cancelled vide Order dated 27th May 1998.

20. It is submitted that the transfer of proceedings from one Estate Officer to another were in accordance with law and the respondent no. 2 was appointed by a proper notification by the Central Government vide Notification dated 10th April 1995.

C. Qua order of the Appellate Court

Petitioner's Submission

21. Learned senior counsel on behalf of the petitioner submitted that the Appellate Court did not consider the fact that the proceedings before the Estate Officer were not in consonance with the law.

22. It is submitted on behalf of the petitioners that during the proceedings under the PP Act before the Estate Officer, the petitioner filed a list of witnesses and evidence by way of an Affidavit and summoned the witnesses so to be produced, however, without any proper notification, the proceedings were transferred from one Estate Officer to another, i.e., respondent no. 2. The appointment of the Estate Officer was



not in consonance with the provisions of the PP Act yet the Appellate Court also did not appreciate this aspect while deciding the Appeal.

23. It is submitted that during the pendency of the appeal, a scheme of respondent no. 1 came into being for conversion from leasehold to freehold. Relying upon the cases of ***J.K. Bhartiya vs. Union of India*, 126 (2006) DLT 302**, ***Union of India vs. Vinay Kr. Aggarwal*, 116 (2005) DLT 322 (DB)** and ***Bal Kishan Chhabra vs. Union of India*, 127 (2006) DLT 460**, learned counsel for the petitioners submitted that the Scheme was applicable to those cases as well where lease deed has been cancelled and hence, the petitioner is entitled to the benefit of the Scheme. Any discrepancies in restoration of the lease deed could be resolved. It has been stated that according to various judgements of this Court a lease deed ought to be restored and converted into free-hold. Any cancellation proceedings, if underway, must be withdrawn, once an application is placed under the abovementioned scheme. As per the said conversion scheme when the latest GPA holder applies for conversion in favour of the latest purchaser and pays the conversion charges plus surcharge, the lease cancellation orders, if any, have to be withdrawn and the lease deed has to be restored and the conveyance deed has to be granted to the latest purchaser. The petitioner accordingly, made a representation alongwith Conversion Application Form and requisite fees before the respondent no. 1 which was also not appreciated in proper perspective and was therefore, rejected vide letter dated 20th March 2007. The challenge against the said order is the subject matter of W.P. (C) 4250/2007. The petitioner also made subsequent



representations/applications with the requisite fees/ bank drafts dated 10th July 2009 and 28th August 2009.

24. Placing reliance on the matter of ***Hari Prakash Education Welfare Society vs. DDA, 152 (2008) DLT 84 (DB)***, it is submitted that as per the several judgments passed by this Court regarding the Conversion Scheme, the lease deed in the present case ought to be restored and be converted into freehold. The relevant judgements passed by this Court in this regard were placed on record before the Appellate Authority. However, the Appellate Court has completely overlooked and ignored the same while passing the impugned order. It is submitted that if the lease is restored or cancellation thereof is held invalid, then the PP Act proceedings, even if concluded, would become redundant.

Respondents' Submission

25. It is submitted on behalf of the respondents that the Appellate Court held that the Central Government may appoint any person, being a Gazetted Officer or Officer of equivalent rank as Estate Officer by notification in the Official Gazette. It is submitted that the transfer of proceedings from one Estate Officer to another were in accordance with law and the respondent no. 2 was appointed by a proper Notification by the Central Government dated 10th April 1995. It is further submitted that the Appellate Court while passing the impugned order carefully considered and perused the record before the Estate Officer and only then came to a finding that ample opportunity was given to the petitioner to lead evidence and address its arguments. The Estate Officer considered and examined all the evidence placed before him. It is submitted that the



application before the Estate Officer had already been considered by him and an application for producing witnesses at a belated stage was only to delay the proceedings before it.

26. Learned counsel for the respondents submitted that the petitioner is seeking conversion from leasehold to freehold, however, such a conversion can only be affected in favour of the power of attorney holder when there is a valid subsisting allotment existing. In cases where the lease deed stands determined the allotment has to be restored and only then can application for conversion can be processed. It is submitted that as per the Scheme, under Para 6(ii) it is specifically provided that in case of the re-entered properties, conversion would be allowed only when re-entry notice has been withdrawn and lease deed/allotment has been restored. It is further submitted that restoration of Lease Deed and conversion from leasehold to freehold is not a composite process rather it implies that the case of conversion would be allowed only after process of restoration, if any, as per merits, is concluded under the relevant provisions of the Land Management Guidelines and is allowed.

27. It is submitted that in the instant case of the petitioner, the matter of revocation of order of determination of lease was decided against the petitioner and till the plot is restored in its name, there will be no cause for allowing conversion from leasehold to freehold as per the Scheme.

28. Heard learned counsel for the parties and perused the record.



ANALYSIS AND FINDINGS

29. At the very outset, it is pertinent to outline the scope of writ jurisdiction under Article 226 and 227 of the Constitution of India while examining and adjudicating upon an impugned order in the instant petition.

Scope of Writ Jurisdiction

30. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

31. In ***Nagendra Nath Bora vs. Commr. of Hills Division and Appeals***, AIR 1958 SC 398, the Hon'ble Supreme Court made the following observations while examining the scope of interference by High Courts in an order impugned and what would constitute an error apparent on record:-

“37. But the question still remains as to what is the legal import of the expression „error of law apparent on the face of the record“. Is it every error of law that



can attract the supervisory jurisdiction of the High Court, to quash the order impugned? This court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the face of the record. In this respect, the law in India and the law in England, are, therefore, the same. It is also clear, on an examination of all the authorities of this Court and of those in England, referred to above, as also those considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction.

38. The principle underlying the jurisdiction to issue a writ or order of certiorari, is no more in doubt, but the real difficulty arises, as it often does, in applying the principle to the particular facts of a given case. In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the record. If at all they are errors, they are errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, those are errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected. As already indicated, the Appellate Authority had unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional



jurisdiction. Section 9(3) of the Act, gives it the power to pass such orders as it thought fit. These are words of very great amplitude. The jurisdiction of the Appellate Authority, to entertain the appeals, has never been in doubt or dispute. Only the manner of the exercise of its appellate jurisdiction was in controversy. It has not been shown that in exercising its powers, the Appellate Authority disregarded any mandatory provisions of the law. The utmost that has been suggested, is that it has not carried out certain Executive Instructions. For example, it has been said that the Appellate Authority did not observe the instructions that tribal people have to be given certain preferences, or, that persons on the debarred list, like smugglers, should be kept out (see p. 175 of the Manual). But all these are only Executive Instructions which have no statutory force. Hence, even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the power of the Appellate Authority to make its own selection, or affect the validity or the order passed by it.

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41. A Constitution Bench of this Court examined the scope of Article 227 of the Constitution in the case of Waryam Singh v. Amarnath [(1954) SCR 565] . This Court, in the course of its judgment, made the following observations at p. 571:

“This power of superintendence conferred by article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR (1951) Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of



judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Art 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art, 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. Hence, interference by the High Court, in these cases, either under Article 226 or 227 of the Constitution, was not justified.”

32. The Hon’ble Supreme Court in ***Union of India vs. P. Gunasekaran, (2015) 2 SCC 610***, elaborating upon the extent of exercise of writ jurisdiction, held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be.... ”

33. Further, the Hon’ble Supreme Court in ***Sarvepalli Ramaiah vs. District Collector, Chittoor, (2019) 4 SCC 500***, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-



“41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.”

34. Further in ***Sanjay Kumar Jha vs. Prakash Chandra Chaudhary, (2019) 2 SCC 499***, the following observations were made by the Hon'ble Supreme Court:-

“13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based



on evidence and substitute its own findings, which the High Court has done in this case....”

35. The law, as has been interpreted by the Hon’ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the question of law and the contents of impugned orders.

Findings qua Order of Estate Officer dated 6th June 2003

36. This Court has perused the impugned order dated 6th June 2003 bearing No. F./EO/CI/4/2003/458. The said order was passed under Section 6 (1) of the PP Act which reads as follows:-

“6. Disposal of property left on public premises by unauthorised occupants.—

(1) Where any persons have been evicted from any public premises under section 5 [or where any building or other work has been demolished under section 5B], the estate officer may, after giving fourteen days’ notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such premises.”

37. Consequent to the passing of an *ex-parte* order of cancellation Lease Deed dated 27th May 1998 and a corrigendum thereto dated 30th June 1998 whereby the lessee/petitioner was directed to hand over the



peaceful possession of the premises in question for having violated the terms of the Lease Deed the said Notice under Section 6 (1) of the PP Act was issued. The relevant portion of the impugned order dated 6th June 2003 is reproduced hereunder:-

“The plot was allotted on lease executed on 23rd September 1992 for running industry of food processing, drugs and pharmaceuticals. It was detected that M/s Jeps Pharma (P) Ltd. was not running the industry for which the plot was allotted but someone else was running a banquet hall under the name of “Jhankar Banquet Hall” on the said plot and also the adjacent plot no. 106 which to was cancelled.

M/s Jeps Pharma (P) Ltd. was called up on to explain the position regarding violations of lease conditions. No reply was received from the company. The show cause notice for cancellation of lease was served on 19.03.97 and 23.03.98 for determining the lease. The lease was determined by the lessor after satisfying the contravention of the lease condition and following due process of law vide Order No. FIEP/C1/FP/133 dated 27.05.98 and the company was directed to hand over the possession within 30 days. The detail contraventions are given in the cancellation order dated 27.05.98.

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The Notice under sub-section (1) and clause (b)(ii) of sub-section (2) of Section 4 of the P.P. Act was issued vide letter No. EQ/CI/1/98/593-595 dated 17.11.98 to Company and was duly received by one of the Directors Shri Jitender Singh Kohli on behalf of the company. One copy was pasted on the door of the factory premises



None of the directors of the ex-allottee company have replied to the notice issued under PP Act, 1971. One Mr. Mahesh Kapoor through Shri R.S. Deewan, advocate filed objections to the show cause notice claiming to hold power of attorney given by Shri Jitendra Kumar Kohli on behalf of M/s Jeps Pharma (P) Ltd. The reply to the objections have been filed by the Deptt through Govt. Counsel Ms. Bindiya Savara and hearing concluded on 13.05.03.

It is established that lessor has determined the lease executed by the ex-allottee M/s Jeps Pharma (P) Ltd. for violation of the conditions of lease after issuing show cause notice and following due process of law. M/s Jeps Pharma (P) Ltd., ex-allottee is not functioning at plot no133 FIE Patparganj and the ownership has been passed on illegally without obtaining prior permission of lessor. Shri Mahesh Kapoor is illegally occupying the premises and running Banquet Hall. Once the lease is cancelled occupation by persons other ex-allottee is not only unauthorized alone but also illegal and occupation can not be continued under any circumstances. It is established that all the reasonable opportunities have been given to ex-allottee company and their directors before cancellation of lease and now before concluding the hearings under PP Act. However, the company and its directors did not respond nor appeared in any of the hearing to explain their case.

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Now, therefore, in exercise of the powers conferred on me under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order that the said Shri Jatinder Singh Kohli and Shri Rakesh Bajaj, Directors M/s Jeps Pharma (P) Ltd. and all person who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of



publication of this order. In the event of refusal or failure to comply that with this order within the period specified above the said Shri Jatinder Singh Kohli and Shri Rakesh Bajaj and all the other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

38. The primary grounds taken by the authority while cancelling the lease of the petitioner were, first, transfer of premises in question without prior permission of the lessor and, secondly, use of the premises in question for purposes other than provided for in the lease deed. The entire controversy started when the premises in question was found to be being used for purposes other than what the lease was executed for.

39. The Estate Officer while passing the order noted that two Show Cause Notices dated 19th March 1997 and 23rd March 1998 were served upon the petitioner/its directors, however, the directors failed to respond or appear before the concerned authority while the proceedings for determination of lease were underway. The petitioner has argued that the said Show Cause Notices were never received by it and hence, it came to know about the cancellation of the lease only when proceedings under the PP Act were initiated against it. However, the respondents submitted that the Notices were duly served upon the petitioner and its directors. This issue regards to a dispute of facts which cannot be adjudicated and looked into by appreciating evidence and conducting a roving inquiry into the proceedings. Therefore, the contents of the impugned order shall be looked into to evaluate the position. To this effect, the Estate Officer noted in the impugned order that the petitioner was called to explain its position regarding transferring the property in the name of petitioner no. 2



and using the property for purposes other than the purpose laid out in the Lease Deed, since no reply was received, the above mentioned Show Cause Notices were issued for cancellation of the lease. Therefore, it is not a case where the petitioner was not given any opportunity to appear before the concerned authority and present its case against cancellation of Lease Deed.

40. The contents of the impugned order suggest that the petitioner was found to be in violation of the conditions of the Lease Deed executed on 28th January 1993. The same have been reproduced hereunder:-

“(5)(a) The Lessee shall not sell, transfer, Assign, sub-let or otherwise part with the possession of the whole or any part of the industrial plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.

PROVIDED that such consent shall not be given for a period of ten years from the commencement of this lease unless, in the opinion of the Lessor, exceptional circumstances exist for the grant of such consent.

PROVIDED FURTHER that in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the industrial plot at the time of sale, transfer, assignment, sub-letting or parting with the possession, the amount to be recovered being fifty per cent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding:



PROVIDED ALSO that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.

(13) The Lessee shall not without the written consent of the Lessor use or permit to be used, the industrial plot or any building therein for residence or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that is running a small scale industry for carrying on the manufacturing process or running the industry of Human and Veterinary Pharmaceuticals viz. Tablets, Capsules and Liquids or such other manufacturing process or industry as may be approved from time to time by the Lt. Governor or do or suffer to be done therein any act or thing whatsoever, which, in the opinion of the Lessor, may be a nuisance, annoyance or disturbance to the Lessor and persons living in the neighbourhood. The Lessee further agree not to use the plot or the building erected thereon for any industrial activity that, in the opinion of the Lessor, is pollutant:

PROVIDED that, if the Lessee is desirous of using the said industrial plot or the building thereon for a purpose other than that if the manufacturing process or industry as may be approved form time to time, the Lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in absolute discretion determine.”

41. Clause 5(a) of the Lease Deed expressly barred the petitioner no. 1/lessee to transfer the premises so leased without the prior permission of the lessor. Yet the premises in question was found to be transferred in the name of the petitioner no. 2, without the said prior permission of the lessor.



42. Secondly, the Clause 13 also explicitly barred the lessee/petitioner to use the premises in question for purpose other than running the industry for '*Human and Veterinary Pharmaceuticals viz. Tablets, Capsules and Liquids*'. However, it is found that after having transferred the premises in the name of petitioner no. 2, it was being used as a Banquet Hall and not in any manner, whatsoever, for running the industry as stipulated in the Lease Deed.

43. Keeping in view these observations, the Estate Officer passed the impugned order dated 6th June 2003. The material before the Estate Officer was duly considered and appreciated by him and the observations as well as the findings given by the Estate Officer were in accordance with the provisions of law, the terms and conditions of the Lease Deed as well as the facts of the case.

Findings qua the Appellate Order dated 30th October 2009

44. This Court has perused the impugned order dated 30th October 2009 passed by the learned District Judge in PPA No. 3/08/03. The said order was passed in the Appeal preferred by the petitioner against the order of the Estate Officer dated 6th June 2003. The petitioner while moving the court of learned District Judge and challenging the order of the Estate Officer invoked the following grounds:

- a. That there were no Show Cause Notices issued to the petitioner before cancellation of the Lease Deed.
- b. That the Show Cause Notices and the Order of the Estate Officer were against the facts.



- c. That the appointment of the Estate Officer, to whom the proceedings were transferred mid-proceedings, was not in accordance with the law.
- d. That there were no grounds with the Estate Officer to evict the petitioner from the premises in question.
- e. That the petitioner was not given opportunity to lead evidence.
- f. That the premises in question is not a public premises and therefore, the provision of PP Act were not applicable on the same.

45. The relevant paragraphs of the impugned order dated 30th October 2009 is reproduced hereunder:-

“8 The appellant has taken the ground that the Estate Officer was not duly appointed by the Government. As per Sub-section (a) of Section 3 of the Act, the Central Government may by notification in the Official Gazette appoint any person, being Gazetted Officer or the officer of equivalent rank (of the Government of any Union Territory) as the Estate Officer. Perusal of record shows that the Estate Officer was appointed by the Government of India vide notification dated 4.10.1995. Perusal of record further shows that the respondent no.2 was working as Gazetted Officer in the Ministry of Industries and lie was so appointed by the Central Government to act as Estate Officer. Thus, the arguments of the appellant has no force that the Estate Officer was not appointed in accordance with law.

9 Next ground taken by the appellant that the premises in question do not fall in the category of



public premises. Section 2(e) of the Act defines the work "Public Premises". As per clause (2)(vii) of Section 2 of the Act, any premises belonging to, or taken on lease by any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi. Admittedly, the premises in question belongs to Delhi Administration, Department of Industries. Thus, I am of the view that the premises taken on lease by the appellant is a public premises.

10 The perusal of lease deed dated 28.1.1993 shows that the premises in question was leased out in the name of M/s JEPS Pharma (P) Ltd. through its Director Sh. J.S. Kohli. The premises was leased out for running the industry of food processing, drugs and pharmaceuticals. The appellant was issued notices dated 19.3.1997 and 26.9.1997. The appellant was called upon to show cause as to why the lease should not be cancelled for breaching the terms and conditions of the lease deed and regarding the change of trade from the premises which was not allowed. No explanation was submitted by the appellant to the said notice.

11 A survey of the premises of the appellant was conducted by the respondent on 6.4.1998. The survey report dated 7.4.1998 shows that the premises of the appellant was found to be not adhering to the terms and conditions of the lease deed. The appellant was allowed to run only the industry of food processing, drugs and pharmaceuticals, but the appellant was found to be running a banquet hall in the name of Jhankar Banquet Hall from the said premises.

17 Perusal of record further shows that the appellant was given opportunity to lead its evidence. The affidavit of Sh. Mahesh Kapoor was filed on behalf of the appellant. Sh. Mahesh Kapoor, GPA of the



appellant was cross-examined by the Department on 13.5.2003. The record of the Estate Officer shows that during his cross-examination, Sh. Mahesh Kapoor passed indecent remarks against the Govt Counsel by stating that the counsel was showing "Tadi" in the case of plot no.106. The Govt. Counsel showed her ignorance to continue with his cross-examination. The Ld. Estate Officer closed the evidence of Sh. Mahesh Kapoor by stating that the lease of the appellant regarding the premises in question had already been cancelled for violation of lease conditions. It is also the admitted case of the appellant that the policy documents produced by its other witnesses were taken on record by the Estate Officer. Thus, the ground taken is unfounded on record and it shows ample opportunities to lead evidence were granted.

20 Admittedly, the lease of the appellant was cancelled vide order dated 27.5.1998 and the same has not been set aside or changed by any competent authority till the date, which culminated into the fact that the lease remained cancelled, till the date.

21 As discussed above, it is established that the appellant was found to have violated the terms and conditions of clause 13 of the lease deed. As lease deed, the plot in question was leased out to the appellant for running the industry of food processing, drugs and pharmaceuticals. Clause 13 of the lease deed shows that the appellant, without the consent of respondent no.1, was not permitted to use the plot for residence or for carrying any other trade or business, except permitted vide lease deed. It is the admitted fact that the appellant had been running a banquet hall, in the name and style of Jhankar Banquet Hall from the leased premises. As per said clause of the lease deed, the appellant without the consent of the respondent no.1, was not allowed to change the use of premises and to



run the banquet hall. Thus, the appellant violated the conditions of the lease deed dated 28.1.1993.

22 *It is established from the record that the notices u/s 4 of the Act were duly served and communicated upon the appellant. Before cancelling the lease deed, the appellant was issued two show cause notices u/s 4 of the Act. The record of the enquiry officer reveals that the said notices were sent on the leased premises and on the address of the original allottee Sh. Joginder Singh Kohli an Sh. Rakesh Kumar Bajaj. As the appellant failed to reply the show cause notices, the lease deed was cancelled vide order dated 27.5.1998. Apparently, there is no procedural irregularity, conducted by the respondent no.1.*

23 *The impugned order dated 6.6.1993 is based upon the order dated 27.5.1998, cancelling the lease deed. As the appellant violated the terms and conditions stipulated in clause 13 of the lease deed, therefore, the appellant was declared as unauthorized occupant of the premises in question. The order of the Estate Officer is detailed one, dealing each and every aspect of the matter. The appellant was held to be unauthorised occupant of the premises. In case titled, **State of UP Versus Roop Lal Sharma (reported in 1997 AIR (SC) 697)**, the Hon'ble Supreme Court held that any person in occupation after the determination of the lease for any reason whatsoever, would make the occupation unauthorized. Relevant para 7 of the judgment reads as under:*

“Unauthorised occupation is defined in Section 2(g). The definition comprises within its contours occupation of the public premises by any person without authority for such occupati9n, and also the continuance In occupation of such premises by any person after' the authority (under



which or , the capacity in which he was allowed to hold or occupied the premises), has expired or has been determined for any reason whatsoever. Thus, continuance in occupation after the determination of such authority would also make the occupation unauthorized for the purpose of the said Act."

24 Thus, keeping in view the above judgment, I am of the view that the Estate Officer has rightly held the appellant as unauthorized occupant of the premises and passed the eviction order. I do not find any illegality or infirmity in the impugned order. The order passed by the Estate Officer do not call for any interference.

26 In view of the facts and circumstances of the case and the discussion made above, I am of the considered opinion that the appellant has failed to make out any ground in support of the appeal. I do not find any ground for interfering in the order of the Ld. Estate Officer. Consequently, the appeal is hereby dismissed.

27 The interim stay granted vide order dated 21.6.2003 with regard to the eviction of the appellant, stands vacated."

46. The several grounds taken by the petitioner have been addressed and adjudicated upon by the Appellate Court. These findings were made after conscious and elaborate appreciation of evidence by the Appellate Court.

47. This Court shall now deal with the contentions raised challenging the order of the Appellate Court. The petitioner submitted that the Appellate Court overlooked the fact that the Estate Officer was not appointed in terms of the PP Act. The procedure for appointment of an



Estate Officer requires a notification by the Central Government in accordance with Section 3 of the PP Act which is reproduced hereunder:-

“3. Appointment of estate officers.—The Central Government may, by notification in the Official Gazette,—

(a) appoint such persons, being gazetted officers of Government⁴ [or of the Government of any Union Territory] or officers of equivalent rank of the [statutory authority], as it thinks fit, to be estate officers for the purposes of this Act:

[Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with the Speaker of the Lok Sabha:

Provided further that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority:

[Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 (34 of 1968) shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968;]

(b) define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and



perform the duties imposed, on estate officers by or under this Act.”

48. In the instant case, the concerned Estate Officer met the eligibility and was notified by the Central Government in accordance with the provisions of PP Act vide Notification dated 10th April 1995. The proper channel and procedure were followed while appointing the Estate Office concerned and there was no lapse or illegality that was found in his appointment.

49. It is submitted on behalf of the respondents that the next ground taken to challenge the order of the Appellate Court is that it did not consider the fact that the petitioner was not given sufficient opportunity to adduce evidence. The petitioner produced petitioner no. 2 as its witness who was examined. The said witness also produced his affidavit and also was cross-examined. The evidence of the petitioner was closed by the Estate Officer only after it was found that all necessary documents and material to ascertain the question of cancellation of the Lease Deed was already on record. Accordingly, it was rightly found that the petitioner was given ample opportunity to adduce evidence and only, thereafter, his evidence was closed.

50. Learned counsel for the respondents submitted that the petitioner has placed reliance on an enquiry report dated 2nd May 2002 to submit that the premises in question was not being used for any other purpose than for *Human and Veterinary Pharmaceuticals viz. Tablets, Capsules and Liquids*, as per the Lease Deed dated which is appended to the petition as Annexure P-1. On a bare perusal of the report, it is found that



the contents of the report state that certain part of the premises was being used by Shri Mahesh Kapoor and evidently, the occupant of the premises was unauthorized and was using the premises, meant for the above stated purposes, as a Banquet Hall. The contention of the petitioner is that the inquiry report dated 2nd May 2002 has not been considered by the Appellate Court, however, the report itself does not suggest anything in its favour.

51. All the above mentioned observations show that the Appellate Court considered the case of the petitioner, heard all the parties, appreciated the material and evidence on record before it and passed a detailed and reasoned finding on each of the ground invoked by the petitioner.

CONCLUSION

52. This Court, keeping the limitations to its powers as a writ court in mind, has perused and considered the pleadings, including the petition, the counter affidavit, the rejoinder and the written submissions filed by the parties and has found that both the impugned orders have been passed by the respective authorities in light of the facts, circumstances, evidence and other material on record and after giving the parties an opportunity of hearing.

53. After perusal of the orders, this Court does not find any gross illegality, error apparent on the face of record or any impropriety in the findings. The Estate Officer considered the facts and circumstances before it, heard the parties, gave sufficient opportunity to adduce



evidence and then passed a reasoned order with the findings as have been reproduced in the order dated 6th June 2003.

54. Further, even the Appellate Court after conscious and thorough appreciation of grounds taken, arguments advanced, material placed on record and carefully perusing the order of the Estate Officer passed the order dated 30th October 2009 which also does not suffer from any gross illegality or error apparent on the face of record.

55. Both the impugned orders dated 6th June 2003 and 30th October 2009 are reasoned and have been passed after consideration and appreciation of all grounds and material on record. Therefore, this Court does not find any cogent reason to interfere in either of the orders.

56. Accordingly, the instant petition is dismissed for being devoid of any merit.

57. Pending applications, if any, also stand disposed of.

58. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 23, 2022
gs/ms