



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

% **Date of order : 12th September 2022**

+ **W.P.(C) 3632/2021 & CM APPL. 11010/2021**

JATINDER SINGH CHAWLA Petitioner

Through: Mr. Sanjeev Manchanda, Ms.
Ravita Manchanda and Mr. Harish
Chawla, Advocates alongwith
petitioner

versus

DELHI DEVELOPMENT AUTHORITY AND ANR

..... Respondent

Through: Mr. Shashank Vachher, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

"(a) recall the order of the learned District Judge Hon'ble Sh. Dharmesh Sharma Judge, Tis hazari Delhi dated 02.02.2021, be recalled and set aside ; and/or

(b) recall the order of Estate officer passed on 07.03.2017 be recalled and set aside; and/or

(c) Pass such other and further orders(s) as it may deem fit and proper in the facts and circumstances of the case and in the interest of the Justice."



2. The present writ petition challenges the order dated 2nd February 2021 passed by the District and Sessions Judge in PPA No. 02/2017 whereby the appeal filed by the Petitioner was dismissed and the eviction order dated 7th March 2017 passed under Section 5 of the Public Premises Act, 1971 was sustained.

3. The facts are that a Plot bearing no. B-51 measuring 400 sq. yards, Rewari Lane, Industrial area, Phase-II was allotted to M/s Hindustan Metalworks vide allotment letter dated 7th November 1969 and possession was handed on 30th January 1970. The plot could only be used for manufacturing of Aluminium kitchen wares as per the terms and conditions of the said Lease deed. The perpetual Lease deed was executed on 4th May 1972, through its proprietor Mr. Mohd. Shafi s/o Mohd. Aabid.

4. The field staff inspected the premises on 25th October 2002 and found that the property is being misused by constructing 53 shops at ground floor and 45 shops at first floor unauthorisedly and further sub-letted to various persons who are doing their trade/business. Accordingly, a show cause notice dated 5th December 2012 was issued by the Delhi Development Authority to which no reply was received and resultantly, the lease of the plot was cancelled by the Competent Authority on 25th July 2003 due to violation of the terms and conditions of the Lease deed. This was communicated vide letter dated 11th August 2003 with a request to handover the physical possession of the property on 26th August 2003, but the Petitioner has failed to do so.



5. The eviction proceedings were initiated by the Delhi Development Authority. Amid this, a Suit numbered as 864/2006, titled as M/s Hindustan Metalworks vs. Delhi Development Authority was filed but was dismissed vide judgment dated 12th September 2013. The relevant portion is reproduced below:

“18. In such eventuality no fault can be found in the cancellation of lease deed. The possession of plaintiff can no longer be protected after the cancellation of the lease deed.

Accordingly, these issues are decided against the plaintiff and in the favour of the defendant.”

6. The Estate Officer issued notice under Section 4 of the Public Premises Act, 1971 to the unauthorised occupants who were given a number of hearings. The Estate Officer passed the eviction order dated 7th March 2017 directing M/s Hindustan Metalworks and all unauthorised occupants who are occupying the said premises or any part thereof to vacate the said premises within 15 days. Aggrieved by this eviction order, the Petitioner preferred an appeal bearing no. PPA 02/2017 which was dismissed on 2nd February 2021. Aggrieved by the dismissal of appeal, the Petitioner has approached this Court.

7. Learned counsel appearing on behalf of the Petitioner has contended that the Court below failed to appreciate that there is sufficient documentary evidence which shows that Petitioner is not unlawfully occupying the subject property. He further contended that the Petitioner who is the actual owner of the disputed property was not issued a fresh notice under Section 4 of the Public Premises Act, 1971 and the appeal



under Section 9 of the Public Premises Act, 1971 was dismissed without considering the true facts and without compliance of Section 4 of the Public Premises Act, 1971.

8. It is also submitted that the Court below has failed to take into consideration all the documents of ownership which were filed before the Estate Officer and termed the Petitioner as 'unauthorised occupant' without any substantive evidence. He has further argued that as per the order of Estate Officer dated 7th March 2017, the eviction order was passed against all persons that is totally contrary to record of Estate Officer. The original owner was not made a party, even Surinder Singh Chawla father of Petitioner appeared before Estate Officer and submitted that they are owner of the property, but no notice was issued. It's contrary to law. It is further submitted that if a lessee of a public premises is allowed to remain in the premises after expiry of the lease and the public authority concerned accepts the rent, as has happened in this case, his occupation becomes authorized occupations as they become a tenant holding over under section 116 of the Transfer of Property Act, 1882.

9. *Per Contra*, the learned counsel appearing on behalf of the Respondent has supported the eviction order as well as the judgment passed by the Court below on the ground that the property was being misused by constructing 53 shops at ground floor and 45 shops at first floor illegally, wherein trade/business was carried on by unauthorised occupants. He has further contended that the lease deed was rightly terminated in accordance with law.



10. Heard learned counsel for the parties and perused the record including the judgement passed by the Court below in PPA No. 02/2017.

11. With respect to the contention of the learned counsel of the Petitioner that no notice under Section 4 of the Public Premises Act, 1971 was served to the Petitioner, it will be relevant to reproduce the observations made by the Court below:

"13. To cut the long story short, unauthorized occupants including the present appellants kept appearing before the Estate Officer and finally vide order dated 25.02.2016 unauthorized occupants as per site inspection report conducted by the filed staff were directed to be served with the notice under [Section 4](#) (i) of the PPA Act. Further, perusal of the record of the Estate Officer would show that as many as 103 number of unauthorized occupants were issued with notice under [Section 4](#) (i) of the PP Act dated 25.11.2016 including the present appellants. Thereafter, the presence of the appellants are recorded on 9th October, 2016, 3rd January, 2017 and 7th February, 2017 but they failed to file any written objections. It would be expedient to refer to the noting by the Estate Officer recorded on 07.02.2017, which goes as under:-

*"07.02.2017 Case called today on 7.2.2017.
37 respondents of unauthorized occupant were present in the court and made request that DDA can provide us some land for rehabilitation like Kathputli Colony. Further letter from DD Industry dt 7.2.17 has been received in which it has been intimated that the competent authority has decided that there is no such in the lease hold property to regularized the same by changing the misuse and other charges in favour of unauthorized occupants. Hence case is kept for orders."*



12. Therefore, the argument of the Petitioner that no statutory notice was served is misconceived and falls to the ground.

13. With respect to the argument that the Court below failed to appreciate that there is sufficient documentary evidence which shows that Petitioner is not unlawfully occupying the subject property, it will be relevant to reproduce the observations made by the Court below:

"14.There is no doubt that the subject property is a 'public premises' belonging to the DDA within the meaning of Section 2(e) 3(ii) of the PP Act. It is admitted fact that appellants have been inducted into the premises by the so called attorney i.e. Sardar Surender Singh Chawla of the original Proprietor viz. Mohd. Shafi and thereafter in gross violation of Clause 5(ii), which prohibited the Lessee from selling, transferring, assigning or parting with the possession of whole or any part of the subject property except with the previous consent of the Lessee. No such approval or consent was ever taken. There was further violation of Clause 13(ii), which prohibited lessee from using the industrial plot for a purpose other than for which it was sanctioned. There is denying fact that whole nature and character of the industrial plot has been changed or altered thereby raising massive unauthorized construction and constructing shops on the ground and first floor. There can be no iota of doubt that Sardar Surender Singh Chawla was instrumental in altering the nature and character of the industrial plot in question in gross violation of the Perpetual Lease and probably somewhere he was in connivance with the officials of the DDA, who looked the other way when unauthorized construction was being done at the site and different portions were let out to different occupants."

14. With respect to the submission of the Petitioner that if a lessee of a public premises is allowed to remain in the premises after expiry of the



lease and the public authority concerned accepts the rent, as has happened in this case, his occupation becomes authorized occupations as they become a tenant holding over under Section 116 of the Transfer of Property Act, 1882, it will be relevant to reproduce the observations made by the Court below:

"16. Since in the case of public properties and premises the members of the public have a vital interest and the members of the public are interested in seeing that such properties and premises are freed from encroachment and unauthorised occupation as speedily as possible. It is for the same very reason that the plea that the appellants are entitled to benefit of section 116 of the Transfer of Property Act can not be sustained in law, which can be expressed in the latin expression generalia specialibus non derogant i.e., special law prevails over the general law."

15. Under Article 226 of the Constitution of India, the 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.

16. While examining the challenge to an impugned order, the Court has to limit itself to the consideration as to whether there is any illegality, irregularity, impropriety or error apparent on record.



17. 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.”

18. 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. I have perused the impugned order dated 2nd February 2021, passed by the learned District Judge. The judgment is well reasoned as the learned judge has considered each submission made by the petitioner, according to law. The Court below has rightly stated that the Petitioner has been given multiple hearings before the Estate Officer, but he has failed to file any written objections.

19. In view of the aforesaid discussion on settled law, I have reached the conclusion that the Court below has rightly held that the Petitioner is an unauthorised occupant as contemplated by Section 2(g) of the Public Premises Act, 1971 and has entered possession of the subject property in



gross violation of the terms and conditions of Lease deed. Therefore, I do not see any ground to entertain the present writ petition.

20. Accordingly, the instant writ petition alongwith the pending application is dismissed.

21. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 12, 2022

Aj/mg



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