

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 13th October, 2022**

+ **W.P.(C) 2815/2020 & CM APPL. 9812/2020**
SH. KISHORE KUMAR Petitioner

Through: **Mr. Manish Makhija, Advocate**

versus

**THE ESTATE OFFICER,
DIRECTORATE OF ESTATES AND ANR** Respondent

Through: **Mr. Ashish Tiwari, Advocate for
NDMC.**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 read with Article 14 of the Constitution of India has been filed seeking following reliefs:-

a) Call for the record of the proceedings before the Estate Officers and the Ld. District Judge in appeal no.33/2015.

b) Allow the present writ petition and set aside / quash the impugned orders dated 19/05/2015 passed by the Ld. Estate officer Sh.Y.V.V.J Rajasekhar and the Ld. District Judge dated 4/03/2020 in PR ACT Appeal no.33/2015.

c) Pass any other orders/writ/directions which this Hon'ble court deems fit and proper to protect the rights and interests of the petitioner in the interest of Justice.

d) To grant costs of this petition to the petitioner.

2. The petitioner runs a business of selling batteries from a Shop located at 111, Sarojini Nagar, Ring Road, New Delhi which was allotted to him on 21st October 1976 by the respondents. The petitioner thereafter executed a partnership deed with one Kanwal Sarna, who joined him in running the business from the same shop. The said partner has filed the instant petition as the Special Power of Attorney (hereinafter "SPA") of the petitioner. The petitioner retired from the partnership business and, thereafter, the partnership stood dissolved.

3. It is the case of the petitioner that after his retirement, Kanwal Sarna was in the exclusive possession of the premises and was running the business from the said premises and the petitioner took necessary steps to transfer the premises in the name of the partner including executing a General Power of Attorney (hereinafter "GPA") and SPA.

4. A policy of the respondent was introduced allowing the allottees of public premises to apply for regularization of the premises in the name of subsequent occupants or partners. The petitioner applied under the policy accordingly to have the premises transferred in the name of Kanwal Sarna.

5. The respondent, thereafter, issued a Show Cause Notice of breach

of license on 2nd May 2000 to the petitioner on the ground that he had sublet the premises allotted to him to Kanwal Sarna and directed the petitioner to remove the said breaches. In pursuance thereto, proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter “PP Act”) were initiated.

6. Ultimately, an order dated 19th May 2015 was passed by the respondents directing the petitioner to handover the premises to the respondents. For assailing the impugned order, the petitioner approached the court of learned District Judge, Patiala House Courts (hereinafter “Appellate Court”), however, the same also came to be dismissed vide order dated 4th March 2020.

7. Therefore, the petitioner is before this Court challenging the said orders dated 19th May 2015 and 4th March 2020.

8. Learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 19th May 2015 is erroneous and has been passed without appreciating the law as existed at the relevant time and without affording a proper opportunity of hearing to the petitioner. The Estate Officer did not conduct any inquiry as envisaged under Section 8 of the PP Act, which was also not considered by the Appellate Court.

9. It is submitted that on 25th July 1996, the respondents introduced a policy to permit original allottees to transfer their right, title and interest in their respective allotted premises in favour of their subsequent occupants. On the basis of the said policy, the petitioner being eligible for availing the benefits of the same, made an application, alongwith all

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necessary documents, for transfer of the premises in the name of the partner Kanwal Sarna. However, instead of processing his application, the respondent issued the Show Cause Notice dated 2nd May 2000 asking him to show cause as to why his license should not be cancelled.

10. It is submitted that the order of eviction was passed without verification of the documents submitted by the petitioner. Moreover, the Estate Officer as well as the Appellate Court did not consider that the petitioner had submitted original documents dated 18th January 1989 and 9th August 1989 executed between the petitioner and Kanwal Sarna to conclusively show that he was in physical control and occupation of the premises as a partner w.e.f. 18th January 1989. It is submitted that as per the office order/policy for regularization dated 25th July 1996 transfer of the premises in favour of partners/occupants was permitted who had come in possession of the premises prior to 20th October 1989, and hence, the petitioner was eligible for having the premises regularized. It is also submitted that similarly placed persons as the petitioner were granted the relief under the policy.

11. Learned counsel for giving force to his arguments has relied upon the judgments of *Siemens Engineering & Manufacturing Co. of India vs. UOI*, AIR 1976 SC 1785, *S.L.Kapoor vs. Jagmohan*, AIR 1981 SC 138.

12. *Per Contra*, learned counsel for the respondent/ NDMC vehemently opposed the instant petition and submitted that the partner, Kanwal Sarna, is purportedly appearing for the original allottee/petitioner

and by way of this petition is seeking regularization of the premises in his favour. It is submitted that the license of the petitioner was cancelled/terminated 22 years back in 2000 and yet Kanwal Sarna has been in possession of the same without paying any damages or compensation for the period.

13. It is submitted at the outset that not only Kanwal Sarna has no locus to pursue the present proceeding but the nature of relief, i.e. regularization of the premises, also cannot be granted in a proceeding arising under the PP Act inasmuch as a Estate Officer under the PP Act has no such jurisdiction vested in him to grant such relief. It is submitted that the original allottee has not approached the respondent/ NDMC or this Court for any relief, rather it is the unauthorized occupant, Kanwal Sarna, who has contested the actions of the respondents. It is submitted that the relief of regularization could not have granted under the PP Act, that too to a third party, in light of the fact that during all these years, none of the documents were ever produced nor any intimation was given or the approval of the respondent/NDMC obtained for regularization during the currency of the license.

14. It is further submitted that the license in question was already terminated for transgression of license terms by Union of India way back in year 2000, i.e., much prior to transfer the said premises to the respondent/ NDMC and therefore, it became final in as much as there was no challenge to termination of license nor any attempt was made by the petitioner to revive the license till date.

15. Therefore, it is submitted that the instant petition is liable to be dismissed since there is no error or illegality in the impugned orders.

16. Heard learned counsel for the parties. Record has also been perused.

17. 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.

18. 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.

19. 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) reappreciate 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:....”*

20. 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.”

21. 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....”

22. 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

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will also limit itself to the question of law and the contents of impugned order dated 19th May 2015 and 4th March 2020 to see whether there is any gross illegality or error apparent on record in the same.

23. The Estate Officer while passing the order dated 19th May 2015, noted as under:-

“Since Sh. Kanwal Sarna has to furnish the documents required vide this Directorates letter dated 10.10.2001 and 11.02.2002 and many opportunities given to him before the Estate Officer, therefore, learned Estate Officer is requested to pass eviction order against the unauthorized occupant of platform No. 111, Ring Road Market, Sarojini Nagar, New Delhi immediately”.

During the course of proceeding before, the Hon'ble Court the respondent has failed to submit any document that the petitioner regularized the said stall in the name of Respondent. Therefore, the status of the respondent at the said stall is that of unauthorised occupant for which he has not right to retain the said shop further.

On the basis of above facts and circumstances, I hold that the respondent is occupying the said stall without any authority of the petitioner, therefore he is directed to handover the physical vacant possession of the said stall to the petitioner, therefore he is directed to handover the physical vacant possession of the said stall to the petitioner within the period of 15 days from the date of publication or receipt of this order, failing which the petitioner is at liberty to get the said public premise vacated in due

courses of law. The respondent is further directed to pay the area of damage as payable within a 15 days. In case the respondent fails to pay the said arrear of the damage within the stipulated period, the said arrear may be recovered as arrear of the land revenue from the respondent.”

24. The petitioner/original allottee, admittedly, had transferred the premises in question in favour of the SPA, without being authorized to do so. The license of the shop in question was allotted to the petitioner and he was bound to abide by the terms and conditions stipulated therein. Therefore, the Show Cause Notice dated 2nd May 2000 was issued to the petitioner. The contents of the said Show Cause Notice are reproduced hereunder:-

“Whereas I, the undersigned am prima facie of the opinion on the grounds specified below that you have committed the following breaches of the licence granted to you in the above mentioned premises and that your licence should be cancelled:-

“You have subletted the said platform to Shri Kanwal Sarna.”

Therefore, I hereby call upon you to show cause within 21 days from the date of issue of this letter, why the licence should not be cancelled.

you are requested to remove the breaches mentioned above immediately and to send your confirmation of having done so along with the documentary evidence thereof if any on or before the date mentioned above.

If no reply is received within the specified date the allotment of the above noted shop will be cancelled.”

25. There is no contention on behalf of the petitioner that a reply was furnished to the above said Show Cause Notice. In absence of a reply, much less a satisfactory reply, the concerned authority had cancelled the license of the petitioner in the year 2000. Admittedly, the said cancellation/termination of the license has not been challenged at any stage by the petitioner or anyone on his behalf and hence, it attained finality. Therefore, at the very outset, it is found that even if it had been the case that the SPA, Kanwal Sarna, was in rightful possession of the premises, there existed no license in favour of the petitioner or the occupant to continue to carry out business at the premises in question.

26. A perusal of the impugned order also shows that the petitioner and even the unauthorized occupant were given ample opportunities to produce relevant and requisite documents to the concerned authority for adjudging their claim, right and title in the premises in question, however, despite service of notices demanding the same, the documents as required and asked for were not submitted by them. Hence, there appears no illegality or error apparent on record which warrants interference of this Court in the impugned order dated 19th May 2015.

27. The petitioner aggrieved by the said order approached the Appellate Court which also came to be dismissed upholding the order of the Estate Officer.

28. The relevant portion of the said order is reproduced herein:-

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“In the present case, the NDMC reached to the conclusion that the said Sh. Kanwal Sarna has not been able to show any credible document to prove that he had come into the occupation of the premises on or before 20.10.1989. The documents submitted by the applicant were under cloud of suspicion. It is also a matter of record that the original allottee never appeared before the Estate Officer. Even the documents which are on the record of the Estate Officer or which have been filed before this court does not fulfill the criteria as laid down in office order dated 25.07.1996. Thus, I consider that there is no illegality or infirmity in the impugned order dated 19.05.2015.”

29. The petitioner is seeking relief under the policy dated 25th July 1996, which made provisions for regularization in favour of partners/occupants, and also laid out terms and conditions that had to be observed and complied with while making an application for the same. Some of the conditions are reproduced hereunder:

“1. The occupant in whose name the premises is to be regularized shall submit in original the partnership deed as well as the dissolution deed.

3. The occupant shall also be required to submit a no objection affidavit from the original allottee duly sworn in before the 1st class Magistrate on a non-judicial stamp paper worth Rs.3/-.

5. The occupant shall produce necessary documents proving his sole occupation of the premises from the date of partnership deed/ dissolution deed. The decision of the Director of Estates as to accept the documents in this regard shall be final.

6. Both the parties i.e. allottee and the occupant shall submit a written statement before DD(M) with two witnesses to each side i.e. the allottee shall submit that he is in actual allottee and has no objection to the proposed transfer and would also submit his attested photograph and signatures and also produce two witnesses. Whereas the occupant in whose name premises is to be regularized shall give a written statement to the effect that he is in sole occupation of the premises and shall also produce two witnesses.”

30. A perusal of the policy reveals that conditions laid therein required the above said documents for consideration of the application for regularization. These documents were despite notices and intimations not submitted by the petitioner or even his SPA.

31. Moreover, it has also been informed to this Court that the petitioner himself has never appeared before the Estate Officer or any other Court for availing any remedies that he had against the orders passed by the respondents. Even before this Court, the unauthorized occupant has filed the instant petition as an SPA holder of the petitioner and therefore, in the garb of the original allottee, is attempting to avail benefits which do not accrue to him. These actions on the part of the SPA holder/unauthorized occupant are even more infringing/ offending in light of the fact that the

license of the shop concerned was in fact cancelled/terminated in the year 2000 itself, due to non-furnishing of a reply by the petitioner or the SPA holder to the Show Cause Notice dated 2nd May 2000.

32. Keeping in view, the aforesaid facts and circumstances, contentions raised in the pleadings, submissions made on behalf of the parties as well as the discussion in the foregoing paragraphs, in the background of the limited powers of this Court in its writ jurisdiction, this Court finds that the impugned orders dated 19th May 2015 and 4th March 2020 do not suffer from any gross illegality or error apparent on the face of record.

33. In light of the above mentioned, the instant petition is dismissed for being devoid of merit.

34. Pending applications, if any, also stand dismissed.

35. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 13, 2022
gs/ms