IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19390-2024 (O&M)
Date of decision :05.12.2024

SURINDER PAUL SINGH @ SURINDERPAL SINGH

…Petitioner

Versus

UNION OF INDIA AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Supinder Singh Sohi, Advocate
for the petitioner.

Mr. Vikram Bajaj, Advocate
for respondents No.1 and 2.

HARSH BUNGER, J. [ORAL]

Petitioner (Surinder Paul Singh @ Surinderpal Singh) has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 12.04.2019 (Annexure P-6) passed by the Estate Officer, Diesel Loco Modernisation Works, Patiala; whereby, the petitioner has been ordered to be evicted from Shop No.05/Colony-II, DMW Complex, Patiala.

A further prayer has been made for setting aside order dated 08.01.2024 (Annexure P-8) passed by the Appellate Authority (Additional District Judge, Patiala); whereby, the appeal filed by the petitioner against his eviction order dated 12.04.2019 (Annexure P-6) has been dismissed.

2. Briefly, the petitioner entered into a license agreement (Annexure P-1) with Union of India/Chief Engineer, Diesel Component Works, Patiala for temporary occupation of Railway Building, Shop No.5, Colony No.II, DMW, Patiala. It is the case of the petitioner that the rent/occupation fee of the afore-said shop was increased from time to time, however, vide letter dated 16.02.2018 (Annexure P-4), the license fee of the shop in question was arbitrarily revised from Rs.2,210/- p.m. to Rs.8002.26/- plus GST per month.

2.1 It appears that on 03.11.2018, the petitioner filed a Civil Suit before the learned Civil Judge (Senior Division), Patiala seeking permanent injunction against respondents No.1 and 2 from dispossessing him and from recovering the rent due from him at the enhanced rates. The said suit is stated to be pending.

2.2 It transpires that respondents No.1 and 2 initiated eviction proceedings against the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short `the 1971 Act'), wherein an eviction order dated 12.04.2019 (Annexure P-6) was passed against the petitioner.

2.3 An appeal filed by the petitioner against the eviction order was also dismissed vide order dated 08.01.2024 (Annexure P-8) passed by the Appellate Authority (Additional District Judge, Patiala).

2.4 Hence, the present writ petition before this Court.

3. Vide order dated 19.11.2024, the petitioner was asked as to whether he is ready and willing to continue with the tenancy of the premises at the market rent, prevailing as on date; whereupon, a short accommodation was granted to the petitioner to file an affidavit to that effect, which was filed. However, today, during the course of hearing of this petition, the petitioner was asked as regards the payment of arrears, however, no positive response was forthcoming. Accordingly, the matter was heard on merits.

4. Learned counsel for the petitioner submits that the authorities below have erred in law and fact in passing the eviction order against the petitioner, without appreciating that the petitioner has already instituted a Civil Suit against the arbitrary revision of rent. It is submitted that the increase in rent/license fee from Rs.2,210/- p.m. to Rs.8002/- plus GST per month, is totally arbitrary. It is further submitted that even the Estate Officer has not afforded any opportunity of hearing to the petitioner, therefore, the order dated 12.04.2019 (Annexure P-6) is violative of principles of natural justice. It is contended that the provisions of the 1971 Act, are not applicable to the case in hand. Accordingly, it is prayed that the impugned orders may be set aside.

5. Learned counsel appearing on behalf of respondents No.1 and 2 opposed the submissions made on behalf of the petitioner, by submitting that since the shop in question belongs to the government / railway department, therefore the provisions of 1971 Act are applicable. It is submitted that the petitioner was aware of the eviction proceedings initiated against him as he had replied to one of the notice(s) sent to him, however he had intentionally not appeared before the Estate Officer to contest the eviction proceedings; therefore, it cannot be said that no opportunity of

hearing was afforded to him. It is further submitted that the status of the petitioner in the shop in question, is only that of a licensee and he cannot dictate the licensor as regards the license fee is concerned and even otherwise, the license fee has been enhanced reasonably, considering the prevalent market rent. It is further submitted that the petitioner has always been in arrears of license fee and he is not entitled to any indulgence by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

6. I have heard learned counsel for the respective parties and have gone through the paper-book with their able assistance.

7. Before considering the submissions of the rival parties, I deem it appropriate to refer to few terms and conditions of the license agreement (Annexure P-1) executed between the petitioner and respondents No.1 and 2, which read thus :-

> *"1 to 4 xxx xxx xxx*
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> *5. That the licensor only agrees to give temporary occupation of the building and licensee is liable to have this license cancelled at any time upon such notice as is mentioned in Clause 7.*
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> *6. xxx xxx xxx*
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> *7. That the Licensor shall be entitled to any time during the currency of this agreement to give notice to the licensee of his intention to resume possession of the building and shall vacate the building, remove all the materials belonging to the licensee and restore the building and its peaceful possession of its original state within 15 days after the date of receipt of the such notice and the licensor shall not be responsible for inconvenience, loss or damage that may be caused to or done to the licensee by reason of his vacating the premises on such notice.*
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> *8. That all materials of general merchandise and goods brought in or stored by the licensee upon the said building shall remain charged into the licensor as continuing security*

(for the payment of the occupation money herein reserved and the faithful observation by the licensee of the stipulations on his part herein contained and of notice referred to in clause 7 above without first paying and satisfying all dues of the Govt. for occupation money or otherwise, it at the expiration of the said period of 15 days referred to in clause 7 of the licensee fail to remove any materials or good/or to restore the said building to its original condition then and in any case the licensor shall be at liberty to sell such materials & goods or otherwise to deal therewith in such a manner as Govt. may think fit and proper and all costs and expenses incurred by the licensee in or about such sale or disposal shall be paid by the licensee to the licensor on demand and the licensor shall be at liberty to recover such costs and expenses and also any occupation money or other dues which may be due to the Govt. from and out of the proceeds of any such sale as aforesaid.

9. That nothing contained herein shall be construed on interpret to create any right, title interest, prescription, grant whatsoever directly or indirectly in the shop hereby licensee to the licensee.

10. xxx xxx xxx

11. That the licensee shall at all times keep the licensor and the Rly. & their employees indemnified against all losses expenses & damages which the said licensor and/or the said Rly. & their employees may become liable to pay or be put to from whatever use arising in connection with the said shop prior to its re-occupation by the said DCW/Patiala.

12. xxx xxx xxx

13. That the occupation money payable by the licensee to the licensor for the license period shall be paid in advance either by depositing the amount in cash, and submit the receipt of payment thereof, to the licensor or by sending the amount through a crossed cheque in favour of the FA & CAC/DCW/Patiala or in such manner as directed by the Licensor, PROVIDED ALWAYS AND IT IS HEREBY AGREED that if the licensee shall pursuant to any such notice *by the licensor as provided in the foregoing clause have fully vacated the building before the expire of the period for which occupation money have been paid in advance the licensee shall be entitled to receive from the licensor a proportion etc. refund of the amount paid in advance for the unexpired portion of the such period except when termination has resulted from the breach of this agreement.*

13A. The licensee period shall commence from 1.12.86, and the licensee agrees to pay to the licensor Rs.325/- PM, 3900/per annum, as occupation fee with effect from 01.12.1986 to 30.11.1987. The licensee shall deposit with the licensor as security for the payment of the money which may at any time become due & payable by the licensee to the licensor for occupation, for due performance of the License complete in all respects a sum equivalent to three months occupation money fraction of a rupees being rounded of to a rupee subject to a minimum of Rs.200/- which sum shall remain to deposited until the expiration of the period referred to above but shall not carry interest in favour of the licensee and the licensor shall be entitled to retain the said deposit infact until the expiration of the said period and shall not be bound but shall nevertheless have option to apply the same or any part thereof in payment or discharge of any moneys owing from licensee and shall be at full liberty to pursue and enforce any other remedies available for the recovery of any such moneys. PROVIDED ALWAYS that the Government shall recoup itself out of the said deposit and the amount of deposit shall in consequence fail short of three months occupation money or the prescribed minimum the licensee shall forth with make further deposit to make good the deficiency.

14 to 16 xxx xxx xxx

17. The licensee clearly understand that the license fee fixed always payable in advance as aforesaid the licnesee under-takes to pay damages at the rate of 1% per month or part there of a month payable from due date of payment to the date of actual payment. If the payment of license/occupation fee is not *made within a further period of 3 months as reckoned from the date of default or the license fee is not paid regularly, the licenser shall be entitled to:*

a. Forfeit the security deposit referred to above.

b. Initiate eviction proceedings for getting the Rly, building/premises vacated and take action for recovery of license/occupation fee with interest and damages upto the date of actual vacation at the cost of the license.

It is, distinctly understood by the licensee that the Rly. Administration, will retain the full legal title, ownership, right access, inspection, and control over the use of the building hereby temporarily licensed and that the licensee is permitted to use the building temporarily subject to the above mentioned rights of the Railway Administration and to the standing liabilities of getting and restoring even that temporary occupation at the will and pleasure of Railway Administration.

18. That the license or occupation fee provided for the License Agreement shall be liable to be enhanced by the Rly. Administration from time to time at their sole and absolute discretion and the licensee shall be bound to pay the fee at the enhanced rates on receipt of notice of 15 days.

19 and 20. xxx xxx xxx

21. The licensee shall ensure that the merchandise sold to employees in no DCW/Rly. Colony is weighed measured correctly, of good quality, unadulterated, and reasonable. Authorised representatives of (DC-Administration) shall inspect his premises and ensure that licensee is not indulging in any irregularity.

Licensee shall wherever, possible, provided sealed sample for inspection.

22. The licensee does hereby admit/agree have temporarily occupied the building shown on the attached plan on the conditions stated above and the licensee does hereby agree to pay occupation money for such temporary use of said buildings at the rate of Rs.325 p.m., including water charges per mensum in advance plus local cesses and taxes, if any."

7.1 A perusal of above extracted clauses would clearly indicate the intention of the parties was to enter into a license agreement by way of temporary occupation of shop in question.

8. Now, I proceed to consider the submissions of the respective parties.

8.1 As regards the plea of the petitioner that the provisions of the 1971 Act, are not applicable, I find no merit therein as the shop in question belongs to the government/Diesel Component Works, Patiala; therefore, it would fall within the preview of "Public Premises" as defined under Section 2(e) of the 1971 Act.

8.2 As regards the plea that no opportunity of hearing was afforded to the petitioner by the learned Estate Officer while passing the eviction order, it is noticed that the Estate Officer had fixed the matter for hearing on various dates i.e. 28.12.2018, 13.02.2019 and 22.02.2019; however, the petitioner did not come forward to attend the said hearings despite receipt of notices by him. It is further noticeable that the petitioner submitted his reply to the notice, which is stated to be available on record. Since, the petitioner was aware of the proceedings initiated against him under the 1971 Act and has even submitted his reply to one of the notices, it does not lie in the mouth of the petitioner to contend that no opportunity of hearing was afforded to him by the Estate Officer; accordingly, the said plea is rejected.

8.3 As regards the plea of the petitioner that the increase in the license fee is arbitrary, it would be apt to refer to a judgment rendered by a Division Bench of Hon'ble Delhi High Court in the case of ***Suresh Chand Gupta v. MCD, 2013 (22) RCR (Civil) 626***; wherein following observations were made :-

> *"14. The Division Bench of this Court in judgment* ***dated 11th May 2012 in LPA No. 9/2012 titled Indian Institute of Public Opinion Pvt. Ltd. v. Life Insurance Corporation of India*** *has held that the tenants of statutory corporations/local authorities, as the MCD is, are entitled to continue in the premises only if agreed to by such corporation/authority and the statutory corporation/authority cannot be compelled to continue with the tenants paying rents much below the market rent and which would amount to giving a benefit to a certain class of tenants at the cost of the public exchequer. Relying on* ***Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1*** *it was further held that distribution of state resources is to be guided by doctrine of equality, larger public good and rational, transparent procedures designed to fetch maximum value for enrichment of the public at large and to allow old tenants of statutory corporations/authorities to continue at old rates would amount to giving monetary benefit for all times to come to those who may on first-come basis have come into occupation of such properties and at the cost and prejudice of others. Mention may also be made of* ***JiwanDass v. Life Insurance Corporation of India (1994) Supp (3) SCC 694*** *laying down that section 106 of the Transfer of Property Act having empowered the public authorities to act in public interest and determine the tenancy, it is not permissible to cut down the width of the power by reading into it the reasonable and justifiable grounds for initiating action of terminating the tenancy.*
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> *15. It is well settled law that the provisions of the PP Act supersede the provisions of the Rent Act (see* ***Ashoka Marketing v. Punjab National Bank (1990) 4 SCC 406****). The tenancy of the appellant even though at a rent of less than L 3500/- per month, is thus not protected. It is not the case of the appellant that there is any registered lease in his favour where under he is entitled to continue as a tenant in the premises. The tenancy of the appellant was at best a month to month*

tenancy and there is no reason for the State, as the respondent MCD, to not terminate the said tenancy and to evict the appellant under the provisions of the PP Act and to earn maximum possible rent therefrom.....

16 to 21. xxx xxx xxx

22. Moreover, the grounds of termination of tenancy are not even relevant as aforesaid. The MCD, as owner/landlord of the premises was/is entitled to terminate the tenancy, which as aforesaid, was a month to month, without even citing any ground/reason therefor and once the tenancy is determined and which can also be by initiation of eviction/ejection proceedings, the possession becomes unauthorized. The Estate Officer thus, cannot be said to have done any wrong in passing the order of eviction. The legislature has provided statutory remedy of one appeal only against the order of the Estate Officer and no further appeals have been provided. The jurisdiction under Article 226 of the Constitution of India cannot partake the character of a second appeal and is intended to only oversee that no injustice is committed. In this case as aforesaid, there is no justification for the appellant to continue in the premises, to the prejudice of the MCD, as MCD is being deprived of earning prevalent rent of the premises.

23. We therefore do not find any merit in this appeal, which is dismissed..."

8.4 From the afore-said judicial pronouncements, the position which emerges is that to allow old tenants of statutory corporations/authorities to continue at old rates would amount to giving monetary benefit for all times to come to those who may on first come basis, have come into occupation of such properties and at the cost and prejudice of others. It further comes out that the statutory corporation/authority cannot be compelled to continue with the tenants paying rents much below the market rent and which would amount to giving a benefit to a certain class of tenants at the cost of public exchequer. Accordingly, in the above referred case of ***Suresh Chand Gupta*** *(supra)*, it was held that there is no justification for the appellant to continue in the premises to the prejudice of the Municipal Corporation, Delhi (MCDC) as MCDC is being deprived off earning prevalent rent of the premises.

8.5 In the present case, as per the initial license agreement (Annexure P-1), the petitioner herein was put in possession of shop in question on temporary basis for a period of one year and the occupation fee/license fee was payable in advance. In case of delay in payment of occupation fee/license fee, damages at the rate of 1% were leviable for the delayed period. Further, in case of non-payment of occupation fee/license fee for three months, the licensor was entitled to forfeit the security deposit and to initiate eviction proceedings. A perusal of Annexures P-2 and P-3 would suggest that the petitioner was always in arrears of payment of license fee. Still further, a perusal of Annexure P-4 (letter dated 16.02.2018) would reveal that although the petitioner was permitted to continue in the licensed premises but he was also called upon to execute a fresh license agreement. Learned counsel for the petitioner has failed to refer to any subsequent license agreement executed in favour of the petitioner.

8.6 It is not disputed before this Court that in terms of Clause 18 of the License Agreement (Annexure P-1), the license fee/occupation fee for the shop in question was liable to be enhanced at the sole and absolute discretion of Railway Administration and licensee was bound to pay the same at the enhanced rate and the only requirement is for giving 15 days' notice for making payment of enhanced license fee/occupation fee. It is noticeable that there is no term or condition in the license agreement

(Annexure P-1) indicating as to at what rate the license fee was to be increased. Evidently, when the license fee/occupation fee was enhanced from Rs.2210/- per month to Rs.8002/- plus GST per month, a notice was issued to the petitioner for making the requisite payment, which is in consonance with Clause 18 of the Lincense Agreement.

8.7 Keeping in view the observations made in case of ***Suresh Chand Gupta*** *(supra)* and upon considering the peculiar facts and circumstances of this case; since respondents No.1 and 2 are part of Central Government in its Ministry of Railways / Railways Department and the shop in question falling within the purview of "*public premises*" under the 1971 Act; it is for the respondents No.1 and 2/Railways Department to decide as to whether to continue to grant the license or not. As a true owner of the shop, respondents No.1 and 2/Railways Department is entitled to put the same to most productive use and they cannot be compelled to continue with those licensee(s) who are paying license fee / occupation fee much below the prevalent rent of the premises; as it would amount to giving a benefit to those licensee(s) at the cost of public exchequer and further deprive the Licensor from earning prevalent rent of the premises. It is not for a licensee to determine as to how the premises should be put to use by the true owner and/or how much of the interest of the licensee can be accommodated. A licensee of the premises has no such right in equity, more so, when it has been shown that the petitioner has always remained in arrears of license fee. It cannot possibly be contemplated that the petitioner was either ignorant or oblivious of his obligation to pay the license fee, which was due.

8.8 In my considered opinion, in terms of clause 18 of the license Agreement (Annexure P-1), the Railway Department was well within its jurisdiction to enhance license fee/occupation fee, taking into consideration the necessity of augmenting its revenue by earning prevalent rent of the premises. Consequently, the petitioner cannot complain that the increase of license fee/occupation fee is arbitrary and exorbitant, without testing the same by bringing the shop in question for public auction; which may fetch even more license fee/occupation fee.

8.9 Another submission has been made by the counsel for the petitioner by referring to license agreement dated 10.04.2024 (Annexure P-9); that shops in the vicinity of the shop in question, has been auctioned by way of license at a meager amount of Rs.2,327/- p.m. and even on that account, the revision of license fee from Rs.2,210/- p.m. to Rs.8002.26/- plus GST is arbitrary. However, I find no merit in the said submission as the counsel for the petitioner has failed to show from any material as regards the size, situation, locality, condition of the premises and the amenities provided in respect of shop mentioned in agreement dated 10.04.2024 (Annexure P-9) *viz-a-viz* shop in question. That apart, if shops in vicinity of shop in question were available for lesser license fee and the said shop had the same attributes as regards the shop in question, possessed by the petitioner, then the petitioner could have participated in that auction and taken the same by making an appropriate bid.

8.10 In view of the above, it cannot be said that that the revision of license fee/occupation fee for the shop in question from Rs.2,210/- p.m. to Rs.8002.26/- plus GST, is arbitrary.

9. Considering the totality of circumstances, I find no merit in this petition and the same is accordingly dismissed.

10. It is required to be noticed here that the Hon'ble Supreme Court in ***D.H. Maniar and Others v. Waman Laxman Kudav AIR 1976***

Supreme Court 2340, observed that a licensee, after revocation of the license granted in his favour; has only a right, in terms of Section 63 of the Easements Act to a reasonable time to leave the property or to remove his goods which had been allowed to be placed on such property.

10.1 Accordingly, this Court, in order to enable the petitioner to make alternative arrangements and be able to exit the premises with dignity extends to the petitioner four months' grace period from today to hand over vacant possession to respondents No.1 and/or 2.

10.2 However, a failure on the part of the petitioner to vacate the premises within the aforesaid period shall leave the respondents open to take such further action as may be permissible in law.

11. All pending applications (if any) shall also stand closed.

December 05, 2024 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No