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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10761/2024 & CM APPLs. 44323-24/2024**
SAMEER JUNGPetitioner

Through: Mr. Rahul Sharma, Mr. S. Santanam
Swaminadhan, Ms. Abhilasha
Shrawat, Mr. Atul Sharma, Mr. Kartik
Malhotra, Mr. Gyan Ranjan, Mr. S.
K. Sharma and Ms. Shambhavi
Mishra, Advocates.

versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Mr. Rudra Paliwal,
(GP), Mr. Maulik Khurana, Mr.
Ranjeev Khatana, Mr. Kartik and Mr.
Varun Pratap Singh, Advocates for R-
1.
Mr. Mohit Bhardwaj, Advocate for R-
2 to 4.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
05.08.2024

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1. The Petitioner asserting lawful occupancy and settled possession on the basis of alleged sub-tenancy of the property situated at shop site no. 36 (also described as 43-44, Khyber Pass, Butta Singh Building, Delhi), at Khyber Pass Market, Civil Lines, Delhi¹, has approached this Court seeking quashing of the notice of eviction dated 01st March, 2024², issued by Respondent No. 1, Land and Development Office, Ministry of Housing and Urban Affairs. He asserts that he and his family were inducted as sub-

¹ “Subject premises”



tenants of the aforementioned property about 70 years ago and they have been residing there peacefully and uninterruptedly. The impugned notice stipulates that the 32 acres of land at Khyber Pass, Civil Lines where the subject property is situated, is under the ownership of Respondent No. 1. The said land is under the unauthorised occupation of squatters. Accordingly, the notice demands that all unauthorized occupants/squatters vacate and remove any illegal constructions from the Khyber Pass Market area. It warns of eviction and demolition of illegal constructions if compliance is not met.

2. Mr. Rahul Sharma, counsel for Petitioner, urges the following facts and contentions:

2.1. The subject premises were first leased out in 1933, by the Committee of the Notified Area of Civil Lines, GNCTD to the Manager, Court of Wards of the estate of one Mr. R.B. Boota Singh.

2.2. Sometime in early 1940s, the subject property was sub-leased by the Manager of the estate of Mr. Singh, to the grandmother of the Petitioner at an annual rent of INR 360/-.

2.3. The Petitioner's grandparents made timely payments of rent to Mr. Singh which is evidenced by the rent receipts issued from 1960 to 1970 in favour of the grandparents of the Petitioner.

2.4. On 20th July 1970, Respondent No. 1 informed the grandmother of the Petitioner that the lease in favour of the Manager, Court of Wards of the estate of Mr. Singh, had been revoked due to their failure to renew the same and as such, the property would now vest with the President of India. Therefore, the grandmother of the Petitioner was requested to forward all

² "Impugned notice"



rental payments to the office of Respondent No. 1. This establishes the fact that the Petitioners had been recognised as tenants of the subject premises by Respondent No. 1.

2.5. In fact, Respondent No. 1 has been raising demands for rent/occupation charges in relation to the subject property, which were duly complied with, thereby acknowledging the Petitioner as a lawful tenant.

2.6. Thereafter in 1978, while returning a cheque for rent payments, Respondent No. 1 addressed another communication to the grandmother of the Petitioner, informing her that a temporary lease has again been granted to the Manager, Court of Wards of the estate of Mr. R.B. Boota Singh and the rent would now be payable directly to him. The communication also acknowledges the Petitioner's status of being a lawful occupant of the subject premises. The said communication states as follows:



2.7. Since then, the Petitioner and his family have been in continuous, legal and uninterrupted possession of the subject premises. In this regard,



reliance is placed on the electricity and water bills paid by Petitioner and his family members, as well as the property tax receipts paid in terms of the subject premises.

2.8. In light of the above, the Petitioner and his family cannot be deemed to be the ‘unauthorised occupants’ of the subject premises. The impugned notice lacks substantive legal basis and fails to consider the accrued rights of the Petitioner as a sub-lessee and the consistent recognition of their tenancy by Respondent No. 1. Thus, as per Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971³, the Petitioner was entitled to a show cause notice prior to issuance of the impugned notice. Moreover, the impugned notice is liable to be struck down as violative of the principles of natural justice since the Petitioner was never awarded any opportunity to put forth their case. There exists a legitimate expectation that the Respondents will act fairly and not infringe upon the Petitioner’s rights under Article 14 of the Constitution of India, 1950.

2.9. Furthermore, even though the impugned notice identifies the subject land as ‘32 acres of Khyber Pass, Civil Lines’, it neither makes any demarcation in terms of the land nor does it discern which occupant is an authorised occupant and which one is unauthorised. In these circumstances, the impugned eviction notice is urged to be vague, unspecific and arbitrary. Despite these clear acknowledgments by Respondent No. 1, over several decades of the Petitioner’s tenancy and lawful occupancy of the property, the sudden issuance of a notice of eviction on the grounds of unauthorized occupation by Respondent No. 1 is both shocking and legally untenable.

2.10 The Petitioner and his family are apprehensive of being evicted



without the Respondents adhering to the procedure established by law, in contravention of Sections 4 and 5 of the Public Premises Act. In the above circumstances, Petitioner prays for quashing of the impugned eviction notice *qua* the Petitioner's property.

3. The Court has considered the aforementioned submissions of the Petitioner, but remains unconvinced. The Petitioner has failed to produce any documentation explicitly conferring upon him the status of an authorized lessee or sub-lessee. The reliance on historical documents from the late 1970s is inadequate, as these documents do not explicitly name the Petitioner as a sub-lessee, nor do they confer any title or interest in the subject property directly to the Petitioner or his grandparents that would substantiate a claim of direct entitlement under the law. The Court notes the Petitioner's contention regarding payment of lease rent directly to Respondent No. 1 for some time and subsequently to the recognized tenant. However, mere acceptance of rent or lease payments by Respondent No. 1 or the recognized tenant does not equate to the acknowledgment of a lawful lease or sub-lease agreement with the Petitioner. The arrangement, at its highest, could be construed as granting a license under the law, which again does not confer any long-term proprietary rights or interests to the Petitioner over the subject property.

4. Further, the Petitioner acknowledges that since 1978 there have been no direct payments made to Respondent No. 1. This cessation of direct transactions is crucial as it signifies that there is no contractual or statutory relationship between the parties. It also extinguishes any license that might have existed. Thus, without continuous and consistent evidence of such

³ "Public Premises Act"



payments or an explicit renewal of lease terms, any presumed tenancy or occupancy rights that were previously enjoyed by the Petitioner or his family are deemed to have been terminated. Consequently, the Petitioner's current claim to the property, based on past permissions to occupy, cannot be sustained legally. The permission to occupy, which was historically granted, does not confer any lawful status or interest in the property under dispute in the present.

5. At this juncture, it must also be noted that the impugned eviction notice dated 01st March, 2024, issued to the occupants of Khyber Pass Area, has been the subject matter of writ petition being W.P.(C) 3307/2024⁴, which was decided *vide* order dated 9th July 2024. The issue of applicability of Sections 4 and 5 of the Public Premises Act to the occupants of Khyber Pass has been specifically dealt and rejected in the said judgment as follows:

“9. At the outset, it is to be stated that the Petitioners have not shown any document as to who inducted them. In absence of any document the Petitioners ought not to have approached this Court by filing a Petition under Article 226 of the Constitution of India to say that they were inducted by a person competent to induct them and put them in possession. Since this issue requires leading of evidence, the Petitioners need to file Suit and lead evidence to show that they were inducted lawfully by persons who were competent to induct them. As far as for Petitioners No.5 & 7 are concerned, there is nothing to show that they have paid license fee till 2024.

10. Section 2(g) of the PP Act, which defines unauthorised occupation, reads as under:

“(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason

⁴ Titled “Sanjay Kumar & Ors v. Union of India & Ors.”



whatsoever.”

11. Admittedly, it is not the Petitioners who were inducted in the premises. If at all, it was their fathers and grand-fathers who were inducted in the land in question. There is nothing on record to show that the Petitioners have paid any rent. The Petitioners themselves in paragraph No.3 have stated as under:

“3. It is submitted that the Petitioners are the lawful occupants of the Khyber Pass Hostel hutments and the hutments have been allotted to the grand parents / parents of the Petitioner and they have regularly paying the rent since 1951. Lastly the rent was paid in the year 2001 and thereafter no one came forward to collect any rent from the Petitioners. Since, then the Petitioners are lawfully occupying the hutments and are residing with their family members uninterruptedly without any hindrance and are directly paying water and electricity charges to the authorities.”

12. A perusal of the abovementioned paragraph shows that no rent has been paid by the Petitioners after 2001 and, therefore, after 2001 the Petitioners cannot be called as legal occupants of the land in question and are rank trespassers. A full Bench of this Court in Chandu Lal (supra) has observed as under:

“34. Shri Saigal next contended that on revocation of the license, the petitioners’ possession of the Kiosks was that of a trespasser and having accepted license fee subsequent to the revocation of the license, the Corporation acquiesced in the possession of the petitioners as trespassers, in the circumstances the Corporation has no right to disposses the petitioners by force. This submission is equally devoid of force. In accepting license fee subsequent to the revocation of the license, all that can be said is that the license was extended up to the period the license fee was accepted but it cannot be said that the Corporation in any manner acquiesced in the alleged trespass or that the petitioners came to acquire “settled possession”. The basic fallacy in this argument is the assumption that on acquiring liberty to occupy the Kiosk possession of it was passed to the petitioners. The petitioners being licensees legal possession all along remained with the Corporation. That being so, as held by the Supreme Court, in Munshi Ram v. Delhi Administration, A.I.R. 1968 S.C. 702 (15), the Corporation had a right to reenter the premises and reinstate itself provided it does not use more force than necessary. Such an entry



would be received only as a resistance to an intrusion upon possession which had never been lost. Further, the law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities, there being nothing more degrading to the human spirit than to run away in the face of peril.

37. Temporary injunction sought by the petitioners could be granted if their case was covered by the three well-established principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in their favour, in that the refusal of the injunction would cause greater inconvenience to them and (3) whether on refusal of the injunction they would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the petitioners have a triable case. Before invoking the jurisdiction of the Court to seek temporary injunction the petitioners were bound to show that they have a legal right and that there was an invasion of that right. They have failed to show a legal right. Facts and circumstances, on the contrary, prima facie show that the petitioners on the revocation of the license are trespassers, there exists no justification or allowing them to continue perpetuating their unlawful act.”

13. A Coordinate Bench of this Court in *Brahampal v. Union of India*, 2005 SCC OnLine Del 329, has observed as under:

“18. This Court had occasion to examine the issue raised by certain persons aggrieved by action of the respondents in denying appropriate notice and proceedings under the Public Premises (Eviction of Unauthorised Occupants), Act. The judgment of the learned Single Judge was 2003 (69) DRJ 311, *Jafar Siddique v. Delhi Development Authority*. The matter was taken in appeal and vide a judgment dated 17th September, 2003 passed in LPA No. 447/2003 entitled *Sh. Vakil Ahmed v. Delhi Development Authority*, the Division Bench held as under:

“21. Learned Single Judge on admitted position, considered the case and found that as these persons were trespassers and the order that can be passed by the authority would be removing the unauthorised occupants



i.e., encroachers (even if we assume that the appellants are right, the competent authority would have passed the said order in law). Even if hearing was granted under the Act, some time was required to be granted to vacate by the public authority. If that opportunity, according to the appellant was denied, the learned Judge has granted that opportunity by” providing a hearing. Both the sides have made their submissions before the learned Single Judge elaborately on facts as well as on law. In view of the fact that the appellants were trespassers on a public land which was acquired by the competent authority under the provisions of the Acquisition Act and was allotted for residential purpose to a society and, in view of the pendency of petitions the appellant continued in possession (even after demolition), even if the authority under the Act would have given hearing, the matter would have been over much earlier and therefore no further delay was required.””

14. Similarly, in Jafar Siddique v. Delhi Development Authority, 2003 (69) DRJ 311, this Court held as under:

“12. It is thus apparent from the aforesaid that there is no doubt about the proposition that if a person is a tenant, licensee or occupies the property in any legal capacity, if rights are terminated, proceedings must take place in accordance with law and it is not open to a party to forcibly dispossess such a person. This is so since the said party itself cannot be permitted to decide the status of the occupant and the occupant has a right to defend himself.

13. The question thus which arises for consideration is whether such a right would be available to a person who is a rank trespasser on a government land which land has been acquired under the LA Act. The LA Act is a code by itself providing for procedure for acquisition of the land. Parties are given right to file objections and be heard. In fact, under Section 9 of the said Act, notices are to be given to all persons interested in the land. It is only thereafter that an award is made and published under Sections 11 and 12 of the LA Act. Under Section 16 of the Act, the Collector after having made an award can take possession of the land which vests with the government, free from all encumbrances. This procedure was followed in the present case and the



land was duly acquired. The award is of 1972-73.”

15. In view of the above, the Petitioners cannot take the benefit of the PP Act until and unless they show that they are in authorised occupation by showing that they were lawfully inducted.

16. On the facts of this case, this Court is not inclined to accept the contention of the Petitioners that they were inducted lawfully and that they are authorised occupants. Even Petitioners No.5 & 7 also cannot be said to be lawful occupants as they have not paid rents since 2001.”

6. The challenge to the said judgment before the Division Bench in LPA 591/2024, has been dismissed by way of a detailed judgment delivered on 29th July, 2024. The relevant observations of the Division Bench are as follows:

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

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



*license is either revoked or expires by efflux of time. Any such occupation thereafter would be, in the facts of the present case, unauthorized. The license issued to an individual, cannot be transferred by inheritance, unless expressly provided for. Admittedly, the present appellants are the third generation of the original licencees. That being the case, their occupation is not only unauthorized but also tantamount to trespass upon such subject lands/hutment. Thus, the appellants would be rank trespassers on such premises. We are fortified in our view by the judgment of the Full Bench of this Court in **Chandu Lal** (supra). It would be apposite to extract the relevant paragraphs hereunder:-*

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

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



a question of intention of the parties which is to be inferred from the circumstances of each case.”

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

[Emphasis added]

7. In view of the factual matrix narrated in the preceding paragraphs and the legal principles elucidated in the decisions referred above, the Petitioner’s claim to authorized occupancy of the subject property cannot sustain. While the Petitioner argues that the historical acknowledgment of his grandparents as lawful sub-lessees by Respondent No. 1 in 1970, and the subsequent continuous possession of the property by his family, should exempt him from being categorized as an ‘unauthorized occupant’ under Section 2(g) of the Public Premises Act, this argument does not withstand legal scrutiny. The legal recognition of tenancy or sub-tenancy is contingent upon the existence of a valid lease agreement. In this case, despite the initial acknowledgment of Petitioner’s grandparents’ occupation of the subject premises, there has been no substantiation of a continued legal relationship or tenancy. Specifically, the absence of any rent payments or sub-lease renewals post-1978 indicates a cessation of any relationship that might have existed between the Petitioner’s grandparents and the property owner or the authorized lessee. Mere prolonged occupation does not confer tenancy rights. As such, past payments of rent or occupancy charges cannot unilaterally create or extend a lease or sub-lease agreement. The Court, therefore, holds that the Petitioner’s continued occupation of the premises has not been substantiated as lawful and the classification of his occupancy as unauthorized is both justified and necessitated by the circumstances.



8. It is further observed that although, counsel for the Petitioner has argued that as a current authorised occupier of the premises, the Petitioner has been paying property tax on the subject premises, however, that again, will not crystallise any legal right over the property. Therefore, in absence of any said legal right, in the opinion of the Court, no relief, as urged in the present petition, can be granted to the Petitioners.

9. The challenge to the impugned notice on the basis of lack of demarcation is unfounded since the Petitioner's property has been clearly demarcated and identified. Furthermore, the other grounds raised in the present writ petition have been thoroughly addressed in the judgment of this Court dated 09th July 2024 passed in W.P.(C) 3307/2024, the principles of which are applicable to the present case *mutatis mutandis*. Accordingly, the present petition is dismissed, along with pending applications.

SANJEEV NARULA, J

AUGUST 5, 2024
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