



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

% **Judgment reserved on : 05 September 2024**
Judgment pronounced on : 19 November 2024

+ **W.P.(C) 176/2020 & CM APPL. 530/2020**

OCEAN PLASTICS & FIBERS (P) LIMITED Petitioner
Through: **Mr. Vikas Upadhyay, Ms.**
Ankit Kashyap and Mr. Arjun
Singh Tomar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.

..... Respondents
Through: **Mr. Ashim Vachher, SC for**
DDA with Mr. Kunal Lakra,
Mr. Vinayak Uniyal and Ms.
Saiba M. Rajpal, Advs. for
DDA.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, for issuance of an appropriate writ, order or direction, thereby seeking the following reliefs:

“I. Issue a Writ of Certiorari, or any other appropriate Writs, orders quashing the order dated 09/10/2019 (Annexure P-1) and directing the respondent to restore the determined perpetual lease dated 20/04/1992 of the petitioner.

II. Issue a Writ of Mandamus, or any other appropriate Writs, Orders restoring the determined perpetual lease of the petitioner and to handover the possession of the lease land to the petitioner.

III. Issue a Writ of Mandamus, or any other appropriate Writs,



Orders to respondents to permit the petitioner to get the land use converted from Industrial to Commercial / Banquet Halls after paying the conversion charge for the same.”

BRIEF FACTS:

2. The petitioner company claims that the physical possession of A-22, Mangolpuri Industrial Area, Phase-II, Delhi, (*hereinafter referred as the ‘subject property’*) was handed over to the petitioner on 22.12.1987 and later on a perpetual lease deed dated 20.04.1992 was executed in its favour by Delhi Development Authority [“DDA”] for subject property, upon which it spent a huge amount to raise construct of a building; and that he obtained an Industrial license on 13.01.1995 from the Municipal Corporation of Delhi for manufacturing polythene bags and related materials. It is stated that since the Supreme Court banned the operations of all the polluting industries in Delhi, consequently the manufacturing business had to be stopped. It is stated that the supply of electricity to the premises was also disconnected because of non-payment of bills by the petitioner, and therefore as an alternative, in order to continue with some work, the petitioner started a small catering business from the said plot.

3. It is then the case of the petitioner that it received a SCN titled “Final Show Cause Notice” dated 10.05.2000 alleging misuse of the subject property which was responded vide reply dated 25.05.2000; and further SCNs were received dated 31.03.2001 and 4.12.2002 each time adding a new ground not espoused in the earlier one; and that after around 5 years, notice order dated 21.11.2005 was received whereby the lease deed was determined. This led to initiation of



proceedings for eviction of petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [“**PP Act**”] before the Estate Officer.

4. It is the case of the petitioner that during the pendency of proceedings before the Estate Officer the respondent came up with a policy for conversion of Industrial Plots for commercial usage/ for use as banquet halls sometime in February, 2009; and that the petitioner submitted numerous letters cum undertakings dated 06.08.2012, 17.01.2013, 11.02.2013, 13.02.2013, 21.03.2013, 05.04.2013, 01.05.2013 and 06.11.2013 that no misuse would be done and they are ready to pay any penalty as imposed by the respondent but in vain.

5. It is the grievance of the petitioner that despite several notices issued by the Estate Officer, the DDA never responded and eventually, the Estate Officer passed an eviction order dated 04.02.2016, directing the petitioner to vacate the premises; and since the premises was lying unused, the officials of the DDA took over the possession of the subject property sometime on 19.08.2016. Aggrieved thereof, the petitioner instituted an appeal before the Court of learned District and Session Judge (North-West) Rohini Courts, Delhi, who vide order dated 27.09.2016 directed the parties to maintain *status quo* with respect to the subject property.

6. It is further the case of the petitioner that the respondent DDA published a Public Notice dated 22.03.2019 in several prominent newspapers wherein it was informed that the process has been initiated for restoration of determined lease deeds for properties belonging to residential, commercial, industrial and institutional owing to misuse



and other reasons; and that to avail benefit under the scheme, the petitioner submitted its application along with necessary documents *inter alia* praying for restoration of its determined lease. The grievance of the petitioner is that its application was summarily rejected vide letter dated 09.10.2019 on the ground that the property has already been reclaimed by DDA and the same is under the physical possession of DDA.

7. The respondent/DDA has filed a counter affidavit, wherein it has stated primarily as under:

- That the Answering Respondent issued a show cause notice under section 30(1) of the DD Act, 1957 to the petitioner in regard to the building construction on the subject plot as the construction was not as per the sanctioned Building Plans. The basement was extended in front and rear side set back, mezz floor was also constructed in the working hall, construction in rear set back upto first floor. Another show cause notice was sent to the petitioner regarding above mentioned unauthorised construction dated 07.05.1996.
- That on 28.04.1997, the field staff of the respondent reported that “Anukampa Banquet Hall” was running at the subject land. In view of this, a show cause notice dated 04.03.1998 for violation of the terms and conditions of allotment by unauthorized construction and industrial plot used as commercial was issued to the petitioner. Furthermore, no reply to the show cause notice was received by the respondent. On 10.12.1999, afresh site inspection was conducted by the field staff of the Answering Respondent.
- That on 12.09.2005 the receptionist Sh Bhupesh Kumar did not allow the officials of the respondent to conduct the survey in the absence of the owner of the subject plot and it was further observed that a banquet hall was running in the name of Anukampa Banquet Hall. In response the respondent issued another show cause notice to the petitioner on 22.09.2005.
- That giving sufficient time and opportunities to the lessee i.e., the Petitioner to stop the misuse of the subject plot, the Petitioner did



not remove the said breaches. The Competent Authority i.e., the Hon'ble LG determined the lease deed on 02.11.2005, pursuant to which the Respondent vide letter dated 21.11.2005. issued the cancellation of allotment and lease deed to the Petitioner

- That the Petitioner filed a W.P(C) no. 11374/2006 against the Respondent/ DDA, which was dismissed by the Hon'ble High Court vide order dated 08.02.2012 with direction to the Estate Officer to pass the final order within three months from the date of order and directions to the petitioner to furnish costs of 20,000/- payable to the respondent/DDA.
- That the Ld. Estate Officer vide order dated 04.02.2016 passed an eviction order against the Petitioner. The relevant portion of the order dated 04.02.2016 is reiterated here below;

“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 M/S Ocean Plastic of Fibers Ltd. In respect of Plot No., A-22, Mangolpuri Industrial Area, Phase-1, New Delhi-110083 who may be in occupation of the said public premises or any part thereof, to vacate the said premises within a period of 15 (fifteen) days from the date of this order. In the event of failure or refusal to comply with the order, within the period specified above, the said M/S Ocean Plactics& Fibers Ltd concerned is liable to be evicted from the said premised in respect of property no. Plot A-22, Mangol Puri Industrial Areas, Phase-1, Delhi-110083, if need be, by use of such force which may be necessary.”

- That vide letter dated 15.03.2016 and subsequent reminders dated 17.06.2016, 27.06.2016 and 30.06.2016, the Respondent requested the Petitioner peacefully to handover the physical possession of the subject land but the Petitioner did not hand over the physical possession of the subject land, the eviction programme was successfully carried out by the Respondent on 19.08.2016. After the successful eviction programme, the Petitioner submitted representation for restoration and de-sealing of the subject plot.

SUBMISSIONS ADVANCED AT THE BAR:

8. Learned counsel for the petitioner submits that the rejection of application of the petitioner by the respondent solely on the ground that "*the plot in question has been reclaimed by DDA and the same is*



under the physical possession of DDA" is a reason beyond the scope of DDA's scheme as the conditions in the scheme only barred for restoration where lease has been cancelled on account of encroachment on public land and in no other case the restoration of lease could have been denied if the applicant is ready and willing to abide by the conditions as being imposed in the scheme. It is urged that the bare fact that the details of the "court case" in addition to "eviction proceedings, litigation" has been sought in the application shows that the scheme does contemplate for a situation where the lease deed is determined and litigation with regard to such determination of lease is pending between the applicant and DDA. Lastly, it is urged that there is no such categorization provided in the scheme which limits the scheme only to cases where possession has not been taken by the DDA, and thus the impugned order is bad in the eyes of the law as the same attempts to over-reach the scheme.

ANALYSIS AND DECISION:

9. I have given my thoughtful consideration to the submissions made by the learned counsels for the parties. I have also perused the relevant record of the case.

10. At the outset, the petitioner has no cause of action to maintain the present writ petition and seek the reliefs claimed. First things first, without going into the issue as to whether or not consequent to execution of perpetual lease dated 20.04.1992, the petitioner ever carried out any manufacturing process of polythene bags and other related materials, as also disregarding whether there was misuse of the property by running a Banquet Hall, the bottom line is that on



determination of the lease *vide* order dated 21.11.2005, the proceedings under the PP Act were initiated and eventually eviction order was passed by the Estate Officer *vide* order dated 04.02.2016.

11. Learned counsel for the respondent/DDA has rightly urged that the policy for conversion of industrial plots for commercial usage, which was announced by way of public notice dated 25.02.2009 followed by the office order dated 15.02.2010 was inapplicable to the petitioner since the lease of the petitioner had already been determined *vide* order dated 21.11.2005. It is pertinent to mention here that the petitioner filed W.P.(C) 11374/2006 challenging the determination of lease *vide* order dated 21.11.2005 and also challenging initiation proceedings under the PP Act, which was dismissed by this Court *vide* order dated 08.02.2012. The petitioner also filed LPA¹ No. 415/2012 against the judgment dated 08.02.2012, which was also dismissed *vide* order dated 28.05.2012.

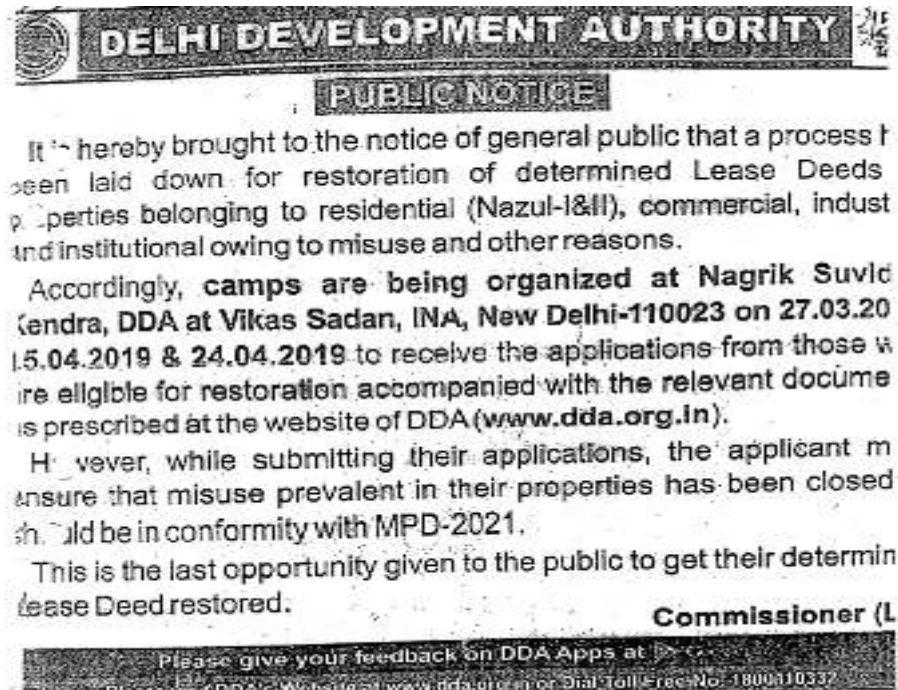
12. It is admitted fact that on passing of the eviction order by the Estate Officer under the PP Act *vide* order dated 04.02.2016, the respondent/DDA took over the possession of the plot in question on 19.08.2016. Although, an appeal was filed under Section 9 of the PP Act before the learned District & Sessions Judge (North-West), Rohini Courts, Delhi and *status quo* order dated 27.09.2016 was passed but by all means *status quo* order has lost its significance since the possession of the subject property had already been taken over on 19.08.2016.

13. The plea of the petitioner that respondent/DDA came out with another public notice for restoration of determined lease on

¹ Letters Patent Appeal



22.03.2019, and therefore, it was entitled to avail the benefit thereof, cuts no ice as the scheme was not *per se* applicable to the petitioner. Evidently, the petitioner had been left with no right, title or interest in the subject property. In order to fortify the aforesaid opinion, it would be appropriate to reproduce the notice, which goes as under:



14. The relevant conditions for restoration were also spelled out as under:-

- “1. An undertaking to the effect that HE/SHE/Commercial/Industrial Unit will pay all misuse, sub-letting, restoration charges etc as applicable under the rules & regulation of DDA, as determined by the DDA.
2. Affidavit duly certified by the two neighbouring Units/RWS/ Federation or Association to the effect that all breaches have been removed and there is no breach or the same is in conformity with Master Plan, 2021.
4. Photographs of the plot/unit with different angle showing that there is no breach of the unit.
4. Details of court case, eviction proceedings litigations pending against the property which lease is determined.”



15. A careful perusal of the aforesaid conditions would show that the policy was applicable to only those persons whose lease had been determined but they continued to remain in possession of the lease premises. This Court finds force in the submission by the learned counsel for the respondent/DDA that question of misuse or subletting would only arise for consideration where the legal, right, title and interest in the property had not been finally determined and in a situation where the possession remained with the original lessee. The very fact that the aforesaid conditions required acknowledgment from two neighbouring units that the misuse had been removed substantiated by photographs would also raise an inescapable inference that the policy was applicable to those who were in possession of the leasehold property as on the date the scheme was floated.

16. In view of the foregoing, discussion the present writ petition is dismissed.

17. The pending application also stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 19, 2024

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