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

+ **W.P.(C) 12777/2024**

BHAGWAN DASS

.....Petitioner

Through: Mr. Ajay Kumar, Mr. R.M Tiwari,
Mr. Manmohan Jha, Advocates along
with Petitioner in person

versus

LAND AND DEVELOPMENT OFFICER & ANR.

.....Respondents

Through: Mr. Hussain Taqvi, Mr. Swamy,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

11.09.2024

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1. The Petitioner contends that his late father, Mr. Ram Nath, was allotted Shop No. 29(3), Market Khyber Pass, Civil Lines, New Delhi – 110054¹, by Respondent No. 1, which was used for running a kirayana shop. The Petitioner's father was regularly paying rent with respect to the Subject Property till the year 1976, whereafter Respondent No. 1 stopped accepting the rent. Nonetheless, the Petitioner asserts that they were in lawful occupation of the Subject Property, and places reliance on electricity bills and other such documents to establish their long possession over the same.
2. The Subject Property has now been demolished on 3rd August, 2024 at the instance of Respondent No. 1. The Petitioner contends that the

¹ "Subject Property"



demolition constitutes an unlawful action as Respondent No. 1 did not give any notice to the Petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971² or even terminate the tenancy of the Petitioner's father. Therefore, it is argued that the demolition action is liable to be set aside. Further, it is contended that the Petitioner and his father were in continuous interrupted lawful possession of the Subject Property since the year 1951, and therefore, on account of wrongful eviction and demolition of their shop, they are entitled to be granted alternate accommodation as well as compensation of INR 10 lakhs along with interest.

3. As regards the question of the Petitioner's lawful possession and entitlement over the Subject Property, a coordinate bench of this Court has considered the same contentions and decline to interfere against the demolition action through order dated 9th July, 2024 in W.P.(C) 3307/2024³. The said judgment was assailed before the Division Bench of this Court; however, this challenge was also rejected through judgment dated 29th July, 2024 in LPA 591/2024. 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

² Public Premises Act

³ Titled "Sanjay Kumar & Ors v. Union of India & Ors."



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 Supplied]

4. In light of the above, it is evident that the Petitioner's contentions regarding the lack of notice under the Public Premises Act has not been accepted by this Court as a ground to hold the demolition to be unlawful. The legal recognition of tenancy or sub-tenancy is contingent upon the existence of a valid and ongoing lease agreement, or at least an unbroken chain of agreements conferring such rights from the original tenant to subsequent parties. Merely residing does not confer tenancy rights, particularly when no subsequent documentation or legal actions have been undertaken to renew or confirm such tenancy rights in the intervening years. As such, past payments of rent or occupancy charges cannot unilaterally create or extend a lease or sub-lease agreement in the absence of mutual



agreement and legal formalities. Thus, the Petitioner's long possession as a tenant of the Subject Property cannot for the basis of setting aside the impugned demolition action. The said reasoning shall apply to the present case, and thus, the Petitioner's submissions in this regard are untenable.

5. This brings us to the question as to whether the Petitioner is entitled to any rehabilitation/ allotment of alternate accommodation and compensation. In the opinion of the Court, the answer to this has to be straightforward in the negative. Since the Petitioner's long possession has not been accepted by the Court for grant of any right over the Subject Property, there is no question of award of compensation. In light of the aforementioned judgment, Petitioner's possession vested no interest or right over the Subject Property. Thus, the Court finds no ground to direct rehabilitation or grant of compensation in favour of the Petitioner.

6. In light of the foregoing, in the opinion of the Court, the present petition cannot be entertained, and is accordingly dismissed.

SANJEEV NARULA, J

SEPTEMBER 11, 2024/ab