



2024:DHC:1267



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

Date of decision: 16.02.2024

+ **CRL.REV.P. 219/2024**
SURESH KUMAR SHARMA

..... Petitioner

Through: Mr.Deva Nand, Adv. (through
VC)

versus

STATE GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 5055/2024

1. Allowed, subject to all just exceptions.

CRL.M.A. 5056/2024

2. For the reasons stated in the application, the delay of 34 days in re-filing of the present revision petition is condoned.

3. The application stands disposed of.

CRL.REV.P. 219/2024 & CRL.M.(BAIL) 290/2024

4. This revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C') read with Section 482 of the Cr.P.C., challenging the order dated 09.10.2023 (hereinafter referred to as 'Appeal Order') passed by the learned



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Additional Sessions Judge-05, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'ASJ') in CA 236/2022, titled ***Suresh Kumar Sharma v. BSES Yamuna Power Ltd. through its Authorized Officer***, and the order on sentence dated 17.09.2022 (hereinafter referred to as 'Sentence Order') passed by the learned Additional Chief Metropolitan Magistrate (Spl. Acts), Central, Tis Hazari Courts, Delhi (hereinafter referred to as 'ACMM') in CC No. 4928/2017 titled ***Bombay Suburban Electric Supply v. Suresh Kumar Sharma***.

Factual Matrix

5. The above Complaint was filed by the respondent no. 2 under Section 630 of the Companies Act, 1956 (hereinafter referred to as 'Companies Act') alleging therein that on coming into force of the Delhi Electricity Reforms Act, 2000 and the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, the respondent no. 2 has taken over the discharge of distribution of electricity in Central, East, and North-East Delhi from Indraprastha Power Generation Company Ltd. (Housing Cell, RPH) (IPGCL) on one hand, and on the other hand all the rights, titles, interests, claims, liabilities and demands etc., qua all the properties/assets belonging to and/or owned by the IPGCL and further all the claims, rights, liabilities and demands of IPGCL against the employees, which were transferred/assigned to the respondent no. 2 with effect from 01.07.2002 vide Notification No. F.11(99)/2001-Power/PF-IV/2828 dated 13.11.2001.

6. It was further alleged that the petitioner was an employee of the erstwhile IPGCL, which subsequently became the Bombay Suburban Electric Supply (in short, 'BSES') and took over the distribution of



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electricity as well as all rights, titles, interests, claims, liabilities and demands with regard to all properties/assets owned by or belonging to the IPGCL.

7. It is stated that vide Memorandum dated 27.02.2002, the petitioner was allotted a flat bearing no. G-26, Type-II, Tripolia Colony, Delhi-110007, and was entrusted with the possession of the same till his employment with the IPGCL or the BSES. Upon his retirement, he was required to handover the possession of the said flat to the legal owner of the flat, which would be the complainant. The petitioner, however, unlawfully retained the possession of the said flat even after his retirement on 30.11.2009.

8. It is alleged that IPGCL issued a letter dated 11.12.2009, and the BSES issued a letter dated 21.07.2010 to the petitioner, seeking peaceful and vacant possession of the said flat within 10 days, failing which he was warned that stricter steps will be taken.

9. As no reply/response to the notice was received from the petitioner, the complainant filed the Complaint under Section 630 of the Companies Act (Section 452 of the Companies Act, 2013), being Ct.Cases no. 4928/2017.

10. The petitioner was convicted of the offence under Section 630 of the Companies Act by the Judgement dated 16.11.2021 passed by the learned ACMM(Special Acts), Central, Tis Hazari Courts, Delhi, and by the order dated 17.09.2022, was sentenced to pay a fine of Rs.10,000/- and in default, undergo simple imprisonment of 1 month. The petitioner was further directed to handover the vacant peaceful possession of the above-mentioned flat to the complainant within a



period of six months of the order, failing which it was directed that he shall be liable to go undergo simple imprisonment for a period six months.

11. The petitioner challenged the above judgment and order by way of an appeal, being CA 236/2022, which has been dismissed by the learned ASJ vide the impugned judgment and order.

12. Aggrieved of the same, the petitioner has filed the present petition.

Submissions of the learned counsel for the petitioner

13. The learned counsel for the petitioner submits that the said flat is not in the ownership of the complainant/respondent no.2 but is, in fact, owned by the State/respondent no.1, and in light of the same, the Complaint under Section 630 of the Companies Act could not have been filed by the complainant/respondent no.2. He further submits that the petitioner was never an employee of the respondent no.2.

14. The learned counsel for the petitioner submits that the petitioner is entitled to live in the said flat under the Lower Income Group Housing Scheme of 1954 (LIGH Scheme) of the Union of India, as he was an employee of the erstwhile Delhi Electricity Supply Undertaking (DESU) and its successor - Delhi Vidyut Board, which fell under the IPGCL. He submits that vide Resolution No. 447 dated 20.09.1996 of the Municipal Corporation, and Resolution No.1428 dated 01.04.1966 of the Standing Committee, flats built under the LIGH Scheme were for the benefit of employees who were desirous of settling in Delhi and did not own any other residential accommodation in the same area.



15. The learned counsel for the petitioner further submits that the impugned order is unreasoned.

Analysis and Findings

16. I have considered the submissions made by the learned counsel for the petitioner.

17. The learned ACMM, vide judgment dated 16.11.2021, while convicting the petitioner of offence under Section 630 of the Companies Act, observed as under:-

“16. CW-1 has further deposed that as of now, the person who had legally occupied the quarter in question had retired from the services, he had left with no right, title or interest to occupy the premises in question, just, for reason that he is former employee of BSES. There is no doubt, in the proposition that by virtue of notification number F-11/99/2001-Power/PF-III/2828 dated 13.11.2001 assets and properties situated at Tripolia Colony, New Delhi stood transferred to the present complainant. Perusal of various documents relied upon by CW1 during his testimony and especially the document Ex.CW1/1 i.e. Certificate of incorporation, it is clear that besides taking over the assests and liabilities, BSES has also got entrustment to recover the properties of the erstwhile power company. Thus, not only the relation of employer and employee stands proved but also other powers of complainant company including to reclaim back its property.

17. Further, to comprehend, Mr. Suresh Kumar Sharma who was initially the employee of erstwhile, Indraprastha Power Generation Company Limited and later on, employee of the complainant company retired from the services on 30.11.2009, had failed to handover the vacant physical possession of the premises in question to the complainant company in



accordance with law. The testimony of CWI could not be shattered during the cross-examination or by leading any further evidence on behalf of accused.

18. Thus, in view of the aforesaid discussions, and in the light of overall circumstances, it is held that complainant has proved that accused Suresh Kumar Sharma was allotted the aforesaid quarter by virtue of his employment and he was liable to vacate the quarter after his retirement. But, he had failed to vacate and hand over the possession of the quarter in dispute to the complainant. As such, accused has been wrongfully withholding the quarter of the complainant company. Thus, it is held that the complainant has proved its case against the accuse Suresh Kumar Sharma beyond reasonable doubt. Accordingly, accused is held guilty and convicted for the offences u/S. 630 of the Companies Act 1956 (Section 452 of the Companies Act, 2013)."

18. The appeal filed by the petitioner has been dismissed by the learned ASJ by way of the impugned judgment, observing as under:-

"11. The respondent/complainant company took over the assets and liabilities of the erstwhile IPGCL w.e.f. 01.07.2002 vide notification dated 13.11.2001 and the employees of the erstwhile IPGCL were transferred/ assigned to the complainant w.e.f. 01.07.2002. The appellant/ accused is stated to be in unauthorized possession of the quarter in question w.e.f. 31.12.2009. As per the allotment letter dated 27.02.2002 Ex. CW1/5 on record, the quarter in question was allotted by the erstwhile Delhi Vidyut Board to the appellant. As such, the appellant/ accused was not the ex-employee of the complainant and rather, when the complainant company took over the erstwhile IPGCL on 01.07.2002, the appellant/ accused was still an existing



employee of the complainant company. As such, I am of the opinion that the ratio of the authority relied upon by the appellant/accused in the present appeal is not applicable as the appellant/accused was not an ex-employee.

12. The next submission of the appellant is that the quarter in question was built under Low Income Group Housing Scheme and as such, the complainant was not the owner of the quarter in question. I am of the opinion that the above said submission of the appellant is not only fallacious but the same is untenable as well. It has to be seen that the allotment letter dated 27.02.2002 issued by the erstwhile DVB Ex. CW1/5 on record, is there on record of the file by virtue of which the quarter in question was allotted to the appellant/accused and as such, the submission of the appellant/accused that the complainant company was not the owner of the quarter in question cannot be entertained.

13. Furthermore, it has to be seen that the only defence witness examined by the appellant/accused is Sh. B.N. Sharma and the above said witness, who has been examined as DW1, in the cross-examination has categorically admitted that Low Income Scheme 1954 has not been implemented by either of the Govt. Department till date. DW1 has categorically admitted in the cross-examination that by virtue of the Gazette Notification Ex. CW1/4, the complainant company was empowered to get the quarters vacated from the unauthorized occupants. DW1 categorically admits that the complainant company has the competency to look after the flats in question.

14. Going by the cross-examination of DW1, I have no hesitation to hold that the case of the complainant is ipso-facto proved and the defence of the accused/ appellant is entirely demolished.”



19. Both the courts have, therefore, found that in terms of the Delhi Electricity Reforms Act, 2000 and the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, the flat in question was transferred from IPGCL to Bombay Suburban Electric Supply, Yamuna, Delhi Power Limited. It also had got the power to get the said flat vacated from any unauthorized occupants vide the notification dated 13.11.2001. The petitioner was earlier an employee of IPGCL, and by virtue of employment was allotted the subject flat on 27.02.2002. He retired from service on 30.11.2009, that is, after the transfer of the flat to the respondent no.2/Complainant herein.

20. As far as the plea of the petitioner that the flat in question was built under the Low Income Group Housing Scheme, the learned Appellate Court, relying upon the statement of Sh.B.N. Sharma (DW1), has held that the said scheme was not implemented and, in fact, the flat in question was allotted to the petitioner only by virtue of his employment. The learned counsel for the petitioner has not been able to show any reason to hold to the contrary.

21. Even otherwise, in exercise of powers under Section 401 of the Cr.P.C., this Court does not act as a court of appeal over the decision of the learned Appellate Court. In *Duli Chand v. Delhi Administration* (1975) 4 SCC 649 and *Bansi Lal & Ors. v. Laxman Singh* (1986) 3 SCC 444, the Supreme Court has held that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a reappraisal of the evidence. Such power can be exercised only where the findings of the learned Trial Court or the Appellate Court is found to be unreasonable



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or perverse. In my view, the petitioner has not been able to meet the above test for interference with the Impugned Order in the present petition.

22. Accordingly, I find no merit in the present petition. The same is, dismissed. The pending application is also disposed of.

23. There shall be no orders as to costs.

NAVIN CHAWLA, J

FEBRUARY 16, 2024/ns/rp

Click here to check corrigendum, if any