

(2011) 12 DEL CK 0190

In the Delhi High Court

Case No : Writ Petition (C) No. 3521 of 2008

Ahuja Refrigeration P. Ltd.

APPELLANT

Vs

Life Insurance Corporation and Another

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 9
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 12 DEL CK 0190

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Nitya Rama Krishnan, Ms. Suhasini Sen and Mr. Rahul Kriplani, for the Appellant; Mohinder Singh and Mr. Ankur Goel, for the Respondent

Judgement

Sunil Gaur, J.—This petition is premised upon the assertion that every action taken under the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 must be informed by reason, which ought to be justifiable. Impugned order of 7th April, 2008 in appeal u/s 9 of Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "Public Premises Act") upholds the order of 28th November,

2001 of the Estate Officer/Respondent No. 2 evicting the petitioner/tenant from the premises of the first Respondent as referred to in the impugned

order, in which damages for use and occupation have been also granted.

2. Petitioner claims to be a tenant of Respondent No. 1 - Life Insurance Corporation of India (hereinafter referred to as "LIC") since the year

1956 and the said tenancy was oral one. As per the petitioner in the year 1991, first Respondent had started issuing electricity bills in excess of

what they were paying to DESU and for the reasons best known to them, the

money paid by the petitioner to the first Respondent towards the rent and electricity/water charges were being kept by them in the "suspense account". That is to say, Respondent - "LIC was wrongly indicating that the petitioner is in arrears of the payment of electricity/water charges etc., but infact, the payments were regularly made by the petitioner to first Respondent.

3. Petitioner asserts that in January, 1992, Respondent had stopped raising bills and as per the account maintained by the petitioner, Rs.3,889/-

was paid in excess to the first Respondent as in July, 1992 and in March, 1994, by way of abundant caution, petitioner had paid Rs.10,578/-

towards water charges and a sum of Rs.8,000/- to the first Respondent towards the outstanding amount, if any, and the same was not taken into account while computing the arrears.

4. On 16th June, 1994, notice of termination (Annexure P-3) pertaining to the premises in question, was served upon the petitioner by the first

Respondent alleging that the petitioner is a habitual defaulter in payment of occupation charges, etc., and Rs. 13,423/- was outstanding towards the

rent and 211,107/- were the outstanding towards water charges and Rs. 39000/- towards electricity charges as on the date of issuance of the

notice (Annexure P-3). Sub-letting of part of the premises in question, was also one of the reasons putforth in the notice of termination (Annexure

P-3) of tenancy of the petitioner in the premises in question.

5. In the reply of 30th April, 1996 (Annexure P-6) to the notice of termination (Annexure P-3), petitioner had maintained that there were no

arrears of rent etc and there was no sub-letting of the premises in question. Not satisfied with the reply of the petitioner, the first Respondent

initiated the proceedings under the "Public Premises Act" against the petitioner and evidence was led in those proceedings which culminated in

passing of the order of 28th November, 2001 (Annexure P- 8) by the Estate Officer/Respondent No. 2 evicting the petitioner from the premises in

question. The operative part of the order (Annexure P-8) is as under:-

Keeping in view all the facts and findings discussed above, I hold that the Respondents had been a habitual defaulter in payment of rent and their

tenancy having been terminated vide termination notice dated 16.6.94 duly served on the Respondent, the Respondents became unauthorized

occupants w.e.f. 1.8.94 under the provisions of PP Act 1971.

6. Aforesaid order (Annexure P-8) holding notice of termination of 16th June, 1994 to be valid also saddles the petitioner with the liability to pay

damages with interest for the period w.e.f. 1st August, 1994. In the impugned order of 7th April, 2008 (Annexure P-10), the aspect of petitioner

being in arrears of rent, etc. was not gone into as the view taken was that Respondent - "LIC" was not required to assign any reason in the notice

of termination of tenancy as simpliciter termination of tenancy was sufficient and since the Respondent - "LIC" did not wish to keep the petitioner

as tenant, therefore it was well within its rights to seek eviction of the petitioner from the premises in question by issuance of notice of termination

(Annexure P-3). While upholding the order of Estate Officer, the Appellate Authority in the impugned order of 7th April, 2008 (Annexure P-10)

has confirmed the award of damages as well.

7. At the hearing, this writ petition is pressed by learned counsel for the petitioner by urging that the impugned order of 7th April, 2008 (Annexure

P-10) is patently bad in law as it does not advert to the basis of eviction upon which the order of the Estate Officer rests and because the

Appellate Authority has acted wholly without jurisdiction in taking the view that termination simpliciter was valid. It was vehemently urged by the

petitioner's counsel that Respondent - "LIC" had sought the eviction of the petitioner on specific ground of being a habitual defaulter and had not

sought a simpliciter termination of the tenancy and so the impugned order upholding the petitioner's tenancy is not only arbitrary but is patently

perverse too.

8. Learned counsel for the petitioner had sought to rely upon the guidelines issued in the year 1992 and had pointed out that the guidelines of the

year 2002 required the review of the pending cases and it was asserted that these guidelines have met the judicial approval in the decision of the

Apex Court in *New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another*, . Reliance was also placed by the petitioner's counsel

upon the decision in W.P.(C) No. 4342/2007, titled as *Damayanti Verma (Deceased) through Her LRs vs. LIC & Anr.*, rendered on 25.7.2011

to contend that the judicial notice has been taken of the fact that the aforesaid guidelines are not to be blatantly ignored by the Government

Corporations as the objective of the said guidelines is to protect the genuine tenants from whimsical evictions and it is pointed out that Damayanti

Verma (supra) was also a case of old tenancy whose eviction was sought by the Respondent - "LIC" on the ground of bonafides necessity and

upon finding that the ground of bonafides need of Respondent - "LIC" was not established the eviction order in the said case was set aside.

Petitioner claims parity with Damayanti Verma (supra), to assert that this matter needs to be remanded to the Appellate Authority to return a

specific finding as to whether the petitioner was in arrears of charges etc., or not, as the categorical stand of petitioner's counsel is that the petitioner

had never defaulted in payment of rental, etc. of the premises in question.

9. Respondent's counsel had staunchly supported the impugned order of 7th April, 2008 (Annexure P-10) and had urged that the guidelines

issued to minimize the landlord-tenant litigation is of advisory character and is not of a statutory nature and was meant to protect genuine non-

affluent tenants and these guidelines were not applicable to large business houses and commercial entrepreneurs. Reliance was placed by learned

counsel for the Respondent upon decisions in Mohammad Ahmad and Another Vs. Atma Ram Chauhan and Others, ; Jiwan Das vs. LIC of India,

1994 RLR (SC) 189 ; Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, ; Jain Ink Manufacturing Company Vs. Life

Insurance Corporation of India and Another, ; Uttam Parkash Bansal and Others Vs. Life Insurance Corporation of India and Others, ; K.R.K.

Talwar Vs. Union of India and Others, ; Banatwala and Company Vs. L.I.C of India and Another, , to urge that the tenant of a public

authority/statutory body can be summarily evicted after service of notice of termination and such instrumentality of the State need not give reasons

for evicting tenants paying low rents and to let out the property at a higher rent and since the question of validity of the notice of termination

(Annexure P-3) is not in issue in these proceedings, therefore, this Court is not required to go into the justifiability of the action for termination, i.e.

of being in arrears of payment of charges etc., as the scope of judicial review is limited one. Thus, it is submitted that the impugned order does not

suffer from any apparent error and so it deserves to be upheld.

10. After having heard both the sides at length in this matter, and upon perusal

of the impugned order, pleadings of this case and the decisions cited, it becomes quite apparent that the question which falls for consideration in this petition is as to whether the Appellate Authority was justified in upholding the impugned order of eviction not on the ground upon which it has been passed but because simpliciter termination of tenancy by issuance of notice of termination (Annexure P-3) was permissible in law.

11. Impugned order of 7th April, 2008 (Annexure P-10) places implicit reliance upon the decision of the Apex Court in *Jiwan Das vs. LIC of*

India, 1994 RLR (SC) 189 to hold that simpliciter termination of tenancy upon service of notice of termination is valid. During the course of

hearing, learned counsel for the petitioner had made no effort to show as to how the ratio of the decision of the Apex Court in *Jiwan Das* (*supra*) is

not applicable to the facts of the instant case nor any decision of the Apex Court holding to the contrary was cited. In *New India Assurance*

(*supra*) and *Damayanti Verma* (*supra*) relied upon by the petitioner's counsel, Apex Court decision in *Jiwan Das* (*supra*) was not brought to the

notice of the Court. The legal position on the subject summed up by the Apex Court in *Jiwan Das* (*supra*) holds good, which reads as under:-

Sec.106 of the T.P. Act does indicate that the landlord is entitled to terminate the tenancy by giving 15 days notice, if it is a premises occupied on

monthly tenancy and by giving a month's notice if the premises are occupied for agricultural or manufacturing purposes, and on expiry thereof

proceedings could be initiated. Sec.106 of the T.P. Act does not contemplate of giving any reason for terminating the tenancy. Equally the

definition of the public premises "unauthorised occupation" u/S. 2(g) of the Act, postulates that the tenancy "has been determined for any reason

whatsoever.

When the statute has advisedly given wide power to the Public Authorities under the Act to 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 for terminating the tenancy u/S. 106 of the T.P.

Act. If it is so read S. 106 of T.P. Act and Section 2(g) of the Act would become *ultra vires*. The statute advisedly empowered the Authority to

act in the public interest and determine the tenancy or leave and licence before taking action u/S. 5 of the Act. If the contention of the appellant is

given acceptance he would be put in a higher pedestal than a statutory tenant under the Rent Act. Take for example that a premises let out at a low rent years back like the present one. The rent is unrealistic. With a view to revise adequate market rent tenant became liable to ejectment. The contention then is, action is violative of Art. 21 offending right to livelihood. This contention too is devoid of any substance. An owner is entitled to deal with his property in his own way profitable in use and occupation. A public authority is equally entitled to use the public property to the best advantage as a commercial venture. As an integral incidence of ejectment of a tenant/licensee is inevitable. So the doctrine of livelihood cannot indiscriminately be extended to the area of commercial operation. Therefore, we do not find any substance in the contentions of the appellant. The appeal is accordingly dismissed. No costs.

12. The legal position as afore-noted, stands substantially reiterated by the Apex Court in the recent decision in Mohammad Ahmad and Another

Vs. Atma Ram Chauhan and Others, in these words:-

One half of the lis between landlord and tenant would not reach courts, if tenant agrees to pay the present prevalent market rate of rent of the tenanted premises to the landlord. In that case landlord would also be satisfied that he is getting adequate, just and proper return on the property. But the trend in the litigation between landlord and tenant shows otherwise. Tenant is happy in paying the meager amount of rent fixed years ago and landlord continues to find out various grounds under the Rent Acts, to evict him some how or the other. This case appears to be another classic example of the aforesaid scenario.

13. It emerges from the foregoing narration that Section 106 of Transfer of Property Act does not mandate giving of reasons for termination of tenancy. Since validity of notice of termination (Annexure P-3) is not in issue, therefore the impugned order of 7th April, 2008 (Annexure P-10) cannot be faulted with on the ground that it has failed to consider the reason put forth in the notice of termination (Annexure P-3) for determining the tenancy in question. So far as the aforesaid guidelines as dealt with in New India Assurance (supra) are concerned, they are of advisory character and these guidelines draw a distinction between a tenant who is rich or industrialist, etc., vis-à-vis a person who is poor who uses the

tenanted premises only for residence. This is so said in this very decision, i.e., in New India Assurance (supra). That is to say that these guidelines are meant for genuine non-effluent tenants and are not applicable to commercial entrepreneurs like the petitioner Company. In this view of the matter, the decision in Damayanti Verma (supra) relied upon by the petitioner is ""per incuriam"" because of the non-binding character of these guidelines and the dictum of the Apex Court in Jiwan Das (supra) as referred to above.

14. When law permits simpliciter termination of tenancy, then it cannot be insisted upon that reason for termination of tenancy, i.e., of being defaulter in payment of electricity charges, etc. in respect of the premises in question, must be proved. When Respondent - "LIC independently maintains the notice of termination (Annexure P-3) that it does not want the petitioner Company to its tenant, then Respondent -"LIC cannot be forced to retain the petitioner Company as tenant on the same terms and conditions for all times to come. In this view of the matter, it was not incumbent upon the Appellate Authority to have returned specific finding as to whether the petitioner is in arrear of charges, etc., or not.

15. In view of what is observed in the preceding paragraphs, the guidelines relied upon by the petitioner have no applicability to the facts of the instant case. As far as assessment of damages are concerned, no arguments were addressed by either side. Impugned order does not disclose any arbitrariness or perversity requiring any interference by this Court while exercising the powers of judicial review. Consequently, finding no palpable error in the impugned order of 7th April, 2008 (Annexure P-10), this petition is dismissed with no order as to costs.