

(2011) 08 DEL CK 0167

In the Delhi High Court

Case No : Writ Petition (C) No. 7881 of 2010

Arun Sharan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9

Citation : (2011) 08 DEL CK 0167

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Kundan Kumar, for the Appellant; Jatan Singh, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.

1 By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the order dated 30.10.2010 passed by the learned District Judge IV, whereby the appeal filed by the Petitioner u/s 9 of the Public Premises (Eviction of Unauthorized Occupants) Act was dismissed.

2. Brief facts of the case relevant for deciding the present petition are that the father of the Petitioner Sh. Kirpal Saran, was allotted a fruit stall on the first floor in Nirman Bhawan on 28.5.1965, which licence was renewed from time to time. That the father of the Petitioner expired on 23.6.2007 and the Respondent terminated the licence in respect of the said stall. That the Petitioner applied to the Respondent for the regularization of the said stall which was rejected and eviction proceedings were initiated against him and an eviction order dated 27.8.2010 was passed against him by the learned Estate officer. That the Petitioner preferred an appeal against the order of the learned Estate Officer which vide order dated 31.10.2010 was dismissed and feeling aggrieved with the same, the Petitioner has preferred the present petition.

3. Mr. . Jatan Singh, learned Standing Counsel for the Respondent/UOI submits that the Petitioner has no legal right over the stall/fruit shop in question which was allotted in favour of his father. Counsel also submits that so far the right of the Petitioner to inherit licence of the said stall is concerned, the policy of the Government is confined only to the shops which are situated in various commercial markets under the administrative control of the Directorate of Estates. In support of his arguments, counsel has placed reliance on the office order dated 21.02.1976. The contention of counsel for the Respondent is that the said office order is only applicable to commercial markets and the stall, which was allotted in favour of the father of the Petitioner, on license basis is not located in any of the commercial markets.

4. Mr. Kundan Kumar, learned Counsel for the Petitioner, on the other hand, submits that the father of the Petitioner late Shri Kirpal Saran was allotted the said fruit stall w.e.f. 28.05.1965 and since then he has been in continuous and uninterrupted possession of the same where he was running his fruit shop. Counsel also submits that the license of the father of the Petitioner was renewed by the Respondents from time to time and no complaint of violation or breach of any terms & conditions of the license deed was ever made by the Respondents against the father of the Petitioner. Counsel also submits that the Petitioner being his son was also assisting his father in running the said business. It is the case of the Petitioner that the said license of the father of the Petitioner was cancelled by the Respondents merely on account of the fact that his father had expired on 23.06.2007. It is also the case of the Petitioner that for the last more than 40 years, the said shop was under the occupation of the father of the Petitioner and the same had been the only source of livelihood of the father of the Petitioner and his family members. Counsel has also placed reliance on a similar extension granted by the Dy. Director of Estate vide their letter dated 2.11.2010 in respect of a fruit stall which is located on the first floor of Shastri Bhawan, New Delhi. Claiming parity with the renewal of the license of the said case, counsel for the Petitioner submits that the Petitioner cannot be discriminated against to deny the renewal in favour of the Petitioner by the Respondents.

5. I have heard learned Counsel for the parties.

6. It is not in dispute between the parties that the stall in question was allotted by the Respondent in favour of Late Shri Kirpal Saran, father of the Petitioner in the year 1965 and the said licence in favour of Mr. Kirpal Saran continued from time to time and last agreement in favour of the said allottee was executed by the Respondent on 21.5.2004. The Petitioner has claimed that he had been assisting his father in his business of running the fruit shop from the said stall for the last many years and therefore he was in joint possession of the said shop with his father. It is also not in dispute that the allotment of the said stall was cancelled only because of the death of the original licensee i.e. Mr. Kirpal Saran who had expired on 23.6.2007 and not because of any violation on the part of the licensee or the present Petitioner of any terms and conditions of the licence

agreement. It is also not the case of the Respondent that the Petitioner or the licensee had ever defaulted in making payment of the licence fee. The licence which was last renewed in favour of the father of the Petitioner also came to an end on 21.5.2007 and thereafter no fresh agreement of licence was executed although the same was not terminated during the life time of the original licensee who died about a month later i.e. on 23.6.2007 from the date of the expiry of the said agreement. It is also not in dispute that after the death of his father, the Petitioner had filed an application on 3.11.2008 to seek regularization of the said stall in his name but the said request of the Petitioner was rejected by the Respondent on the ground that the said stall in question was not a designated shop. It is a settled legal position that the Petitioner invoking the writ jurisdiction of this Court has to establish clear and enforceable right in his favour and correspondingly invasion or violation of such a legal right by the State or the instrumentalities of the State. The father of the Petitioner was a licensee and his last license as per the agreement dated 21.5.2004 was for the period w.e.f.1.1.94 to 21.5.2007. Although no further agreement in writing was executed between the said licensee and the Respondent but at the same time the license of the said fruit stall was also not revoked by the Respondent during the life time of the father of the Petitioner. The reason for revocation of the said licence is primarily on account of death of the licensee and the license being not heritable by the legal heirs. There cannot be any quarrel with the proposition that the license is a personal right granted to a person to do something upon the immovable property of the grantor and it does not amount to the creation of an interest in the property itself. The licence therefore is purely a permissive right and is personal to a licensee and such a right being not heritable cannot devolve upon the legal heirs. In the teeth of this settled legal position, the Petitioner cannot claim any right on the licensed stall in his capacity as a legal heir of late Shri Kirpal Saran. It has been time and again held by the Apex Court that the action of the State or instrumentalities of the State cannot be based on whims and fancies and cannot be discriminatory to say the least and has to fulfill the mandate of Article 14 of the Constitution of India. The Apex Court in the case of New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, held that if the landlord is a State within the meaning of Article 12 of the Constitution of India then it is required to prove fairness and reasonableness on its part in initiating a proceeding and that its action has to meet the constitutional requirements of Article 14 of the Constitution of India. This was further reiterated by this Court in the case of Kamla Bhargava and Anr. v. Life Insurance Corporation of India and Ors. W.P. (C) No. 12718/2009 decided on 20.1.2011 and then in Damyanti Verma v. Life Insurance Corporation of India WPC 4342/2007 decided on 25.7.2011 that the action of the State has to satisfy the requirements of the test of fairness, reasonableness, which are the basic postulates of Article 14 of the Constitution of India and cannot be totally arbitrary and capricious. There cannot be thus any dispute that the action taken by the State against any of its lessee/licensees must not be unreasonable, whimsical, unfair, unjust or tainted with arbitrariness or capriciousness

Nevertheless, the Respondent being a Government Department in the present case thus cannot be seen to be adopting different parameters for similarly placed persons.

7. During the course of the hearing of the present petition, counsel for the Petitioner brought to the notice of this Court that in an identical placed case, the Respondent had renewed the licence in favour of the legal heir where also the fruit stall on the first floor of Shastri Bhawan was licensed in favour of one Mr. Madan Lal Gupta and after his demise the licence was renewed in favour of his wife Smt. Shakuntala Devi. This renewal of the licence in favour of Smt. Shakuntala Devi has not been denied by the Respondent. However, the Respondent in its short affidavit filed through Dy. Director of Estates has taken a strange stand by stating that they are not in a position to say how the said fruit stall was allotted to a private person and under what circumstances the license was renewed in favour of the wife of the deceased licensee. With such a stand taken by the Respondent, it is quite manifest that for two licensees, one in Nirman Bhawan and the other one in Shastri Bhawan different parameters have been adopted by the Respondent and in the absence of any explanation coming forth the denial of renewal of license in favour of the Petitioner is discriminatory on the very face of it. Counsel for the Respondent has also taken a stand that so far the heritability of the licence is concerned, as per their policy the same is confined only to the shops in the commercial markets and not for stalls located in the Government buildings. Counsel has also taken a stand that in fact there is no policy in place to grant rights to the legal heirs of the licensed stalls located in various Government buildings. Even if this contention of the counsel for the Respondent is taken as correct, then also the Government cannot be seen to be adopting a different yardstick for the similarly situated persons. In the absence of any justification given by the Respondent as to why and how the licence in favour of Smt. Shakuntala Devi was renewed and why not in the case of the Petitioner, this Court is of the considered view that interest of justice would be best served if the licence of the Petitioner is also renewed by the Respondent at least for a period of three years so as to enable him to run the fruit stall, from the same space from where he was earlier operating and if the said space has already been occupied by the concerned Ministry, then some other reasonable space of equal measurement on the same floor be made available to the Petitioner within a period of one month from the date of this order.

8. In the light of the above discussion, the impugned order dated 30.10.2010 is hereby set aside.

9. In terms of the above order, the present petition is allowed.