(2012) 03 DEL CK 0558

In the Delhi High Court

Case No : Writ Petition (C) 8254 of 2010 and C.M. No. 21233 of 2010

Band Box Private Ltd. APPELLANT

Vs

Estate Officer and Another RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2012) 190 DLT 81

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : R.M. Bagai, Ms. Anu Bagai and Ms. Damini Khaira, for the Appellant; P.S. Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur

1. By invoking the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, petitioner was evicted from the Ground Floor of the commercial premises No. 18/19 in Connaught Circus, New Delhi by the Estate Officer vide Order of 23rd September, 2008 against which petitioner had preferred statutory appeal and the said appeal stands dismissed vide impugned order of 2nd December,2010. The challenge to petitioner''s eviction from the commercial premises in question is primarily on the ground that Mr. P.S. Bhatia, Chief Manager of the respondent-bank who had conducted the proceedings in this case as Estate Officer was not competent to do so as Assistant General Manager, General Administration of respondent-bank is the competent authority who can act as an Estate Officer. It was vehemently contended by learned counsel for the petitioner that the aforesaid plea of lack of jurisdiction which goes to the root of the matter can be raised at any point of time. In support of this stand, reliance was placed upon decisions in Chandrika Misir and Another Vs. Bhaiya Lal, ; Shri O.P. Nigam Vs. Union of India (UOI) and Others, ; K.K. Taneja Vs. Union of India and Another, ; Chiranjilal Shrilal Goenka (Deceased) through

Lrs. Vs. Jasjit Singh and Others, Delhi Electric Supply Undertaking Engineers'' Association and Another Vs. Municipal Corporation of Delhi and Others, and Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, .

2. It was sought to be highlighted by learned counsel for the petitioner that the action of the respondent bank in initiating proceedings against other two tenants under Delhi Rent Control Act and to single out the petitioner for being proceeded against under the Public Premises (Eviction of Unauthorized Occupants) Act,1971, is discriminatory and without framing any policy, petitioner has been got evicted by the respondent in violation of the Guidelines of 2002 which provides safeguard against arbitrary use of powers under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to evict genuine tenants. Reliance was placed upon decisions in Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, .

3. Impugned order (Annexure P-29) is assailed by learned counsel for the petitioner on the ground that it wrongly puts the onus upon the petitioner to proof that respondent bank did not require the premises in question for its bonafide use. Reliance was placed by petitioner''s counsel upon decisions in Virender S. Hooda and Others Vs. State of Haryana and Another, Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, ; Commissioner of Customs Calcutta etc. etc. vs. M/s. Indian Oil Corporation Ltd., AIR 2004 SC 2799; New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, to contend that the aforesaid Guidelines of 2002 are of binding nature and the same have been illegally ignored by the Estate Officer as well as by the Appellate Authority. It was also urged by petitioner''s counsel that Division Bench Order of 2nd September, 2008 (Annexure P-20) of this Court in LPA No. 509/2008 giving liberty to the petitioner to raise the contentions on the merits of this case including plea of lack of material before the Estate Officer has been illegally ignored by the Appellate Authority in the impugned order and the observations of the learned Single Judge have been relied upon which renders the impugned order patently illegal.

4. Initiation of proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act,1971, by the respondent-bank have been labelled to be malafide by the petitioner''s counsel by pointing out that despite issuance of notices in the years, 1991, 1992 and 1994 to evict the petitioner from subject premises, respondent-bank had taken no steps to get the petitioner evicted and thus the hollowness of the plea of respondent Bank of requiring the subject premises for bonafide use stands exposed.

5. On behalf of the respondent-bank, it was contended that there is sufficient evidence on record to establish that respondent-bank generally requires the subject premises for proper functioning of the office of the Zonal Manager of the respondent-bank as well as for other banking purposes and there is no question of petitioner being discriminated as the two tenants i.e. M/s Goyal Industrial

Corporation and M/s General Transport Corporation against whom eviction proceedings under the Delhi Rent Control Act were initiated, could not be proceeded against under the Public Premises (Eviction of Unauthorized Occupants) Act,1971, as the lease of the portion of the premises under the aforesaid tenants was cancelled by DDA on account of mis-user and it is not so in the case of the petitioner and the petitioner cannot take any advantage on account of the lapse on the part of the respondent-bank in not initiating eviction proceedings in pursuance to earlier eviction notices.

6. It was contended by learned counsel for the respondent that there has been no violation of order (Annexure P-20) passed by the Division Bench as the plea of lack of jurisdiction on the part of Mr. P.S. Bhatia who had officiated as a Estate Officer for a while, was never raised in the earlier round of litigation by the petitioner and since no effective order was passed by Mr. P.S. Bhatia as Estate Officer in this matter, therefore, petitioner suffers no prejudice and so the decisions relied upon by petitioner''s counsel are distinguishable on facts and petitioner''s eviction deserves to be upheld.

7. Having heard learned counsel for the parties in this matter and on perusal of the impugned order, material on record and the decisions cited, this Court is of the considered opinion that the Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Section Undertaking/Financial Institutions of the year 2002 are meant to be followed in letter and spirit, particularly, in the case of non-affluent tenants. In this context, it is required to be seen as to whether any lapse on the part of the respondent Bank not to initiate eviction proceedings in pursuance to earlier eviction notices in the years 1991, 1992 and 1994 would per se render the eviction proceedings instituted in pursuance to eviction notice in the year 1999 sterile.

8. There cannot be any straight answer to the aforesaid question posed by the petitioner, until and unless the petitioner brings enough material on record to show as to why eviction proceedings were not initiated against the petitioner upon the previous notices. However, some correspondence on record indicates that petitioner had been gaining time by initiating compromise/settlement talks all this time. So this question is answered against the petitioner as no foundation has been laid by the petitioner to even prima facie indicate as to how the afore-noted inaction on the part of the respondent Bank is malafide.

9. There is no question of ignoring Division Bench Order (Annexure P-20) as the submissions raised by the petitioner have been adequately dealt with by the Appellate Authority in the impugned order. Petitioner has not been able to demolish respondent''s evidence of bonafide need of the subject premises by the respondent-bank and the plea of the petitioner of shifting of onus is clearly misplaced. Plea of discrimination raised by the petitioner has been found to be clearly unsustainable as the case of two tenants relied upon is on altogether different footing. Thus, there is no violation of afore-noted Guidelines of the year 2002.

10. Main plea of the petitioner of eviction proceedings being vitiated on account of Mr. P.S. Bhatia being not competent to act as Estate Officer is required to be considered in its correct perspective. It is not in dispute that neither notice u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 nor eviction order under the aforesaid enactment was passed against the petitioner by Mr. P.S. Bhatia in the capacity of Estate Officer. In fact, Mr. P.S. Bhatia had officiated as Estate Officer with the approval of the Chairman and Managing Director of the respondent-bank. No effort was made by petitioner''s counsel to even faintly indicate as to whether Mr. P.S. Bhatia as Estate Officer had passed any effective order in the eviction proceedings against the petitioner.

11. When Mr. P.S. Bhatia then Chief Manager had officiated as Estate Officer, petitioner had filed an application for adjournment of the eviction proceedings sine die which was rejected and against it, petitioner had filed writ petition before this Court which was dismissed in May, 2008 and LPA against the said order was withdrawn by the petitioner. It is in this context, it is to be seen as to what prejudice the petitioner has suffered on account of Mr. P.S. Bhatia conducting intermediate eviction proceedings. It has to be kept in mind that the eviction order has not been passed by Mr. P.S. Bhatia as Estate Officer. Thus it transpires that Mr. P.S. Bhatia as Estate Officer had not conducted any effective proceedings in this case, resulting in no material prejudice to the petitioner and so on this mere technicality, eviction proceedings cannot be set at naught. Such a view is being taken as the judicial trend reveals that there has been a shift in the conventional view of the power being exercised in the manner specified and in no other manner to a pragmatic view of there being substantial compliance of law upon being tested on the touchstone of real prejudice.

12. The pertinent observations made in Seasons Catering Services Pvt. Ltd. vs. Delhi Development Authority, 2007 (Supp.-2) ILR(D) 66, on this aspect are as under:-

42. With periodic frequency Courts are faced with a dilemma between breach of the rules of natural justice and the Court''s discretion to refuse relief even though the rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party. In the decision reported as Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, Gadde Venkateswara Rao vs. Government of A.P. and in the decision reported as Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, the Supreme Court refused to issue a writ of certiorari notwithstanding that the impugned order was passed without issuing the mandatory notice.

43. In the decision reported as Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . the theory of prejudice caused to be shown was highlighted by the Supreme Court. It was held that mere breach of a principle of natural justice was no ground to quash a decision unless the party affected established that it was prejudiced by the said deficiency.

13. In Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, the Apex Court has reiterated that the rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. The principle reiterated is that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with.

14. In the instant matter, it becomes quite apparent that the petitioner had suffered no prejudice on account of Mr. P.S. Bhatia conducting the intermediate eviction proceedings and so the eviction order in question does not get invalidated, as the manner and extent of prejudice suffered by the petitioner has not been even averred in the writ petition.

15. Finding no manifest error in the impugned order, I dismiss this petition with costs of Rs. 30,000/- as the petitioner has been successful stalling its eviction from the subject premises for a decade or so, in spite of respondent-bank requiring it for its bonafide use. This petition as well as pending applications are accordingly dismissed.

