(2014) 01 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (C) 363 of 2014 and CM No. 716 of 2014

B.K. Bhagat APPELLANT

Vs

New Delhi Municipal Council and Another RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 10 5 7

Citation : (2014) 01 DEL CK 0028

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Maheshwar Dayal and Mr. Om Prakash Sharma, for the Appellant; Arvind Sah and Mr. Dr. Kumar Jwala, for the Respondent

Final Decision : Disposed Off

Judgement

Sudershan Kumar Misra, J.—This petition has been preferred against the impugned order dated 23.12.2013 where, in a review petition, moved by the NDMC, the Estate Officer, NDMC, has set aside the order which was passed by the earlier Estate Officer on 04.02.2013. On 08.05.1987, the petitioner was granted a license for a period of 30 years to use the premises located near Ashoka Road, Janpath Lane, New Delhi-110001. The term of the license was to expire on 10.05.2007 and the rate of rent was fixed at Rs. 35,551/- per month. Under the terms, the petitioner also had a right of renewal for a further period of 30 years.

2. After the initial period of 30 years expired, Respondent No. 1/NDMC offered to renew the license for a further 10 years while prescribing a new, exorbitant rate @Rs. 169/- per sq. ft. as rent. This was not acceptable to the petitioner. Thereafter, on 07.05.2008, an action under Sections 5 & 7 of the Public Premises (Eviction of Unauthorised Occupant) Act, 1971 (hereinafter referred to as, "Public Premises Act", for short) was taken by Respondent No. 1/NDMC for eviction of the petitioner.

3. At this stage, on 21.05.2008, the petitioner filed the suit for specific performance, inter alia, based on the terms of the aforesaid license for 30 years granted to the petitioner on 08.05.1987, which, according to the petitioner, created a vested right in the petitioner for renewal of the same for another 30 years; and, on 31.10.2008, an interim stay of eviction of the petitioner from the premises in question was granted, subject to payment of the license fee to NDMC at the agreed rate.

4. While the said suit was pending, a final order came to be passed on 04.02.2013 by the Estate Officer in the aforesaid petition u/s 5 and 7 of the Public Premises Act that had been moved by the NDMC. The said order is an extensive order, running into more than 25 pages, that has examined the entire background of the matter and has identified all the issues arising between the parties; it then went on to examine the evidence led by the parties; the relevant resolutions of the NDMC, as well as the decisions taken by the NDMC at different stages whilst processing the matter. Similarly all the contentions of the petitioner herein, who was arrayed as the respondent before the Estate Officer, along with its evidence etc., have also been duly examined. Even the circumstances, which led to the extraordinary increase in the license fee, being demanded by the NDMC as a condition of renewal, were also examined in detail. Judicial precedents on the justiciability of such a payment in the light of the agreed terms were also considered and, ultimately, the matter was disposed off with the following conclusions:

I am inclined to follow the guidelines issued by the Ministry of Urban Development and Poverty Alleviation, Directorate of Estate, Notification No. 23, dated June 8, 2002 in relation to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of public sector undertakings/ financial institutions under the provisions of the PP Act, 1971. I am also inclined to rely upon the various offers offered by the respondent based on the various resolutions of NDMC regarding renewal of others properties made from time to time. They appear to be Just, fair, Equitable and reasonable and seek to enforce uniformity in the matter of renewal without any manner of discrimination.

I am also of the view that due to the orders of Hon''ble Court of the ADJ the license fee which has been fixed at the rate prevailing upto May 2007 which is Rs. 35,551/- pm till outcome the final judgment is causing loss of revenue to NDMC and the matter needs to be settled early.

I consider that in the interest of justice, the best offer offered by the respondent M/s. Girdhar Bhagat & Co. for annual license fee on lump sum basis (as the original tender is on Lump sum basis) which also seems reasonable be considered for acceptance by NDMC for the next 30 years w.e.f. 10.05.2007 which should be increased @ 9% biennially as resolved in the Council''s Decision dated 29.08.2007 and applicable to "B" category markets license fee which includes Hailey Lane market on Hailey Lane and Mohan Singh Place situated on Baba Kharak Singh Marg.

I accordingly set aside the demand of petitioner NDMC @ Rs. 169/- per sq. ft. per month and also set aside the order of determination of license w.e.f. 10.05.2007. The license deed be considered for renewal for the period of 30 years from the date of its expiry.

In view of the settled law, offer of the respondent be considered by NDMC and increment be based on NDMC resolution dated 29.08.2007.

I further direct that the respondent shall withdraw the civil suit pending before the court of ADJ, Tis Hazari Courts, Delhi on receiving the offer from the petitioner, which should be done within 6 weeks from the date of this order.

Admittedly, a copy of the aforesaid order was also formally communicated by the office of the Estate Officer to the petitioner.

5. In keeping with the aforesaid direction, the petitioner duly withdrew his aforementioned suit that was pending before the Court of Additional District Judge. It is also noteworthy that whilst the said suit was pending before the Additional District Judge, the petitioner herein had offered to pay a sum of Rs. 1,81,12,964/- by cheque dated 05.07.2013 to the NDMC towards license fee which was refused. Again, on 26.09.2013, the NDMC refused to accept another cheque of Rs. 5,68,162/- towards the same. Later, on 08.10.2013, these cheques are stated to have been sent to the NDMC directly which were also returned unencashed to the petitioner. Consequently, the petitioner is stated to have filed W.P. (C) No. 6859/2013, seeking implementation of the aforesaid orders of the Estate Officer dated 04.02.2013 inter alia, by directions to the NDMC, to accept the said payment. That petition is still pending.

6. It appears that at this stage, on 15.10.2013, i.e., after more than 200 days, the NDMC chose to move an application that was titled;

Application for Review Petition against the orders of the Ld. Estate Officer dated 4.2.2013 in case No. 87/157/008/EO.

This application came to be allowed by the impugned order passed by the Estate Officer on 23.12.2013. On this application, a notice of hearing/evidence/ arguments was sent to the petitioner where it was categorically stated that the stay application was with reference to a, "case pending against you u/s 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971", and a copy of the aforesaid review petition was also enclosed. In that petition, the NDMC took the stand that, a perusal of the order dated 04.02.2013 shows that no final order has been passed by the Estate Officer on that date. Further, a number of grounds were taken to demonstrate that the orders passed on 04.02.2013 by the Estate Officer were bad in law, and he had no powers to pass those orders. Admittedly, while there is no provision at all for review, the period prescribed under the Act even for filing an Appeal is only 12 days, which had long expired.

7. Ultimately, the Estate Officer proceeded to re-examine the entire matter and

to review the same. He concluded that, in fact, his predecessor who had issued the earlier order on 04.02.2013, had not rendered a final decision in the proceedings initiated by the respondents u/s 5 and 7 of the Public Premises Act. According to him, "the said petition has not been attended to in the order dated 04/02/2013, there is no finality of the order dated 04/02/2013 and said issue has not attended finality as claimed by the Respondent by virtue of section- 10 of the P.P. Act."

8. The Estate Officer further proceeded to conclude that since the decision of 04.02.2013, "is not a decision/order within the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 and the proceedings have to be continued from the stage of the proceedings date to 13/09/2012".

9. The action of the Estate Officer in deciding to entertain the said review under these peculiar circumstances has prompted the petitioner to approach this Court in writ praying for quashing of order dated 23.12.2013 and all consequal proceedings under the Public Premises Act in respect of the suit premises.

10. The power of review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication. It is the creation of a statute and in the absence of any provision in the Act/Rules, review of an earlier order is not permissible. Even a quasi-judicial authority, such as the Estate Officer cannot review its own order, unless the power of review is expressly conferred on it by the statute from which it derives its jurisdiction. See Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, ; Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others,

11. It was therefore put to counsel for the NDMC, who appears on advance notice, as to how an application for review could have been maintained and furthermore, even the limitation prescribed for an appeal against the said order had admittedly expired. In response, counsel for the NDMC has tried to take the position that, in fact, this was not an application for review as such, and as a matter of fact, it only seeks a continuance of the proceedings, which had been initiated u/s 5 and 7 of the Public Premises Act by the NDMC and in which the said order had been passed on 04.02.2013. According to him, since the matter remained unresolved, and had not yet been finally disposed off on 04.02.2013, therefore, what the respondent/NDMC was seeking before the Estate Officer was merely a continuance of the same proceedings so that they could be thereafter taken to their logical conclusion. He submitted that for this purpose, there is no specific limitation prescribed; and even after a hiatus of about ten months it was open for the NDMC to request the Estate Officer to continue.

12. On the face of it, the application of the NDMC moved before the Estate Officer is styled as one of review, which proceeds thereafter to impeach the orders passed on 04.02.2013 by his predecessor. To this, it was sought to be suggested at the Bar that perhaps, this has been styled as a review without legal

advice. This is also not acceptable. Basic understanding of the English language, coupled with a normal experience of administrative functioning is all that is required to differentiate between a situation that requires a matter, which has been finally disposed off by an Authority, to be reviewed by the same Authority, and the type of application to be made for that; as compared to another matter where all that is required is for the Authority concerned, to proceed further in the matter. If the NDMC was motivated by the latter intention, then all that was required was a simple application pointing out that the matter at hand is still pending, and needs to be taken further, inter alia, by fixing the next date of hearing.

13. At the same time, counsel for the NDMC fairly conceded that the Estate Officer does not have the power of review, and the only ground upon which the action of the Estate Officer, in passing the impugned order, can be defended is that he was continuing the proceedings in question. In this context, he submits that proceedings were initiated by the NDMC u/s 5 and 7 of the Public Premises Act under which the Estate Officer is empowered to fix the arrears of rent and also to direct eviction. However, in his earlier order of 04.02.2013, the previous Estate Officer has not said anywhere that no case is made out by the NDMC u/s 5 and 7 of the Public Premises Act and therefore, the matter had not yet been concluded. To my mind, this is a simplistic argument. Even though it has not specifically been stated by the Estate Officer in the order of 04.02.2013 that the petition stands rejected, or that it is being disposed off finally, the tone and tenor of the order is quite clear. It is indeed a final determination of the petition filed by the NDMC. This is demonstrated by a number of factors. Firstly, no date was fixed for any other hearing which would have normally followed any interim orders being passed. Not only that, if the NDMC itself was of the view that this is only an interim order of some sort and that the petition is yet to be heard further, it would have approached the Estate Officer long ago, asking him to fix another date. The fact that they have not done so demonstrates that even the NDMC was of the opinion that the matter is finally disposed off. All that such an application required was two sentences; the first one reminding the Estate Officer that the matter was last heard on 04.02.2013, and the next pointing out that the learned Estate Officer appears to have overlooked the need for fixing a next date of hearing in the matter, with a prayer that the next date be now fixed. Even the review petition does not adopt this approach. Enforcement of the NDMC''s notice to vacate was sought u/s 5 of the Public Premises Act by a specific order of the Estate Officer; and the fact remains that by the order of 04.02.2013, the Estate Officer has declined to enforce that notice issued by the NDMC to the petitioners to vacate the premises. In fact, the Estate Officer has proceeded to set aside the order of the NDMC whereby the license in question was determined by it with effect from 10.05.1987. Under the circumstances, the obvious conclusion to be drawn is that the prayer of the NDMC u/s 5 has been declined, and the license in question remains in force.

14. It cannot be that after setting aside the order of the NDMC determining the

license, the Estate Officer intended to continue to hear the matter with a view to possibly reinstating that determination of the license by the NDMC on a later date, and then enforce it u/s 5. The order passed on 04.02.2013, was not in the nature of an interim order merely staying the order of the NDMC determining the license. The language used by the Estate Officer in the order of 04.02.2013 is explicit. The relevant order in question of the NDMC determining the license, which was sought to be enforced in the proceedings u/s 5 and 7 of the Public Premises Act; which were brought by the NDMC before the Estate Officer; was itself set aside, and to that extent, it is a final order for the NDMC. To then presume that the Estate Officer intended to continue with the proceedings with regard to the relief u/s 5 does not really hold water.

15. Obviously, if the NDMC felt that the order of 04.02.2013 was without jurisdiction or otherwise erroneous, it was open to appeal. It is for such challenges that the provisions of appeal have been provided under the statute; but it cannot be that merely because the NDMC is not happy with the order, it has to be assumed that the Estate Officer has not closed the proceedings.

16. Another factor which leads to the conclusion that this was a final determination of the petition on 04.02.2013 is the aforesaid direction issued by the Estate Officer on that date, directing the respondent to withdraw the civil suit pending before the Court of ADJ within six weeks; which has also been stated to have been done by the petitioner. Had it not been a final order, there was no question of such a direction being issued.

17. As I have concluded earlier, the question is not whether the order passed by the Estate Officer on 04.02.2013 suffered from any infirmity or whether it amounted to a valid exercise of jurisdiction. All these objections could have been raised by the NDMC in appeal if it was aggrieved of the same. It is however clear that the approach actually adopted by the NDMC cannot be countenanced. In fact, the circumstances indicate a degree of administrative malafides and abuse of authority in adopting this approach to have the order dated 04.02.2013 overturned and nullified by the successor in office of the Estate Officer himself.

18. Finally, as regards the contention of the NDMC that the order passed by the Estate Officer on 04.02.2013 has resulted in a large revenue loss to the authorities; the fact remains that, for some inexplicable reasons, the NDMC has slept over its legitimate rights to impeach the same. To my mind, this appears to be a case, where, at the very least, the NDMC ought to have initiated an expeditious enquiry into the matter to rule out any connivance of its own officers. Of course, it still remains open to the NDMC to take such recourse as may be available to recover its losses from all those found responsible.

19. For all the reasons stated herein ex facie, the stand of the NDMC in this matter is without substance and needs to be rejected. The impugned order dated 23.12.2013 is therefore unsustainable in law and stands quashed. The writ petition stands disposed off in the above terms.