
(2005) 03 DEL CK 0101
In the Delhi High Court
Case No : WPC 2087 of 2003

Brahampal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Citation : (2005) 124 DLT 35

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : S. Singh, for the Appellant; Sangeeta Tomar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—This writ petition has been filed against the Union of India to the defense Secretary and Joint Secretary of the Ministry of defense who have been arrayed as respondents no. 1 and 2 and against Col. S.K. Jha, the Chief Security Officer of the H-Block of the Ministry. The petitioner has sought the following prayers in the petition:-

"(i) That appropriate writ/direction(s)/orders be issued to the Respondent to allow the petitioner to enter the building namely Engineers Army Head Quarters, Kashmir House Rajaji Marg, New Delhi, to enable him to carry on his business or running the Fruit shop in this building by giving him gate pass/entry permit in the building.

(ii) The appropriate writ/orders/directions may kindly be issued to the Respondent to allocate alternate shops/stalls to the petitioner at any available place in their jurisdiction in place of the stall occupied by the petitioner in the building namely Engineers Army Head Quarters, Kashmir House Rajaji Marg, New Delhi.

(iii) That appropriate writ directions/orders be issued to the Respondent not to evict the petitioners from his stall/shop as mentioned above, without the due

process of law.

(iv) That it is further prayed that in case, the respondent are unable to provide alternative stall of their own, they be directed to liaison with MCD/DDA for allotment of alternative stall as was done in the case of shopkeepers/stall holders of Central Vista Mess and Maulana Azad Road Hostel."

2. The prayer of this petitioner is based on the plea that he was granted a license to run a fruit cum cigarettes stall in the South Block, New Delhi by the Assistant Chief Administrative Officer of the Ministry of defense on the 12th April, 1977 and had been running the stall for such purposes continuously without any objection up till April, 1993. According to the petitioner he had paid all charges payable to the respondents for the same and had been abiding by the terms of the agreement. The petitioner contends that in the year 1978, his stall was shifted to the Central Transit House building(CTH for brevity) at the South Block, New Delhi. In April, 1993 this CTH building was declared as old and dangerous and was so demolished by the CPWD. The petitioner submits that he was given another stall in the Q-Block(near the car parking area) at the Rajaji Marg, DHW PO, New Delhi under the Ministry of defense wherefrom he was running his business. As per the petitioner, the entry to his stall was through the Engineers Army Headquarters at the Kashmir House, Rajaji Marg, New Delhi. For this purpose, the petitioner had to take the gate pass from the security department of this building but since 5th February, 2003, the petitioner was refused to enter into this building by the Security staff of the respondents and as such was denied access to his stall. The petitioner has contended that prior to eviction, the occupant of the stall had to be served with a legal notice of eviction which had to be followed by proceedings, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972. Additionally, the petitioner has cited eight instances of stalls which according to him are still in operation in the very premises or in its vicinity. The petitioner has also pointed out that in cases of similar occupants of premises which were demolished as the Central Vista Mess, the respondents had abided by their statement given in the Rajya Sabha on the 8th July, 1986 that alternative stalls would be given to stall owners in place of their demolished stalls. Based on these facts, the petitioner has contended that he is entitled to continue to run his business from a stall or in the alternative, is entitled to an alternative allotment. It is further contended that the petitioner's belongings which were lying in his stall are still in the custody of the respondents.

3. Notice to show cause was issued in this writ petition. The respondents entered a response stating that the license given to the petitioner for selling fruits for consumption of the employees in the Kashmir House expired on the 14th September, 2000. However on account of certain bomb blasts incidents which had occurred within the locus of the defense Headquarters Zone, the decision had been taken not to renew the license earlier granted to the petitioner. It is also submitted that keeping in view the security perception and the prevalent threat, the entry to this high security zone is controlled by the Chief Security

Officer. The petitioner had no right whatsoever to enter this zone and as such was intercepted by the defense security force while entering the premises without authority on the 5th February, 2003. It is submitted that the petitioner had no legal right whatsoever for continuation of the license and had no right whatsoever to a gate pass to enter the premises once the license had expired. The respondents have explained the instances cited by the petitioner of stalls/shops being permitted to be run in the defense area. It has been submitted that the same include the CSD(i) Canteen which is run by the Army Headquarters and is part of the defense establishment; a Syndicate Bank which is carrying out banking activities for the benefit of the officers and staff of the officers located in the defense Headquarters, Vishal Tailors which is providing tailoring services to the service personnel only and the Kendriya Bhandar to which accommodation is given as per Government policy. It has further pointed out that a writ petition by one Budhi Chand in respect of Gupta Food Stall, who was similarly placed as the petitioner, being civil writ no 1855/2002 was dismissed by this court vide a judgment dated 10th April, 2002 and that for this reason as well the petitioner had no right whatsoever to maintain the present writ petition or urge entitlement to the relief sought herein. The respondents contend that the petitioner had no right to enter after his license came to an end on 14th September, 2000. He was trying to enter without the gate pass on 5th February, 2003 when he was intercepted.

4. It is further contended that the office of the Chief Security Officers is the competent authority under the Ministry of defense who alone can analyze the seriousness of the threat perception and direct that all measures are undertaken to ensure that the security is not jeopardised and also that such measures are strictly enforced. The petitioner having no legal right whatsoever upon expiry of the license, cannot be permitted to assert any right whatsoever. So far as the claim of alternative accommodation is concerned, it has been pointed out that this court vide a judgment dated 10th April, 2003 passed in a bunch of matters including civil writ 3670/1996 entitled Mahinder Singh Oberoi and Ors. v. Union of India and connected writ petitions was pleased to hold that upon termination of the authority under which persons were occupying premises, they became unauthorised occupants of the public property and they had no enforceable or statutory right to seek alternative accommodation.

5. I have heard the learned counsel for the parties who have taken me through the record of the case. It is an admitted position that the license given to the petitioner had lapsed by efflux of time and that there was no renewal thereafter. The respondents have contended that they have no policy of granting alternative accommodation to the petitioner.

6. The petitioner came to be disentitled to access to the stall in question on account of three main reasons which are, that firstly, the license in its favor had come to an end and the petitioner had no authority to demand continuation or extension of the same; secondly, the building where the stall was housed had

been declared to be dangerous and had to be demolished and; thirdly, that in view of the bomb blasts in the defense establishments and keeping in view the threat perception which was evaluate by the Chief Fire Officer it was decided not to permit any stalls in the building in question. For all these reasons, the petitioner was denied entry pass into the building through which he had to pass to access his stall.

7. It cannot possibly be urged that the three reasons as contrary to law or irrelevant. The license in favor of the petitioner had come to an end. The petitioner has no legal right to demand continuation or extension of the same. He cannot also be heard to plead arbitrariness in the respondents' actions. Therefore I find no fault in the action of the respondents in refusing access to the petitioner to the building in the high security zone of the respondents. Such matters are best left to the discretion of the defense authorities who are best equipped to assess and evaluate security perceptions, threats thereto and to undertake appropriate measures in respect thereof.

8. Having held thus I am required to consider the plea of the petitioner to the effect that the action of the respondents is illegal as the respondents have singled out the petitioner for such ouster. Vide orders passed in this case on the 7th July, 2004, the respondents were directed to file an additional affidavit with regard to the allegations made by the petitioner alleging existence of four other shops in and around the high security zone where the defense Ministry was located. In compliance thereof, the respondents have filed an affidavit pointing out further distinguishing features on account of the locational situation of the stalls mentioned by the petitioner and his location. It has further been submitted that no defense Headquarter office is functioning near any such stall. It has also been stated that, whereas the location of the stall which had been allotted to the petitioner was within a compact high security area known as the Kashmir House having controlled entries, all the instances cited by the petitioner were located at areas where entry to the block was open and no authorisation from the Chief Security Officer was required. The respondents have vehemently denied the allegation of the petitioner that one Sh. K.K. Khurana was permitted to open any new stall in the Kashmir House for selling bidis and cigarettes. In view of the aforesaid position on affidavit, the petitioner has been unable to make out a case of any hostile discrimination by the respondents against him and the plea made on such basis also is hereby rejected.

9. The last contention on behalf of the petitioner relates to his entitlement to grant of an alternative accommodation. It has been pointed out that on suggestions made in court in this case, the respondents have considered such requests for alternative allotment on behalf of the petitioner. However, the respondents are unable to provide any alternative space.

Furthermore it has already been held by this court in its decision dated 10th April, 2003 in civil writ no. 1855/2002 entitled Duli Chand v. Union of India and Ors. that persons situated in similar situations as the petitioner have no legal or

vested right to seek alternative accommodation in the event of their eviction from premises in their occupation.

In this view of the matter, the petitioner cannot legally contend that he has a vested right to allotment of an alternative accommodation.

10. So far as the plea with regard to entitlement to issuance of a notice to show cause and proceedings under the Public Premises(Eviction of Unauthorised Occupants)Act, 1972 prior to his eviction from the premises in question, it is noteworthy that in the instant case, the respondents did not physically evict the petitioner but succeeded in doing so by the act of the Chief Fire Officer denying a gate pass and hence access to the petitioner to the stall in question. It has been repeatedly held that no person can be evicted from a premises which was lawfully occupied by him or a premises to which entry was obtained by lawful allotment other than by due process of law.

The respondents have also admitted that in other cases they have taken out proceedings under the Public Premises(Eviction of Unauthorised Occupants) Act, 1972 and did not do so in the case of the petitioner. It is also under the admitted position that the petitioner has had no access to his stall since 5th February, 2003.

11. While these considerations would have enured in favor of the petitioner in respect of his plea for entitlement to be evicted in accordance with law, however I cannot lose sight of the fact that it was considerations of the security threat perception which weighed with the Chief Fire Officer in denying entry pass to the petitioner. Therefore assuming that the respondents were directed to hold proceedings under the Public Premises(Eviction of Unauthorised Occupants) Act, 1972 against the petitioner, this court cannot possibly direct the Chief Security Officer to issue an entry pass to any individual who, according to the Chief Security Officer, is not required to be permitted entry to the high security building. There is admittedly no valid agreement or license in favor of the petitioner since 2000.

12. It may be useful to advert to the law laid down by the Supreme Court holding that rules of natural justice are flexible and their application in certain events could be lawfully excluded. It was so held in the case reported at R.S. Dass Ors. Vs. Union of India (UOI) and Others, and Shiv Sagar Tiwari Vs. Union of India and others, .

The Apex Court in the judgment reported at Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, held that where action by the authority is of such an emergent nature that pre-decisional hearing/compliance with principles of natural justice would not be possible, then the same purpose of hearing can be achieved by giving a post-decisional hearing.

13. Perusal of the record of the instant case shows that this court was pleased to issue notice to show cause to the respondents on the writ petition filed by the

petitioner. The respondents filed a detailed affidavit setting out the reasons and circumstances in which the license of the petitioner came to an end and the circumstances in which he was not permitted access to the Kashmir House. This petitioner had opportunity to file rejoinders to not only the counter affidavit but also the additional affidavits of the respondents. Detailed hearing in the matter has taken place. It would be noteworthy that no fruitful purpose would be served by requiring the respondents to give an additional and further hearing keeping in view the special facts and circumstances of the high security zone in question where the stall is located. It has already been held that in such circumstances, the court would refrain from issuing writs which have been rendered futile. In this behalf, I may appropriately refer to the judgment of the Apex Court reported at S.L. Kapoor Vs. Jagmohan and Others,

14. This court had occasion to examine the issue raised by certain persons aggrieved by action of the respondents in denying appropriate notice and proceedings under the Public Premises(Eviction of Unauthorised Occupants), Act. The judgment of the learned Single Judge was reported at Shri Jafar Saddique and Others, Vakil Ahamad and Liaqat Ali Vs. Delhi Development Authority and Another, The matter was taken in appeal and vide a judgment dated 17th September, 2003 passed in LPA no. 447/2003 entitled Sh. Vakil Ahmed v. Delhi Development Authority and Anr., the Division Bench held as under :-

"21. Learned Single Judge on admitted position, considered the case and found that as these persons were trespassers and the order that can be passed by the authority would be removing the unauthorised occupants i.e., encroachers(even if we assume that the appellants are right, the competent authority would have passed the said order in law.) Even if hearing was granted under the Act, some time was required to be granted to vacate by the public authority. If that opportunity, according to the appellant was denied, the learned Judge has granted that opportunity by providing a hearing. Both the sides have made their submissions before the learned Single Judge elaborately on facts as well as on law. In view of the fact that the appellants were trespasses on a public land which was acquired by the competent authority under the provisions of the Acquisition Act and was allotted for residential purpose to a society, and, in view of the pendency of petitions the appellant continued in possession, (even after demolition), even if the authority under the Act would have given hearing, the matter would have been over much earlier and Therefore no further delay was required."

The petitioner has admittedly no surviving right or authority and no fruitful purpose would be achieved by directing further consideration.

In view of the foregoing discussion, I find no merit in the writ petition which is hereby dismissed. The respondents are, however, directed to handover the belongings of the petitioner within a period of two weeks from today.

There shall be no order as to costs.