

(2013) 07 DEL CK 0155

In the Delhi High Court

Case No : Writ Petition (C) 587 and 796 of 2013

Delhi State Industrial and Infrastructure Development
Corporation Ltd.

APPELLANT

Vs

M/s. Delhi Tanneries and Leather Goods MGF. Co. and Others

 Niamat Kaur Anand and Others Vs Office of The
Commissioner of Industries and Another

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2013) 07 DEL CK 0155

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Rahul Kumar, for Mr. Gaurang Kanth in W.P. C 587/2013, Mr. H.L. Tikku and Mr. Arun Batta in W.P. C 796/2013, for the Appellant; Yogesh Saini, Advocate for Mr. V.K. Tandon, Advocate for the Respondent No. 1. and Mr. H.L. Tikku, Mr. Arun Batta, Advocate for the Respondent No. 2, for the Respondent

Judgement

Reva Khetrapal, J.

W.P. (C) 587/2013

1. The Petitioner in the present writ petition seeks to challenge the order dated 9.8.2012 passed by the learned District Judge dismissing the appeal of the Petitioner impugning the order dated 25.8.2011 passed by the Estate Officer. The Estate Officer by his aforesaid order had directed the Petitioner to handover the actual and physical possession of Shed No. 74, Okhla Industrial Estate, Phase-II, New Delhi to the Respondents on payment of balance outstanding by the Respondents and also directed the Petitioner to execute the Hire Purchase Agreement in favour of the Respondents in respect of the said property, setting aside the cancellation of allotment in favour of the Petitioner and also the eviction proceedings. Shorn of details, the background facts may be briefly delineated as follows. The premises in question was allotted by the Petitioner in

favour of Respondent No. 1 through its sole proprietor Sardar Mohan Singh Anand, predecessor-in-interest of the Respondent Nos. 2 and 3, on leasehold basis in 1963 for a fixed period of five years. A formal Lease Deed was executed on 25.9.1963 in favour of Sardar Mohan Singh Anand. On 16.5.1966, a communication was sent to Mohan Singh Anand (lessee) from the Petitioner offering the benefit of a Hire Purchase Scheme introduced by the Director of Industries in respect of the premises in question with effect from 1.4.1966. Mohan Singh Anand accepted the said offer by way of communication sent on 17.5.1966 and started making the payments as per the Scheme. The Petitioner in this context relies upon a communication dated 18.3.1984 emanating from the office of the Directorate of Industries, Delhi captioned as a final notice on the subject of "Finalisation of Hire Purchase", which confirms the arrangement/understanding between the parties and the outstanding of Rs. 99,886.40 inclusive of interest towards the hire purchase cost as on 28.2.1984. It is the case of the Petitioner that extension of time was sought for by the Respondents on the demise of Sardar Mohan Singh to make the payments, which was granted by the Lieutenant Governor. It is further the case of the Petitioner that full payment has been made by the Respondents in terms of the demand raised by the Petitioner on account of Hire Purchase Agreement by the end of 1984.

2. The further case of the Petitioner is that the Respondent Nos. 2 and 3 on the demise of Sardar Mohan Singh on 1.10.1970 had illegally sublet the premises to M/s. Sahib Singh Manufacturing Company Private Limited in 1971 and, thereafter again sublet the premises to M/s. Decon Company in the year 1974. On 11.6.1987, the Petitioner issued an eviction order cancelling the allotment/Lease Deed in respect of the premises in question in favour of the Respondent No. 1, inter alia, on the ground that the said premises had been sub-let in violation of the terms of allotment. Thereafter, the Petitioner appears to have slept over the matter till 10.05.2002 when it issued a show cause notice u/s 4 of the Public Premises Eviction of Unauthorised Occupants Act, 1975 (hereinafter referred to as the "The Public Premises Act") through the Estate Officer to the Respondents to show cause as to why an eviction order be not passed on the ground that they had failed to carry out/observe "various conditions of the offer letter/Lease Deed" for which reason the Lease Deed had been determined. It is in these proceedings arising out of this show cause notice that eviction order dated 30.6.2003 was passed by the Estate Officer directing, u/s 5(1) of the Public Premises Act, the Respondents herein to vacate the premises or to face forcible eviction.

3. An appeal u/s 9 of the Public Premises Act was preferred by the Respondents against the aforesaid order, which culminated in judgment dated 24.5.2011 passed by the learned Additional District Judge, whereunder the order of eviction passed on 30.6.2003 was set aside and the matter was remanded to the Estate Officer with certain directions.

4. The Estate Officer upon remand took up the matter for further proceedings, which eventually resulted in the order dated 25.8.2011 being passed whereby

the eviction proceedings as also the order of cancellation dated 11.6.1987 were set aside. Relevant extract of the said order reads as under:

As the facts revealed, the lease was executed on September 25, 1963, the lease agreement stipulate the period of the lease agreement for 5 year, meantime the circular dated May 16, 1966 had came into effect from April 1, 1966 announcing the Hire Purchase scheme with respect to the premises situated in Okhla Industries area.

The Records further reveal that the offer was accepted by the allottee Sardar Mohan Singh Anand and after his death his legal heirs were making payments as per the term and condition of the Hire Purchase Scheme. The entire payment was made within the extended period allowed to the legal heirs of the allottee. The Department later also reconciled the entire payment as per its letter dated August 23, 1985. As a matter of fact the Agreement should have been executed by this time and the Department should have communicated its decision on the pending application for transfer of property in the name of the legal heirs.

While the Department had issued the cancellation of lease vide order dated 11.06.1987, the lease was no longer in existence. The lease deed dated 25/09/1963 had been executed for five years only and thereafter there was no extension of the lease deed moreover the same also stood superseded to the hire purchase scheme. On the other hand the conditions of the Hire purchase was accepted and met by the allottee. It is further to mention here that the Department had not communicated any time about the pending formalities, if any to be fulfilled by the allottee. In my considered view the order dated 11.06.1987 cannot stand in the judicial scrutiny as on that date lease was non-existent. As such the order dated 11.06.1987 cannot be sustained and is set aside.

The Department had though noticed the subletting in 1983 itself however the Demand of subletting charge was communicated to the occupants in 1998 to the tune of Rs. 52,29,395/- vide Department letter dated 18/12/1998. The Department in its written statement filed before this court had recalculated this subletting charges w.e.f. 1.1.1971 to 31/08/2003 Rs. 12,09,600/- and interest there on up to 31/07/2011 Rs. 40,68,576/- with restoration charges Rs. 83,610/-. It was clarified by the Department that the earlier calculation of subletting charges done on the basis of compound interest however the same is now been done on the prevailing practice at simple rate of interest of 18%. The department submitted that in case of the restoration charges earlier calculation was based on 25% of the ad-hoc market rate of the plot however now the calculation has been done on the basis of the revised order dated 31.01.2008 @ 300/- per sq mtrs, that comes to Rs. 83,610/-.

The Department also admitted that as per the allotment file the allottee has paid full amount of on account of hire purchase scheme, though still the Dept feels the need of reconcile the same with their account branch.

As stated earlier on 11.6.87 the property was not subject matter of lease administration as such the cancellation order dated 11.6.87 eviction proceedings are set aside and consequently the possession of the property by the department is null and void is liable to be restored to the allottee.

The allottee has disputed the demand of subletting charge of Rs. 12,09,600/- up to date interest of Rs. 40,68,576/- and Rs. 83,610/- towards restoration charges raised by the department submitted that interest should have been charged from the date of issue of Demand. This Court holds that in the facts and circumstances of the case the allottee is liable to pay the amount as calculated by the Department and cannot dispute the dues raised on valid grounds.

As such the respondent allottee had not been an unauthorized occupant of shed no. 74, OIE for the reason the respondent has been in occupation of the said shed being owner thereof, under the Hire Purchase Scheme of 16 May 1966.

... In view of the above since the cancellation order dated 11.06.87 and eviction proceedings is set-aside. The Court orders as under:-

1. The legal heirs of allottee namely Smt. Niamat Kaur Anand and Shri Jasjiv Singh Anand shall pay a sum of Rs. 53,61,786/- towards subletting charges interest thereon and restoration charges within two months of this order and the department shall handover the possession of the property No. 740, OIE within one week of the above payment to the legal heirs of allottee.

2. The Department shall execute the hire purchase agreement with documents of the transfer of the Property No. 74, OIE I favour of the legal heirs of allottee within one month of deposits of Rs. 5361786/- (Rs. Fifty Three Lac Sixty One Thousands Seven Hundreds Eighty Six Only), by the allottee.

5. The order dated 25th August, 2011 was sought to be assailed by the Petitioner by way of an appeal u/s 9 of the Public Premises Act preferred on 18.2.2012. Since the appeal against such an order can be preferred only within 12 days of the publication of the order under Sub-Section (1) of Section 5 of the said Act (as per the provisions contained in Section 9(2) thereof), the Petitioner acknowledging the delay of 165 days in filing the appeal, submitted an application u/s 5 of the Limitation Act seeking condonation of delay. On consideration of the said application and the rival submissions made at the bar, the learned District Judge concluded that there was no satisfactory or sufficient cause made out for the condonation of delay and proceeded to dismiss the application u/s 5 of the Limitation Act. Consequently, the appeal too was dismissed by the learned District Judge vide his order dated 9th August, 2012. It is this order which is assailed by the Petitioner by filing the present writ petition. Thus, this is in effect is the third round of litigation between the parties in which quashing and setting aside of the order dated 9th August, 2012 passed by the learned District Judge is sought for by the Petitioner.

6. The contention of Mr. Rahul Kumar, Advocate for the Petitioner is that the

Public Premises Act is enacted to provide for speedy and summary eviction of unauthorized occupants from the premises of the Central Government, Companies in which not less than 51% paid-up share capital is held by the Central Government, Corporations, etc. But the said Act does not give any statutory power to the Estate Officer to adjudicate upon a cancellation order made by the Petitioner and further direct the Petitioner to accept the charges and execute Hire Purchase Agreement, as was done by the Estate Officer in the instant case, vide his order dated 25th August, 2011. Learned counsel further contends that it is in the aforesaid background that the Additional District Judge ought to have considered the case of the Petitioner for condonation of delay in filing the appeal u/s 9 of the Public Premises Act. A cogent explanation for the delay of 165 days in preferring the appeal had been furnished by the Petitioner to the learned Additional District Judge, who ought to have condoned the delay and heard the matter on merits.

7. Learned counsel for the Petitioner, in the aforesaid context, relied upon the judgment of the Supreme Court rendered in the case of *Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek, etc.,* , wherein it is observed:

It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed to the party. [See *Shakuntala Devi Jain Vs. Kuntal Kumari and Others,* ; *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others,* ; *N. Balakrishnan Vs. M. Krishnamurthy,* ; and *Sital Prasad Saxena (Dead) by Lrs. Vs. Union of India (UOI) and Others,*]

8. Learned counsel for the Petitioner also relied upon a three-Judge Bench decision of the Supreme Court rendered in *State of Haryana Vs. Chandra Mani and others,* , and in particular upon the following extract of the said judgment:-

7. ...When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.

8. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part

is less difficult to understand though more difficult to approve. The State which represent collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay was accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties.

9. Reference was also made by learned counsel for the Petitioner to the provisions of Section 7 of the Public Premises Act to argue that the Estate Officer had no power to levy sub-letting charges. He contended that as reiterated by the Hon"ble Supreme Court in Maharshi Dayanand University Vs. Surjeet Kaur, : "It is a settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision". Thus, in the instant case, the following directions issued by the Estate Officer by his order dated 25th August, 2009 were beyond the purview of his jurisdiction and, therefore, unsustainable.

1. The legal heirs of allottee namely Smt. Niamat Kaur Anand and Shri Jasjiv Singh Anand shall pay a sum of Rs. 53,61,786/- towards subletting charges interest thereon and restoration charges within two months of this order and the department shall handover the possession of the property No. 740, OIE, within one week of the above payment to the legal heirs of allottee.

2. The Department shall execute the hire purchase agreement with documents of the transfer of the Property No. 74, OIE in favour of the legal heirs of allottee within one month of deposits of Rs. 53,61,786/- (Rs. Fifty Three lac Sixty One Thousands Seven Hundreds Eighty Six Only), by the allottee.

10. Per contra, Mr. H.L. Tikku, learned senior counsel for the Respondent contended that while there cannot be any dispute with the proposition of law laid down by the Hon"ble Supreme Court in the case of Maharshi Dayanand University (supra) that a party cannot plead estoppel against statute nor can the Government or public authority be debarred from enforcing a statutory provision, the exercise of powers by the Estate Officer in the instant case was well within the purview of the statute. The Estate Officer came to the conclusion that the Respondent No. 3 was not an unauthorized occupant but an owner under the Hire-Purchase Agreement and accordingly directed the legal heirs of the original allottee to pay a sum of Rs. 53,61,786/- towards sub-letting charges, interest thereon and restoration charges within two months of his order and directed that the Department shall handover the possession of the premises in question to them and shall execute the Hire Purchase Agreement in their favour. The Estate Officer held the notice u/s 4 of the Act to be bad as the lease was not operative on the relevant date and as the records further revealed that the offer of a Hire Purchase Agreement inter se the parties had been extended by the Petitioner and

accepted by the Respondents, who had made the entire hire purchase payments. As such, the Estate Officer rightly came to the conclusion that the Respondent was not an unauthorized occupant of the premises for the reason that the Respondents had been in occupation of the said shed being owner thereof under the Hire Purchase Scheme of 16th May, 1996.

11. Reference was made by Mr. Tikku to a large number of precedents in support of his argument that the Estate Officer was fully empowered to go into the question of validity of the cancellation of a lease or licence and was fully competent to decide all questions of fact and law pertaining thereto. The following, amongst other cases, were relied upon by learned counsel in support of the aforesaid contention:-

(i) *Premlata Bhatia Vs. Union of India (UOI) and Others*, wherein it was categorically laid down that cancellation of a lease or licence can be subjected to judicial review and the Estate Officer can go into the question of validity of such cancellation in proceedings under the Public Premises Act.

(ii) *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, . In the said case, a submission was made that whether a lease has been determined or not involves complicated questions of law and the Estate Officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case where the person sought to be evicted had obtained possession of the premises as a lessee. Repelling the aforesaid contention, the Supreme Court held that though it is true that there is no requirement in the Public Premises Act that the Estate Officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Moreover, Section 9 of the Act confers a right of appeal against the order of the Estate Officer and the said appeal has to be heard either by the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than 10 years" standing as the District Judge may designate in that behalf. The final order that is passed is by a judicial officer in the rank of a District Judge. The wide amplitude of powers vested in the Estate Officer by the Act is thus offset by a provision in the Act providing for judicial scrutiny of the order of the Estate Officer.

(iii) *Ocean Plastics and Fibres (P) Limited Vs. Delhi Development Authority and Another*, wherein relying upon the judgment of the Supreme Court in *Ashoka Marketing Ltd. (supra)* it was reiterated by this Court that the question as to justification for determination of lease falls within the jurisdiction of the Estate Officer.

(iv) *Baij Nath Vs. Bank of Maharashtra and another*, . In this case, with regard to the submission of the counsel for the Petitioners that the principles of promissory

estoppel were applicable to the case, the Court held that the Estate Officer is competent to decide all questions of fact and law including the question as to whether the principles of promissory estoppel are applicable and attracted to a particular case, being the competent authority to determine questions of fact and law.

(v) D.S.I.D.C. vs. Chander Parkash and Anr., 1994 I AD (DELHI) 377. In this case, an eviction order was passed by the Estate Officer. The Additional District Judge held that the premises were not public premises and that no action could be taken against the Respondent under the provisions of Public Premises Act. A writ petition was filed to challenge the aforesaid decision of the Additional District Judge. In the said writ petition, the Division Bench of this Court opined as follows:-

21. The position in law is that if premises are sold on hire purchase basis then the transfer takes place only after the last instalment is paid. In the present case this situation has admittedly not arisen. The Corporation cannot, therefore, in law be regarded as having ceased to become the owner of the property. To put it in another way, there is no document on record or any paper to suggest that the respondent has become the owner of the property or that the petitioner has lost or relinquished its title thereof....

12. The learned counsel for the Respondents contended that in the instant case the total consideration asked for by the Petitioner has been paid and applying the ratio of the judgment in D.S.I.D.C. vs. Chander Parkash and Anr. (supra), the Petitioner has ceased to be owner of the premises in question. The Estate Officer had, therefore, rightly held that the Respondents were not an unauthorized occupant in view of the Petitioner's acceptance of the Hire Purchase payments and directed the Petitioner to execute the Hire Purchase Agreement on payment of the sum of Rs. 53,61,786/-, which amount stands paid as on date.

13. Reliance was also placed by Mr. Tikku on a recent decision of Hon'ble Supreme Court rendered in the case of M/s. Real Estate Agencies Vs. Govt. of Goa and Others, to contend that the writ court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to the detriment of the rights of citizens and in fact in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction of the writ court under Article 226 even if such adjudication involved determination of disputed questions of fact or title.

14. On a conspectus of the aforesaid facts and the legal position enunciated in the various decisions cited by the parties, this Court is of the view that the Government of India through the Directorate of Industries having itself extended the offer to the Respondent No. 3 to enter into a Hire Purchase Scheme with respect to the property already taken on lease for a period of five years by the Respondent No. 3 and the Respondent No. 3 having accepted the said offer by its

communication dated 17.05.1966 and having made the entire hire purchase payments to the Petitioner, the notice u/s 4 of the Public Premises Act issued to the Respondents was uncalled for. The Respondents were not unauthorised occupants but owners and this being so, there was no occasion for the issuance of eviction notice to the Respondents. In this context as already noted, the Estate Officer in his order dated 25th August, 2012 pertinently observed that:-

The respondent allottee had not been an unauthorized occupant of shed no. 74, OIE for the reason the respondent has been in occupation of the said shed being owner thereof, under the Hire Purchase Scheme of 16 May 1966.

15. In the backdrop of the aforesaid finding of the Estate Officer, the twin directions issued by the Estate Officer, the first, to the legal heirs of the allottee to pay a sum of Rs. 53,61,786/- towards sub-letting charges, interest thereon and restoration charges within a stipulated period of time and, the second to the Department to handover the possession of the property in question and to execute the Hire Purchase Agreement in favour of the legal heirs of the allottee, were clearly within the purview of the Estate Officer. I am buttressed in coming to the aforesaid conclusion from the decisions of this Court rendered in the cases of Premlata Bhatia, Ashoka Marketing Ltd., Ocean Plastics & Fibres (P) Limited and Baij Nath (*supra*).

16. As subsequent events reveal, the Respondents paid the entire amount of Rs. 53,61,786/- lac (approximately) as directed by the Estate Officer, but the Petitioner refused to execute the Hire Purchase Agreement in their favour. It may have been a different matter if the aforesaid amount of Rs. 53,61,786/- lac (approx.) had not been accepted by the Petitioner, but the Petitioner accepted the same and even encashed the pay order deposited by the Respondents. In such circumstances, it is not open to the Petitioner to contend that the lease stood determined and it is not under an obligation to execute the Hire Purchase Agreement between the parties. The Petitioner's argument that the Estate Officer is vested with no power by the statute to order the Department to execute the Hire Purchase Agreement on deposit of the sub-letting charges by the Respondents and such directions issued by the Estate Officer were beyond his purview is, in my opinion, wholly untenable. The Petitioner's second contention that the Estate Officer had no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions also has no application to the facts of the present case. It is trite that neither the court nor any tribunal has the competence to issue a direction contrary to law, but in the instant case it cannot be said that the Estate Officer was not exercising powers within his province and/or that he exceeded his jurisdiction in any manner whatsoever.

17. In the aforesaid backdrop, the learned Additional District Judge rightly refused to condone the delay in preferring the appeal for which no sufficient explanation was furnished by the Petitioner. Since the learned Additional District Judge has dealt with the aspect of condonation of delay at great length, no useful

purpose would be served by reproducing the said discussion. Suffice it to state that the findings of the learned Additional District Judge on the aspect of condonation of delay are fully supported by the precedents referred to by him and cannot be faulted. Even otherwise, this Court has examined the case on its merits and finds that order of the Estate Officer in the instant case is a well reasoned one and calls for no interference.

18. Resultantly, there is no merit in the present petition which fails and is rejected. There is no infirmity or perversity in the impugned orders of the Estate Officer and the learned Additional District Judge, which are accordingly upheld.

19. W.P. (C) No. 587/2013 stands disposed of accordingly.

WP(C) No. 796/2013

20. In view of the orders passed in WP(C) No. 587/2013, the Respondents are directed to comply with the order dated 25.08.2011 passed by the Estate Officer and hand over the possession of the Shed No. 74, Okhla Industrial Estate, Phase-III, New Delhi to the Petitioners and execute the Hire-Purchase Agreement in favour of the Petitioners latest within 60 days of the receipt of this order. Writ Petition No. 796/2013 is accordingly allowed in terms of the judgment passed in WP(C) No. 587/2013.