
(2003) 05 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ Petition No. 2930 of 2001

Delhi State Industrial Development Corporation

APPELLANT

Vs

Engineering Ancillary Co-op. Industrial (Production) Society
Ltd.

RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 9

Citation : (2003) 72 DRJ 360

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Shobhna Takiar, for the Appellant; N.K. Jha, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The petitioner herein Delhi State Industrial Development Corporation had constructed some industrial sheds in different parts of the city between 1970 to 1974. On 19th July, 1974 the respondent was allotted Shed Nos. 92 and 93 in New Okhla Industrial Complex, Phase-I at monthly rent of Rs. 1,460/- for both the Sheds. The license was for a period of three years which expired in July, 1977. Admittedly this license was not extended thereafter. It is a common case of the parties that the petitioner had come out with the Hire Purchase Scheme under which options were given to such licenses to purchase the sheds allotted to them on hire purchase basis. This option was extended to the respondent also. However, the respondent did not opt for the scheme. The respondent also defaulted in making regular payment of license fee. As the arrears of license fee mounted and the term of license had also expired, the petitioner treated the respondent as unauthorised occupant and moved an application u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Act") before the Estate Officer and these proceedings culminated in order dated 26th November, 1993 whereby the Estate Officer passed eviction order against the respondent and he was given 15 days time to

vacate the public premises. Admittedly, the respondent did not challenge this order by filing any appeal before the appellate court u/s 9 of the Act. Since in the order dated 26th November, 1993 the Estate Officer had also assessed damages, the respondent thereafter started appearing before the Estate Officer, tendered in bits the amount of the damages assessed by the Estate Officer from time to time in Installments. For this purpose case was fixed before the Estate Officer on various dates.

2. The matter of this nature was considered by this Court in the case of DSIDC v. Chander Prakash and Anr., 1994 1 AD Del 377. It was held that the premises, as per the terms of lease deed, had been let out to different allottees and the same belong to the DSIDC. Shed which had been constructed on the land was leased by the Government to it. This Court also clarified that the position in law is that if the premises are sold on Hire Purchase basis then the transfer takes place only after the Installments are paid. The Court also observed that once the allotment is validly determined the provisions of the Act could be invoked. As pointed out above, in the instant case the lease which was monthly lease came to an end by of time and the petitioner did not opt for taking the premises on Hire Purchase basis. The petitioner, Therefore, became unauthorised occupant and thus initiating action for eviction under the provisions of the Act or for damages for continued unauthorised occupation of the petitioner in the said premises cannot be said to be illegal.

3. It may be of some relevance to point out that many writ petitions were filed in this Court challenging the terms of hire purchase promulgated by the petitioner, particularly the price which was fixed under the said scheme. These writ petitions were decided and the judgments given are reported as under:

1. DSIDC v. Chander Parkash and Anr., 1994 1 AD (Del) 377.

2. Delhi State Enterprises Association and Ors. v. DSIDC, 1994 3 AD (Del) 1351.

3. Pushplata Vs. Delhi State Industrial Development Corporation Ltd., .

4. It may be noted that in the last judgment a Division Bench of this Court directed DSIDC to give one final opportunity to the occupants of these sheds to opt under Hire Purchase Scheme. This judgment was rendered on 16.1.1996. Thereafter, another opportunity was granted to the petitioner. The petitioner failed to avail even this opportunity and thereafter warrants of possession/orders dated 10th December, 1998 were issued.

5. It is thus clear that because of the pendency of cases in this Court, earlier warrants of possession were not issued for taking possession even when the Estate Officer had passed eviction order dated 26th November, 1993 and no appeal was preferred by the petitioner there against. The Estate Officer kept on receiving the amounts of damages in Installments as offered by the petitioner from time to time on various dates by the Estate Officer. Perusal of records produced by the petitioner shows that proceedings were fixed only for tendering

the amount since the respondent was in possession of the two sheds.

6. Significantly, after the warrants of possession dated 10th December, 1998 were issued, one Ras Bihari Yadav claiming himself to be the tenant under the respondent filed appeal u/s 9 of the Act before the Addl. District Judge, Delhi: This appeal No. 31/99 filed on 12th February, 1999 was dismissed by the Addl. District Judge vide his judgment dated 17th February, 1999. In this appeal Shri. Ras Bihari Yadav had contended that even if he was in unauthorised possession of the premises in question, it had to be respected and he could not be thrown out without affording any opportunity of hearing. While dismissing the appeal, the Addl. District Judge held:

"In the facts and circumstances of the case and for the reasons given hereinabove, I find the present appeal is not only barred by limitation but also without any merit and Therefore, this appeal is hereby dismissed. At this stage it is submitted the counsel for the appellant that the appellant may be given some reasonable time for removing his luggage from the suit accommodation and it is further submitted that the appellant is prepared to give an undertaking to the court that he shall vacate the suit accommodation in his occupation by the evening of 31.3.1999. This request is not opposed by the learned counsel for the respondents. Even otherwise, I am of the view that the request for time made by the appellant can be accepted in the interest of justice in order to bring the finality to the whole matter regarding eviction of the appellant from the suit accommodation. The undertaking of the appellant has been recorded separately and in terms of his undertaking he is given time till 31.3.1999 for vacating the suit accommodation. It is directed that the respondents should not execute the impugned eviction order against the appellant till 31.3.1999. The present appeals stand disposed of accordingly with no order as to costs."

7. After the dismissal of the aforesaid appeal, the respondent herein filed appeal u/s 9 of the Act being PP No. 79/2000. It is clear that this appeal was filed almost 7 years after the eviction order dated 26th November, 1993 and more than two years after possession order dated 10th December, 1998. Of course, the respondent had challenged the order dated 10th December, 1998 only and did not challenge eviction order passed on 26th November, 1993.

8. This appeal has been disposed of vide order dated 17th February, 2001. The Additional District Judge has observed that originally the payment of arrears of rent was Rs. 6,02,821.79 paise and the respondent had till date paid a sum of Rs. 6,30,000/- and since substantial amount had been paid, the respondent deserved some leniency.

9. In these circumstances, the Additional District Judge directed the petitioner herein to de-seal the premises and hand over possession of the same to the respondent herein and had remanded the case back to the Estate Officer for reconsideration of the matter afresh in view of the fact that substantial amount has allegedly been paid by the respondent.

10. Feeling aggrieved against this order, present writ petition has been filed.

11. After hearing the learned counsel for the parties, I am of the view that the Additional District Judge misdirected on facts as well as in law in dealing with the case before him which has resulted in passing off the impugned order which cannot be sustained in law. It is clear from the facts noted above that the respondent was an unauthorised occupant. Eviction order was passed against the respondent way back on 26th November, 1993 which was not challenged. That order became final. Reasons why this order was not executed earlier are also mentioned above. It is only when pursuant to the direction given by this Court in *Pushplata v. DSIDC* (supra) that the respondent did not avail the hire purchase scheme that order of possession dated 10th December, 1998 was passed. The respondent even filed appeal against this order after more than two years when the limitation period for filing such an appeal is 12 days.

12. That apart, the Additional District Judge has not dealt with the matter on merits as to how the eviction order passed by the Estate Officer and the possession order dated 10th December, 1998 passed by him were wrong in law.

13. Even the reasons which persuaded the Additional District Judge to remand the case back to the Estate Officer is factually incorrect. The respondent has itself submitted the statements of dues allegedly computed on the basis of order or the Estate Officer. Even as per this statement, the arrears of license fee dues as on 31st March, 1991 were Rs. 6,76,707.33 paise. The respondent has paid a sum of Rs. 6,30,000/- till the date of decision by the Additional District Judge. Thus the amount which was due as on 31st March, 1991 has also not been paid in full although the respondent took 10 years for paying this amount in various Installments. Moreover, the Additional District Judge failed to notice that in these 10 years, further arrears had become due of substantial amount which have not been paid. Therefore, there was no ground to take lenient view in the matter and remanding the case to the Estate Officer when the respondent was a chronic defaulter.

14. This writ petition is accordingly allowed. Impugned order passed by the Additional District Judge is set aside.

15. No costs.