

(2004) 01 DEL CK 0021

In the Delhi High Court

Case No : Regular Second Appeal No. 187 of 2002

Dr. R.K. Kohli (Decsd) through his LRs.

APPELLANT

Vs

R.K. Garg and Another

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Citation : (2004) 110 DLT 379 : (2004) 74 DRJ 646

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : S.K. Taneja and J.K. Debla, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Appellant claims to have occupied the shop in question as a result of subletting of the same by the original allottee. Initially it was a platform which was allotted to respondent No. 1 by respondent No. 2 L & DO. The appellant has been in the occupation of the shop in question since 1.6.77 and was also found to be in occupation on inspection by respondent No. 2 but respondent No. 2 served a notice for cancellation of the license to the original allottee on the ground that the possession has been transferred either by way of sale or by way of subletting without the consent of respondent No. 2.

2. The appellant claimed protection under the Office Order dated 25th July, 96 relating to regularisation of shops/stalls/flats/platforms etc. in the names of partners and occupants. Same read as under:

"In case, where shop has been allotted on tender basis the occupant in whose name the shop is to be regularised shall pay at least 50% of the tendered license fee over and above it. In any case it should not be less than three times the economic license fee. In this case too the revision provision as stated at (IX) above shall be applicable.

"In case of regularisation on subletting grounds, the occupant in whose name the

shop etc. is to be regularised in addition to above documents except partnership deed or dissolution deed shall also produce a certificate from the concerned marked Association as also from the Federation of Marked Association to the effect that the occupant is in physical occupation of the premises and is doing his independent business in that premises from a specified date. Such a certificate should be signed by atleast 3 office bearers of each i.e., Association and Federation. However, one office bearer will not sign on both the certificates."

3. Both the Courts have taken the view that without obtaining the consent of respondent No. 2, respondent No. 1 was not authorised either to transfer the possession of the premises in question or to sublet the same and Therefore the appellant does not fall within the category of those persons who have been given the benefit of regularisation of shops/stalls/flats/platforms etc. in their names.

4. This contention has no force as the Office Order does not clarify as to the nature of category of occupants of the premises. The Office Order itself shows that the Government had decided to allow regularisation of shops/stalls/flats/platforms etc. in the names of the partners/occupants who have come into occupation of the respective premises on or before 20th October, 89 on certain terms and conditions stipulated therein. Even if it is assumed that respondent No. 1 sublet the premises in question to the appellant without the consent of the respondent No. 2 still the fact remains that he has been in occupation of the premises since 1.6.77 and Therefore fall within the category of occupants referred in the office order dated 25th July, 96 as the word "occupant" has not been defined or clarified and Therefore has to be given the literal meaning or on the rational basis.

5. The object of the aforesaid Office Order appears to regularise all the shops/stalls/flats/platforms etc. in the name of those persons who were neither original allottee nor had been occupying the premises. The object was to regularise the premises in the names of those persons who have been found in occupation of the premises up to a specified period or point of time or who had declared themselves as partner of the allottee. This interpretation emanates from the fact that only those partners or occupants were entitled regularisation of shops in their names who have been in occupation of the premises on or before 20th October, 89.

6. On inspection on 15th December, 80, i.e. nine years prior to the stipulate date and year respondent No. 2 found the appellant in occupation of the premises.

7. Counsel for respondent has taken refuge under the Circular dated 15th September, 1975 which was issued in supersession of the Order dated 4th July, 75, whereby it was decided that all requests for regularisation of allotment in favor of partners/sublessee, which were pending on 6th May, 75 in the market section of the Directorate of Estates, may be accepted if such requests are otherwise acceptable. In the instant case the appellant claims to have occupied the premises in the year 1977 and therefore the question of application of the

aforesaid office order to the appellant does not arise. It appears that respondent No. 2 has been issuing such kind of office orders from time to time in order to regularise the possession or occupation of a person who has been occupying either as sublessee or otherwise had been given the possession to partners. For instance, similar office order has been issued even in the year 2000.

8. The object or the underlying idea at the relevant stage was that no person who has been in occupation either as a partner or otherwise in respect of shop which has not been allotted to him but for a sufficient long time such a possession or occupation should be regularised as in practice possession is with person who is seeking regularisation. Whether such office orders are having an adverse effect on the policy that the allottee transfers the possession of premises in the name of somebody by taking money and the second occupant reaps final benefit of transfer of possession either under the agreed partnership or sublessee with or without the consent of respondent No. 2 as it is not known that while formulating policies of regularising such premise in the names of occupants, or sublessees. What are the factors of consideration that are taken into account. In the aforesaid Office Order, the stipulation that "if possession is transferred with the consent of respondent No. 2, a person who is either occupant or sublessee will not have the right of regularisation. Even if It was so still the fact remains, that the authorities remained silent, for the reasons best known to them for nine long years after they had the knowledge of unauthorised occupation of the premises by the appellant.

9. In view of the aforesaid reasons the appeal is allowed and the impugned orders of the First Appellate Court as well as of the Trial Court are hereby set aside. Respondent No. 2 shall now regularise the premises in the name of appellant on the terms and conditions and the license fees at the prevailing rate from the date of this order in respect of such premises. To ask a person to vacate the premises after occupying it for 26 long years is to negate the whole concept of regularisation of the premises in favor of occupants or sublessee.