

(2006) 08 DEL CK 0227

In the Delhi High Court

Case No : WP (C) No. 13182 of 2005 and CM No. 10079 of 2005

Harvey Radio Corporation

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Citation : (2006) 08 DEL CK 0227

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Piyush Kalra, Manjit Singh Ahluwalia and Reema Kalra, for the Appellant; Anusuya Salwan, for DDA, Akansha Sharma Advocate for Meera Bhatia, for GNCT and O.P. Saxena and Usha Saxena for MCD, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In this writ petition, orders issued by the Delhi Development Authority (hereafter called as the "DDA") on 1.7.05 and dated 4.8.05, have been called into question as illegal and arbitrary.

2. The Petitioner was allotted an industrial plot (hereafter referred to as the "property") on lease; possession was handed over on 7.4.1971. It sought for sanction to construct upon the leased lands, on 23.7.1974; permission was accorded on 23.3.1974. Construction was completed and occupancy certificate was issued on 26.6.1981. It is claimed that in 1989 the Municipal Corporation of Delhi (MCD) granted a license, valid up to 31.1.2002. On 7.4.99 and 16.4.99 the DDA had issued notices requiring the Petitioner to show cause why the lease ought not be determined for violation of its terms, alleging subletting to another concern M/s Pearl, for storage purposes. The Petitioner had resisted the notices and denied the allegations on 28.4.1999. Subsequently, on 26.4.2000 the lease was determined by the DDA.

3. The Petitioner approached this Court by filing WP(C) 4223/00. The Court had disposed off the writ petition inter alias with the following directions:

In view of the aforesaid, it is desired that respondent No. 1 will inspect the property in question and intimate to the Petitioner whether there are any deviation beyond compoundable limit. The needful be done within four weeks from today. The Petitioner shall carry out the necessary rectification within six weeks thereafter.

In so far as the issue of the subletting is concerned, respondent No. 1 shall at the inspection to be carried out check the position in terms of the statement made in the court today and confirm that there is no subletting. In so far as any charges to be recovered by the respondent No. 1 in view of the Petitioner subletting the premises is concerned, respondent No. 2 shall issue to the Petitioner a noticee intimating the charges in accordance with the policy of respondent No. 1 and given an opportunity to the Petitioner of hearing. After such hearing the charges shall be finally determined and intimated to the Petitioner for payment. Needless to say that if the Petitioner still aggrieved by the same it will be open to the Petitioner to take proceedings in accordance with law.

The impugned decision dated 24.6.2000 was communicated vide noticee 10.7.2000 determining the lease is hereby quashed.

The writ petition is disposed of with the aforesaid directions. The parties are left to bear their own costs.

4. After the above order the Petitioner appears to have rectified the building and removed the unauthorized construction; it has placed reliance upon a letter issued by the MCD on 11.8.03, for that purpose. On 1.7.05 the DDA issued the first impugned order intimating that the lease had been determined for non-compliance with the demand to pay Rs. 14,17,440/-, sought for by letters issued on 24.4.04, 26.4.04, 6.7.04 and 29.9.04. It was alleged that the Petitioner deposited only Rs. 2,00,000/- on 26.7.04, and did not deposit rest of the charges. By the second impugned letter the DDA called upon the Petitioner to hand back vacant and peaceful possession. It is claimed that the demand raised and cancellation of the lease are arbitrary and illegal. The claim for subletting charges from 19.4.91 to 10.8.02 is termed as wrong and baseless; the Petitioner alleges that this Court had referred to the notice issued on 7.4.1999, on the issue of subletting and Therefore there was no question of paying any charges for any previous period. It is also claimed that nobody from DDA had visited the site until 1999 and there is no justification for claiming such an exorbitant amount. The Petitioner further avers that the entire factory building is lying vacant since 20.4.2000. The Petitioner had placed on record counter affidavit filed by the DDA dated October,2000 and also the final order in the previous proceedings.

5. The DDA in its counter affidavit denies allegations of arbitrariness and states that inspection was carried out in 1999 when building had been sublet; the basement and ground floor were used by M/s Pearl for storage of clothes. It used

rear set-back with sheds for manufacturing radio parts. It is claimed that a show cause notice was issued on 25.5.91 but no action was taken as the file had been consigned to the record room. It then relies upon the facts leading up to the filing of the previous writ petition and alleges that on 4.8.2003 a fresh inspection took place after which the Petitioner had been granted an opportunity to appear before DDA along with all relevant records. The basis of various subletting charges sought for on account of unauthorized subletting have been disclosed, by a statement. For the period 19.4.93 to 7.7.99, the amount claimed is Rs. 9,63,531/- ; for the period 2000-02 the amount claimed is Rs. 4,14,469.64 and for the third period namely 10.8.02 to 4.9.03, the amount claimed is Rs. 36,666.50.

6. The calculations have been refuted. However, during the course of the hearing learned Counsel for the Petitioner submitted that for the period 2000-02 the amount of Rs. 4,14,469.64 would be paid because the premises had been let out to a third party. As far as the amount of Rs. 36,666.50 is concerned, it was submitted that there was no subletting as alleged in favor of M/s N.K. Printing Press and that the printing activity was carried out by the Petitioner in partnership with his nephew; the venture was later closed on account of losses.

7. In addition to reiterating the contentions raised in the petitioner, Mr. Kalra learned Counsel submitting that none of the show cause notices disclosed the basis for demanding a colossal amount of Rs. 14.14 lakhs. It was submitted that repeatedly allegations were made, that an inspection was carried out in 1991 but no material much less a break up followed up by a reasoned order was ever issued revealing the amounts payable on account of so called subletting. Learned Counsel submitted that in the absence of any material the DDA could not have arbitrarily and fancifully charged amounts on an assumption of subletting.

8. Ms. Salwan, learned Counsel submitted that the impugned order was justified because despite repeated opportunities the Petitioner deposited only Rs. 2 lakhs towards the amount demanded and as a consequence it had to blame itself for the determination of the lease by the impugned orders. It was claimed that the Petitioner had sought, permission for letting out basement for go-down purposes through an application which was examined by the DDA; the Petitioner was informed that permission could be granted only after clearance of amounts which at that stage was Rs. 12.17 lakhs.

9. It was also submitted that the inspection carried out in 2003 revealed unauthorized constructions which were eventually removed. The Petitioner was also granted opportunities to furnish documents about the extent of subletting and the amounts received. Yet it did not produce the relevant particulars.

10. The factual narrative and the above discussion shows that the controversy in these proceedings is whether the DDA has acted in accordance with law, particularly in conformity with the Court's order dated 22.7.02. The Petitioner has not denied its liability to the extent of Rs. 4,14,469.64.... The question

Therefore is whether it is liable to pay the balance amount.

11. This Court while disposing off the previous writ proceedings had directed inspection and also required the DDA to issue noticee intimating the charges in accordance with its policy and also grant opportunity of hearing to the Petitioner. The four show cause notices demanding the amounts are on record. Learned Counsel for the DDA has also made the original record available. The show cause notices dated 23.7.04 dated 26.4.04, 6.7.04 and 23.7.04 indicate the amounts due. However, they do not disclose a year wise break up as has been done in the calculation sheet produced at Annexure A-2 along with the counter affidavit.

12. The counter affidavit of the DDA produced, filed in the previous proceedings along with Annexures as also a subsequent reply affidavit filed on 7.3.02 are a part of the original record of the DDA, which were produced during the hearing. They disclose that there were some materials existing on the file of the DDA relating to the question of subletting. These were by way of property tax assessments whereby the rateable value of the property was assessed on the basis of the rent received; apparently the rateable value was fixed differentially; the rented portion was on the basis of the annual rent whereas the self occupied portion was assessed separately. This is evident from the order of Dy., Assessor and Collector dated 2.1.1996; it was applicable for w.e.f. 1.6.1991, 1.1.1994, 1.4.1994 and 1.8.1994 with variations. Another assessment order effective from 1.4.99 is also on record, this too discloses that the premises had been let out. The original file contains a copy of the computation statement of the Income tax Department for the year ending 31.1.98 in which shows the rent received for the property.

13. From the above discussion it is apparent that there was, and continues to be, sufficient materials on the record of the DDA, on the basis of which it could have issued a proper and specific noticee to the Petitioner calling forth its Explanation and then finalizing a demand for subletting charges. However, it ignored those materials and proceeded on the basis of its own calculations. I am unpersuaded by the submissions of the Petitioner that the DDA ceased to have any power or could not have claim amounts prior to 1999. The materials on record on the original file of the DDA as well as in the previous proceeding, (the file of which was considered by me after the judgment was reserved) show that though the DDA has acted improperly this case does not warrant an inference that it was foreclosed from claiming charges prior to 1999. I am Therefore of the view that DDA was within its rights to issue a noticee demanding subletting charges, the manner in which it exercised its power, ignoring relevant materials on record with a complete non-application of mind.

14. It is a settled principle of law that no man can be condemned unheard or without following fair procedure. Principles of natural justice are a necessary (and ordinarily indispensable) part of fair procedure. One important component of such procedure is issuance of noticee. In this context it would be useful to consider certain judgments on the issue. While dealing with a notice proposing to

revise rateable value, on the ground of vagueness and absence of grounds, the Supreme Court, in *Food Corporation of India v. State of Punjab and Ors.* AIR 2001 SC 250 stated as follows:

Notice to affected person mandated in this section is not an empty formality; it is meant for a purpose. A vague and unspecific notice will not provide reasonable opportunity to the notice to file objection meeting reasons/grounds on which the amendment of the assessment list is proposed to be made. Such a notice cannot be taken to be complying with the statutory requirement.

In *Canara Bank and Others Vs. Shri Debasis Das and Others*, , the Supreme Court held that:

the adherence of principles of natural justice as recognised by all civilized states is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order becomes wholly vitiated.

15. In this case although the DDA demanded specific amounts, it failed to indicate the break up or the briefest reasons why it was claiming them. The documentary evidence which is a part of the original record in the DDA; but unfortunately not disclosed in the counter affidavit filed in the course of these proceedings (in contrast to the affidavit filed in the previous proceedings, which had made pointed references to such materials and even produced copies of those documents), amply demonstrates that it is in a position to issue a proper notice setting forth in detail and with specificity, the period of subletting, the party to which subletting could be alleged and amount/amounts which can possibly be claimed. The notices culminating in the impugned order unfortunately do not measure to the standards demanded of by law; they are singularly lacking any particulars and blandly claim the amounts mentioned.

16. In the light of the above discussions the impugned orders are hereby quashed. The DDA is however granted liberty to issue fresh notices, after giving credit to the amount of Rs. 2,00,000/- paid by the petitioner, and in the light of its admitted liability for the sum of Rs. 4,14,469.64/-. The notice shall indicate with precision the period/periods of subletting, the parties to which premises were sublet and as also the amounts requiring to be recovered, in terms of policies of the DDA. The DDA shall also grant reasonable opportunity of hearing to the Petitioner, and pass a speaking order in the light of the submissions made.

17. The writ petition is allowed to the extent indicated above subject to the liberty as reserved. No costs.