

(2008) 02 DEL CK 0125
In the Delhi High Court
Case No : LPA No. 57 of 2008

Jagat Talkies Distributors and Others	Vs	APPELLANT
M.C.D. and Another		RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Citation : (2008) 102 DRJ 733 : (2008) 7 ILR Delhi 50

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : Harish Malhotra and Rajender Aggarwal, for the Appellant; Amit K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

C.M. Nos. 1922-23/2008(exemption)

Exemption allowed subject to all just exceptions.

Applications stands disposed of.

LPA 57/2008 & C.M. Nos. 1921/2008(delay)

1. The present appeal is directed against the order dated 3rd December, 2007 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein.

2. The said writ petition was filed by the appellant being aggrieved by the order of the Appellate Authority dated 25th October, 2007 which was passed under the provisions of Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 upholding the eviction order passed by the Estate Officer on 16th February, 2005. We have heard the learned Counsel appearing for the appellant as well as the counsel appearing for the Municipal Corporation of Delhi.

3. Counsel appearing for the appellant has submitted before us that the order passed by the learned Single Judge is required to be set aside and quashed as the reasons given by him for dismissing the writ petition are erroneous. In order to appreciate the aforesaid contentions we have examined the records.

4. The appellant, namely, Jagat Talkies Distributors, was given a lease by the Municipal Corporation of Delhi under its resolution dated 15th March, 1967 duly confirmed by the resolution dated 2nd May, 1967. By the aforesaid resolution the appellant was given the lease of the land and also the super-structure. In that regard a deed was also executed on 5th June, 1968. The lease was for a period of 10 years effective from 1st April, 1960 with an option for one renewal. The stand of the Municipal Corporation of Delhi is that the aforesaid lease came to an end by efflux of time after one renewal which was granted to the appellant. The respondent took up the plea that after expiry of the said 20 years period, i.e., 1980 onwards the appellant has become an unauthorized occupant in respect of the land and, Therefore, the proceeding under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was initiated against the appellant. The said initiation of the proceeding and the show cause notice were challenged by the appellant by filing a writ petition in this Court which was dismissed by the impugned order dated 3rd December, 2007.

5. Being aggrieved by the said order the present appeal is filed by the appellant. Since the said appeal was filed belatedly, an application for condensation of delay was also filed by the appellant. There was a delay of 25 days in filing the present appeal. Reasons Therefore have been set out in the application. On going through the same and upon hearing the learned Counsel appearing for the parties, we are of the considered opinion that the appellant has been able to make out a case of sufficient cause on the reasons given in the application. Therefore, we allow the application seeking for condensation of delay. CM No. 1921/2008 seeking for condensation of delay is disposed of.

6. The appellant has filed the present appeal contending, inter alia, that since the appellant was in occupation of the premises by virtue of a lease, Therefore, the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 would not be applicable. The said contention was noticed by the Division Bench of this Court. The learned Division Bench of this Court referred to the decision of the Supreme Court in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . Relying on the said decision it was held that the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 would be applicable. It was also held by the Division Bench that in the case of the appellant, the right of the appellant expired by efflux of time and the notice u/s 4 was preceded by a notice dated 26th December, 1979. It was also held that the notice dated 26th December, 1979 was not determining the tenancy of the appellant but was merely intimating the fact of tenancy expiring by efflux of time. While disposing of the aforesaid appeal the Division Bench also held that since the proceedings before the Estate Officer were at the stage of notice, it is

hoped and expected that the Estate Officer would consider expeditious disposal of the proceedings emanating from notices under Sections 4 and 7 of the PP Act. It was also recorded by the Division Bench that the appellant has enjoyed the benefit of stay obtained by it from this Court for over 24 years and has continued to occupy the site which as per the decision of the learned Single Judge was required by the MCD for an urgent public purpose.

7. Subsequent thereto, however, an SLP was filed by the appellant which was dismissed by the Supreme Court, observing that all the pleas raised in this petition shall be available to be urged against the order passed by the Estate Officer pursuant to the direction made by the High Court in the event of an occasion arising for the purpose. Finally an order u/s 4 of the Act was passed by the Estate Officer directing for eviction of the appellant from the land holding that the appellant is an unauthorised occupant of the said land. The said order was challenged by filing an appeal which was again dismissed by order dated 25th October, 2007. Thereafter, the writ petition was filed in this Court which was dismissed under the impugned judgment and order dated 3rd December, 2007.

8. The Division Bench of this Court has held that the tenancy had expired by efflux of time and thereafter the appellant has become unauthorized occupant and, Therefore, the proceedings initiated could go on which have now become final and binding under the Act. The learned Estate Officer as also the Learned Single Judge have also held that the appellant has been an unauthorized occupant in respect of the public premises belonging to the Municipal Corporation of Delhi and that no condition or stipulation existed which obliged the Municipal Corporation of Delhi to give him a fresh lease or a renewed lease. The learned Single Judge has considered in depth all the submissions made and has found no merit in the said submissions. The learned Single Judge has recorded the findings of fact that there is no dispute that the suit property falls within the scope of the expression "public premises" under the Act and that the appellant was an unauthorized occupant and, Therefore, the Estate Officer has rightly exercised his jurisdiction in directing for eviction of the appellant from the public premises.

9. While recording the aforesaid findings of fact the learned Single Judge also referred to the decision of the Supreme Court in *Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another*, . In paragraphs 18 and 19 of the said judgment the Supreme Court has held thus:

18. In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can - and rather must - also save themselves from negative balances caused by the cost of maintenance, payment of taxes and

costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hands from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.

19. A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation, the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the legislature. At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself.

10. In the light of the aforesaid proposition of law laid down by the Supreme Court we find no merit in this appeal, which is dismissed accordingly.