
(2002) 07 DEL CK 0049
In the Delhi High Court
Case No : CWP No. 3083 of 2000

Mr. Satish Verma

APPELLANT

Vs

D.V.B.

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 07 DEL CK 0049

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Jaya Tomar, for the Appellant; N.S. Dalal, for the Respondent

Judgement

R.C. Chopra, J.—This writ petition under Article 226 of the Constitution of India seeks quashing of the orders dated 8.4.2000 and 12.4.2000 issued by the respondent directing disconnection of the electricity to the petitioner's Premises No. 175, Functional Industrial Estates, Patparganj, Delhi. The petitioner also seeks directions to the respondent to restore the electricity which was ordered to be disconnected on the ground that the Commissioner of Industries, Government of NCT of Delhi, the Lesser, vide orders dated 4.2.1999 had terminated the lease of the plot in favor of the petitioner and had directed the petitioner to hand over the possession of the plot in question to it on the ground that there was a change in the trade and the plot had been sold/sublet.

2. The petitioner alleged that the aforesaid industrial plot was allotted to him in the year 1991 on lease hold basis subject to the condition that the petitioner lessee could not sell, transfer, assign, sublet of part with the possession of the plot or any part thereof except with the permission in writing of the Lesser nor he could use the said plot for residence or for carrying on any trade or business other than that of manufacturing ready-made garments. The proviso however stipulated that the Lesser could allow change of user on such terms and conditions, including payment of additional premium and additional rent, as the Lesser may in his absolute discretion determine.

3. The petitioner averred that the ground floor, first floor and barsati floor were completed in the year 1995 and thereafter the petitioner obtained a license for running a factory of ready-made garments. The said license was valid up to 31.3.2000. The respondent/DVB sanctioned 14 kw of electricity to the petitioner's premises for commercial use. The petitioner had been paying all the bills and there were no arrears. However on 11.6.1998 the Commissioner of Industries, NCT of Delhi issued a notice to the petitioner alleging that the plot was under the occupation of one Shri V.K. Aggarwal and was being used as godown and thus the plot was sold/sublet. It was also alleged that there was a change in the trade also. The petitioner replied to the said notice denying that any part of the plot had been sold, sublet or parted with. Regarding change of trade, he pleaded that the trade of readymade garments could not be successfully run on account of lack of water and as such the petitioner was interested in commissioning of a project for assembling and repair of electrical goods on job work basis. The Commissioner of Industries, however, vide order dated 4.2.1999 terminated the lease and directed the petitioner to hand over possession of plot to him. A copy of the cancellation order was endorsed to the DVB/respondent also with a direction to cut off the electricity supply. The petitioner filed an appeal before Lt. Governor against the termination of his lease which was forwarded by him for consideration to the commissioner of Industries. The petitioner made or more representation dated 22.4.1999 to the Commissioner of Industries against the cancellation of lease but vide orders dated 24.6.1999 the Commissioner of Industries directed him to hand over the possession of the plot stating that the Lt. Governor had rejected his appeal. The petitioner challenged the aforesaid order by filing a Civil Suit which was still pending.

4. On 8.4.2000 the respondent issued a notice to the petitioner that the supply would be disconnected after the expiry of 48 hours. The petitioner made a representation dated 10.4.2000 stating therein that a Civil Suit against the cancellation of lease deed was pending in the Civil Court. However, on 12.4.2000 the respondent disconnected the supply of electricity to the petitioner's premises. The petitioner assailed the action of the respondent in regard to disconnection of electricity without any show cause notice pleading that it was arbitrary, illegal and in violation of principles of natural justice for the reason that the suit against termination of lease was still pending, premises were being used for commercial purposes and no proper show cause notice was given to him before disconnecting the electricity supply.

5. The respondent in its counter affidavit pleaded that the disconnection was on the ground that the lease in favor of the petitioner had been cancelled by the Lesser and order for re-entry had been passed and as such the petitioner had no right to remain in the premises in question or get the electricity supply. It was stated the electricity was disconnected in terms of the directions received from the Department of Industries and once the lease in favor of the petitioner was determined, the petitioner had no right to have the electricity.

6. I have heard learned counsel for the petitioner and learned counsel for the respondent. I have gone through the records.

7. The main question which requires consideration by this court is as to whether the respondent was justified or not in withdrawing the supply of electricity to the petitioner's premises merely on the ground that the lease in his favor had been determined by the Lesser. The Lesser may, in accordance with the terms and conditions of the lease, terminate the lease but the mere termination of the lease does not ipso facto extinguish the rights and title of a lessee who may wish to challenge the termination on the ground that the termination was not in accordance with law or that it was in violation of the terms of the lease or in case of an instrumentality of the state it was malafide, arbitrary or unjust. Till the time such a challenge remains pending and the possession of the premises continues with lessee, he cannot be termed an unauthorised occupant and subjected to arm twisting tactics so as to force him to vacate the premises and submit to the order of termination.

8. In *State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others*, the Apex Court in no uncertain terms held that a Lesser, with best of little, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of termination of the lease. It was held that the use of expression re-entry in the lease deed does not authorize use of extra-judicial methods to resume possession and the possession of a lessee even after the expiry of lease or termination of lease is juridical possession and his forcible dispossession is prohibited. In a case where State is a Lesser, it was held that it is under an Additional duty to act in accordance with law. The State is prohibited from taking possession otherwise than in due Course of law. Applying the said principles to the facts of the present case, it appears that the Lesser, Director of Industries, Govt. of NCT of Delhi, after terminating petitioner's lease was indulging in arm twisting and oppressive tactics to oust the petitioner from the premises in question by way of stopping supply of electricity to him so that the premises become unusable and he stands browbeaten to surrender the same in spite of the pendency of his challenge to the termination order by way of filing a civil suit. This short cut to re-entry as adopted by the Govt. of NCT of Delhi with the help of respondent cannot be approved. It is also to be added that the impugned action initiated by the respondent at the instance of Director of Industries, Govt. of NCT of Delhi tantamounts to validating the action of termination of lease and resumption of possession by adopting extra-judicial means. In para 31 of the judgment in *State of U.P. and Ors. v. Maharaja Dharmender Prasad Singh and Ors.* (supra), the Apex Court made following observations:

"Therefore, there is no question in the present case of the government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government

is, accordingly, prohibited from taking possession otherwise than in due course of law."

9. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that the grant as well as termination of lease by a Lesser are governed by the terms and conditions of lease whereas the supply of electricity to consumer is controlled by the Electricity Act, 1910 which prescribes different parameters for the supply and withdrawal of the electricity to a consumer. The mere fact that the lease in favor of lessee has been determined by a Lesser is not a valid ground for withdrawal of electricity to a consumer especially when the action of the Lesser in regard to the termination of the lease is under challenge before a court and is sub-judice. Therefore, the withdrawal of electricity supply to the petitioner by the respondent on mere receipt of directions from the Lesser was unjustified and unwarranted firstly on the ground that a civil suit challenging the termination of lease was pending in a Civil Court and secondly the Lesser had not so far recovered the possession of the premises from the lessee by following due process of law. The lease deed, in favor of the petitioner, speaks of powers to condone the default made by a lessee and as such till the time the controversy regarding termination of lease is decided by the court or the Lesser recovers the possession of premises from the lessee the withholding of electricity supply cannot be justified. Possibility cannot be ruled out that the Lesser itself may condone the alleged violations and regularize the braches. In that eventuality the petitioner would suffer irreparable loss on account of non-availability of electricity supply to him during the interregnum. Therefore, this Court is of the considered view that the impugned action on the part of the respondent in disconnecting the electricity supply to the petitioner merely on account of termination of lease by the Lesser was illegal, unjust and unwarranted in as much as mere determination of lease by the Lesser does not render the lessee an unauthorised occupant and his possession continues to be juridical.

10. This Court is further of the view that withdrawal of electricity supply to the petitioner by merely giving him a notice dated 8.4.2000 intimating him that the supply would be disconnected after the expiry of 48 hours was in utter violation of the principles of natural justice. Neither this intimation was a show cause notice nor any opportunity was given to the petitioner to present his case before the respondent so as to satisfy it that there were no good grounds for disconnection of electricity supply. The impugned action, Therefore, initiated vide orders dated 12.4.2000 by way of disconnecting the electricity supply to the petitioner's premises was in violation of the principles of natural justice and cannot be sustained.

11. In view of the foregoing reasons, this Court is of the considered view that so long the petitioner is in possession of the premises in question, the respondent has no right to refuse the supply of electricity to him subject to the conditions that the petitioner abides by the terms and conditions of the supply of the

electricity and continues to pay for the electricity as per tariff rules. Therefore, the orders dated 8.4.2000 and 12.4.2000 passed by the respondent are quashed and the respondent is directed to continue to supply the electricity to the petitioner in accordance with the terms and conditions of the supply of electricity.

12. The writ petition stands disposed of accordingly.