
(2013) 02 DEL CK 0264
In the Delhi High Court
Case No : Writ Petition (C) 7002 of 2003

M/s. Krishna Packers

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0264

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Avnish Ahlawat and Mr. N.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Rajiv Shakdher, J.—There is no representation on behalf of the petitioner. As a matter of fact, the writ petition was dismissed for non-prosecution on 20.08.2010 when interim order dated 05.11.2003 was also vacated. Thereafter, based on an application moved by the petitioner, by an order dated 14.03.2011, the writ petition was restored. It was directed by the very same order that the matter be listed in regular board. There is no order of restoring the interim order whereby the impugned demand letters dated 15.01.2013 and 01.07.2013 were stayed. In view of the fact that there is no representation today, as indicated above, the writ petition is dismissed for non-prosecution. No application for restoration will be entertained unless it is accompanied by a receipt of payment of costs of Rs. 7500/- with the Delhi Legal Services Committee.

2. At this stage, Ms. Avnish Ahlawat and Mr. N.K. Singh appears for the petitioner. Ms. Ahlawat makes an oral prayer for recall of order passed above. At her request, the order is recalled subject to Ms. Ahlawat continuing with the matter. She has agreed to address arguments in the matter. Accordingly, the order passed, dismissing the writ petition, is recalled. The writ petition is heard.

3. In the present writ petition a challenge is laid to the orders dated 15.01.2003 and 01.07.2003. The challenge has been laid in the background of the following

brief facts:

3.1. The petitioner was allotted an industrial plot situate at plot no. 29, Industrial Estate, Patparganj (in short the plot in issue). The allotment was made by execution of a perpetual lease deed dated 29.01.1993.

3.2. It appears that in November, 1998 an inspection was carried out by the respondents qua the plot in issue where a building was under construction. Apparently, the officers of the respondents informed the petitioner that a show cause notice had already been issued on 26.05.1998 for determination of the lease on the ground that the plot was in possession of another entity by the name of M/s. Mayank Fashions. The charge against the petitioner was that, it had sold/sub-let the plot in issue. A second charge was also levied that the charge, that the plot in issue, was being used, for a trade other than which it was leased out to the petitioner, without the permission of the lessor. This charge was based on the fact that, according to the respondents, the said M/s. Mayank Fashions was in the business of fabricating readymade garments.

3.3. The petitioner, thus, vide communication dated 13.11.1998 represented to the respondents that it had not been served with the show cause notice and that, as a matter of fact, at that point in time, the building was under construction and was lying locked. The sum and substance of its stand was that, the allegation that, it was used for a trade other than one for which permission had been granted alongwith a plea that it, had been sublet to M/s. Mayank Fashions, was incorrect. A personal hearing was sought by the petitioner from the Commissioner of Industries.

4. To cut a long story short, it appears that the petitioner's protestation did not work with the respondents. The petitioner, in fact, received a copy of the order dated 02.02.1999, which was evidently issued by the Deputy Secretary, Industries informing the petitioner that its lease had been cancelled on the ground that the petitioner was running the business of fabricating readymade garments in the name of M/s. Mayank Fashions, without the consent of the lessor.

5. Being aggrieved, the petitioner preferred an appeal with the Lt. Governor, Govt. of NCT of Delhi. This appeal was filed on 27.02.1999.

6. On 04.06.1999, the petitioner claims, that it received a communication from the Commissioner of Industries asking the petitioner to appear before him, on 10.06.1999. Thereafter, the petitioner says that on the due date it was represented before the Commissioner of Industries. It appears that, thereafter the appeal was heard on 23.07.1999; though this time by Joint Director of Industries. Notice in this behalf was received by the petitioner, admittedly, on 12.07.1999.

6.1. As directed, the petitioner appeared before the Joint Director and placed on record the document in its possession, which, inter alia included photocopy of Form "C" & "D" issued by the Delhi Development Authority (in short the DDA);

the rent agreement, Municipal license, TDS Certificate as also an application submitted to let out the premises on rent. The said documents were apparently filed alongwith an affidavit that the petitioner was in possession of the plot in issue.

7. The appeal was finally disposed of by the impugned communication dated 15.01.2003. By this communication the petitioner was informed by the Deputy Secretary, Industries that the competent authority, i.e., the Lt. Governor had approved the restoration of the plot in issue subject to payment of a sum of Rs. 5,59,800/- as restoration charges. The petitioner was directed to deposit the said amount within thirty (30) days.

8. It appears that by a communication dated 06.02.2003 the petitioner protested against the demand raised, which was rejected by communication dated 01.07.2003; which is the other communication impugned by the petitioner. By virtue of this communication the petitioner was informed that the demand was raised in accordance with the provisions of the Land Management Guidelines and the order approving the imposition of demand passed by the Lt. Governor; which was the order dated 15.01.2003.

9. It is against the impugned demand, as indicated above, the petitioner has filed the present writ petition. Ms. Ahlawat, in support of the reliefs claimed in the writ petition, has made the following submissions:

(i) The appeal had been preferred to the Lt. Governor, while the impugned orders dated 15.01.2003 and 01.07.2003 had been passed by the Deputy Secretary, Industries and, therefore, the demand ought to be set aside.

(ii) The petitioner was heard by a different officer at each point in time, while orders were passed by an authority who had not heard the petitioner in support of its case. In this regard, the learned counsel referred to the fact that on one occasion, i.e., on 10.06.1999, the petitioner was heard by the Commissioner of Industries, while on 23.07.1999 the petitioner was heard by the Joint Director, whereas the orders were passed by the Deputy Secretary.

(iii) The impugned orders, by which the demand was raised, bear no reasons and, therefore, ought to be set aside.

10. I have heard the learned counsel for the petitioner. There is no representation on behalf of the respondent.

10.1. In so far as the argument of Ms. Ahlawat is concerned, that the impugned order by which the demand was raised (i.e., order dated 15.01.2003) was passed by an authority other than the competent authority, i.e., the Lt. Governor, in my view, is not tenable. The impugned order merely conveyed the approval received from the competent authority, i.e., the Lt. Governor with respect to the petitioner's prayer in the appeal that the plot in issue, be restored. There is nothing to suggest that the order allowing the petitioner's appeal was not passed by the competent authority.

10.2. The second submission of the learned counsel for the petitioner that it was heard by officers other than one who passed the order is also not tenable in this case as the petitioner does not seem to have objected to the same. It is the petitioner's own case that, when she appeared before the Commissioner of Industries, the Commissioner of Industries was of the view that since the petitioner had already sought permission to let out a portion of the premises, i.e., the basement, the case would have to be put up before the Joint Director of Industries, for further action. Therefore, the Commissioner of Industries on 10.06.1999 did not hear the matter.

10.3. It appears that on 23.07.1999, when the petitioner was required to appear before the Joint Director, the appearance by the petitioner was actually made before the Deputy Secretary (Industries), on the said date, and not before the Joint Director. This is evident on perusal of the petitioner's own letter dated 27.07.1999 addressed to the Commissioner of Industries which is appended as Annexure "P" at page 71 of the paper book.

10.4. A perusal of the said letter would show, that the Deputy Secretary (Industries) in fact after hearing asked the petitioner to file an affidavit to the effect that the plot in issue was in its possession alongwith relevant documents.

10.5. It is the petitioner's case that the relevant documents were filed and it is based on this material, apparently, that the Lt. Governor passed the impugned order restoring the plot in issue to the petitioner. In other words, the order determining the lease was recalled. Even though the petitioner was well aware that it had preferred an appeal with the Lt. Governor, no objection was taken before the Deputy Secretary that he ought not to hear the appeal. This objection is sought only after the impugned order raising the demand was passed. Therefore, this argument of the petitioner does not impress me. See following observations of the Supreme Court in *Municipal Commissioner, Calcutta and Others Vs. Salil Kumar Banerjee and Others*, :

...The High Court also overlooked the fact that it was the first respondent, the writ petitioner before it, who had filed the appeal under the 1980 Act before the Tribunal and had at no stage before the Tribunal ever contended that it was improperly constituted. Even assuming that it ought to have consisted of three or more Members, had that objection been taken at the initial stage of the hearing of the appeal before the Tribunal, that position could have been rectified. Certainly, in circumstances such as these, the High Court ought not to have exercised its discretion in favour of the first respondent....

11. The third argument, however, of the petitioner, which is that no reasons are provided in the impugned order whereby the competent authority came to the conclusion that restoration would be subject to imposition of the impugned demand, in my view, has merit. A perusal of the impugned order dated 15.01.2003, followed by order dated 01.07.2003, would show that it does not give any clue as to why in the petitioner's case the demand was raised. As

indicated above, in the second impugned order, i.e., order dated 01.07.2003, there is a reference to the Land Management Guidelines. As to what provisions of the Land Management Guidelines were invoked against the petitioner, and how these guidelines applied to the petitioner's case is not apparent on a perusal of the impugned orders, in particular, the second order dated 01.07.2003.

11.1. It is well settled that the reasons are a link between the material which an adjudicator considers and the conclusions which he arrives at after consideration of material placed on record. If the link is missing, then the conclusion would have to be set aside; as it would then present to a writ court an "inscrutable face of a sphinx". [See *UOI vs. Mahendar Lal Capoor* 1994 (1) SCR 797 819 (H) and 820 B, C & D]. Accordingly, in my view, the petitioner ought to succeed on the ground that the impugned orders do not furnish any reasons as to why the impugned demand was imposed on the petitioner for restoration of the plot in issue.

11.2. This is more so, in view of the fact that, the restoration of the plot in issue and the recall of the order determining the lease would have been necessarily made on account of the competent authority, i.e., the Lt. Governor, coming to the conclusion that the charge of sub-letting the plot or change in trade, was not substantiated. If that be so, then it does not stand to reason that the petitioner should be asked to pay the impugned demand for restoration.

12. At this stage, Ms. Ahlawat also draws my attention to paragraphs 19 and 20 of the counter affidavit, which seems to suggest that the lease was restored on 21.09.1999. Therefore, it makes it all the more curious as to why this fact was communicated to the petitioner after a gap of nearly four years, i.e., on 15.01.2003. Only to be noticed, that in the interregnum, the respondents demanded and the petitioner paid the ground rent at the stipulated rate to the respondents. For all these reasons, the writ petition is allowed. The impugned orders are set aside. However, there will be no orders as to costs.