
(2013) 01 DEL CK 0105
In the Delhi High Court
Case No : W.P. (C) 1051/1997

Pradeep Kumar Khanna

APPELLANT

Vs

N.D.M.C. and Another

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0105

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Sistani, J.—Present petition has been filed by petitioner under Article 226 of the Constitution of India inter alia seeking a direction to quash the demand raised by respondent No. 2 in the Notice dated 27.8.1996 in the sum of Rs. 10,21,403.80. The petitioner also seeks a direction to the respondents to re-fix the rent/license fee payable by the petitioner in respect of the shop allotted to him in Palika Bazar, New Delhi, in accordance with the directions contained in the judgment rendered by the Supreme Court of India in the case of Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, As per the petition, the petitioner was allotted a shop bearing No. M-12, (Mezzanine Floor), Palika Bazar, Connaught Circus, New Delhi, at a monthly license fee of Rs. 7547/-, vide a License Deed dated 19.9.1980. Actual physical possession of the shop in question was delivered to the petitioner on 10.10.1980. According to the petitioner, he was carrying on his business in conformity with the trade zone restrictions imposed/applicable with respect to the said shop and he never committed any breach or deviation from the trade zone restrictions applicable to the Trade Zone No. 3 in which the shop of the petitioner was located. Further as per the petitioner, respondent No. 1 had fixed reserved rates for the said shopping centre, and it carved out certain specified zones and had also earmarked the same for carrying out certain specified business/trade.

2. Learned counsel for the petitioner submits that factually respondent No. 1

could not enforce the zone system and the shops were being used by the licensee against the trade zone policy of the respondent. Counsel further submits that on account of violation of the trade zone a show cause notice dated 31.07.1980 was issued to some of the allottees of the shops, which led to the filing of writ petitions in the Delhi High Court. CWP No. 670/1980 and other connected matters were allowed by a judgment dated 29.5.1981 passed by Single Judge of this Court wherein it was held that the allottees, who have not violated the zonal restrictions, were entitled to re-fixation of their municipal rent/license fee. Thereafter, an LPA was filed by the respondent no. 1 wherein the aforesaid judgment was reversed, which led to the filing of a Special Leave Petition, which was allowed. The judgment was reported as Gursharan Singh (supra).

3. Learned counsel for the petitioner submits that the petitioner was also impleaded as a party in the SLP and was arrayed as one of the respondents before the Supreme Court of India. In support of this submission, counsel for the petitioner has placed reliance on Annexure P-1, copy of memorandum of parties, filed at page 30 of the paper book, wherein the name of the petitioner finds mention at Sl. No. 134 as a respondent. Strong reliance is also placed by counsel for the petitioner on the judgment rendered by the Supreme Court of India in the case of Gursharan Singh (supra), more particularly para 14(3), which reads as under:

14(3) Allottees who have not deviated from the trade zone and have paid at the agreed rate throughout except the period when interim orders of the Court were operative, shall pay the balance amount of the arrears of the agreed rate with simple interest at the rate of 6 per cent.

4. It is submitted by counsel for the petitioner that the case of the petitioner is fully covered in fact and law by the case of Gursharan Singh (supra). It is also contended that the petitioner has surrendered the shop in question way back on 20.4.1985. It is further contended that the petitioner is a law abiding citizen and has already deposited the entire amount, in the total sum of Rs. 5,61,115/- along with 6% interest, with the respondent, as directed by the Supreme Court of India, even prior to the filing of the writ petition.

5. Learned counsel for the NDMC has opposed the present petition. Mr. Lohia submits that the petitioner cannot derive any benefit of the judgment rendered by the Supreme Court of India as he was not a party to the same. Counsel further submits that the benefit of the judgment of the Supreme Court of India cannot be extended to the petitioner as the judgment nowhere clarifies the fate of ex-allottees, who have surrendered their trade licenses and shop to the NDMC. He also submits that the fixation of reserved rate has no relevance as the license of the shop was in the name of the petitioner on the rate offered by the petitioner himself through a tender. It is further contended that it was mandatory for the petitioner to adhere to the trade zone system. Counsel further submits that the license of the petitioner was cancelled only on the ground that he

deviated from the trade zone.

6. I have heard learned counsel for the parties and considered their rival contentions. Petitioner was allotted a shop in Palika Bazar in the year 1980. Possession was delivered to the petitioner on 10.10.1980. A notice dated 27.08.1996 was issued to the petitioner and other similarly situated persons on account of violation of the trade zone. The petitioner approached this Court and the writ petition filed by him bearing No. 2585/1984 was clubbed with other writ petitions, which was decided in favour of the petitioner and similarly situated persons by the Single Judge by the order dated 09.07.1986. Thereafter on an LPA filed by respondent No. 1 the aforesaid judgment was reversed, which led to the filing of a Special Leave Petition, which was allowed and the judgment rendered by the Single Judge was upheld. The operative portion of the judgment rendered by the Supreme Court of India has been reproduced above. I have also perused the memo of parties in the Special Leave Petition, a copy of which has been placed on record by the petitioner, which clearly establishes that the petitioner was also a party before the Supreme Court of India and so were a large number of allottees were made respondents in the said SLP totaling to 336. The name of the petitioner finds mentioned at Sl. No. 134 of the memo of parties in the said petition. Submission made by counsel for the respondent that the judgment rendered by the Supreme Court would be inapplicable to the facts of the present case of the petitioner is without any force as the petitioner was also before the Supreme Court of India as other similarly situated persons. Merely because the petitioner surrendered his license and is an ex-allottee would not make the case of the petitioner any different from other similarly situated persons. Another factor, which cannot go unnoticed, is that the petitioner has already surrendered the license allotted to him way back in the year 1985 and even prior to the filing of the writ petition petitioner has deposited the amount due with 6% interest (the amount as per the petitioner) with the NDMC, as directed by the Supreme Court of India. In my view keeping in view the directions passed by the Apex Court the case of the petitioner cannot be singled out.

7. Accordingly, present writ petition is allowed. Rule is made absolute. The impugned demand dated 27.8.1996 is quashed. In case there is any amount due and payable by the petitioner in terms of the judgment rendered by the Supreme Court of India, the same shall be demanded by the respondents from the petitioner. Petition stands disposed of in above terms. No order as to costs.