(1999) 01 DEL CK 0070

In the Delhi High Court

Case No : CW. 2815 of 1987

Prem Grover and Others APPELLANT

Vs

New Delhi Municipal Committee RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7(3)

Citation : (1999) 1 AD 761 : (1999) 77 DLT 348 : (1999) 48 DRJ 419

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Mukul Rohtagi and Mr. Saurabh Kirpal, for the Appellant; Mr. R.P. Gupta, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner had prayed for the following reliefs:

"It is, Therefore, respectfully prayed that this Hon''ble Court may be pleased to:

(a) issue an appropriate writ, order or direction quashing the demand made by the respondent Committee of enhanced license fee in its letter dated 16.2.1987;

(b) issue any other appropriate writ, order or direction command ing the respondent Committee to grant renewal of license to the petitioners in respect of the shop-cum-flat No. 5, Main Market, Lodhi Road on the petitioners'' paying the license fee @ Rs. 454/ plus 20% as demanded by the respondent Committee in its letter dated 16.2.87;

(c) issue any other appropriate, writ, order or direction re straining the respondent Committee its officials, employees and agents from disconnecting the electric supply and dispossession from the said Shop-cum-Flat No. 5, Main Market, Lodhi Road, New Delhi by force."

2. It is admitted by the petitioners that the premises in question is under the control of the respondent and the petitioners could claim themselves only to be

licensee.

3. Before we notice the facts, the claim of the petitioners could be stated in the following terms: The petitioners entered into a partnership with one Davinder Singh, who was the original licensee of the premises. Subsequently, Davinder Singh retired and the petitioners had become entitled to renewal of the licence. The petitioner''s grievance is that the respondent cannot make any demand increasing the license fee.

4. On the 8th of October, 1947, the Shop-cum-Flat No. 5, situated at the Main Market, Lodhi Road was allotted to Shri Davinder Singh. He was paying the necessary license fee. On the 30th of May, 1975, Davinder Singh entered into a partnership with the three petitioner and by virtue of the partnership, the three petitioners came to occupy the premises. On the 7th of July, 1978, the respondent by its Resolution No. 55 had fixed certain norms for the purpose of regularising genuine partnership transactions and with reference to the properties in Lodhi Colony, the NDMC had fixed ten times of the original license fee. On the 13th of April, 1979 the respondent Committee considered the minutes of the meeting of the Allotment Sub-Committee held on the 4th of April, 1979. The Allotment Sub-Committee had recommended that since the petitioners had entered into a registered partnership with Davinder Singh and the partnership being a genuine one, it should be accepted by enhancing license fee from Rs. 227 to Rs. 454 per month with effect from the date of partnership, subject to the original allottee, Davinder Singh, clearing the arrears on account and completing all other requisite formalities. The petitioners did not furnish the license deed duly executed by all the partners. As the petitioners and Davinder Singh did not respond to the offer made by the respondent the respondent did not recognise the partnership.

5. On the 25th of March, 1981, by Resolution No. 88, the respondent Committee had decided to enhance the license fee by 30% after the expiry of five years. The period of license of the petitioners came to an end in May, 1980. On the 16th of June, 1981, the respondent issued a notice to the petitioners and Davinder Singh in the following terms:

"Whereas the term of license granted in favor of S/Sh. Davinder Singh, Prem Grover, Ranjan Grover & P.K. Grover in respect of shop-cum-flat No. 5, Main Market, Lodhi Road, New Delhi has expired on 29.5.80. As such, allotment of said shop-cum-flat in your name stands cancelled and license withdrawn from the said date and you are in unauthorised occupation thereafter in the said premises.

The Committee can, however, consider your request for renewal of the license for another period of 5 years w.e.f. 30.5.80 subject to enhancement of existing license fee by 30%.

Therefore, in case you are interested in renewal of licence, acceptance to the revised rate of license fee as mentioned here in above and to the fresh terms and conditions acceptable to the committee may be communicated to this office within 7 days. Otherwise, you are requested to hand over the vacant possession of the shop-cum-flat mentioned above immediately on the expiry of 7 days failing which action for your eviction from the said shop-cum-flat will be taken as per law. For purposes of handing over the possession of the shop, you are advised to appear in Room No.105, Town Hall, New Delhi Municipal Committee, New Delhi and contact the Supdt. Estate in this regard. Kindly note that you are liable to pay damage charges for unauthorised use and occupa corporation of the shop-cum-flat at the rate of Rs. 590/ p.m. w.e.f.30.5.80."

6. The petitioners did not avail the option to have the renewal as per the above notice. There was no response from the petitioners and the said Davinder Singh. On the 23rd of March, 1982, the respondent issued a showcause notice to Shri Davinder Singh giving the address of the premises and the notice is as under :

"I am desired to state as under:

1. That shop-cum-flat No. 5 Main Market Lodi Road was allotted to you for a period of five years w.e.f. 30.5.75 on a monthly license fee of Rs. 454/ on the terms and conditions contained in the license deed executed by you.

2. That it was agreed that in the event of the breach of any of the said terms and conditions of the licence, the Committee shall be entitled to forfeit the whole or part of the security deposit ed by you besides terminating and revoking the license on the revocation being made it shall be the duty of the licensee to quit and vacate the premises without any resistance and obstruc corporation and give the complete control of the shop of the licensor peacefully.

3. That the term of the license has expired on 29.5.80 and there after you are in unauthorised occupation of the premises.

4. That the cancellation orders/Notice were served on you on 24.6.81 but you have not handed over peaceful possession of the premises.

5. That you have further made the following violations without the consent/ approval of licensor and hence violated the term of license which already stands cancelled. ''Subject the flat above the shop to S/Sh. Prem Grover, Ranjan Grover and Pradeep Grover unauthorisedly.

6. That you are liable to pay damages for the unauthorised use and occupation of the premises at the rate of Rs. 1,251/ p.m. w.e.f. 30.5.80 besides interest at the rate of 15% p.a. on each payment remaining outstanding every month.

7. That now a total sum of Rs. 18,991/05 (Rs.16,809.82 damage charges and interest amounting to Rs. 2,181.23) is outstanding against you for the period ending 31.1.82.

You are, requested to make the payment of damage charges out standing against you and also hand over the vacant possession of the premises to the Municipal Inspector at site within 7 days at the latest. You are also called upon to show cause within 7 days as to why the security deposited by you in respect of the said premises be not forfeited for violation of the terms and conditions of allotment and action taken against you for eviction of the said premises. You are also directed to furnish the latest copy of Income Tax Order."

7. The showcause notice was delivered to Mr. Pradeep Kumar, the second petitioner, and he represented himself to be an employee of the petitioner.

8. On the 25th of July, 1986, the respondent issued a notice under sub-Section 3 of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 calling upon Davinder Singh to show cause why an order for the recovery of Rs. 38,014.80 be made. The notice is as under:

"Whereas I, the undersigned, am satisfied that you are/were in unauthorised occupation of the Public Premises mentioned in the Schedule I below.

And, whereas in exercise of the powers conferred on me by Sub Section 3 of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider the amount of Rs. 38,014.80 on account of arrears of damages and interest on the said arrears is/are due from you for the period and at the rate shown in the occupation of the said premises, and subsequent damages at the rate of Rs.1,251/ p.m. along with interest at the rate of 15% p.a. as arrears are also due from you w.e.f. 1.4.86 till decision in the case and/or vacation of public premises.

Now, Therefore, under the provision of the Sub-Section 3 of Section 7 of the said Act, I hereby call upon you to show cause on 28.8.86 at 11.00 a.m. why an order for the recovery be not made against you along with future interest at the rate of 15% p.a. on the amount of damages till the same are finally cleared by you to the petitioner Committee.

I issue under my hand and seal of the office on 25.7.86.

SCHEDULEI

Shop-cum-flat No. 5, M.M. Lodi Road, New Delhi.

SCHEDULEI

damages at the rate of Rs.1,251/ p.m. and interest at the rate of 15% p.a. a defaulted payments for the period 1.2.84 to 31.3.86, and subsequent damages along with interest as arrears at the above rates are also due from you w.e.f.1.4.86 till decision in the case and for vacation of public premises."

9. That was not replied to by Davinder Singh. 10. On the 24th of December, 1986, notice was issued by the respondent to Davinder Singh to show cause as to why the electricity supply be not discontinued. In response to this, on the 29th of December, 1986 Shri Davinder Singh wrote to the Director (Estate) of the respondent in the following terms:

The addressee respectfully states as follows:

1. That the addressee has been and is licensee in respect of premises known as shop-cum-flat No. 5, Main Market, Lodhi Road, New Delhi, under New Delhi Municipal Committee, and that the occupation of the said premises by the addressee and the partners is lawful, authorised and legal.

2. That it is true that NDMC has initiated proceedings against the addressee and his partner for eviction from the said premises u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the said proceedings are pending before the Estate Officer, NDMC, New Delhi. It is also not disputed that NDMC has been claiming damages @ 1,251/ p.m. with interest @ 15% from the addressee and his partner as against the settled license fee of Rs. 454/ p.m.

3. That addressee, however, states and submits that neither the addressee nor his partners are liable to eviction from the said premises nor are they or any of them liable to pay the damages @ demanded by the NDMC, NDMC''s action in eviction and recovery of damages is being contested by the respondent and the proceedings in this respect have been pending before Estate Officer.

4. That in view of the facts stated hereinabove it would be unfair to allege that the addressee is in unlawful or in an unauthorised occupation of the premises and that the addressee has no right to seek supply of electricity for the said premises. The addressee states that the supply of electricity by the NDMC to the addressee in the premises in question constitutes a separate, distinct and an independent contract and is governed by the terms and conditions agreed to as also the statutory provisions contained in the Indian Electricity Act, 1910. The occupation of the suit premises by the addressee and his partner constitutes a different contract between the NDMC and the addressee and his partners and one contract has nothing to do with the other. The mere fact that the proceedings in eviction and for recovery of damages are pending against the addressee, it would not, in the humble submission of the addressee, entitle the NDMC to disconnect the supply of electricity to the addressee in the said premises.

5. The addressee humbly prays that in the light of facts and circumstances explained above the notice under reference may be withdrawn and no attempt to disconnecting the electricity supply to the said premises be made. The addressee states that he has always been and is now ready willing to pay the license fee at the agreed rate of Rs. 454/ p.m. but the NDMC has refused to accept the same."

10. On the 5th of February, 1987, the petitioners wrote to the respondent in the following terms:

"We the occupant of shop-cum-flat No. 5, Main Market, Lodi Road, New Delhi beg to point out that due to some misunderstanding our shop-cum-flat was cancelled. We had not agreed to the proposed increase of 30% at the time of renewal of licence. This we had done on the belief that some court case is pending in this issue. However, we are giving our consent for the proposed increase in the license fee at the time of expiry and we accordingly request that our license may kindly be regularised. We will deposit the lump sum amount on hearing from you.

One of the partner Shri Davinder Singh has retired from the firm leaving 3 of us in charge of the shop-cum-flat His dissolution deed and receipt etc. are enclosed for your kind information. His name may be deleted from the license deed.

Due to theft in our shop we have to suffer Rs.1.55 lacs. We may be allowed to cover the Yard with some iron bars for the purpose of security.

We will withdraw the court case which is pending in the High Court the date fixed is 5th March, 1987."

11. On the 4th of March, 1987, the petitioners wrote to the respondent in response to the letter dated 16.2.87 referring to the letter dated 16.6.81 from the respondent. The same reads as under:

"With reference to your letter dated 16.02.87. It is submitted as follows:

1. That a partnership deed was executed amongst S/sh Devendra Singh, PB Grover, RK Grover and PK Grover vide dated 30.5.1975 and duty registered in 1975.

2. That the factor of execution of partnership deed was brought to the Committee''s notice and the committee after considering and applying policy of the committee considering Resolution of 1978 was pleased to regularise the shop-cum-flat by Resolution No.12(19) dated 13.04.1979 subject to the enhancement of the license fee which at that time was Rs. 27/ p.m. to Rs. 454/, p.m. from the period 30.5.1975. The enhancement was paid from the period from 1975 by us.

3. That by letter dated 16.06.1981 committee asked all the licensee to agree to enhance of license fee by 30% since, it was alleged that the original period of license had expired. The licensee sent their consent to accept the enhancement as proposed by the NDMC.

4. That the undersigned are agreed to enhancement of 30% in license fee w.e.f.1980.

5. That the under signed are prepared to pay the entire license fee as stated above for the period for which license fee has remained unpaid.

6. That the undersigned undertake to withdraw the court case immediately or as and when the committee directs us to do."

12. On the 23rd of March, 1987, the Director Estate of the respondent wrote to the petitioners that a request made in the letter dated 4.3.87 cannot be accepted and the petitioners should express their willingness to the terms proposed in the letter dated 16.2.1987 by the respondent. Without sending any reply to this letter, six months thereafter on the 22nd of September, 1987 the petitioners had presented the writ petition in this Court.

13. The main thrust of the petitioners'' case is that the respondent is bound to renew the license as per the demand made in the letter dated 16.6.81 and the demand made on the 16th of February, 1987 was absolutely uncalled for and unjust. The petitioners have not shown as to how they have got any right to challenge the demand made on the 16th of February, 1987 except stating that this is unjust. The petitioners have stated that the respondent had infringed the rights of the petitioners under Article 19(1)(g) of the Constitution of India.

14. The respondent filed its counter on the 11th of January, 1988 and submitted a few documents on the 30th of August, 1988. In the counter it is stated by the respondent:

"In the year 1967, the allottee Shri Davindra Singh constructed a shed in the back compound of the shop unauthorisedly and added the trade of Draping and Dry cleaning in the premises without the permission of the Committee. On the basis of the aid violations, the allotment of the premises was cancelled from his name under orders of the then President dated 31.8.67. Thereafter, Shri Davinder Singh removed the unauthorised shed and also stopped the trade of Draping and Dry cleaning when cases were withdrawn against him before the Estate Officer for recovery of damage charges and eviction. Subsequently, he entered into partnership in the shop premises with S/Shri P.K.Grover, Ranjan Grover and Pradeep Grover and made a request to the committee to regularise the allotment in his favor as well as his copartners. The committee vide its Resolution No.12 dated 13.4.79. (Copy enclosed as Ann. P1) regularised the partnership w.e.f 30.5.75 at a monthly license fee of Rs. 454/ only in respect of the shop portion of the premises in question subject to the condition that the petitioner will clear the arrears and complete all other requisite formalities. The petitioners did not furnish the license deed duly executed by all the partners. The term of license which was regularised w.e.f. 30.5.75 i.e. the date of partnership had expired on thereof became unauthorised occupants in the said premises. However, the petitioner was served with a letter dated 16.6.81 (copy enclosed as Ann. P2) calling upon him to give his consent for renewal of license on fresh terms and conditions. The petitioners, however, failed to give his consent. Not only this, the petitioner had further sublet the flat above the shop prem isles to his partners unauthorisedly without seeking the prior approval of the respondent committee. The petitioner thereafter was served with a notice dated 23.3.82 (copy enclosed at Ann. R 3) intimating therein that the term of license has expired on 29.5.80 and he has committed breach of terms and conditions of allotment as such he is in unauthorised occupation of the prem isles in question. He was, Therefore, called upon by the said notice to hand over the vacant possession of the premises or to clear the outstanding dues. The premises in question is owned and controlled by the NDMC (respondent) and as such is a public premises. The same is covered by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The petitioner further sublet the flat portion to other partners in contravention of the terms and conditions of allotment.

The original allottee Shri Davinder Singh had left the premises and the petitioners S/Shri P.K. Grover, Ranjan Grover and Pradeep Grover who were in an unauthorised occupation of the shop-cum-flat No. 5, Main Market, Lodi Road, had approached the Hon''ble High Court."

15. Mr. Mukul Rohatgi, the learned senior counsel, appearing for the petitioners, submitted that the respondent had acted in an arbitrary fashion in making a demand for ten times of the original license fee. He referred to the judgments of the Supreme Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , in support of his submissions.

16. The ratio decidendi laid down by the Supreme Court in those two cases would not apply to the facts of this case. In Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , the appellant before the Supreme Court was carrying on the business of sale and distribution of lubricants. The Indian Oil Corporation stopped the supply of lubricant to the appellant firm without giving any notice. That was challenged in this Court. This Court dismissed the writ petition. The Supreme Court upset the judgment of this Court issuing following directions:

"Therefore, we direct that the case of the respondent be put to the appellants, and let the respondent authorities consider afresh the submissions made by the appellant firm, namely, that the existing arrangement amounts to a contract by which the distributorship was continued in case of the appellant firm without any formal contract and further that the new policy of the Government introduced in December, 1982 would not cover the appellant firm and as such the appellant should continue. It will be sufficient, having regard to the nature of the claims, for the respondent authority to consider this aspect after taking the appellant firm into confidence on this aspect. Nothing further need be stated or required to be done and we give no directions as to whether reasons should be recorded or hereinafter should be given. In the facts and circumstances, it is not necessary to give oral hearing or record the reasons as such for the decision. The decision should be based on fair play equity and considera corporation by an institution like IOC. It must act fairly.

We direct accordingly that the present arrangement to continue until the respondent company gives the consideration on the lines indicated above and make the decision.

It is not our decision which is important but a decision on the above basis should be arrived at which should be fair, just and reasonable _ and consistent with good government _ which will be arrived at fairly and should be taken after taking the persons concerned whose rights obligations are affected, into confidence. Fairness in such action should be perceptible, if not transparent.

The judgment and the Order of the High Court are, Therefore, set aside and the direction and order as aforesaid are substituted and the application made to the high Court is disposed of on the aforesaid terms. In the facts and circumstances of the case, there will be no order as to costs. Order accordingly."

17. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , The Supreme Court had to deal with a case of removal of en masse of all district Government counsel. In deciding the question, the Supreme Court held:

"In our opinion, the wide sweep of Art.14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Art. 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appoint ment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of UP for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind."

18. The decisions of the Supreme Court, as we mentioned above, do not help the petitioners.

19. The petitioners, according to the respondent are in unauthorised occupation of the premises and the petitioners, having failed to give their consent to the offer made by the respondent by its letter dated 16.6.81, cannot seek, as a matter of right, renewal of licence. Due to non-acceptance of the offer, the licensee lost the right even under the policy. The petitioners had also not accepted the offer made by the respondent in its letter dated 16.2.87. The petitioners, Therefore, in our view are not entitled to the reliefs prayed for. Accordingly, the writ petition is dismissed.

20. There shall be no orders as to costs.

