
(2014) 11 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 33680 of 2014

Promod Kumar Kankane and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 127 RD 656

Hon'ble Judges : Arun Tandon, J;Arvind Kumar Mishra, J.

Bench : Division Bench

Advocate : S.K. Chaturvedi, for the Appellant

Final Decision : Dismissed

Judgement

Arun Tandon and Arvind Kumar Mishra-I, JJ.

1. Heard learned Counsel for the petitioners and learned Standing Counsel for the State-respondents. The issue with regard to the right of the petitioners to enjoy the lease in respect of the property in question came to be considered by this Court in writ petition No. 51876 of 2013 filed by the present petitioners. The writ petition was decided under the order dated 23.9.2013. This Court noticed that the District Magistrate has referred the entire matter pertaining to the petitioners to the State Government on 31.5.2011. On the request of the petitioners themselves, the State Government was directed to take a decision in the matter so referred at the earliest, preferably within three months of the date of the presentation of the certified copy of the order in accordance with law.

2. The Principal Secretary, under the order impugned dated 5.6.2014 has recorded a finding that the petitioners have breached the terms and conditions of the lease-deed and, has gone on to hold that there is no justification for renewal of the term of the lease. It has been directed that the petitioner may be asked to vacate the Government land and action taken be reported to the State Government within 15 days.

3. From the records of the present writ petition, we find that the lease-deed which was executed in favour of the petitioners, copy whereof enclosed as Annexure-2 to the writ petition, it was specifically contemplated that the lessees shall erect and complete on the premises as are marked out on the plan, dwelling house and out buildings according to the plan and elevation to be approved by such Collector which shall be of value of Rs. 20,000/- and no part of the external elevation or plan of such dwelling house and out buildings shall at any time be altered or varied from the original elevation or plan thereof without written consent of such Collector and no other building shall be erected on the said premises without the like consent. It was further stipulated that the lessees will not in any way transfer or sub-let the premises or buildings erected thereon without sanction of the lessor in writing.

4. The lease deed further, stipulates that lessees shall not permit to be certified on upon the said premises any trade or business whatsoever or use the same for any other purpose then as a private dwelling without the consent in writing of the Collector, Ist Class. The lease-deed also contemplates that if there shall be breach or non-observance of any of the covenants by the lessees hereinabove contained then in any such case the lessor notwithstanding the waiver of any cause or right of re-entry may re-enter upon the said premises and expel the lessees and all occupants therefrom and this demise shall absolutely determine and the lessees shall forfeit all rights to remove or recovery any compensation for the building erected by him.

5. From recital of the lease-deed as quoted above, it cannot be disputed that the lessees were given a right to construct residential bungalow and dwelling house and nothing further except with the written consent of the District Magistrate. Similarly the lessees had no right to permit any trade or business to be carried on from the said premises except by permission to be granted by the Collector in writing. It was clearly stipulated that if the petitioners breach any of the conditions mentioned in the lease deed then the same shall stand forfeited and the petitioners along with other persons in occupation would be liable to eviction.

6. From the order impugned, it is apparent that the petitioners have admittedly constructed the shops over the premises in question. They have also let out the shops for the purpose of trade and business to the tenants. According to the petitioners, such construction has taken place after the map was sanctioned by the Nagar Nigam and the Collector had permitted the conversion of the residential lease to that as commercial lease.

7. On a query being made by this Court as to whether the Collector ever permitted construction of the shops or other buildings in writing, answer given by the learned Counsel for the petitioners is in negative. Similarly, on being asked as to whether the Collector ever permitted in writing to let out the shops so constructed by the petitioners for the purpose of carrying out trade or business from premises in question, answer given by the learned Counsel for the petitioners is again in negative.

8. Learned Counsel for the petitioners, however, referred to letter is sued by the office of the District Magistrate, Jhansi on 11.9.1972 whereby permission was granted to let out the land in favour of Awadhesh Kumar Agrawal.

9. We are of the considered opinion that even if such permission is taken on its face value, it cannot be treated to be a permission to the shops and to let out the same as has been done by the petitioners. The said facts cannot be disputed by learned Counsel for the petitioners. In view of the aforesaid, we are inclined to hold that there has been apparent breach of terms and conditions of the lease by the petitioners resulting in forfeiting of the lease strictly in terms of the lease itself. Therefore, if the State Government has taken a decision to not to renew the lease of the petitioners any farther because of such breach of terms and conditions of lease, no interference article 226 of the Constitution of India is warranted. There is no merit in this petition. The present writ petition is dismissed.