

(2007) 11 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) 7388, 7389, 7390, 7391, 7392, 7393, 7394, 7395, 7396, 7397, 7398, 7399, 7400, 7401, 7402 of 2006

Rajinder Kumar Aggarwal and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:

Citation : (2007) 99 DRJ 700 : (2008) 1 ILR Delhi 968

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Malhotra, for the Appellant; Gaurav Duggal, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioners have approached this Court for directions to quash a notice issued by the Land and Development Officer on 14.10.2005 and the subsequent notice dated 12.11.2005.

2. The petitioners claim to be residing/occupying portions of property built on plot No. 23, West Patel Nagar, New Delhi. The lease in respect of the said plot was given in favor of one Shri G.Krishna in March, 1957. Eventually, on 3.7.1986, one M/s. Folk Garments (P) Ltd. sold the said property to Ashoka Builders and Promoters through a registered sale deed. Between 1986 and 1991, the said Ashoka Builders apparently redeveloped the property in accordance with sanctioned plans and sold different flats/units to various persons such as the petitioners.

3. It is claimed that the petitioners have been occupying the flats since 1991. On 14.10.2005, the respondent land do issued a notice to M/s. Folk Garments P. Limited alleging misuse and unauthorized construction of the property. This notice was not received by the petitioners as they were not recorded owners; they had also not secured any mutation in their favor. On 12.11.2005, the LandD.O. had issued the impugned order terminating the lease of the property

and seeking re-entry. Subsequently, it issued notice under provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

4. Upon becoming aware of the above developments, the petitioners and other occupiers of portions of the property applied for mutation. The application was lodged with the land do. Upon receiving notices under the Act, the petitioners approached this Court.

5. At the time of entertaining the proceedings, this Court had required the respondent's counsel to obtain instructions as to whether land do would consider it appropriate to issue notice directly to the petitioners and thereafter take a decision in accordance with law.

6. In the counter affidavit filed in these proceedings as well as the contentions made before the Court, during the course of hearing by the respondents, it was submitted that the petitioners had never intimated the land do, at the relevant time, and instead approached the authority only after the action initiated against M/s. Folk Garments P. Limited, led to cancellation of lease and re-entry.

7. It was contended that the petitioners in fact applied for mutation in December, 2005 and, Therefore, there was no obligation for land do nor was there any occasion for it to intimate occupiers about its intention to take remedial actions for breach of the terms and conditions of the lease deed.

8. I have considered the submissions of the parties and also the materials on record. There seems to be no serious dispute that M/s. Folk Garments P. Limited had parted with the property. The subsequent purchaser, namely, Ashok Builders allegedly developed the property after obtaining some sanctions from local authorities. The question of sanction is unclear; it has been disputed. The petitioners are purchasers having bought various flats and residential units from that builder; they have been occupying the premises since 1991-1994.

9. Although the contention of the land do that in the absence of a request for mutation, it was not bound to issue individual notices to the occupiers, may be technically correct, yet what cannot be ignored is the fact that even on inspection what emerged was that the petitioners were occupying various portions of the premises. They, in fact, used them as residences. In these circumstances, it would have been appropriate and in consonance with fair-play if land do after inspecting the premises of each occupant, had issued notices individually to them. These notices could have alleged the extent of unauthorized constructions and detailed the violation of the terms and conditions of the lease deed. In the absence of such notice, the petitioner/occupiers practically are deprived of any opportunity to be heard.

10. In view of the above findings, I am of the opinion that the respondent ? LandDO should undertake the entire exercise afresh. While doing so, it shall inspect all the premises/flats and after noting the exact nature of structures and the features of each individual portions, issue notice to the occupiers calling upon

them to take such steps as are necessary in law and in terms of the lease conditions. Further action shall be taken in the light of the reply to the show cause notice and after granting reasonable opportunity to the notices ,and such other decision as is warranted.

11. In view of the above, the impugned orders are hereby quashed with liberty to the LandDO as mentioned above. The LandDO has disputed that there was any appropriate sanctioned plan or approval of the local authorities. The petition is allowed in the above terms. No costs.