

(2010) 05 DEL CK 0268
In the Delhi High Court
Case No : L.P.A. 743-44 of 2005

Sardar Jagat Singh and Another

APPELLANT

Vs

NDMC and Others

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 247(1)

Punjab Municipal Act, 1911 — Section 171, 173, 173(1), 189(1), 189(2)

Citation : (2010) 05 DEL CK 0268

Hon'ble Judges : Mukta Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Amiet Andlay and Arun Kumar Sharma, in L.P.A 743-44 and 745/2005, Kirti Uppal and Mohd. Amanullah, in LPA 1594, 1595 and 1596/2005, for the Appellant; Arvind Sah, for Respondent No. 1, Sanjeev Sachdeva, Preet Pal Singh and Chitranshul Sinha for Hotel Imperial, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The present appeals arise out of a common judgment dated 8th April, 2005 passed by the learned Single Judge dismissing the writ petitions of the Appellants herein. All these appeals are being taken together as the facts and legal issues arising in all the appeals are common, except one factual difference, that is, the Appellant in LPA 743-45/2005 were granted permission to occupy the rear portion of the telephone booth whereas the other Appellants were not.

2. The Appellants were allotted masonry telephone booths on Janpath outside Hotel Imperial. Vide agreement dated 30th March, 1968 license was granted to the Appellants to occupy masonry telephone booth comprising of an area of 6' x 14' on a monthly rent of Rs. 75/- erected on the road-berm in front of Hotel Imperial, Janpath at taxi stand approved by the Committee u/s 173 of the Punjab Municipal Act, 1911 (in short "PM Act") by the New Delhi Municipal Committee (hereinafter called as "Committee").

3. In the agreement, there was a provision for prescription of fee at any other

rate by the Committee from time to time and thus the Committee vide its various resolutions enhanced the license fee. The said enhancement of license fee was challenged by the Association of the Appellants in a writ petition filed before this Court being WP(C) No. 6603/1999 which was dismissed as withdrawn.

4. In the meantime, during the course of years, the Respondents raised unauthorized construction and thus there was a proposed demolition action. Against this a writ petition being WP (C) No. 2174/1999 was filed seeking restraint from demolishing the telephone booths which was disposed on 20th April, 1999 by this Court with the observation that in view of the proviso to Section 247(1) of The New Delhi Municipal Council Act, 1994 (in short "the NDMC Act") no demolition order shall be made unless the person has been given reasonable opportunity to show cause prior to any demolition order. It was directed that the Respondents shall not demolish the premises in question otherwise than in accordance with law.

5. The Appellants were served with a notice dated 8th September, 1999 to which a reply was filed by them and immediately thereafter on 20th September, 1999 a writ petition being WP (C) No. 5693/1999 challenging the notice dated 8th September, 1999 of the Respondent was filed. The said writ petition was disposed of by this Court with a direction to the NDMC, to dispose of the matter after consideration of all the representations of the Petitioners therein by a speaking order. After hearing the Appellants, the Respondents passed a detailed order dated 16th March, 2000. Vide order dated 16th March, 2000, the NDMC terminated the licenses of the Appellants and directed removal of unauthorized encroachment in the telephone booth and public passage and withdrawal of civic amenities and possession of the booth and recovery of arrears as per the provisions of law. Hence as on date since 2000 the Appellants are neither licencees nor in possession of the telephone booths at the taxi stand.

6. The Appellants filed writ petitions being WP(C) Nos. 4001/2000; 4355/2000; 4356/2000; 4357/2000 and 4358/2008 challenging the order dated 16th March, 2000 of the Respondent, of which Civil Writ Petition No. 4001/2000 with the following prayers was treated as the lead matter:

a) issue a writ in the nature of certiorari to quash and set aside the impugned order dated 16.3.2000 (Annexure A) issued by the respondents.

b) Issue a writ in the nature of mandamus directing the respondents to restore the status quo ante in respect of the premises bearing No. 7, 36, Janpath, New Delhi.

c) Issue a writ of mandamus or any other order or writ or direction restraining the respondents from demanding the payment as ask for in the impugned order dated 16.3.2000.

7. The above mentioned writ petitions were dismissed by the learned Single Judge vide impugned order dated 8th April, 2005.

8. With regard to the issue of license fee it is submitted by learned Counsel for the Appellants that as per the directions of this Court, the Appellants have already deposited Rs. 1 lakh without prejudice to the rights of the parties, at the time of initial hearing of the writ petitions. Moreover, the calculation of the Respondents with regard to the licence fee even as per the rates is incorrect and the NDMC could not have revoked the licence on this ground.

9. According to the learned Counsel for the Appellants Section 195 of the PM Act was the only provision under which the Respondents could have taken action and under the said provision no notice could have been issued beyond a period of six months. Admittedly, the time of six months from the unauthorized construction having lapsed, the Respondents were not empowered to take any action against the Appellant. In the alternative it is stated that at best Respondent could have removed the additional constructions raised and could not have terminated the licenses and taken over the possession from the Appellants. It is also submitted that the Appellants could have been removed only after following the procedure prescribed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short PP Act). Reliance is placed on the decision of this Court in the case of Municipal Corporation of Delhi Vs. Surjit Kaur, and H.K. Choudhary Vs. N.D.M.C. and Another, wherein this Court held that as no notice of demolition was given within six months in view of Section 195 of the PM Act, the building was saved and cannot be demolished or sealed by the Respondent. It is also contended that at best the Appellant could have been removed in accordance with the provisions of P.P. Act. Section 195 of the PM Act reads as under:

195. Penalty for disobedience:--Should a building be begun, erected or re-erected.

(a) without sanction as required by Section 189(1); or

(b) without notice as required by Section 189(2); or

(c) when sanction has been refused;

the [committee] may by notice delivered to the owner within six months from the completion of the building, require the building to be altered or demolished as it may deem necessary within the period specified in such notice; and should it be begun or erected;

(d) in contravention of the terms of any sanction granted; or

(e) when the sanction has lapsed; or

(f) in contravention of any bye-law made u/s 190; or in the case of a building of which the erection has been deemed to be sanctioned u/s 193(4), if it contravenes any scheme sanctioned u/s 192;

the [committee] may by notice to be delivered to the owner within six months from the completion of the building require the building to be altered in such a manner as it may deem necessary, within the period specified in such notice:

Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable:

Provided also that the committee shall require a building to be demolished or altered so far as is necessary to avoid contravention of a building scheme drawn up u/s 192:

[Provided further that if any notice is issued by the Executive Officer under this section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made u/s 190 the person to whom the notice is issued may, within fifteen days from the date of service of such notice, appeal to the committee, and subject to the provisions of Sections 225, 232 and 236, the decision of the committee shall be final.

10. Per contra the Respondents have stated that the agreement between the parties is very clear and is u/s 173 of the PM Act which creates no vested right in the Appellants to continue with the possession. The Respondent could not only cancel the licence for violating the terms of the condition but could terminate the said license at any point of time without assigning any reason. According to them, Section 195 of the PM Act has no application to the facts of the case. It is further submitted that in so far as Section 195 is concerned, by the (New Delhi Amendment) Act, 1984, Section 195 of the PM Act stands amended by deletion of the words "six months". It is further contended that even in view of the decision of the Hon'ble Supreme Court in the case of Municipal Committee, Karnal Vs. Nirmala Devi, , the Municipality is empowered to remove unauthorized construction on public street, if the encroacher does not voluntarily remove the same, even after issuance of a notice for demolition.

11. We have heard learned Counsel for the parties. We find from the agreement dated 30th March, 1968 that the same was entered into u/s 173 of the PM Act. The agreement dated 30th March, 1968 reads as:

Agreement

Whereas, I, Shri Jagat Singh S/o Shri Manohar Singh a Jat Sikh by caste and a transporter by profession and resident of H. No. 180, J.J. Colony, Moti Bagh II, Ring Road, N. Delhi hereinafter called the 'First Party' which expression shall include all his heirs, successors, survivors, administrators, and assignees, The first party has been accorded permission to occupy a Telephone Booth erected on the road-berm of in F.O. Imperial Hotel, Janpath road at Taxi Stand approved by the Committee.

Whereas this permission has been granted vide Res. No. 35 dated 9.6.67 u/s 173 of the Punjab Municipal Act, 1911 by the New Delhi Municipal Committee, the erector and owner of the said Telephone Booth, hereinafter called the "Second Party" which expression shall include all their successors, assigns and

administrators of the other part, and

And whereas the first party as a pre-condition for the grant of permission by the Second party do hereby voluntarily agree to abide by and bound by all the terms and conditions incorporated in this agreement.

1) The first party hereby admits and declares that the site underneath the Telephone booth is and shall continue to be part of a public street and vests in the second party.

2) That the First party hereby agrees and undertakes to surrender the said Booth as and when the permission to occupy the Booth is cancelled and a demand to this effect is made by the second party, even without assigning any reason whatsoever.

The First party shall not be entitled to any compensation for any resultant loss or injury.

3) The First party hereby agrees to pay @ Rs. 75/- P.M. and also undertakes to pay fee at any other rate, which may be prescribed by the Committee from time to time.

4) The First party hereby undertakes not to damage the Telephone Booth erected by the second party.

5) In witness whereof the First party sets his hand this__day of 30.3.1968 at New Delhi.

12. It would be seen that the terms of the agreement are in consonance with the provision of Section 173 of the PM Act, which is reproduced herein under:

173. Power to permit occupation of public street and to remove obstruction:--

[(1) The committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to

(a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer drain or water-course or any movable overhanging structure projecting into such public street at a point above the said ground level.

(b) take up or alter the pavement or other materials for the fences or posts of any public street, or

(c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or

(d) make any hole or excavation on, in or under any street, or remove materials from beneath any street, so to cause risk of subsidence, or

(e) erect or set up any fence, post, stall or scaffolding in any public street.

(2) Whoever does any of the acts mentioned in Sub-section (1) without the written permission of the committee shall be punishable with fine which may extend to five hundred rupees and the committee or the secretary of the committee or the Medical Officer of Health or any person authorized by the committee may

(i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and any such materials, goods or articles, of merchandise and any such fence, post, stall, or scaffolding.

(ii) and take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

13. As per the agreement dated 30th March, 1968 between the parties the license of the Appellants were terminable without assigning any reason. Pursuant to the directions of this Court dated 20th April, 1999 in WP (C) No. 2174/1999 a show cause notice dated 8th September, 1999 was issued to which the Appellant filed a reply and it is only thereafter that the order dated 16th March, 2000 was passed by the Respondent in conformity with the principles of natural justice. In the present case, the reason for which the license was revoked and possession taken over by the Respondent No. 1, are fully justified. Clause 4 of the agreement clearly stipulates that the first party undertakes not to damage the telephone booth erected by the second party, however, the Appellants made unauthorized constructions of an additional structure besides encroachments over the telephone booth, which were permanent in nature. Secondly the Appellants were duty bound to pay the fee at the rates prescribed by the committee from time to time and having not paid the same the committee is entitled to recover the same from the Appellants.

14. We are of the opinion that Section 195 of PM Act has no application to the facts of the case. The agreement was entered into u/s 173 of PM Act which provides a complete mechanism for granting permission and withdrawal thereof. Moreover even if Section 195 of PM Act was to apply to the present case in view of the Punjab Municipal (New Delhi Amendment) Act, 1984 (hereinafter called the Amendment Act, 1984) which came into force on the 28th May, 1984, whereby the words "six months" in Section 195 stood deleted, the Respondent was not barred from taking the action beyond a period of six months. The decision of this Court in the case of MCD v. Smt. Surjit Kaur has no relevance as the same was rendered prior to coming in force of the Amendment Act, 1984. In the decision rendered by this Court in the case of H.K. Choudhary v. N.D.M.C. and Ors. wherein reliance is placed on the decision in the case of Jor Bagh Association (Regd) and Others Vs. Union of India (UOI) and Others, , it is apparent that the Amendment Act, 1984 was not brought to the notice of this

Court.

15. It is also contended by learned Counsel for the Appellants that the place where the telephone booth was erected was not a "public street", hence Section 173 of the PM Act has no application and reference in this regard is made to definition of public street u/s 3(13)(b), PM Act and it is stated that without a declaration, the place cannot be treated as a public street.

16. The contention of learned Counsel for the Appellants that the same is not a "public street", is also fallacious in view of the definition of the same u/s 3(13)(b) of the PM Act and the terms of the agreement dated 30th March, 1968 wherein the place has been clearly mentioned as a public street. Section 3(13)(b) is reproduced as under:

3 (13)(b) "public street" shall mean any street

(i) heretofore leveled, paved, metalled, channelled, swerved, or repaired out of municipal or other public funds, unless before such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or

(ii) which under the provision of Section 171, is declared by the committee to be, or under any other provision of this Act becomes, a public street.

Thus it would be seen that the Clauses 1 and 2 are disjunctive and thus streets which are levelled, paved, metalled, channelled, swerved or repaired out of municipal or other public funds are public streets and besides that the Committee also had the power to declare other streets also as public streets.

17. The reliance of the learned Counsel for the Appellant to the decision rendered in the case of Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, is of no avail as in the said decision the Hon^{ble} Supreme Court held that in case of "settled possession" even the rightful owner may only recover it by taking recourse to law. In the present case Section 173 PM Act provides a complete mechanism even for removal of the possession and thus action of the Respondents was in accordance with law as held by the Hon^{ble} Supreme Court. The contention of the learned Counsel for the Appellant that the removal could have been only after taking recourse to PP Act is also misconceived in view of the provisions of Section 173 PM Act.

18. Learned Counsel for the Appellant also places reliance on the decision of this Court in the case of Panchkuian Road Refugee Vyapar Sangh and Ors. v. Delhi Metro Rail Corporation and Ors. reported as 2006 VI AD (Delhi) 573. In our view the said decision has no application to the facts of the present case. In the said decision, this Court came to the conclusion that the Petitioner's therein possessed legal rights for continued possession of their shops which can be brought to an end only through pursuit of due process of law. In the present case the Respondent has taken recourse to due process of law before terminating the

license of the Appellants.

19. With regard to the issue of license fee, the New Delhi Taxi Operators Association of which the Appellants are members filed a writ petition being W.P. (C) No. 6603/1999, wherein this Court vide order dated 24th August, 2004 held:

22. During the pendency of the petition, interim orders were passed that on depositing of a sum of Rs. 1 lac by tax stand operators, impugned resolutions would not be enforced. Since, the writ petition is being disposed of on the petitioner not passing the issue pertaining to license fee charged by NDMC for the kiosk created at the stand. It is directed that each of the taxi stand allottee would pay the entire license fee payable after adjusting the sum of Rs. 1 lac deposited under orders of this Court within a period of eight weeks from today without any interest. If the arrears are not paid within the aforesaid period, same shall be recoverable by NDMC with interest at the rate of 12% per annum for the period post eight weeks from the date of the present order.

Thus the issue qua license fee having become final in the said writ petition, we are not inclined to interfere in the same. The Respondents would be entitled to recover the arrears in accordance with law after adjusting the amounts already paid.

20. For the reasons stated above we find no merit in the appeals. Hence the same are dismissed.