
(2012) 03 AHC CK 0163
In the Allahabad High Court
Case No : Writ - C. No. 29007 of 1998

Shanti Devi (Smt.)

APPELLANT

Vs

Xth Addl.District Judge, Varanasi and others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5, 7

Citation : (2012) 03 AHC CK 0163

Hon'ble Judges : Sunil Hali, J

Final Decision : Allowed

Judgement

Sunil Hali, J.

Petitioner was permitted to run a shop in the Railway Colony of a size of 10"x10" on payment of license fee of Rs. 770/ per annum. It seems that the petitioner was in default in respect of payment of license fee from 1.1.1984 to 30.6.1988, as a result of which, a proceeding under sections 5 and 7 of the Public Premises (Eviction of Authorized Occupant) Act, 1971 was initiated against the petitioner. The petitioner is stated to have deposited an amount of Rs. 5076/ on 2.12.1989. The order came to be passed by the prescribed authority on 17.9.1990 directing the eviction of the petitioner from the premises in question on account of his failure to deposit the amount within the period provided under the notice. Against this order, an appeal was preferred by the petitioner before the District Judge. While dealing with the appeal, the District Judge has acknowledged that the petitioner was in default in payment of license fee and liquidated damages from 1.1.1984 to 30.6.1988 which was required to be paid by him on account of user of the property as an unauthorized occupant. The order further reveals that the petitioner thereafter has paid license fee on various dates. However, the District Judge did not agree with the submissions of the learned counsel for the petitioner and dismissed the appeal on the ground that the amount due from 1.1.1984 to 30.6.1988 was not deposited by the petitioner within the period prescribed by the notice. Merely because the amount of Rs. 5076/ was deposited

by the petitioner that would not confer him any benefit as he was declared as an unauthorized occupant.

Heard the learned counsel for the parties.

It is not disputed that the petitioner has committed default in payment of license fee from 1.1.1986 to 30.6.1988 as a result of which an order dated 17.9.1990 was passed by the prescribed authority declaring the petitioner as an unauthorized occupant. The matter was referred to the Collector for recovery of the amount as arrears of land revenue. The District Judge while dismissing the appeal has acknowledged that the petitioner has deposited an amount of Rs. 5076/ on 2.12.1989 much before the impugned order dated 7.9.1990 was passed. After having acknowledged that the petitioner has deposited an amount of Rs. 5076/ towards license fee and liquidated damages, it could not be said that the deposit of this amount would not legalize the possession of the petitioner. The respondents had not only accepted the liquidated damages but also the rent which was due against the petitioner from 1.1.1986 to 30.6.1988. Once the rent was accepted for the aforesaid period, the appellate court could not dismiss the appeal of the petitioner by holding that the deposit of rent would not debar the respondents to evict the petitioner as an unauthorized occupant. He was declared as an unauthorized occupant only on account of having failed to pay the rent. I am not inclined to agree with the view of the appellate authority. Once the amount has been deposited the basis of the impugned notice does not sustain. The amount has been deposited beyond the period prescribed in the notice, the respondent had an option not to accept the same. Learned counsel for the petitioner stated at Bar that the petitioner has been paying license fee ever since then. I feel it appropriate that the petitioner should be allowed to remain in the premises.

I, therefore, allow the writ petition and set aside the order impugned dated 21.8.1998 passed by respondent no. 1 and 17.9.1990 passed by respondent no. 2. However, it is made clear that the petitioner will pay the license fee as revised from time to time. In case, any amount is liable to be paid by the petitioner, necessary details shall be supplied by the respondents and same shall be paid by him within two months from the date of said notice. In case, the respondents intend to resume the land, this order will not come in their way.