
(2006) 09 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) . No. 3793 of 1992

Shri Bhagwan Dass

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 9

Citation : (2006) 09 DEL CK 0114

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sandeep Sethi and Rahul Dhawan, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has impugned the dismissal of his appeal being P.P. Appeal No.221 of 1990, Shri Bhagwan Dass v. Union of India, by judgment dated 1.10.1992 against the order of eviction passed by Estate Officer, Directorate of Estate, Nirman Bhawan, New Delhi by order dated 9th October, 1990 in respect of Shop No.216, Srinivas Puri Market, New Delhi.

2. Brief facts to comprehend the controversies are that Ministry of Rehabilitation, Government of India, allotted shops to refugees who had migrated from West Pakistan in the year 1947 on ownership basis and consequent thereto petitioner was also allotted Shop No.216, Srinivas Puri, New Delhi, which was regularized in favor of petitioner vide office order dated 20th June, 1973.

3. The petitioner received a notice dated 30th October, 1985 stipulating that the said shop was allotted to him vide letter dated DE/MKT/9(216)/SN/62 dated 20th June, 1973 on a monthly license fee of Rs.126 with effect from 29th May, 1969 and as petitioner is in arrears of license fee from 10th September, 1985 @ Rs.126 amounting to Rs.547.30 Therefore the license of the petitioner is determined with effect from the last date of month of November, 1985.

3. Pursuant to notice of cancellation dated 30th October, 1985, the petitioner appeared before respondent No.2, the Estate Officer, on 28th August, 1990 on which date the matter was adjourned to 10th September, 1990. On 10th September, 1990, petitioner appeared and filed objections and the proceedings were adjourned to 24th September, 1990, on which date as no one was present on behalf of Department, the petitioner was asked to come on 9th October, 1990 and the signatures of the petitioner were not taken though on earlier dates the signatures had been taken. On 9th October, 1990, petitioner could not appear as he was sick and sent an application along with medical certificate which was received in the office of the respondent however, on that date instead of adjourning the matter, as there was sufficient cause for non-appearance of petitioner an order of eviction was passed holding that the allotment of the shop of the petitioner was cancelled on two grounds, that is, non payment of rent and subletting. Since the dues had been cleared, the Estate officer held that the ground of non-payment does not survive, however, on the second ground of subletting it was stated that the premises was inspected by Shri P. Srinivasan who reported that the petitioner had sublet the shop to Shri S.S. Sehgal. A certificate of the Shopkeeper Kalyan Samiti was relied on stipulating that Shri Bhagwan Das and Shri S.S. Sehgal are doing business in the partnership and the photocopy of the partnership deed between Bhagwan Dass and S.S. Sehgal was also relied on. On this premise, it was held that the premises has been sublet to Shri S.S. Sehgal, consequently, the order of eviction was passed against Shri Bhagwan Das and Shri S.S. Sehgal in respect of Shop No.216, Srinivaspuri, New Delhi.

4. Aggrieved by the order of eviction passed by respondent No.2 on the ground of subletting only the petitioner filed an appeal being P. P. Appeal No.221 of 1990 u/s 9 of the Public Premises Act. Though the order of eviction was passed on the ground of subletting and not on the ground of non-payment of license fee, the appeal was dismissed on the ground that the case of non-payment of license fee was made out.

5. Learned Counsel for the petitioner has relied on Banarsi and Others Vs. Ram Phal, to contend that the appellate court could have either allowed the appeal and dismissed the eviction order passed against the petitioner of subletting but the appellate court could not modify the eviction order and pass an order of eviction on the ground on non-payment of rent/license fee as the respondent no.2 had not passed the order of eviction dated 9th October, 1990 on the ground of non-payment of license fee.

6. The petitioner has also relied on Malhotra Tyre Service Company Vs. National Capital Territory of Delhi and Others, to contend that the foundation for determination of license is the show cause notice and since the ground of subletting was not raised in the show cause notice, the eviction proceedings subsequently on the basis of the same could not be sustained. In respect of the proposition that the order of eviction cannot be sustained on a ground different

than the grounds stipulated in the eviction notice, the reliance was also placed on Ex. Havaladar Kailash Singh and Sons Vs. Union of India (UOI) and Another, , Shri Kabool Singh Vs. N.D.M.C. and Others, , Kabool Singh v. N.D.M.C. and Ors.

7. Perusal of the notice dated 30th October, 1985 reveals that determination of license was only on account of non-payment of license fee @ Rs.126/- from 10th September, 1985 for non-payment of arrears of Rs.547.30. The notice did not stipulate that the petitioner has sublet the shop to Shri S.S. Sehgal.

8. No appeal against the dismissal of eviction petition on the ground of non-payment of the license fee was filed by respondents. While passing an order of eviction dated 9th October, 1990, it was categorically stated that petitioner has cleared the dues and consequently, the grounds of non-payment of rent/license fee was not made out.

9. Since respondents had not filed an appeal against the eviction order being not passed on the ground of non-payment of arrears of license fee/rent, the appellate court could not have passed an order of eviction against the petitioner on the ground of non-payment of arrears of license fee/rent. The learned Additional District Judge in appeal has decided that despite there being no formal lease deed executed, the petitioner shall continue to be lessee. This proposition cannot be denied. The petitioner has categorically averred that Clause 13 was deleted from the terms and conditions of the allotment. Whether there were arrears or not and on non-payment of arrears of license fee/rent, if the license agreement was terminated, then on payment of license fee whether the order of eviction ought to have been passed and merely because the license fee was paid subsequently, the termination of the license deed could not be revived was to be considered by the respondent No.2. The respondent No.2 in the eviction order dated 9th October, 1990 has rather held that the petitioner had cleared the dues and Therefore eviction of the petitioner from the shop on the ground of non-payment of license fee is not available. This finding of the Estate Office has not been challenged by the respondents in any appeal nor cross-objections were filed by the respondents in the appeal filed by the petitioner. The settled position of law that cross-objection can be taken even against the finding in judgment irrespective of eviction decree being passed in its entirety in favor of the licensor cannot be disputed. Since eviction order dated 9.10.1990 was passed in favor of respondent and against the petitioner on the ground of subletting but the eviction order was not passed on the ground of non-payment of rent, the only remedy available to the respondent to succeed on the ground of non-payment of license fee/rent was to either file cross-objections in the appeal filed by the petitioner or to file a separate appeal. Since the respondents did not file the cross-objections, the appellate court could not modify the order of eviction passed against the petitioner on the ground of non-payment of arrears of license fee.

10. In Banarsi and others (supra), the trial court in a suit for specific performance and in the alternative for the relief of compensation had passed the

decree of compensation and had further directed specific performance, if payment of compensation not made. The appeal was filed by the defendant and the plaintiff did not prefer any cross-objection though a decree for specific performance was not passed. Despite a decree for specific performance not passed, the appellate court modified the decree to one of specific performance and in these circumstances, it was held that the appellate court could not modify the decree to one of specific performance when trial court had not passed the decree for specific performance. The relevant observation of the Apex court is as under:

13. We are, Therefore, of the opinion that in the absence of cross-appeal preferred or cross-objection taken by the plaintiff-respondent the first appellate court did not have jurisdiction to modify the decree in the manner in which it has done. Within the scope of appeals preferred by the appellants the first appellate court could have either allowed the appeals and dismissed the suit filed by the respondent in its entirety or could have deleted the latter part of the decree which granted the decree for specific performance conditional upon failure of the defendant to deposit the money in terms of the decree or could have maintained the decree as it was passed by dismissing the appeals. What the first appellate court has done is not only to set aside the decree to the extent to which it was in favor of the appellants but also granted an absolute and out-and-out decree for specific performance of agreement to sell which is to the prejudice of the appellants and to the advantage of the respondent who has neither filed an appeal nor taken any cross-objection.

11. Therefore, in the facts and circumstances of the present case also, the appellate court could not have passed an order of eviction against the petitioner on the ground of non-payment of rent and could not have modified the eviction order passed against the petitioner on the ground of subletting to that of non-payment of rent/license fee. Such an order of the Appellate Court is not sustainable on this ground and is liable to set aside.

12. The notice dated 30th October, 1985 did not stipulate that the license/lease of the petitioner is being cancelled on the ground of subletting. If the notice was not on the ground of subletting, the eviction order could not have been passed against the petitioner on the ground subletting. In *Ex Havaladar Kailash Singh & Sons (supra)*, a single Judge of this Court had held that if grounds specified u/s 4 are different from grounds on which eviction order is passed, the eviction order cannot be sustained as the petitioner is not given reasonable opportunity of meeting the ground in the facts and circumstances. In *Kabool Singh (supra)* also a single Judge had held that if a show cause notice is not issued before the cancellation order, the same cannot be sustained.

13. As already held that since no show cause notice was given to the petitioner on the ground of subletting, the eviction order passed by the Estate Officer on the ground of subletting could not be sustained. The appellate court had also set aside the order of eviction passed on the ground of sub letting which has not

been challenged by the respondents. Even otherwise the ground of subletting has not been made on account of partnership between Shri Bhagwan Das and Shri S.S. Sehgal. Respondents have rather relied on the partnership deed between Bhagwan Das and Shri S.S. Sehgal. In case there was a partnership between Shri S.S. Sehgal and the petitioner, it has not been established that any portion of the premises was in exclusive possession of Shri S.S. Sehgal. In order to constitute subletting the respondent had to establish that the premises or a portion of the premises was in exclusive possession of the person to whom the premises is said to have been sublet. On the basis of the evidence produced by the respondents, no inference could be drawn that the premises had been sublet by the petitioner to Shri S.S. Sehgal and in the circumstances no ground for subletting was made out. The appellate court has also set aside the order of eviction on the ground of subletting. Consequently, the petitioner cannot be evicted on the ground that the premises was sublet by the petitioner to Shri S.S. Sehgal.

14. In the facts and circumstances, the eviction order could not be passed on the ground of non payment of rent by the appellate court as the Estate officer had not passed an order of eviction on the ground of non payment of license fee/rent and no appeal or cross objections were filed against the order of Estate officer declining passing an order of eviction on the ground of non payment of license fee/rent as the arrears of license fee/rent had been paid by the petitioner. The order of eviction on the ground of subletting passed by the Estate officer has been set aside by the appellate Court and no ground of sub letting is made out in the facts and circumstances.

15. Therefore, the rule issued on 30th August, 1993 is made absolute. Consequently, the order of eviction passed in P.P. Appeal No.221/1990, Bhagwan Dass v. Union of India dated 1st October, 1992 passing an order of eviction on the ground of non-payment of arrears of license fee/rent is set aside and consequently the order of eviction against the petitioner from premises No.216, Srinivaspuri, New Delhi is set aside and the writ petition is allowed. No order as to cost in the facts and circumstances.