

(2011) 11 DEL CK 0396
In the Delhi High Court
Case No : LPA 967 of 2011

Shri Mohan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ILR Delhi 705

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Neeraj Kishan Kaul with Mr. Rajendra Singhvi, Mr. K.K.L. Gautam and Mr. Anil A. Batra, for the Appellant; R.V. Sinha and Mr. A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The appellant had filed W.P.(C) No.4179/2007 impugning the order dated 11th May, 2007 of the Director of Estates, Govt. of India revoking the license earlier granted to the appellant in respect of Quadrangle No. IV, Mohan Singh Market, INA, New Delhi. The learned Single Judge has vide impugned judgment dated 10th August, 2011 dismissed the writ petition holding:-

- i. That there was no illegality, irrationality or arbitrariness in the decision of revocation of license;
- ii. That the earlier W.P.(C) No. 17550/2004 preferred by the appellant impugning the show cause notice issued before the order of cancellation had been dismissed and the appeal being LPA No.393/2006 preferred by the appellant there against had also been dismissed vide order dated 21st September, 2007 and reasons given therein were also applicable to the challenge to the order ultimately passed of revocation of licence;
- iii. That the petitioner as a licensee in any case had no right to the Quadrangle

No. IV and the licence by its very nature was revocable.

Aggrieved therefrom the present appeal has been preferred.

2. We may notice that Mohan Singh Market is in the shape of a quadrangle with the shops opening in covered verandah all around the market and with their rear towards a "small central quadrangle". The appellant is a licensee of shop No.207 in the said market. He/his father were given licence with respect to the "small central quadrangle" known as Quadrangle No. IV behind their shop and which licence of the quadrangle alone has now been cancelled. The licensee with respect to the shop No.207 subsists. It is not in dispute that the said quadrangle contains all drainage including gully traps and manholes with underground drainage pipelines from where the waste water is taken out to the Municipal drains. The order dated 21st September, 2007 dismissing the LPA No.393/2006 (earlier preferred by the appellant challenging the show cause notice and seeking a direction for grant of ownership rights in the said quadrangle) records that the quadrangle was in fact a service area for all the shops in the market and if the ownership rights with respect thereto are given to one person or if the same is blocked from all sides, the quadrangle area will not be available for maintenance when it was a common area for circulation/ventilation.

3. The licence earlier granted to the appellant of the said quadrangle has been cancelled on the ground that though the appellant as a term of the licence was required to provide access through his shop to the said quadrangle for carrying out of the common maintenance but had blocked the entire area of quadrangle in such a way that the maintenance and cleaning work thereof could not be carried out.

4. The senior counsel for the appellant has vehemently contended that the ground for revocation of the licence is erroneous; the appellant never deprived access to the said quadrangle for maintenance, cleaning etc. and has rather repeatedly offered and undertaken that he is willing therefor. It is urged that the appellant even now is willing to give an undertaking in this regard as may satisfy this Court and/or the respondents. It is contended that the learned Single Judge has not noticed the said aspect and has wrongfully dismissed the writ petition.

5. The senior counsel for the appellant with respect to the observations aforesaid in the order dated 21st September, 2007 in LPA No.393/2006 earlier preferred by the appellant contends that the said LPA was concerned with the show cause notice then issued and any observations therein would have no relevance to the final order of cancellation. It is further contended that the appellant was then, also claiming ownership rights with respect to the said quadrangle in accordance with the policy of the respondents but is now not claiming any ownership rights and is confining the claim only to the continuance of the licence and which has been revoked for wrongful reasons. It is further contended that the Division Bench had categorically observed in the order dated 21st September, 2007 that the observations therein would not influence final order passed pursuant to the

show cause notice then under challenge.

6. As far as the latter of the aforesaid submissions is concerned, though undoubtedly the Division Bench towards the end of the order dated 21st September, 2007 had clarified that the observations would not come in the way of a decision pursuant to the show cause notice but the fact remains that what was observed therein remains relevant in the decision pursuant to the show cause notice also. The reply by the appellant to the show cause notice does not contain anything for what was observed earlier to be not relevant today. We have examined the sketch plan of the market. The location of the subject quadrangle is undoubtedly as of a common area within the meaning of the Delhi Apartments Ownership Act, 1986. The senior counsel for the appellant has of course contended that the licence has not been revoked for the said reason and we, not to be guided by the reasons which did not prevail with the respondents for revoking the licence. However this Court while exercising powers under Article 226 of the Constitution of India cannot give any direction or relief contrary to the law. Once the nature of the said quadrangle is found to be as of a common area, over which all the occupants/users of the market have a right, then this Court cannot confer any exclusive right in the appellant who is occupant of the one of but several shops in the market and vesting of which rights would definitely have an impact on the rights of the other occupants thereof. We are rather surprised at the grant of exclusive licence by the respondents with respect to the said common area.

7. Though in view of the above, the grounds for which the licence was revoked are irrelevant but we may observe that considering common nature of the said quadrangle and the implicit need for 24 hour access thereto to all the occupants of the market, grant of exclusive licence with respect thereto to one or two occupants only is bound to interfere with the needs of others. This Court would not grant such an order which cannot be enforced and/or which may cause prejudice to others. The Court is not in a position to supervise the uninterrupted access by the appellant as is sought to be undertaken before this Court and imposing any such condition is likely to lead to multiplicity of litigation.

8. The licence of the said quadrangle cannot also be equated to the licence with respect to a shop. Though the appellant may be correct in contending that the appellant in the matter of grant of a licence with respect to the shop cannot be discriminated qua others similarly placed but the licence with respect to the quadrangle stands on a different footing. The beneficiaries of the said licence were not all shopkeepers but only a select few. For this reason also we are of the view that no error can be found in the action of revocation of such a licence.

9. There is no merit in the appeal; the same is dismissed.