

(2007) 09 DEL CK 0113
In the Delhi High Court
Case No : LPA No. 393 of 2006

Shri Mohan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Citation : (2007) 09 DEL CK 0113

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Krishan Mahajan, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The present appeal is concerned with a quadrangle which exists contiguous to the shop No. 207, Mohan

Singh Market, INA, New Delhi. The father of the appellant herein was allotted the aforesaid shop No. 207 in the year 1968 at a monthly license

fee of Rs. 235/- by the Union of India.

2. A notice was issued by the Government of India on 6/7th December, 1974 to Moti Singh, the father of the appellant, that since he had

trespassed into the Government property viz. the quadrangle not licensed to him, the license granted to him in respect of the shop No. 207 stood

revoked. It was also intimated to him that occupation, if any, subsequent thereto would be considered as unauthorised. It was also stated that if he

desires to take the aforesaid shop as also the quadrangle on a license, he may file a representation to the Government. Pursuant to the aforesaid

demand raised by the Government, Moti Singh complied with the demand, upon which it was alleged that his occupation of the shop and also

quadrangle was regularised in his favor. A letter is placed on record by the appellant, which states that the license deed executed by Moti Singh in respect of the aforesaid shop No. 207, Mohan Singh Market has been accepted on behalf of the President of India. This is, however, without prejudice to the Government's right to take any action, including cancellation of allotment, for breaches already committed or to be committed in future by way of additions/alterations/encroachments etc.

3. Moti Singh died on 31st January, 1985 whereupon the appellant sought transfer of the license to his name. The said request of the appellant was accepted by the Government and on 12th September, 1985, Government of India transferred the license in favor of the appellant, in respect of property being shop No. 207 and the quadrangle No. IV. The appellant complied with the documentation formalities required by the Government. license fee was revised from time to time.

4. A public notice was subsequently issued by the Union of India announcing the policy of the Government to grant ownership rights to the licensees in ten markets in Delhi including Mohan Singh Market. As the appellant was fully covered by the said policy of the Government entitling him to grant of ownership, he submitted an application on 30th August, 1990. However, no final decision was taken on the application submitted by the appellant. Subsequently, however, on 8th July, 1999, the appellant was informed that his request for grant of ownership right of Shop No. 207 and Quadrangle No. IV could not be accepted as the quadrangle was common area for circulation / ventilation and service area was required for maintenance purposes. It was also intimated that in that view of the matter and under no circumstances ownership of the quadrangle should be vested to a shop keeper.

5. The appellant disputed the aforesaid decision conveyed under letter dated 8th July, 1999 on the ground that quadrangle cannot be said to be a common area for circulation / ventilation. On 29th September, 2004, a show cause notice was issued to the appellant to the following effect:
The allotment of quadrangle No. 4, Mohan Singh Market (INA) was made to you under the condition that the said space would be accessible for carrying out facilities of the common maintenance by the CPWD.

In breach of the terms of the allotment letter dated 6.12.1974, you have blocked

the entire area of quadrangle in such a way that CPWD is unable to have access to the common area for carrying out facilities like cleaning, maintenance work of the shops. Kindly show cause as to why the license of the quadrangle No. 4, Mohan Singh Market (INA) should not be cancelled in the wake of the breach of the terms of the allotment by you.

You are requested to remove the breaches mentioned above and send your confirmation to the Directorate along with a clearance report from

CPWD to this effect within 21 days from the date of issue of this letter, failing which action for cancellation of allotment of quadrangle will be taken as per Market Rules.

6. The appellant submitted a reply to the aforesaid show cause notice on 14th October, 2004 wherein he pointed out that there was no question of

his blocking access to the common areas and that the aforesaid quadrangle was officially licensed to his father and thereafter to him. However,

fearing forcible dispossession, the appellant filed a writ petition in this Court praying that show cause notice dated 29th September, 2004 be

quashed as it ignored the license granted by the respondent to the father of the appellant and thereafter to the appellant.

7. A counter affidavit was filed by the Union of India contending, inter alia, that the entire market was originally allotted to Super Bazar in 1968. It

was also stated in the said counter affidavit that shops were situated outside the core of the quadrangles, being four in number, and each

quadrangle is surrounded by 14 shops and that the shops alone were allotted. It was also stated in the said counter affidavit that that Director of

Estate gave no objection on 18th September, 1973 permitting allotment of the quadrangle site on a license, but subject to the condition that the

place would be made accessible for attending to the drainage systems as and when necessary. It was also stated that on 13th October, 1997, the

site was inspected and the inspection revealed that the shopkeepers had unauthorisedly encroached upon the verandah in front of their shops. It

was also pointed out that drainage system passed beneath the quadrangle and, Therefore, the said quadrangle cannot be converted into private

ownership. Reasons for not granting ownership are also contained in the CPWD's letter dated 13th December, 1996 wherein the following was

stated:

Dear Shri K.K. Gupta

Kindly refer to your D.O. letter No. DE.MKT/5/2/93 dated 5.12.1996 regarding quadrangle No. 1 and 4 of Mohan Singh Market, INA. I

reiterate that the service area enclosed by the 14 shops in each of the two blocks is absolutely and necessarily a service area catering to the

ventilation and service to all the 28 shops in the two quadrangle. This service area is approachable by the maintenance staff as well as the allottees

of the shops from two entries in each block. It would Therefore not be proper to give possession of this service area to the lessees of two shops

due to the following reasons:

1. The ventilation of all the shops open in this service area referred to as the quadrangle. The quadrangle Therefore cannot be owned by a single

person with openings of all shops in this area. It may be stated here that this area was originally open to sky and was covered by Super Bazar

during their occupation, for use as storage space.

2. The service area viz. Quadrangle contains all drainage, that is, there are a number of gully traps and manholes with underground drainage pipe

lines from where the waste water is taken out of this service area to Municipal drains. The likelihood of blockage of pipes/drains resulting in

overflow of water from the gully traps/manholes cannot be ruled out - in which case the owner (if ownership is granted) is bound to block the

system so that his business area is not flooded and fouled by the blocked drainage system. This may result in damage to structure.

3. The owner (if ownership is granted) is bound to compel the other shopkeepers to close their ventilators as the doors, windows and ventilators

cannot legally over look into other's property.

4. The access to this area will be prohibited/barred by the owner once ownership is given even for maintenance.

5. A plan indicating the foregoing is enclosed.

6. Presently the two approaches of each quadrangle are being used by the lessees of the two shops. It has to be decided whether the ownership of

this area also is to be given to the same shop owners.

The Cabinet decision in regard to the grant of ownership rights to the allottees of

shops and further qualifies that the area underneath the shops is to be considered for transfer. This indicates that the allottees of shops are entitled to the ownership area if leased out to them by default.

As regards the allotment on lease of these two quadrangle to the allottees of the shops 193 and 207, INA, Mohan Singh Market is concerned, I

am not aware of the circumstances under which this decision was arrived at and the reasons why the objections were not raised at that time. I am

pointing out foregoing to forestall any embarrassment which the department / Government may have to face if possession of this service area to any

single shop owner is given. Subject to the above, the details of area of the quadrangle, the approaches and the depreciated replacement cost is

being furnished as desired in the D.O. referred to above.

8. The aforesaid show cause notice dated 29th September, 2004 asking the appellant to show cause why license given for quadrangle be not

cancelled for breaches and blockage of the entire area of quadrangle is under challenge in this appeal wherein it was also mentioned that the

appellant had blocked the entire area of quadrangle making it impossible for CPWD to have access to the area. There is no dispute with regard to

the fact that underground drainage in the market passes beneath the site of the quadrangle.

9. In that view of the matter, there cannot be any denial of the fact that to maintain the drainage system the Union of India must retain ownership of

the site. It is also clearly established and there is no dispute with regard to the fact that there are altogether four such quadrangles surrounded by 14

shops. CPWD had also stated in their letter dated 13th December, 1996 that the aforesaid quadrangles, particularly, quadrangle No. I and IV are

in the nature of a service area enclosed by the 14 shops in each of the two blocks, and that the said area is absolutely necessary as the same is also

catering to the ventilation and service to all the 28 shops in the two quadrangle. The aforesaid service area like quadrangle No. IV should always

be approachable by the maintenance staff as well as the allottees of the shops from two entries in each block and, Therefore, to give ownership

right of the service area to the lessees of two shops would not be proper. Again if there is any violation of the terms and conditions of license, the

authority could always issue show cause notice to enable it to ascertain facts and

to take action in accordance with law.

10. In the light of the aforesaid facts, the learned Single Judge held that the aforesaid show cause notice which is issued to the appellant cannot be

said to be either illegal or arbitrary. The writ petition was accordingly dismissed.

11. Being aggrieved by the aforesaid order, the present appeal was filed on which we have heard the counsel appearing for the parties.

12. It could not be disputed before us by the counsel for the appellant that the quadrangle, which is the service area, contains all drainage including

gully traps and manholes with underground drainage pipelines from where the waste water is taken out of the service area to the Municipal drains.

If the ownership right is given to one person or if the same is blocked from all sides, the said area will not be available even for maintenance.

Besides, the said area is also stated to be common area for circulation / ventilation. The aforesaid view points arrived at by the CPWD and also by

the respondents cannot be said to be in any manner arbitrary or unreasonable. The underground drainage is always managed for the benefit of all

the shopkeepers of the market. If exclusive ownership right is granted or if there is no access to the area, the same may prevent and obstruct the

Public Works Department from having the access to the said drainage system etc. to remove any kind of blockage.

13. Considering the entire facts and circumstances of the case, we are also of the considered opinion like the learned Single Judge that there is no

arbitrariness or unreasonableness on the part of the respondents in issuing the aforesaid show cause notice, as the said area is required to be

managed as a public area for easy access and for easy movement and ventilation. Besides the matter is only at the show cause stage. On the basis

of the reply to the appellant, a final decision has to be taken in accordance with law. Therefore, we find no reason to interfere with the aforesaid

show cause notice as also with the order of the learned Single Judge.

14. In terms of the aforesaid order, the appeal is dismissed. We, however, make it clear that final decision on the show cause notice shall be taken

on the basis of records and upon exercising independent mind. The observations made herein should be construed as view expressed for deciding

the present matter and not as a final decision on merit of the issue as to whether or not license for quadrangle should be cancelled.