(2012) 07 DEL CK 0386

In the Delhi High Court

Case No : LPA. No. 475 of 2012

Shri Prem Kumar and Another — APPELLANT

Vs

Union of India and Another — RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 7, 9

Citation : (2012) 07 DEL CK 0386

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ajay Kumar Jha and Ms. Shweta Sharma, for the Appellant; B.V. Niren, CGSC for UOI, for the Respondent

Final Decision : Dismissed

Judgement

1. All these intra court appeals are preferred impugning the common judgment dated 10th April, 2012 of the learned Single Judge dismissing WP(C) Nos. 6850/2007, 6849/2007, 6852/2007, 6851/2007, 6848/2007 & 6853/2007 respectively preferred by the appellants herein. The said writ petitions were preferred impugning the orders dated 15.09.2007 of the District Judge exercising powers as Appellate Authority u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and dismissing the appeals preferred by the appellants against the orders of the Estate Officer of eviction against each of the appellants from the shops/quarters in respective occupation of the appellants President''s Estate Market, Rashtrapati Bhavan, New Delhi. The learned Single Judge has observed/found -

i. that it is beyond the realm of controversy that after the year 1993 there was no subsisting right of the appellants to remain in possession of their respective shops/quarters, as the term of the agreement under which each of them was permitted to occupy the subject premises had then came to an end by efflux of time;

ii. that in the year 2003 "notice to evict" was served upon each of the appellants as they were in arrears of licence fee and the ground of bona fide necessity was also invoked;

iii. that in the replies to the said notices, the factum of being in arrears of licence fee was contested but the plea of bona fide requirement was not disputed; rather the notice to evict was contested by the appellants on the plea that though revised licence fee was payable from January, 2000, the same was being illegally demanded from the year 1992;

iv. that the Estate Officer had passed the orders of eviction on the ground that each of the appellants were unauthorized occupants after the termination of their respective agreements;

v. that the plea of the appellants before the learned Single Judge was that-

a. that the plea of bona fide requirement of the subject premises and of there being high security risk due to commercial use of the subject premises in the Rashtrapati Bhavan, which was accepted by the Estate officer as well as by the Appellate Authority, did not stand established; and,

b. the ground of the appellants being in arrears of licence fee did not survive due to a consensus being arrived at, of the revised licence fee being payable only from January 2000; it was thus argued that the eviction orders were bad,

c. that the eviction orders were also in contravention of the Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Section Undertaking/Financial Institutions of the year 2002,

d. that the Estate Officer had carried out corrections in the cross examination of the respondent''s witness disclosing bias.

vi. the learned Single Judge relying on the Division Bench judgment dated 23rd March, 2012 in LPA No. 977/2011 titled Life Insurance Corporation of India Vs. Damyanti Verma has negated the challenge on the ground of the Guidelines aforesaid;

vii. the learned Single Judge has further held that once the appellants had become unauthorized occupants owing to the term for which they were permitted to occupy the premises having expired, the grounds of eviction urged were irrelevant;

viii. the learned Single Judge has in a detailed judgment dealt with other pleas aforesaid also of the appellants.

2. The counsel for the appellants before us has raised only two submissions-

the first is that the notice u/s 4 of PP Act leading to the eviction Order by the Estate Officer was barred by res judicata. Secondly it is urged that the documents which this Court, vide order dated 11th March, 2003 in CWs.No. 1834/2003, 1777/2003, 1778/2003, 1782/2003, 1786/2003, 1796/2003 then preferred by the appellants had, directed to be supplied to the respondents were never supplied and thus the proceedings before the Estate Officer are vitiated.

3. As far as the first of the aforesaid contentions is concerned, the counsel for the appellant has urged that prior to the notice u/s 4 of the PP Act pursuance to which eviction order has been passed by the Estate Officer, two earlier notices u/s 4 had been issued. He has in this regard invited attention to the first Section 4 notice dated 30th January, 2003. In the said notice it is stated that the appellants had earlier been served with a notice dated 16th December, 2002 notifying that the term for which they were directed to occupy the premises had expired and giving the appellants 30 days time to vacate the premises. By the said Section 4 PP Act notice, the appellants were called upon to show cause as to why Order of eviction be not passed. The counsel for the appellants states that no further proceedings were however taken in pursuance to the said notice dated 30th January, 2003 and a second Section 4 PP Act notice dated 30th July, 2003 was served. It is further argued that vide order dated 19th August, 2003 in C.Ws.No.5155/2003, 5156/2003, 5157/2003, 5158/2003, 5159/2003 and 5193/2003 then preferred by the appellants, the said notices dated 30th July, 2003 were quashed. It is thus the argument of the counsel for the appellants that the third notice u/s 4 of PP Act dated 25th September, 2003 which has resulted in the orders of eviction was barred by res judicata.

4. We, however do not find any merit in the aforesaid contention. The second Notice u/s 4 of PP Act dated 30th July, 2003 was quashed by this Court for the reason of not giving the mandatory 7 days time to show cause and with liberty to the respondent to issue fresh notices under Sections 4 and 7 of the PP Act. Thus it cannot be said that the fresh notices dated 25th September, 2003 served on the appellants were barred by res judicata.

5. It is also worth highlighting that it is not the plea of the appellants that the notice dated 16th December, 2002 vide which, notwithstanding the permission granted to occupy the premises having lapsed, the said permission was also terminated, was withdrawn. Once the right of the appellants to occupy the premises has been determined, and such determination remains, even if the first notice u/s 4 of the PP Act is not acted upon or the second notice quashed, it cannot be said that the proceedings in pursuance to the third notice are barred by res judicata. There was no adjudication in pursuance to the first two notices and thus the question of res judicata even otherwise does not arise.

6. There is similarly no merit in the second argument also. The order of eviction has been sustained only on the ground of the permission to occupy the premises, having been terminated. It is not the argument of the counsel for the appellants before us that the permission to occupy the premises still subsists. We may also record that we have recently in Indian Institute of Public Opinion Pvt. Ltd. Vs. Life Insurance Corporation of India (LPA No. 9/2012 decided on 11.05.2012) held that once the right to occupy the premises is validly determined, the non-proof by any of the other ground for seeking eviction is irrelevant.

7. As far as the guidelines of the year 2002 are concerned, though the question qua the same stands conclusively determined vide our judgment in Life Insurance Corporation of India Vs. Damyanti Verma (LPA No. 978/2011 decided on 23.03.2012) and Indian Institute of Public Opinion Pvt. Ltd. (supra) but we may also notice that the said guidelines are for public sector undertaking and financial institutions and not qua the public premises as in the Rashtrapati Bhavan. We are even otherwise aghast that the appellants notwithstanding the permission in their favour to occupy the premises having lapsed in the year 1993 i.e. nearly 20 years back, are still in occupation of the premises which are perhaps the best address not only in the city of Delhi but the entire country. The same can be a result only of dilatory tactics adopted by the appellants from time to time, including by abuse of process of the court. We do not find any merit in these appeals and dismiss the same. Since the appeals have been disposed of on the very first day, we refrain from imposing any cost on the appellants.