

(2005) 11 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No. 2434 of 1983

Shri Sureshwar Dayal Seth

APPELLANT

Vs

L and DO and Others

RESPONDENT

Date of Decision : 14-11-2005

Acts Referred:

Citation : AIR 2006 Delhi 128

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : H.L. Tiku and Yashmeet Kaur, for the Appellant; Siddharth Mridul and Pragya Gupta, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—By way of the present petition, petitioner prays that the order dated 14.9.1982 (Annexure P-7), order dated 3.1.1983 (Annexure P-9) and order dated 24.9.1983 (Annexure P-11) be quashed and as a consequence respondents be restrained from re-entering property bearing No. 13, Block 48, Diplomatic Enclave, New Delhi.

2. Backdrop of the facts leading to the filing of the petition are that vide agreement for lease (Annexure P-1) dated 22.7.1963, acting on behalf of the President of India, L&DO executed a lease in favor of the Delhi Cloth and General Mills Company Limited, under which a plot of land admeasuring 306.67 square yards numbered as plot No. 13, Block 48, Shopping Centre, Diplomatic Enclave was leased in favor of the lessee. Relevant part of the lease, relating to the use of the building to be constructed on the plot reads as under :-

XIV. During the period of this Agreement the said land shall be used only for the purpose expressly stated in Clause II hereof and subject to the terms of the covenant in that respect to be contained in the Lease no part of the building to be erected on the said land shall at any time hereafter without the previous consent in writing of the said officer be used or allowed to be used for any

purpose whatsoever other than as 4 shops facing two on the front and two on the back verandah at the ground floor and a residential house for one or two families in all on the first floor.

3. The Delhi Cloth and General Mills Company Limited constructed the building and intended to sell the same to the petitioner. It sought the necessary sale permission from the Lesser which was granted vide letter dated 9.5.1967 (Annexure P-2). Based on the sanction granted, Delhi Cloth and General Mills Company Limited, vide sale deed date 11.5.1967 registered as document No. 3212, additional book No. 1, Volume 1764, pages 52-55, registered on 18.5.1967 sold the building and the lease hold rights to the petitioner. Vide letter dated 22.5.1967 petitioner intimated the fact of having purchased the property and as a consequence sought mutation in his favor in the records of the L&DO.

4. Vide letter dated 6.9.1967 (Annexure P-4), L&DO intimated to the petitioner that it had carried out, in the records of the L&DO, the necessary mutation. It was pointed out that the petitioner would be bound by the covenants of the original lease executed on 22.7.1963 by L&DO in favor of the Delhi Cloth and General Mills Company Limited.

5. On 18.12.1971 (Annexure P-5) petitioner sought permission of L&DO as under :-

In the meantime I seek your permission to let the property on rent to the National and Grindlays Bank Limited which would use the basement for storage, ground floor for business and first floor for residential purposes.

6. Vide letter dated 29.12.1971 (Annexure P-6) L&DO conveyed the necessary sanction to the petitioner. It read as under :-

To,

Shri Sureshwar Dayal Seth,

No.8, Dharam Marg,

Diplomatic Enclave,

New Delhi.

Dear Sir,

With reference to your letter dated 18.12.1971 on the above subject, I am to say that this office has no objection under the lease if the property is let out to the National and Grindlays Bank Ltd. for using Basement for storage purposes, ground floor for shops and First Floor for residential purposes.

Yours faithfully,

Sd/- xxx

A.S. Madan

Dy. Land and Development Officer

7. The first impugned order dated 14.9.1982 (Annexure P-7) was issued by L&DO to the petitioner. Following was intimated :-

To

Shri S.D. Seth

8-Dharam Marg,

Chankya Puri, New Delhi.

Sub : Notification of the breaches on account of the unauthorised construction misuse in Property No. Shop No. 13, Block No. 48 known as Diplomatic Enclave, New Delhi.

Dear Sir,

On inspection of the above premises on 16.7.1982 the following breaches were noticed at site by the Inspecting Officer :-

1. Ground Floor is being used as Bank

These breaches are in contravention of Clause XIV of the Agreement for Lease.

You are, Therefore, hereby required to remedy the breaches within 30 days from the date of receipt of this notice.

You are also liable to pay the charges (which can be intimated to you hereafter) for having committed the breaches of terms of the Agreement for lease shown in Para I above for the period of their existence.

In case you have any point to clarify in connection with the above notice you may kindly see the undersigned by the prior appointment of Tel. No. 382624 between 2 to 4 pm in the afternoon within a week of the date of receipt of this notice. It may however, be clearly understood that your inability to avail of this opportunity of personal hearing/discussion will not be acceptable as a ground for not taking further action in the matter under the terms of the Agreement for lease.

Yours faithfully,

Sd/- xxx

T. Devadasan

Dy. Land & Development Officers

For and on behalf of the President of India.

8. Order dated 14.9.1982 was followed by the second order impugned, being the order dated 3.1.1983 (Annexure P-8). The same reads as under :-

To

Shri S.D. Sethi

8, Dharam Marg,

Chankya Puri,

New Delhi

Sub : Premises situated on shop plot No. 13, Block No. 48, known as Diplomatic Enclave, New Delhi.

Dear Sir,

I am to refer to this office letter No. L.IV/9/48(S-13)/82 dated 14.9.82 on the above subject and to say that the breaches notified to you vide this office letter under reference have not so far been remove/regularised.

You are, Therefore, hereby given final show cause notice to remove/regularise the breaches in question immediately but not later than 15 days from the date of receipt of this letter failing which further action will be taken against you under the terms of the lease deed for the contravention of Clause XIV of the Agreement to lease without any further reference to you.

Yours faithfully,

Sd/- x x x

T. Devadasan

Dy. Land & Development Officer

For & On behalf of the President of India.

9. Vide his letter dated 3.1.1983 (Annexure P-9) the petitioner informed as under :-

The Land & Development Officer,

New Delhi.

Sub : Premises situated on Shop plot No. 13, Block No. 48, known as Diplomatic Enclave, New Delhi.

Dear Sir,

I am to refer to your letter No. LIV/9/48(S-13)/82 dated 3.1.1983 regarding the alleged breach i.e. use of ground floor as office by National and Grindlays Bank and to state that the ground floor beings commercial one, the objection raised by you is contrary to law and justice. Even your list of condonable items speaks that change from one trade to another is not objectionable. Even at the time of auction or in the lease deed executed no specific condition was laid that shops cannot be used for any other purpose.

The fact that no objection was raised from 1972 till September 82, the right to object has been waived by the Govt. I shall Therefore request you kindly to withdraw the impugned notice. If any further action is taken, that will be at your risk and cost.

Yours faithfully,

Sd/- x x x

S.D. Seth

10. Paying no heed to the letter written by the petitioner, order dated 24.9.1983 (Annexure P-11), the third order impugned was issued to the petitioner. The same reads as under :-

To

Shri S.D. Seth

8-Dharam Marg,

Chankyapuri,

New Delhi.

Sub : Premises situated on Shop Plot No. 13, Block No. 48, known as Diplomatic Enclave, New Delhi.

Dear Sir,

WHEREAS the undermentioned breaches were observed which have not been removed/regularised so far inspire of the notice given by the Lesser vide letter No. LIV/9/48/(S-13)/83 dated 3.1.83:-

1. Ground Floor is being used as a Bank.

AND WHEREAS the reply dated Nil, (received in this office on 28.2.83) given by you was not found to be satisfactory and attracted Clauses XIV & XV of the Agreement to lease deed which remained unremedied.

In the circumstances the Lesser in exercise of the powers conferred on him by Clause XX of the Indenture of lease, has re-entered upon the said premises w.e.f. 29.7.83.

Upon such re-entry of said lease and everything contained in the said Indenture of lease of the said premises shall cease and determine and the entire plot of land forming the subject matter of the relevant lease deed and the building standing thereupon including all structures erection and fittings shall vest with the Lesser.

Sh. L.D. Ganotra, Asstt. Engineer of the Land & Development Office has been directed to take possession of the premises from you and he will call upon you for this purpose on 5.10.1983 at 11.00 am and hence you are hereby called upon

to handover peacefully the possession of the premises including land, buildings, fittings and fixtures etc. to him.

Yours faithfully,

Sd/- x x x

R.S. CHADHA

Asstt. Settlement Commissioner

For and on behalf of the President of India.

11. Vide letter dated 27.10.1983, petitioner protested. He wrote as under :-

Mr. D.N. Asija,

Land & Development Officer,

Room No. 6011, Nirman Bhavan,

New Delhi.

Dear Sir,

Kindly refer to the personal discussions the undersigned had with you today. As desired, I am enclosing copy of my letter dated 18.12.1971 and a copy of your letter No. LIV/9/48/(S-13)/71 dated 29.12.1971 granting me permission to let out the premises situated at plot No. 13, Krishna Market, Diplomatic Enclave, New Delhi to Grindlays Bank. Both the letters are self explanatory and your action now in issuing me the Show Cause Notice for misuse of the premises by letting out the same to the Grindlays Bank, is without any basis and seems to have been issued inadvertently by your office. You are requested to please cancel/withdraw your Show Cause Notice and oblige.

Thanking You,

Yours faithfully,

Sd/- x x x

S.D. Seth

Encl. As above.

12. Fearing forcible eviction and resumption of the plot and as a consequence the building, present petition was filed praying as afore-noted.

13. In a nutshell, case of the petitioner is that the plot of land had a mixed land use. Ground floor had to be used for a commercial purpose (shops). First floor had to be used as a residential unit. Using the ground floor for purposes of running a bank is a commercial purpose and Therefore there is no breach of the terms of the lease. Additionally, it is urged that vide Annexure P-5, petitioner sought permission of the Lesser to let out the property to National and Grindlays

Bank, clearly stating that the ground floor would be use by the bank for business. Permission was accorded vide Annexure P-6. It is urged that notwithstanding that while granting permission vide Annexure P-6, respondent wrote that the premises could be let out to National and Grindlays Bank for shops, for all intents and purposes, considering that a bank would use a premise for banking facilities, permission meant that the bank could conduct its business from the ground floor.

14. Placing reliance on an office order No. 504 dated 24.11.1975 (Annexure P-10) it is averred by the petitioner :-

That by 1982 the respondents had declared their policy that certain breaches of leases were condonable, i.e, such breaches were condonable and do not entail forfeiture. Accordingly, in the case of many lessees who had been guilty of condonable breaches, no forfeiture took place and such condonable breaches were regularised. The petitioner understands that the said policy was introduced in 1975. Annexure P-10 is a true copy of the said policy statement dated 24th November, 1975 which had been widely circulated.

15. Policy decision (Annexure P-10) lists 92 condonable breaches, condonable breach listed at Serial No. 40 on which petitioner relies reads as under :-

40. Change of use from one trade to another in business premises except that change of hotel/cinema will not be permitted.

16. Opposing the writ petition, stand of L&DO is that as per Clause XIV of the Agreement to Lease, ground floor had to be used as shops. Permission granted by L&DO vide letter dated 29.12.1971 was for using the ground floor as shops. It is urged that since the ground floor was used for running a bank, i.e., conducting banking business, lease was violated.

17. Averments of the petitioner pertaining to office order issued by L&DO on 24.11.1975 (Annexure P-10), response is as under :-

In reply to Para 14(ii) to (iv) of the writ petition it is stated that the use of the shop other than shop is objectionable according to the Circular No. 2/83 dated 21.1.1983 of the respondent copy of which is enclosed herewith as Annexure R-II.

18. Annexure R-2, being the Circular No. 2/83 dated 21.1.1983 reads as under :-

Dated 21.1.1983 Circular No. 2/83

Sub: Grant of lease hold right of specific use, ie., shops

Extracts of notes at page 35 to 37/N of the file relating to shop at plot No. 14, Block No. 48, Diplomatic Enclave Market, file No. XV-9/48(S-14)/80 are circulated for information and future guidance.

Sd/-

(P.N. Gupta)

Public Relations Officer

19. Extracts of the office note attached to the circular inter alias records as under :-

2. Although the use of shops or office can be treated as commercial in either case, allowing such change of use is likely to create problems. In the present case, many of the shops in Chankya Puri Market are being used as offices because it is more remunerative to let out these shops for office purposes because of the locational advantage. As this area is sparsely populated running of shops cannot be as such profitable as letting out for office purposes....Due to the large scale conversion of shops into office premises in this area there is already a demand for second shopping center.

...

3. In the circumstances stated above, it is for consideration of the Ministry of Works and Housing as to whether the use of shops as office and vice versa should be permitted as both of them can be treated as commercial use in general terms which will create the problems mentioned in para 2.

Sd/-

(T. Devadasan)

8.11.1982

...

Discussed with Director (Le. He supports the view expressed by me on pare-page and his note gives additional grounds for the same view. L&DO may kindly take action accordingly.

Sd/-

(R. Krishnaswamy)

16.11.1982

20. Lease granted in favor of the Delhi Cloth and General Mills Limited, covenants whereof bind the petitioner, require the ground floor of the building to be used as shops. It is relevant to note that no particular user, i.e., particularised business to be conducted from the shop is not mentioned. In other words, as long as the ground floor is used as a shop, there would be no misuse.

21. What is a shop? A shop is a place from where business activity is carried out. This business activity need not only be sale and purchase of goods. Business activity may include rendering services. Business is an activity which involves sale and purchase of goods or services for a profit. For example, an electrician who sits in a market and repairs heaters, geysers, toasters, vacuum cleaners and other electrical appliances uses the premises as a shop. Would one not

understand that the premise is being used as a shop for providing services relating to repair of electrical goods.

22. Let me give another example. A person provides software consultancy service. He sits in a market and designs programmes for computer software, designed to meet the particular needs of the customers. The computer professional sells services. Can it not be said that he is using the premises as a shop from where he sells computer software programme designed to meet the specific requirements of his customers.

23. No doubt there is a profit element in a business relating to sale of services and a professional activity and both are based on personally specialised skill and knowledge. But what distinguishes the two is that a professional activity is regulated by a regulatory body i.e. lawyer, doctor, dentist, architect etc.

24. Banking is a business. A banker provides a wide variety of services to his clients. To my mind, use of a premise for running of a bank, banking being a business activity, would not derogate from the user of the premises as a shop. I repeat, service activity is permissible as a business activity and hence premises from where services are being rendered would be a shop. Surely, L&DO, which was informed by the petitioner when he sought permission to let out building to National and Grindlay Bank was aware that the bank would use the shops for banking business. What else could the bank use the ground floor for? Indeed, learned Counsel for the respondent could not point out what other activity, other than a banking activity, would the commercial branch of a bank do in a market.

25. In *Re Shields* (1901) 1 Ir. R. 172 per Fitz Gibbon L.J. as of general acceptance a banker is one who traffics with the money of others for the purposes of making profit.... If he keeps open shop for the receipt of money...he answers the description of a banker.

26. The term bank is derived from the word bank or bank which means a bench or table on which European money lenders and money changers in the past used to exhibit coins of different countries in big heaps for the purposes of changing and lending money. A bank is now regarded as an institution which attracts money on deposit for purposes of lending. Essentially a bank is a buyer and seller of money.

27. In the report published as 94 LW 203 *Sundran Finance Ltd. v. State of Tamil Nadu*, it was held :-

It is not correct to say that the services rendered by an establishment shop must be personal services rendered in the premises of the establishment shop itself in order to fall within the mischief of the word "shop" in Notification under Employee's State Insurance Act. The petitioner renders service to its customers by advancing money to purchase motor vehicles on hire-purchase, on the security of motor vehicles themselves. Held, establishment falls within the meaning of the word "shop" in the Notification.

28. In the report published as 1978 RLR 201 D.D.A. v. Bawa Raghbir Singh, a learned Single Judge of this Court held :-

To my mind a shop is a place where business is carried on. It may be a place where goods are ordinarily sold or even bought, but it does not exclude other places where business is carried on. For example, it is common to refer to a work place as a workshop or indeed there are many other type of shops where goods need not be sold. These may be used for booking agencies, pawn brokers, money-lenders and so on. Such shops are not necessarily selling goods. The word "shop" is often used to describe places where ordinary goods are sold but also places other business is carried on. Definition in Chamber's Twentieth Century Dictionary "is a building or room in which goods are sold" a place where mechanics work, or where any kind of industry is pursued; a place of employment or activity, esp. a theatre....

It is also indicated in this definition that the word is derived from Old English and the etymon is a word meaning "treasury". The etymological root is useful when one has to determine the true meaning of a word. A more elaborate definition is given in the Oxford English Dictionary as :-

a house or building where goods are made or prepared for sale and sold.

An example is given as a banker's shop which is a bank. The original of this was the portion of a shop of a goldsmith or other tradesmen used for practicing banking. Then, it is also described as a building or room set apart for the sale of merchandise or a building or room set apart and fitted up for the carrying on of some particular kind of handiwork or mechanical industry; eg. a workshop. It is said the word is now often referred to as a portion of a building or a room in a factory, appropriated to some particular department or stage of the work carried on there. There are some other definitions which need not be referred to. In the Webster's third new International Dictionary, there is also an elaborate series of definitions which show that the word "shop" may be used to describe a place where goods are ordinarily bought and sold and also for many other purposes including a place where business is carried on. It, Therefore, appears that the word "shop" can be understood either giving it a narrow meaning or with a larger meaning.

9. As the present is a case of a restrictive covenant I hold that it must be strictly construed and there appears to be no reason why a narrow meaning should be given. I cannot understand why the word "shop" should be used in a narrow sense when a long-term lease was granted, if it was intended that it should be used for only a very limited type of purposes. Generally, there are similar leases all over the country, and it would bring about chaotic conditions if the user of those building was unusually restricted merely because the word "shop" was used in the lease. For instance, in many modern cities there are shopping centres in which buildings which are described as shops are auctioned at substantial prices to the public in general, and it would be really harsh if those shops could

only be used for the limited purpose for selling consumer goods and not for other business purposes. Of course, if the actual user is not at all shop-like, i.e. not as a place where activity is carried on with the public it cannot be a shop. The case I am dealing with is the case of a bank. I have to find out whether the running of a bank is the running of a shop or is not the running of shop.

10. In my view, a bank is a place where the public freely enters for the purpose of doing what may be described as "shopping" for money or keeping money. People give money or take away money, if a bank is considered as a dealer in money in this sense. I think a bank can easily be described as a shop. Therefore, the running of a bank does not appear to be an infringement of the covenant.

29. By according sanction vide letter dated 29.12.1971 (Annexure P-6) to the petitioner to let out the premises to National and Grindlays Bank, for using basement for storage, ground floor for shops and first floor for residential purposes, respondent granted the necessary permission for the bank to carry on its business from the ground floor.

30. There is another additional reason why the petitioner must succeed.

31. Office order No. 504 dated 24.11.1975 (Annexure P-10), as noted above permits change of use from one trade to another in business premises (except hotel/cinema). It is not in dispute that by prescribing that the ground floor would be used as shops it meant that the ground floor has to be used for business. Office order permits change of use from one trade to another. The office order was widely circulated and was not withdrawn. The office order occupied the field and was in full force on 14.9.1982. Circular No. 2/83 dated 21.9.1983 was not even born when order dated 14.9.1982 (Annexure P-7) was issued. The office order dated 21.1.1983 could Therefore not be the source of power of the order dated 14.9.1982. Additionally, respondent has placed no material to show that Circular No. 2/83 dated 21.9.1983 was circulated for the information of the public. The office order makes an interesting reading. It circulates notes at pages 35-37/N of file No. XV-9/48(S-14)/80. I have never seen an office order which intends to regulate conduct of their affairs by the citizens as of the kind which I am noticing. Nothings on the file have to be formalised in the shape of a policy so that the same can be understood by all who read the same. By circulating for information of the officers nothings on the file of L&DO and not formalising the same as a policy and not even notifying the public, disentitles the respondent to rely on Circular No. 2/83 dated 21.1.1983.

32. The inevitable legal consequences is that the impugned orders dated 14.9.1982 (Annexure P-7), 31.1.1983 (Annexure P-8) and 24.9.1983 (Annexure P-11) are quashed. Writ of injunction is issued against the respondent restraining it from re-entering the leased premises or from determining the lease or from resuming possession of plot No. 13, Block 48, Diplomatic Enclave, New Delhi.

33. No costs.