

(2010) 12 DEL CK 0378

In the Delhi High Court

Case No : Writ Petition (C) No. 10931 of 2009

Shri Tek Chand

APPELLANT

Vs

Estate Officer, Delhi Jal Board and Another

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5, 7(2) (2A), 9

Citation : (2010) 12 DEL CK 0378

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sunil Satyarthi and Raman Gandhi, for the Appellant; Karunesh Tandon and Jitendra Kumar and D.N. Singh, Director (A and P), for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226/227 of the Constitution of India, the Petitioner seeks directions to set aside the order dated 04.05.2009 passed by the learned Addl. District Judge, Delhi. The Petitioner also seeks direction to quash the office orders dated 19.11.2008 and 25.02.2009 passed by the Respondent.

2. Learned Counsel for the Petitioner submits that the Petitioner had never raised any sort of unauthorized construction in the Govt. quarter bearing No. C-34, Type-I, Kilokari, New Delhi which was allotted in his favour on account of his employment with the Respondent. Counsel also submits that the Petitioner had not erected any "jhuggi" adjacent to his said govt. quarter, as many such "jhuggies" were raised by various unauthorized jhuggi dwellers surrounding the govt. quarters. Counsel for the Petitioner also submits that in fact the land on which the jhuggies were raised is not owned by the Respondent, as in LCA No. 116/2001 the learned Labour Court held that the land in question did not belong

to the Respondent but belonged to the Slum and J.J department. Counsel also submits that the Petitioner was prevented from appearing before the Estate Officer due to bonafide reasons. The Petitioner, while on duty on 12.04.2007, received serious injuries and part of his body was burnt including his hands and fists. Counsel further submits that it was only after the Petitioner had recovered from his injuries that he could contact his counsel Mr. P.S. Tomar, but was told by his son that Mr. P.S. Tomar had already expired on 13.03.2008. Counsel thus submits that non-appearance of the Petitioner and his counsel before the Estate Officer was neither intentional nor deliberate but due to above bonafide reasons. Counsel also submits that no evidence was led by the Respondent before the Estate Officer to prove that the Petitioner was an unauthorized occupant in respect of the said govt. quarter. Counsel thus states that in the absence of any material on record, the learned Estate Officer wrongly passed the eviction order under Sub-section (1) of Section 5 and order for recovery of damages under Sub-section (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

3. Refuting the said submissions of counsel for the Petitioner, counsel for the Respondent submits that the Petitioner was served with a show cause notice dated 17.01.2002 on the ground that he had constructed a tin shed over the courtyard of the said govt. quarter bearing No. C-34, Type-I, Kilokari, New Delhi and also erection of four jhuggies by the Petitioner surrounding the said govt. quarter. Counsel further submits that vide order dated 16.09.2008 the allotment of the Petitioner in respect of the said govt. quarter was cancelled and the said cancellation order became final as no challenge thereto was made by the Petitioner. Counsel further submits that even before the Estate Officer, the Petitioner did not choose to appear and, therefore, now before the writ court the Petitioner cannot be heard to say that he was an authorized occupant of the said govt. quarter or his allotment was illegally cancelled by the Respondent. Counsel for the Respondent also submits that once the allotment of the Petitioner was cancelled by the Respondent, the onus was upon the Petitioner to have proved before the learned Estate Officer that he was an authorized occupant in respect of the said govt. quarter. Counsel further submits that enough material was placed on record by the Respondent before the Estate Officer and based on the said material only the Estate Officer had passed the eviction order u/s 5 of the Public Premises Act. Counsel for the Respondent further submits that the Petitioner has failed to point out as to how the orders passed by the courts below are illegal and perverse.

4. I have heard learned Counsel for the parties.

5. The Petitioner was allotted the govt. quarter bearing No. C-34 Type-I, Kilokari, New Delhi and he was in possession of the said govt. quarter till 31.10.2008. Due to the vacation of the said govt. quarter by the Petitioner, so far the eviction order passed by the Estate Officer is concerned, the same is not in question any more. The Petitioner in the present petition is primarily concerned with the order

passed by the Estate Officer under Sub-section (2) and (2A) of Section 7 of the Public Premises Act directing recovery of an amount of Rs. 3,13,253/- from the Petitioner for the period w.e.f. 06.02.2004 to 31.10.2008. It is not in dispute between the parties that a show cause notice dated 17.01.2002 was served upon the Petitioner before passing of the cancellation order by the Respondent. It is further not in dispute that the said show cause notice dated 17.01.2002 was duly replied by the Petitioner vide his reply dated 19.02.2002. In the said show cause notice, the Respondent complained of two violations on the part of the Petitioner. The first violation complained of by the Respondent was that the Petitioner had covered the open courtyard from the front side with a tin shed and the second violation attributed against the Petitioner was that he had erected four jhuggies of different sizes. In the reply submitted by the Petitioner, it was refuted by him that any jhuggi was erected by him. With regard to the unauthorized construction of tin shed, the Petitioner took a stand that open portion in the quarter was covered with tin shed because of monkey menace.

6. Vide order dated 18.06.2004, the allotment of the Petitioner was cancelled by the Office of the Assistant Commissioner (Land and Building), as the Petitioner failed to remove the unauthorized construction from the court yard of the said quarter and even the said unauthorized jhuggies. Apprehending his eviction from the said govt. quarter after the passing of the said cancellation order dated 18.06.2004, the Petitioner had filed a writ petition bearing W.P.(C) No. 12438-39/2006 before this Court to seek directions to restrain the Respondent from illegally evicting the Petitioner from the said quarter. The said writ petition of the Petitioner was dismissed by this Court vide order dated 04.08.2006 as the Respondent took a stand that they will take necessary steps under the Public Premises Act to seek eviction of the Petitioner from the said quarter. Consequently, proceedings were initiated by the Respondent against the Petitioner so as to seek his eviction under Sub-section (1) of Section 5 of the Public Premises Act. The Respondent separately initiated proceedings under Sub-section (2) and (2A) of Section 7 of the Public Premises Act for recovery of damages. Vide order dated 16.09.2008 eviction order under Sub-section (1) of Section 5 of the Public Premises Act was passed against the Petitioner and vide order dated 16.09.2008 the Petitioner was directed to pay a sum of Rs. 1,63,509 for the period of unauthorized occupation w.e.f. 06.02.2004 to 30.09.2006 along with interest @ 12% p.a. on this sum till realisation. The Petitioner was duly served in the said proceedings before the learned Estate Officer and in fact the Petitioner had appeared before the Estate Officer. The Petitioner, however, failed to contest the said proceedings despite grant of numerous opportunities in this regard. As per the order of the Estate Officer, the Petitioner failed to appear on 19.04.2007, 24.05.2007, 07.06.2007, 21.06.2007, 19.07.2007 and on 03.04.2008. The said two orders were challenged by the Petitioner by filing an appeal u/s 9 of the Public Premises Act and vide order dated 04.05.2009, the learned appellate court did not find any infirmity in the said two orders passed by the Estate Officer and the same were accordingly upheld by the Appellate Court.

Although the Respondent failed to prove on record that the Petitioner was instrumental in the erection of four unauthorized jhuggies adjacent to his govt. quarter, yet the other ground contained in the show cause notice dated 17.01.2002 was still available to the Respondent as the Petitioner in his reply dated 19.02.2002 had admitted the fact of raising of construction of tin shed over the courtyard of the said govt. quarter. The question as to whether the construction of tin shed in the govt. quarter would afford a ground to the Respondent to pass cancellation order of the said govt. quarter or not was to be determined before the Estate Officer. The Petitioner was well within his rights to challenge the validity and correctness of the cancellation order dated 18.06.2004 and the same could have been challenged by the Petitioner only before the Estate Officer. Despite grant of many opportunities by the Estate Officer, the Petitioner did not even choose to file any reply to the show cause notice. The Petitioner also did not seek any remedy for setting aside of the ex parte orders passed by the Estate Officer. Not only this, the Petitioner also failed to satisfy the Appellate Court that he was prevented to appear before the Estate Officer on medical grounds as no such ground was taken by the Petitioner in the appeal preferred by him before the learned Addl. District Judge.

7. It is a settled legal position that after the order of cancellation is passed, the onus rests on the occupant to establish the fact that his occupation in the govt. premises is duly authorized. After the order of cancellation dated 18.06.2004 was passed by the Respondent, the occupation of the Petitioner clearly became unauthorized. The Petitioner has not disputed the fact that he had raised unauthorized construction of tin shed in the courtyard of the govt. quarter which was one of the grounds contained in the show cause notice dated 17.01.2002. The Petitioner has nowhere pleaded that the said unauthorized tin shed was removed by him before the passing of cancellation order dated 18.06.2004 and, therefore, no illegality can be found in the said decision of the Respondent. The Petitioner also failed to contest the proceedings before the learned Estate Officer and no explanation was furnished or disclosed by the Petitioner in his appeal for his non-appearance before the Estate Officer. Number of opportunities were granted to the Petitioner to present his case, but having not done so, the Petitioner cannot now at this stage complain of violation of principles of natural justice.

8. In the light of the above, this Court does not find any infirmity or illegality in the impugned orders passed by the courts below and the same are accordingly upheld.

10. There is no merit in the present petition and the same is hereby dismissed.