

(2002) 02 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5759 of 1998

Sk. Jafulla

APPELLANT

Vs

Cuttack Development Authority and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Citation : (2002) 02 OHC CK 0001

Hon'ble Judges : M. Papanna, J;B. Panigrahi, J

Bench : Division Bench

Advocate : U.C. Patnaik, A. Mohanty and P. Mohapatra, for the Appellant; D. Mohapatra, S.S. Rao and D.K. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—In this writ petition, the Petitioner, who was an erstwhile licensee in respect of a shop room bearing shop Room No. 107 situated at Bajrakabati Community Shopping Centre, Cuttack has challenged the validity, legality and propriety of the allotment of the shop room in favour of opp. party No. 4.

2. The Petitioner's case is that he was allotted shop Room No. 107 at Bajrakabati Community Shopping Centre. Cuttack vide letter No. 1839/GCIf dated 15.2.1982 on a monthly licence fee of Rs. 430/-. Accordingly, an agreement was executed between the Cuttack Development Authority and the Petitioner and possession of the same was taken over by the Petitioner. He continued to remain in occupation as a licensee from 15.2.1982. The number of the shop room was re-numbered as shop Room No. 114. As the Petitioner was not keeping good health and unable to run the business he made a request to opp. party No. 1 on 17.6.1989 for transferor the said shop room in favour of his niece. Miss Nasira Nokhat.

3. It is alleged that opposite parties 1 to 3 did not take any action for transfer of the shop room in favour of his niece (Miss. Nasira Nokhat) for which the Petitioner continued to remain as a licensee and he is in continuous possession of

the said shop Room No. 114. Opposite party No. 2 issued a letter No. 10534 dated 30.8.1997 intimating that the licence fee in respect of the shop room had been revised at the rate of Rs. 5/per sq. ft. and the licence fee was accordingly enhanced from Rs. 430/- to Rs. 860/-. The Petitioner did not deposit the arrear rent for which the Cuttack Development Authority started a Certificate Case being No. 14/84 before the Certificate Officer, Cuttack. Thereafter the niece of the Petitioner. Nasira Nokhat represented the niece of the Petitioner-, Nasira Nokhat represented by her father, 6pp. Party No. 4 informed the Cuttack Development Authority to clear up the arrear dues and for re-allotment of the said shop in her favour.

4. Thereafter the Petitioner claims to have informed opp. party No. 1 on 17.6.1989 to treat his earlier letter dated 17.6.1989 as cancelled as he was no longer interested for transfer of the said shop room. The Petitioner came to know that the opposite parties were taking steps to recognise Miss. Nasira Nokhat as a licensee instead of the Petitioner notwithstanding the withdrawal of the earlier letter as par Annexure-2. Therefore, he has filed this case challenging the action of opposite parties 1 to 3 whereby they executed a deed of licence in favour of opposite party No. 4

5. Opposite parties 1 to 3 have filed their counter affidavit to the writ petition whereby they admitted the shop room to have been given to the Petitioner on 15.2.1982. The allotment was cancelled on 26.12.1983 as the Petitioner defaulted to deposit the licence fee and in support of which a letter was issued to the Petitioner vide Annexure-3. After such cancellation of allotment of Shop Room No. 114, as the Petitioner failed to vacate the same, opposite parties were constrained to initiate eviction proceeding and eviction order was also passed. The said order of eviction was challenged before the appellate authority but the Petitioner having not taken steps in the said matter, it was allowed to be dismissed for default.

6. It has been further stated that after the letter dated 17.6.1989 was sent by the Petitioner requesting opposite parties 1 to 3 to execute a fresh deed of licence in favour of opp. party No. 4, the Petitioner has no further right to remain as a licensee. It has been further stated that opposite parties 1 to 3 allotted the shop No. 114 in favour of Nasira Nokhat as she cleared up the outstanding dues of Rs. 23,825/- which was payable by the Petitioner. Therefore, in the aforesaid context, since a right had accrued to the opposite party No. 4 as licensee, the Petitioner lost his right. Opposite parties 1 to 3 have further stated to have not taken any steps for recovery of the licence fee through the certificate proceeding from the Petitioner after the same was realised from opposite party No. 4.

7. Opposite party No. 4 has filed a separate counter affidavit by denying all the allegations made by the writ Petitioner. It has been stated that there was an understanding between opposite party No. 4 and the Petitioner by which the former was asked to clear up the arrears so that he would occupy the shop room

as a licensee. With such understanding he had cleared up the arrears and taken occupation of the shop room. Although there was no deed of licence in his favour but opposite parties 1 to 3 had accepted him as a licensee and allowed him to occupy the premises as such. After such accrual of right to opposite party No. 4 the Petitioner could not have withdrawn the letter sent to opposite parties 1 to 3. There was a deed of licence between opposite party No. 4 and opposite party No. 1 with regard to allotment of shop room on 22.4.1998. Therefore, since he has been occupying the shop in question since 1989 as a licensee having been recognised by opposite parties 1 to 3. the Petitioner has no right whatsoever to file this writ petition.

8. Upon hearing the submissions and counsel submissions advanced by Learned Counsel for both the parties and on perusal of the grounds of the writ petition we found that for some time the shop room bearing No. 114 situated at Bajrakabati Market Complex was given under a deed of licence to the Petitioner. Since there was accumulation of arrear licence fees, the Petitioner did not pay the same and authorised opposite party No. 4 to clear up the dues on his behalf. From the several correspondences it is gathered that opposite party No. 4 was in occupation of that shop room after a letter was issued by the Petitioner in favour of the Vice-Chairman. C.O.A. which was received on 17.6.1989. There was a statement on the said letter that opp. party No. 4 shall clear up the outstanding dues and on such payment it would, be allotted to opposite party No. 4. It is argued that opposite party No. 4 was only managing the shop on behalf of the Petitioner since the Petitioner for sometime was not keeping good health but the said fact has not been mentioned in that letter. We also found that opposite party No. 4 has paid the licence fee from 1989 to 1997 and we did not find any demand having been made by the writ Petitioner either against opposite parties 1 to 3 or against opposite party No. 4 for delivery of possession of the shop room. Only the trouble arose after allotment order was made independently in favour of opposite party No. 4 we find it is too late to agitate such question regarding the right accrued in favour of opposite party No. 4. Since the Petitioner was a licensee and no right has inhered to him therefore, he cannot claim any right over the property which undisputedly belong to Cuttack Development Authority.

In that view of the matter, we do not find any merit in this writ petition which is accordingly dismissed.

M. Papanna. J.

9. I agree.