
(2011) 02 DEL CK 0058

In the Delhi High Court

Case No : LPA No. 3 of 2010 and CM No. 114 of 2010

Smt. Murti Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 02 DEL CK 0058

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Seema Gupta, for the Appellant; S.K. Dubey and Anshuman Sood, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Appellant has challenged the order dated 6th November, 2009, passed in WP(C) No. 11191/2009 titled as "Smt. Murti Devi v. UOI and Ors.", dismissing the writ petition, seeking directions to Respondent Nos. 1 to 3 to allot alternative suitable site under rehabilitation scheme to the Appellant after demolition of the leased premises adjacent to shop No. 6, West Barron Road, New Delhi and for quashing the demand notice dated 17th April, 2009 and to declare the notice null and void.

2. The relevant facts for comprehending the controversies are that pursuant to the application dated 7th May, 1957 by the husband of the Appellant, a site measuring 2210 sq.ft., for running a flour mill driven by electricity at West Barron Road, adjacent to shop No. 6 from 14th August, 1957 at a monthly lease of Rs. 53/- per month was granted by the Respondents. The proposed lessee was also entitled for erection of a temporary structure on the land in accordance with the plans to be approved by the lesser. It was also agreed that a temporary lease will be executed at the expense of proposed lessee. By a communication dated 13th December, 1957, it was communicated to Sh. Paras Ram, erstwhile lessee that the ground rent of Rs. 53/- for the area of 1950 sq. ft. had been wrongly

intimated and he was directed to pay an amount of Rs. 57/- for the reduced area of 1,592 sq. ft.

3. For erection of temporary structure, an application dated 18th November, 1957 was filed which was considered by Resolution No. 175 dated 28th March, 1958. A temporary lease dated 18th September, 1958 stipulating the monthly lease money of Rs. 57/- was also executed in favor of the predecessor of the Appellant. The said lease could be determined by giving one month notice by the lesser. A No Objection Certificated dated 29th July, 1958 to run a flour mill adjacent the shop No. 6, West Barron Road, New Delhi was also granted in respect of a newly constructed structure from the health point of view. The department of factory license had also issued a commercial license dated 11th August, 2004.

4. The predecessor of the Appellant was, however, sent a notice dated 3rd March, 1976 demanding the ground rent for different periods stipulating that if the amount was not paid within 30 days, the terms and conditions offered would be automatically withdrawn and action would be taken against the proposed lessee. To the notice dated 3rd March, 1976, a reply was sent on behalf of Sh. Hari Shankar Flour Mills dated 28th December, 1976, contending, inter alia, to consider his representation sympathetically and for reducing the ground rent so that it may be within the paying capacity. Thereafter, many more representations were made by Sh. Paras Ram for reconsideration of his case and for reducing the monthly rent which was not accepted by the authorities. The representations of the Appellant's predecessor were declined by letter dated 28th August, 1987 and he was directed to make payment within 15 days, failing which the terms and conditions offered to the predecessor of the Appellant by a communication dated 3rd March, 1976 would be withdrawn and cancelled. It was also stated that the occupation of the Government land was unauthorized from 15th January, 1966 and hence he was also liable to pay the damages.

5. Against the said notice, though some communications were addressed, however, no legal action was taken to establish that the possession was not unauthorized w.e.f. 15th January, 1966 as was claimed by L& DO and that the predecessor of the Appellant was liable to pay damages as demanded by L& DO.

6. The learned Single Judge while noticing the relevant facts also recorded that the rent of the premises had been enhanced to Rs. 295.59 per month from 15th January, 1971 and to Rs. 369.93 per month w.e.f. 14th April, 1974. Though the predecessor of the Appellant was asked to remit payment of Rs. 22,970.03 and Rs. 2,655/- by separate cheques drawn in favor of L&DO, however, it was not accepted nor were the terms and conditions complied with. This was also accepted before the learned Single Judge that predecessor-in-interest of the Appellant had not made payment @ Rs. 63.72 per month.

7. The DMRC (Delhi Metro Rail Corporation) had acquired the property for the purpose of the Delhi Metro Project on 11th September, 2008. Before the property

was acquired, the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were initiated against the predecessor of the Appellant; however, after the possession was taken the said proceedings became infructuous and therefore, were withdrawn. However, the L&DO have also demanded a sum of Rs. 2,33,00,000/-as damages from the Appellant and her predecessor-in-interest, which demand had also not been challenged by the Petitioner in any separate proceedings.

8. After the possession was recovered from the Appellant she demanded allotment of alternate site for her under the Rehabilitation and Relocation scheme in terms of guidelines on Relocation and Rehabilitation Policy in respect of project affected persons. The relevant terms and conditions of the guidelines on Relocation and Rehabilitation are as under:

(1) Eligibility conditions for being covered under Relocation/Rehabilitation Policy:

(a) The guidelines on Relocation & Rehabilitation Policy for project affected persons will be uniformly applicable for all phases of MRTS projects.

(b) Those whose shops/residences on workshops/industrial units got affected in such a manner that they have to leave the said premises. In case of premises where only small part, (less than 50%) has been taken and the occupant continues to reside/work from there, will not be eligible for rehabilitation under this scheme.

(c) In case of shops the persons doing business whether he is the owner of the land or the tenant will be eligible.

(d) In case of premises being used as residential units the rehabilitation will take place only in case of owner residing there. The tenants will not be eligible under the scheme.

(e) The treatment in respect of workshops/industrial units would be the same as those of industrial shops indicated above.

2. In case of Pucca Structures at government land, removed due to implementation of phase-I project of Delhi MRTS, their owners will be allotted the plot of maximum size of 18 sq. m. in case of persons having valid food card as on 31.01.1990 and 12.5 sq. m. having valid food card as on 31.12.1998 under the existing Relocation Policy of J.J. Clusters.

9. Under the guidelines, the persons having shops doing business whether owner of the land or the tenant is eligible for rehabilitation.

10. The Appellant therefore, filed writ petition being WP(C) No. 11191/2009 claiming, inter alia, direction to the Respondents to allot alternative suitable site under the rehabilitation scheme to the Appellant and to award appropriate compensation/damages and for quashing the demand notice dated 17th April, 2009 and to declare the same as illegal, null and void. Before the Single Judge, the policy decision under which any alternative accommodation could be allotted

had not been produced.

11. The learned Single Judge relied on Ravi Khullar and Anr. v. UOI and Ors., Appeal (Civil) No. 1704/2007, to hold that de hors any scheme, alternative accommodation could not be allotted and owner/occupier is entitled to compensation only under the Land Acquisition Act, 1898. Since no policy was produced before the Single Judge, it has been held that the Appellant is not entitled to any relief. In any case, the predecessor of the Appellant had been in occupation of the Govt. land temporarily in 1957 which period had expired in 1967 and no extension had been granted and the Appellant had also failed to comply with the terms and conditions and did not accept terms offered in 1971, 1974 and 1987. Consequently, the occupation of the Petitioner is unauthorized and merely because the proceedings under the Public Premises (Eviction and Unauthorized Occupants) Act, 1971 were initiated which became in fructuous on acquisition of premises by DMRC, no such right to have allocation of alternative accommodation had precipitated or crystallized in favor of the Petitioner which would entitle her for allotment of an alternative site in lieu of the site which was in her un-authorized occupation, possession of which was taken over by DMRC.

12. The learned Single Judge has also distinguished the case of Sukhdeep Singh, a coal merchant on the ground that in the case of Sukhdeep Singh, there was a court order and under some policy an alternative site for fuel depot was allotted to him and on parity with the case of Sukhdeep Singh, the Petitioner shall not be entitled for any alternative accommodation.

13. The learned Counsel for the Appellant Ms. Seema Gupta has very vehemently contended that the Appellant is a tenant and so she is eligible for alternative accommodation in terms of the guidelines of Relocation and Rehabilitation Policy. The learned Counsel, however, has not been able to produce any documents on the basis of which it can be inferred that the tenancy of the Petitioner or her predecessor in interest, which was created pursuant to a temporary lease and which was determined, had continued till the time the possession was taken by DMRC. The guidelines on Relocation and Rehabilitation Policy do not contemplate allotment of alternative accommodation to an unauthorized occupant. The learned Counsel has also emphasized that some amount was being paid by the Petitioner as rent, which was not equivalent to the rent demanded by the concerned authorities. This fact, however, has not been denied that no perpetual lease was executed in favor of the Appellant and her predecessor in interest. If the lease was temporary and it had expired by efflux of time and in any case, after the notice for determination of tenancy was given, the Petitioner could not have continued as a tenant nor can she claim tenancy rights in the premises.

14. The Petitioner and her predecessor in interest did not challenge the determination of tenancy and the demand by the authorities that her occupation is unauthorized from 15th January, 1966. If that be so, it has not been established that the Petitioner is a tenant in the premises. From the documents produced on the record it cannot be inferred even prima facie that the Appellant

had any right in the property, on the contrary it reveals that she is an unauthorized occupant. Therefore it cannot be concluded or inferred that the Petitioner was a tenant at the time when the possession was taken by DMRC for its project. If that be so, then under the guidelines of Relocation and Rehabilitation Policy, the Petitioner does not become entitled for allotment of an alternative site for running a flour mill.

15. The learned Single Judge has dismissed the writ petition on these grounds and on behalf of the Petitioner, no such illegality or irregularity has been pointed out which will entail any interference by this Court in the appeal under the Letters Patent Act against the order of the Learned Single Judge declining the plea of the Appellant for allotment of an alternative site.

16. Although the powers of this appellate forum under Clause-10 of Letters Patent has to be taken to be co-extensive with the powers vesting in the original forum enabling it to examine the legality and propriety of the judgment passed in the original forum yet it has to examine and consider the same taking into account the evidence and the materials brought on record before the learned Single Judge. It has been observed in the matter of "Jagdish Prasad Shivhare v. Municipal Corporation and Ors.", 1999 (2) JLJ 209 that the remedy envisaged under Article 226 of the Constitution of India is a discretionary remedy. They were also of the considered opinion that in a Letters Patent Appeal the appellate forum should ordinarily be slow in interfering with the discretion exercised by the learned Single Judge. It must not, however, be lost sight of that in the appropriate cases if it is found that the exercise of the discretion by the learned Single Judge stands vitiated in law, arbitrariness or perversity, and has the effect of resulting into manifest miscarriage of justice, there can be no impediment in interfering in such an order/judgment in appeal. But the mere possibility of different conclusions on the same facts and evidence will not justify interference. It was also noticed in the case of Babu Ram, Ashok Kumar and Another Vs. Antaram Zila Parishad, , while dealing with a Special Appeal directed against a judgment disposing of a writ petition under Article 226 of the Constitution, rendered by a Full Bench, it had been observed that if two views are possible on the question, then also the Court of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it.

17. So far as the demand made by the Respondents for recovery of arrears of damages, it is apparent that the Respondents have taken some contradictory pleas as that the rent had been enhanced after Petitioner had become unauthorized occupant and therefore, they would have to establish and prove the amount demanded by them in accordance with and by due process of law. Merely on the basis of the alleged notice they would not be entitled to recover the amount demanded by them as the Respondents have alleged that the occupation of the Appellant became unauthorized from 15th January, 1966 yet the other plea taken is that the rent had been enhanced from time to time after that date. In the circumstances even though the notice dated 17th April, 2009 is not

quashed, the Respondents shall be liable to establish and prove the demand raised by them in accordance with law and on the basis of the alleged notice alone, the Petitioner shall not be liable to pay as it is denied by her.

18. In the circumstances there are no grounds to interfere with the order passed by the Learned Single Judge which is challenged before us and the Letters Patent Appeal is liable to be dismissed. The appeal is therefore, dismissed, however the parties are left to bear their own costs.