

(2002) 07 DEL CK 0069

In the Delhi High Court

Case No : CW No's. 3821, 3822, 3823 and 3824 of 1999 and 1385 of 2000

Smt. Sushila Verma, Mr. Vasudev Goyal, Ex. Captain Sajjan Singh and Munna Tailor APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(2)

Citation : (2002) 07 DEL CK 0069

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Jose, P. Verghese, C.M. Khanna and Rajat Aneja, for the Appellant; Sanjay Jain, Pinky Anand, in CMP No. 1385/2000, Pinky Anand, B.K. Aggarwal, in CWP No. 3821/1999, Pinky Anand, B.K. Aggarwal, in CWP No. 3822/1999, Pinky Anand, B.K. Aggarwal, in CWP No. 3823/1999, Pinky Anand and B.K. Aggarwal, in CWP No. 3824/1999, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioners in these batch of writ petition are allottees of shops, where either the license has expired or has been terminated. Proceedings were initiated under the Public Premises (Eviction of Unauthorized Occupants) Act (hereinafter referred to as "the Act"). Eviction orders were passed and the petitioners had preferred appeals before the learned Additional District Judge, which were dismissed. The petitioners have challenged by these writ petitions, the orders of eviction, and the dismissal of their appeals preferred against the orders of eviction. Most of the petitioners are either Ex Army personnel or their widows or legal representatives, who were allotted shops on license basis. Before dealing with the common grounds of challenge, the facts of the individual cases as well as submissions relating to the individual cases may be noted.

2.(1). CW No. 1385/2000

Petitioner's husband, Ex Subedar, Mr. P.D. Verma, had retired from the Indian Army. He was allotted Shop No. 8, Arjun Vihar Shopping Complex, Delhi @ Rs. 482/-p.m. The petitioner's husband, it is stated, was carrying on his business in conformity with the terms and conditions of the allotment. Petitioner's husband is stated to have expired on 1.11.1996. Petitioner sought regularization in her name as per the terms of license deed of the shop and offered to pay all necessary charges. It is claimed that the respondent No. 2 was pleased to issue an allotment letter dated 1.9.1998. A license deed at the enhanced fee of Rs. 600/- p.m. and security of Rs. 11,000/- with allotment for period of 2 years was prepared.

Respondent No. 2 vide order dated 5.12.1998, held the petitioner to be unauthorized occupant and directed that order u/s 5(1) of the Act for vacation of the premises be served on the petitioner. The petitioner preferred an appeal before the Additional District Judge. The Additional District Judge dismissed the appeal on 27.1.2000.

The respondent's case is that the license deed in favor of petitioner's husband expired on 12.8.1996. Respondents did not agree to the regularisation of the shop in favor of the petitioner. Proceedings before the Estate Officer were initiated vide case No. 37/97 and an order was passed on 5.12.1998, declaring the petitioner as an unauthorized occupant. The appeal of the petitioner before the Additional on 21.1.2000 giving time to the petitioner to vacate the premises up to 30.9.2000.

The respondents admit that an option to the petitioner to extend the license was given vide letter dated 1.9.1998. The petitioner did not meet the requirements for deposit and other charges. Hence no extension of the license came into force. It may also be noticed that the petitioner had preferred a suit for permanent injunction, which was dismissed on 27.1.1997 recording the respondent's undertaking that petitioner would not be evicted without due process of law. Petitioner was accordingly issued a notice u/s 4 of the Act.

The petitioner has assailed the order of the Additional District Judge submitting that she was an unfortunate widow of late Ex serviceman, who had been allotted the shop as a measure of rehabilitation. The purpose was that the retired army personnel, his legal representatives and family members were able to maintain themselves. Petitioner had been duly paying the license fee up to 31.1.2000. Petitioner could not be treated as an unauthorized occupant. It is claimed that the petitioner had accepted the allotment offered vide letter dated 1.9.1998, for a period of 2 years and had been paying the enhanced license fee. It was also claimed that though the nomenclature was a license deed, it was in fact and in substance a lease deed. Petitioner also complained of discrimination as certain other shops had been allotted to the widows of Ex serviceman. It was urged that the whole object of rehabilitation would be defeated, if the petitioner was to be thrown out. It was also urged that the order of eviction had been passed, because the petitioner could not pay the increased amount of rebate demanded.

Petitioner urges that the question arising for consideration is whether the petitioner was an unauthorized occupant of the shop or not and whether she could have succeeded to her late husband as a licensee? Plea of discrimination was also sought to be raised as licenses had been allegedly renewed in favor of some legal representatives of some allottees. It was urged that the notice for eviction had given the ground of additional space being required for primary school, while eviction had proceeded on the ground of expiry of petitioner's ex husband, prior to his death. The ground given in the notice was different from the one actually accepted.

2.(ii) CW No. 3821/1999

Petitioner had approached the respondents for allotment of a shop in the Cantonment area in the year 1977. Petitioner was allotted Shop No. T-4/5, Pratap Chowk Shopping Complex. Petitioner has been paying the license fee and carrying on his business. The license deed was renewed from 12.8.1994 for a period of 2 years. Petitioner claims to have paid the license fee up to 31.3.1999. license deed dated 12.8.1994 provided for payment of Rs. 300/- p.m. as rebate charges to the Department. Petitioner claims respondent started harassing the petitioner to pressurize her for increase in the rent/license fee as also the other charges. Petitioner was constrained to file a suit for injunction. An ad interim injunction was not granted by the Civil Judge, the petitioner, Therefore, filed a civil revision petition. Respondents were restrained from evicting the petitioner without the due process of law. As the respondent attempted to close the access to the petitioner's shop, a writ petition was also filed. The possession of the shop was sought to be taken on the ground that the same was for extension of the Delhi area Primary School. A show cause notice was issued to the petitioner, pursuant to which on 29.5.1999, an order of eviction was passed. Petitioner preferred an appeal against the order of eviction. Dispossession was stayed in appeal. The Additional District Judge dismissed the appeal vide order dated 28.6.1999, which is sought to be assailed in this petition. The authority of the officer issuing the notice u/s 4 of the Act is questioned in the instant case by learned counsel Mr. C.M. Khanna, claiming that only a person with the rank of Brigadier could act as Estate Officer and the present incumbent was a Colonel. There is nothing placed on record to support the plea raised. The objection is, Therefore, rejected. It is claimed that the allotment amounted to a lease and not license, as the purpose was rehabilitation of the petitioner, who was an ex serviceman on permanent basis. The real reason for termination was the arbitrary increase in rebate, which the petitioner could not pay.

2. (iii) CW No.3823/1999

Petitioner had retired from Indian Army in 1983. The allotment had been made to the petitioner initially for a period of 2 years from 30.12.1987. A fresh agreement dated 12.8.1991, was arrived at. Thereafter the petitioner did not grant fresh renewal, though they were receiving rent and other charges. Petitioner claims to be in lawful possession without having committed any

breach. Petitioner claims that as respondents were threatening to dispossess the shopkeepers, their association after making a representation filed a suit for injunction. No stay was granted in the suit or in the appeal and Therefore the Association preferred a Civil Revision Petition, where respondents were restrained from dispossessing the petitioner and others. The respondents took the law into their own hands and possession of one of the quarters was taken, which led to the filing of a contempt petition. Respondents sought possession of the shop in question on the ground that it was required for the extension of Delhi area Primary School. The area, where the shop was located was commercial area and could not be used for a school. Show cause notice was issued to the petitioner to vacate the shop. Eviction order was passed on 29.5.1999. Appeal was preferred u/s 9. The appeal of the petitioner was dismissed by the Additional District Judge.

2. (IV) CW.3822/1999

Petitioners case is that he was allotted a shop bearing No. T.4/3, Pratap Chowk Shopping Complex, Delhi, being an ex serviceman. The license was renewed from time to time and a fresh license deed was entered into between the parties. The respondents accepted the license fee/rent up to 27.11.1998 and the petitioner continued in lawful possession. Respondents started harassing the petitioner to pressurize the petitioner either to increase the rent or vacate the shop. The Association filed a suit for injunction. Interim stay was not granted in the suit and the appeal. Hence the Revision Petition was filed, wherein dispossession was stayed. Respondents closed the main gate illegally. Writ petition had to be filed to get the main gate opened. Forcible possession of one of the quarters was also taken. Respondents were harbouring ill will and issued a letter claiming that the shop in question was required for extension of the Delhi area Primary School. Subsequently, they sought possession of the shop on the ground that it was unsafe and it was required for extensive repairs. A show cause notice to vacate the shop was given. Petitioner questions the competence and jurisdiction of the officer issuing the notice. An order dated 29.5.1999 determining the petitioner to be an unauthorised occupant and directing service of the order for vacating premises u/s 5(1) of the Act was passed on 29.5.1999. Petitioner preferred an appeal against the order, which was dismissed in limine by the Additional District Judge, vide orders dated 28.6.1999.

2(v) CWP No. 3824/1999

Husband of the petitioner was allotted shop No. T-4/8, Pratap Chowk Shopping Complex, Delhi Cantt. Allotment had been made to the petitioner initially for a period of 2 years from 1.4.1980. Petitioner claims that another lease deed was executed between the husband of the petitioner and the President of India for the said shop. The petitioner's husband died in September, 1997. Petitioner as legal representative and widow, has been carrying on the business in the shop. The petitioner claims to have paid the charges to the respondents up to 16.10.1999. A show cause notice was issued which was replied on 17.6.1999. An order of eviction was passed. Petitioner claims that he did not commit breach of

any term and condition of the license. Respondents have acted contrary to the guidelines of the Government of India in initiating eviction proceedings. Reference is then made to the legal proceedings instituted by the shopkeeper's association. It is claimed that respondents as a result of the ill will issued a notice claiming that the shop in question was required for the extension of Delhi area Primary School. Petitioner pointed out that the same could not be used for the said purpose. The respondents took the position that premises had become unsafe and were required for extensive repairs. A show cause notice was issued, pursuant to which eviction order was passed. An appeal was preferred before the Additional District Judge. The same was dismissed vide the impugned order dated 28.6.1999.

3. The respondents have produced on record a chart showing the dates, on which the agreements came into existence and when the last renewed license deed expired in each of the cases. The dates on which the notices were issued are given as also the date of the order of eviction and the date of the order passed by the Additional District Judge. It is seen that rate of rebate was also sought to be increased from Rs. 200/- to Rs. 300/- w.e.f. April, 1997 in all the cases except that of Smt. Sushila Verma, where rate of rebate was @ Rs. 400/- p.m. and was enhanced to Rs. 600/- p.m. Respondents during the course of proceedings had indicated the outstanding amounts of the license deeds as also the other amounts due. Petitioners were directed to clear the arrears of license fee as well as that of rebate since there was no stay of recovery granted by the competent Court. This has been done.

4. Having noticed the individual facts and the grounds of challenge to the eviction petition, let us consider the submissions made.

Learned Senior counsel Dr. Verghese firstly submitted that the petitioners were being evicted because they could not pay the rebate amount demanded, after the same was increased, when the license deed came up for renewal. At one stage, the respondents had sought to increase the rebate by 100% resulting in several representations being made. It is submitted that the license money goes to respondents No. 1/UOI, while the rebate amount goes to respondent No. 2, i.e. the station headquarters of Delhi Cantt. It is thus contended that the demand for increase in rebate was without jurisdiction.

5. Dr. Verghese submitted that the eviction order was liable to be quashed since show cause notice for eviction was given on the ground that additional space for a primary school was required or premises were required for extensive repairs, but the eviction order was passed on a different ground, namely, that the license deed had expired and was not renewed. The Additional District Judge in appeal sustained the eviction order on the ground of the license deed having expired or not having been renewed. Learned counsel, Therefore, submitted that since the ground of eviction, namely, requirement for a primary school etc. was not sustained, the eviction order on a different ground namely that the license had expired or was not renewed, could not be sustained.

It was next argued that the requirement of statutory notice has not been met and there was denial of principles of natural justice. Subsequent proceedings had become illegal and were liable to be quashed. Learned counsel places reliance on *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others*, etc. Learned counsel submitted that there was also violation of the proposition laid down in *Charandas Malhotra Vs. Assistant Collector of Customs and Superintendent Preventive Service and Others*, , that notice on which action is proposed to be taken should be clear and unambiguous. Counsel submitted that the notice mentioned one ground and if the action is taken on some other ground or additional ground, the said notice would suffer from vagueness and it would not meet the statutory requirement of a valid notice. He further submitted that it was not permissible for the respondents to supplement the notice or facts by additional submissions or subsequent affidavits. Learned counsel submitted that want of a proper notice with regard to expiry of license deed, had caused grave prejudice to the petitioner in as much as the petitioners could have shown that the license was made to expire by respondent No. 2 to enforce the illegal payment of rebate money. Secondly, it was really not a case of expiry of license deed, rather of non-renewal by the respondents. The petitioners had complied with all formalities of their own except the payment of illegal demand of rebate. Further, the respondent who had no power to levy rebate could not have allowed the license deed to expire for its non-payment. Learned also attempted to assail the demand for rebate in these proceedings. It was claimed that it was the levy of rebate which could only be done by invoking taxing powers, which were with respondent No. 1. Respondents could have increased the license fee, which goes to public exchequer but the rebate money goes to respondent No. 2 for its own use. Respondent No. 2 had no power to levy rebate, which was in the nature of tax.

6. Let us first consider the plea of Dr. Verghese that the eviction order was liable to be quashed since the show cause notice was issued on the ground that additional space for primary school was required or the premises has become unsafe. While the eviction order had been passed on the ground of expiry of license deed. There are cases, where the license deed had admittedly expired and had not been renewed. Upon expiry of license deed, by afflux of time and its non renewal, a formal notice under the Public Premises Act is not required for termination of the license deed. However, in this case notice that was served, duly satisfied the requirement of Section 4 of the P.P. Act. Notice duly intimated the petitioners reasons for the Estate Officer's opinion as to why the petitioners had become unauthorised occupants and should be evicted. The reasons as given i.e and expiry of license deed for becoming unauthorised occupants is sufficient by itself. The mentioning of other grounds would not and cannot operate to negate or vitiate the notice given or the ground of expiry of license deed. There is thus no merit in the submission that the eviction order passed could not be sustained because the Estate Officer and the Appellate Authority did not either

go into the question or determine the other grounds mentioned.

7. The second submission made by Dr. Verghese in case of Smt. Sushila Verma (CWP No. 1385/2000) was that the license deed had been duly prepared at an enhanced fee of Rs. 600/- per month plus security was prepared, but was not executed. The allotment letter dated 1.9.1998 was also proposed to be issued. In this case, as noted, the petitioner's husband, ex subedar, who was the licensee, had expired on 1.11.1996 i.e. even prior to expiry of the license term. Clause 6 of the license deed itself provided "In the event of death of the licensee prior to the expiry of the license period, the heir or legal representatives of the licensee will not be vested with any right for the use of the premises and shall not enter the premises except for the removal of the goods and belongings of the licensee with specific permission from the licensor."

8. Petitioner's husband as noted had died on 1.11.1996 while the license itself had expired on 12.8.1996 i.e. prior to his death. The license, as noticed earlier, was not hereditary and the petitioners or other legal representatives did not, Therefore, acquire any right to inherit the license, which otherwise stood determined with the death of the licensee and in any case had even expired by efflux of time. In these circumstances, no notice was in any case required for termination of the license. Reference is invited to Malaykumar Banerjee Vs. Union of India and others, . In the above case, the South Eastern Railway had granted a license for tea snacks etc. at the main South Eastern Railway Hospital for a period of two years. During the license period, violation of some terms is alleged by Railways. The railways decided not to extend the license. The decision was communicated but the Licensor refused to accept the communication. Show cause notice was thereupon issued u/s 4(2) of Public Premises (Eviction of Unauthorized Occupants) Act 1971. Reply was given denying the allegations. Eviction order was passed by the Estate Officer u/s 5(1) of the Act. The Licensee having lost in appeal before the District Judge. In the writ petition before the High Court, contended that notice terminating license being issued by the canteen staff committee was not issued by a Competent Authority. The Court repelled the argument as fallacious. It accepted the railway's contention that upon expiry of the license, the licensee became an authorized occupant as no fresh license was granted. It was, Therefore, immaterial whether any notice terminating the license was given or not. The Court also declined to go into the question of the particular period for which license was given or not in writ proceeding, the same being a pure question of law. It was further held that acceptance of license fee after issuance of show cause notice would not amount to acquiescence.

9. In the instant case, petitioners had duly availed of the opportunity of putting across their submissions before the Estate Officer, who had passed the order u/s 5 of the PP Act. Petitioners in the appeal had confined their ground to the plea that the appellants/petitioners were authorized occupants of the suit premises and, Therefore, not liable to be evicted. Petitioner contended that the grounds on

which eviction was sought suffered from contradictions inasmuch as in some cases, it was claimed that the premises were required for expansion of Primary school while in some, it was contended that the premises have become unsafe.

10. In the case of petitioners, the license had expired and petitioners were duly notified of the same. Hence, the petitioners were unauthorised occupants. The applicability of the P.P. Act to these proceedings is not in question. The license deed itself provides that the licensee could be evicted under the P.P. Act. The submission, that the eviction order is vitiated by lack of statutory notice or the notice itself was not as per the statutory requirements, is devoid of merit.

11. Dr. Verghese argued that the real reason for non renewal of the license deed was the arbitrary and exorbitant rebate that was demanded by the respondents. He submitted that the rebate was not part of the license fee and did not go to the exchequer but went to the account of the Commandant. The non-renewal of the license was on account the unwillingness of the petitioner to pay the amount of rebate being demanded. He, Therefore, submitted that non-renewal was for a collateral purpose and eviction based on such collateral purpose ought not to be sustained. I am afraid, the petitioners cannot be permitted to raise this plea in these proceedings belatedly. This was neither a ground, which was urged before the Estate Officer or a ground taken in appeal. In any case, the said ground is totally irrelevant under the P.P. Act.

12. Learned counsel lastly contended that the entire action on the part of the respondents smacked of vindictiveness. He submitted that allotment to petitioners was under a welfare scheme, which was intended for the benefit of ex-servicemen and their legal heirs/representatives. Before an ex-serviceman is fully rehabilitated, he is sought to be disrupted from the vocation in which he engaged himself. Allegations of pick and choose, favoritism and of discriminatory in this regard were made. This Court had, Therefore, issued a direction calling upon the respondents to file their policy in this regard. Respondents in an affidavit filed in CWP No. 1385/2000 have listed the various categories of persons in order of priority, who were eligible for allotment under the Scheme. These were, namely, (i) War Widows and IPKF Widows; (ii) ex-servicemen, who are disabled but are fully competent to run business of their own; (iii) Retired ex-servicemen or the widows of such ex-servicemen; (iv) Ex-servicemen who had taken premature retirement or the widows of such e-servicemen; (v) Ex-servicemen, who were released on medical ground but are in receipt of medical ground pension of 50 per cent lastly civilians.

13. Respondents have clarified that as long as persons, individuals in the category specified hereinbefore were available, allotment to civilians would not be made unless it was for a trade for which the earlier categories would not opt for. Learned counsel also urged and explained that the plea with regard to the discrimination was completely misconceived. The whole purpose was to provide immediate relief and succor to ex-servicemen or their widows. Once some relief had been provided for a certain period, it would be others, who are in the waiting

list and waiting for some relief, who should get it rather than those who have once been provided relief seek to perpetuate the benefit received.

14. From the foregoing, it would be seen that there is also no merit in the contention that respondents have a discriminatory policy in this regard.

15. In these cases, interim directions were given for the petitioners to make up the deficiency in payment of license fee and other charges. To sum up the license deeds issued in favor of the petitioners or other ex-servicemen have already expired. Notice of termination of the license deed was thus not required, the license having expired. The ground of expiry of the license was sufficient for the purposes of notice u/s 4 of the P.P.Act. The P.P.Act was clearly applicable to these proceedings. Notice u/s 4 did not stand vitiated on account of mention of additional ground such as requirement for the space for School or the premises being unsafe. Petitioners were clearly unauthorised occupants but had overstayed and enjoyed the limited facility for which other ex-servicemen and more deserving cases were wait-listed. Besides, some of the petitioners had also been in default.

In view of the foregoing, I am of the view that the writ petitions have no merit and deserve to be dismissed and are dismissed. The petitioners are given time of one month to vacate subject to payment of applicable charges/damages.