

(1986) 08 DEL CK 0049

In the Delhi High Court

Case No : Civil writ Petition No. 968 of 1977

Suresh Chander Vohra and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-08-1986

Acts Referred:

Easements Act, 1882 — Section 52

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5

Citation : (1986) 08 DEL CK 0049

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : D.K. Kapur, with Sanjiv Khanna, for the Appellant; Rajinder Dutt, for the Respondent

Judgement

Mahinder Narain, J.—This writ petition has been filed by Suresh Chand Vohra against the respondents, whereby he seeks to have two orders of the respondents dated 13/14th Oct. 1977 (Annexure A-16) and dated 29th Nov. 1977 (Annexure A-18). These orders imposed a condition on the petitioner requiring him to pay licence fee with respect to shop No. 57, Kasturba Nagar Market, at the enhanced rate of Rs. 251/- per month w.e.f. Dec. 1969. By Annexure A-16, he was directed to pay interest on the arrears @ 12 per annum w.e.f. 1st Dec. 1969. The facts giving rise to this petition are that the petitioner sought allotment by tenders of shop in Kasturba Nagar Market by making a tender on the same. Shop No. 57, Kasturba Nagar Market was allotted to him w.e.f. 25th Aug. 1969. The shop was given on hence. The licence fee was fixed at Rs. 167/- per month. The acceptance of tender is Annexure A-1 to the writ petition. After the acceptance of the tender a formal licence deed was executed between the petitioner and the respondents. This is not disputed. Unfortunately a true copy of the licence deed which was executed between the parties subsequent to the acceptance of tender, has not been filed either by the petitioner or by the respondents. Mr. Rajinder Dutt, learned counsel for the respondents, has, however, brought a printed form of the licence terms which

were printed, as is evident from the note at the foot of the schedule to the printed form on or about 30th July, 1969 and 4500 copies were printed. The notation at the foot of the printed form reads

M.G.I.P.K.-I.D. Est./69.37.7.1969-5000

1A. The printed endorsement makes it clear that on and after 30th July, 1969 the terms of the licence have been as mentioned in the printed form.

2. Clause 8 of the licence, which is relied upon by Mr. Rajinder Dutt, reads as under:-

The licensee (s) shall not permit the said premises or any part thereof being used by any other person for any purpose, whatsoever, without the previous consent in writing of the Government and in default thereof shall be liable for ejectment. The licensee (s) shall not introduce any partner nor shall he/they transfer possession of the premises or any part thereof or otherwise carry on the business in the premises with any other person, or assign, transfer, change or otherwise alienate his interest in the premises.

3. After execution of the licence deed what happened was that the petitioner was unable to pay the licence fee, and arrears accumulated. He made various representations after receipt of notice of termination of licence on 19th Feb. 1971, that he be permitted to pay the arrears off in monthly instalments.

4. The respondents considered the representations made, and by their letter dated 1st Aug. 1972, permitted the petitioner to pay the arrears in 12 monthly instalments.

5. It is apparent from the counter-affidavit filed by the respondents that all arrears were paid by the petitioner about 30th May, 1974.

6. Meanwhile what appears to have happened is that in pursuance to the notice of eviction on the ground of non-payment of licence fee eviction orders were passed under S. 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The eviction orders were passed for non-payment of licence fee on 29th Mar. 1974.

7. Apparently the petitioner kept on making representations and continued to occupy shop No. 57, Kasturba Nagar Market in spite of the eviction orders. The petitioner also informed the respondents on 27th Mar. 1974, that there had been in existence between him and some members of his family a partnership which was carrying on the business at and from shop No. 57, Kasturba Nagar Market, New Delhi.

8. Before the information was sent by the petitioner on 27th Mar. 1974 that there was a partnership functioning at and from shop No. 57, by a letter dated 17th June, 1974 which is annexed to the writ petition as Annexure A 8, the respondents gave conditions on the basis of which they were prepared to restore shop No. 57 to the petitioner. The said letter reads as under:-

Government of India

Directorate of Estates

No. DE/MKT/34(57) 166

New Delhi, the 17-6-74

To

Shri Suresh Chander Vohra,

Shop No. 57, Kasturba Nagar Market

New Delhi.

Sub: Restoration of shop No. 57, Kasturba Nagar Market, New Delhi.

Dear Sir,

I am directed to refer to your letter dated 21-5-74 on the above mentioned subject and to state that shop No. 57, Kasturba Nagar Market, can be restored in your name with effect from 21-5-1974 provided you

i) Agree to pay licence fee at Rs. 167/- p.m. or as may be fixed by the Government from time to time.

ii) Execute fresh licence deed on stamp paper worth Rs. 2.25 (pro forma enclosed).

iii) Submit an affidavit at stamp paper worth Rs. 3/- (pro forma enclosed) sworn before 1st Class Magistrate.

iv) Submit your latest photograph of passport size duly attested by 1st Class Magistrate or any Gazetted Officer.

The above requirements should be complied with within a period of 15 days from the date of issue of this letter, failing which it will be assumed that you are not interested in the restoration of the allotment and the matter regarding restoration of allotment would be treated as closed.

Yours faithfully,

Sd/- (S.S. Chowdhury)

Asstt. Director of Estates.

9. Apparently after the disclosure about the existence of the partnership, the respondents did some rethinking and by their letter Annexure A-12, refused to restore the premises to the petitioner taking up the position that the petitioner having carried on business in partnership along with three others without permission from the respondents the plea of restoration cannot be acceded to by the respondents. Thereafter on 3rd Aug. 1976, the respondents actually and physically dispossessed the petitioner from the premises shop No. 57, Kasturba

Gandhi Nagar Market.

10. Apparently on representation fresh terms were offered on 14th Oct. 1977 which are Annexure A-16 to the writ petition. By this what is stated by the respondents is that the respondents are willing to consider the "regularisation" of shop No. 57 upon the petitioner paying licence fee @ Rs. 251/- per month from 1st Dec. 1969 in lump sum. Interest was also demanded on this amount on the arrears worked out on the basis as if the licence fee was not Rs. 167/- but Rs. 251/- at the rate of 12% per annum from 1st Dec. 1969. The date 1st Dec. 1969 appears to have been the date on which the partnership was entered into between the petitioner "and other members of his family." It is on receipt of this letter dated 14th Oct. 1977, it appears, that the petitioner made a representation to the Minister of Works and Housing on 23rd Oct. 1977, and in response to that representation it was communicated to the petitioner that the arrears of licence fee which means the difference between the licence fee which had been paid up at the rate of Rs. 167/- per month and Rs. 251/- could be paid by the petitioner by five equal monthly instalments. The petitioner did not accept what was stated in the letter dated 14th Oct. 1977 read with the letter dated 29th Nov. 1977, and has filed this petition.

11. A licence is a privilege to do something in property which would otherwise not be permissible. This is evident by S. 52 of the Easements Act. 1882. Clause 8 of the licence, reproduced above, also indicates that the use of shop No. 57, Kasturba Nagar Market is a personal privilege. Being a personal privilege, the respondents were entitled to terminate it in terms of the agreement between the parties.

12. At the time of admission of this writ petition, stay was ordered by this Court to the effect that shop No. 57 should not be allotted to anyone else. The stay has continued and the premises is still locked up.

13. During the course of arguments, Mr. D.K. Kapur stated that if time is granted to his client to make payment in terms of the letter dated 14th Oct. 1977 as modified by the letter dated 29th Nov. 1977, then the petition can be disposed of. Mr. Kapur wanted time for the benefit of his client as almost 10 years have elapsed since 1st Aug. 1976. Respondents did not have any objection to this course being adopted. Calculation of the amount due has been made by Mr. Rajinder Putt's clients. A sum of Rs. 66,187.10p. is now due. If time is granted to make payment of the amount then the amount of monthly licence fee at the rate of Rs. 251/- will be added to that amount.

14. In terms of agreement between the parties. I grant four months time to the petitioner to make the payment, If the amount of Rs. 67,191. 10p. is paid by the petitioner by 31st Dec. 1986, then the respondents shall deliver the possession of shop No. 57, Kasturba Nagar Market, as agreed, to the petitioner. Fresh licence deed would be executed on or before that date. If the aforesaid amount is not paid in the aforesaid manner, the writ shall stand dismissed. No order as to

costs.