
(2016) 02 DEL CK 0220

In the Delhi High Court

Case No : W.P. (C) 2531/2015 & CM No. 4511/2015

Union of India and Others

APPELLANT

Vs

Gulab Singh

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1),
Section 4(2), Section 5(1), Section 9

Citation : (2016) 5 ADDelhi 190 : (2016) 162 AIC 472 : (2016) 228 DLT 353 :
(2016) 155 DRJ 425 : (2016) 1 RCRRent 355

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : R.V. Sinha and A.S. Singh, Advocates, for the Appellant; S.S. Jain,
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—1. This petition under Article 226 of the Constitution of India impugns the order dated 2nd July, 2014 of the District Judge (Hqs.) Delhi allowing the appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) being PPA - 7/2013 (Unique Case ID No. 02401C0076392013) filed by the respondent by setting aside the order dated 6th February, 2013 of the Estate Officer under Section 5(1) of the Act of eviction of the respondent from the premises comprising of two rooms, kitchen-cum-godown, verandah, bathroom and toilet in Old Hostel (Hostel no. 1) and one room and kitchen in the New Hostel (Hostel no. 2) of petitioner No. 2 National Institute of Communicable Diseases now known as National Center for Disease Control 22, Sham Nath Marg, Delhi and remanding the matter to the Estate Officer for adjudication afresh.

2. Notice of the petition was issued and though an opportunity of filing reply was sought by the respondent and granted but no reply was filed and the opportunity

to file reply/counter affidavit was closed. The matter was listed on 1st July, 2015 for hearing arguments, when adjournment was sought by the counsel for the respondent and granted subject to payment of costs. The respondent however did not pay the cost and thereafter when the matter was posted on 14th July, 2015, the counsel for the respondent again sought adjournment. In the circumstances judgment was reserved granting an opportunity to the respondent to, subject to payment of costs, file written submissions. No written submissions also have been filed. I have perused the records.

3. The position which emerges is as under.

4. That the petitioner No. 2 Institute is a subordinate office under the Directorate General, Health Services, Ministry of Health and Family Welfare, Government of India and has its campus at 22, Sham Nath Marg, Delhi with two hostels therein for accommodating the participants in the various training courses undertaken by the petitioner/Institute.

5. Shri Govind Singh Rawat father of the respondent was allowed to provide food to the boarders of the said hostels and for the said purpose was permitted to store his goods in one of the rooms in the hostel. It is the case of the petitioner that the father of the respondent slowly encroached over certain other portions of the hostel also and after his death in the year 2007, the respondent as his son continued to occupy the same and render catering services in the hostel.

6. That in or about the year 2008 the petitioner No. 2 Institute invited tenders to run the Mess in the hostel as well as Staff Welfare Cafeteria. The respondent, fearing that thereby he will cease to provide catering services and would also be required to vacate the premises in his occupation, filed a suit in the Court of Civil Judge, Delhi for declaration that he is a tenant in the premises in his occupation and to restrain the petitioner No. 2 Institute from dispossessing him therefrom and also for directing the petitioner No. 2 Institute to recall the tender invited. The petitioner No. 2 Institute contested the said suit and the application of the respondent for interim relief in the said suit was dismissed vide detailed order dated 16th February, 2009.

7. That in or about the year 2009 the petitioner No. 2 Institute, to modernise its premises, decided to do away with the old structures / building including the hostel buildings in a portion of which the respondent was in an unauthorized occupation of and initiated proceedings under PP Act for eviction of the respondent and the Estate Officer vide order dated 26th June, 2009 passed an order of eviction of the respondent from the portion in his occupation.

8. The respondent preferred an appeal being PPA No. 27/2009 under Section 9 of the PP Act against the order of his eviction and Shri A.K. Chawla, District Judge, North vide order dated 11th May, 2012 allowed the said appeal observing that the Estate Officer had proceeded to pass the order of eviction with a pre-determined mind and without dealing with the contentions of the respondent and remanded the matter back to the Estate Officer for decision afresh in accordance

with law.

9. A fresh notice dated 11th October, 2012 under Section 4(2) of the PP Act was issued to the respondent and the Estate Officer after considering the reply of the respondent and the material placed on record and hearing the parties, vide order dated 6th February, 2013, passed an order of eviction of the respondent reasoning (i) that there was no merit in the challenge to the appointment of the person acting as the Estate Officer being the Estate Officer since he had been notified so and thus had the power to act as the Estate Officer under the PP Act; (ii) it stood established that the father of the respondent was permitted only to store his goods, for the purposes of providing catering services in the hostels, in a room in the hostel but had subsequently encroached over other portions; (iii) that the respondent, in the suit filed by him had also not been able to even prima facie establish that he was a tenant in the portion in his occupation; (iv) that the pendency of the civil suit otherwise did not come in the way of proceedings under the PP Act; (v) that neither the respondent nor his father were at any time the employee of the petitioner No. 2 Institute nor had the premises in their occupation been ever allotted to them; (vi) that the respondent was in unauthorized occupation of the premises; and, (vii) that the premises in occupation of the respondent were required by the petitioner No. 2 Institute.

10. The respondent again preferred an appeal under Section 9 of the PP Act against the order of eviction passed by the Estate Officer and the same has again been allowed by Shri A.K. Chawla, District Judge (Hqs.) vide the impugned order dated 2nd July, 2014 reasoning (i) that it was admitted by the petitioner No. 2 Institute in the written statement filed in the civil suit aforesaid filed by the respondent that the father of the respondent had been inducted as a tenant in the premises and was paying rent therefor; (ii) that the plea of the respondent of being a tenant in the premises could be adjudicated only after both parties had led evidence and could not have been decided without evidence; (iii) the Estate Officer had not afforded any opportunity to the respondent to substantiate his plea of being a tenant in the premises; (iv) the Estate Officer had decided merely on the basis of the notice issued to the respondent and the reply of the respondent thereto; (v) though a counter reply had been filed by the petitioner No. 2 Institute but the same was not even signed by anyone on behalf of the petitioner No. 2 Institute; (vi) thus the finding of the Estate Officer of the respondent being in unauthorized occupation of the premises could not be sustained; (vii) that there was a difference in the notice issued first on 27th January, 2009 and the notice dated 11th October, 2012 subsequently issued pursuant to the earlier remand of proceedings; that while the basis of the notice dated 27th January, 2009 was that the respondent had not vacated the premises in spite of notice, the basis of the subsequent notice dated 11th October, 2012 was of the respondent having been in occupation of the premises without valid authority; and, (ix) merely on the premise that the premises in occupation of the respondent are public premises, adjudication of all the disputed questions of fact arising could not be obviated.

11. Accordingly Shri A.K. Chawla, District Judge (Hqrs) again remanded the matter to the Estate Officer for framing issues and to thereafter grant opportunity to lead evidence and decide afresh after hearing the parties.

12. To say the least, not only the impugned order dated 2nd July, 2014 but also the earlier order dated 11th may, 2012 of the same learned District Judge, of allowing the appeal under Section 9 of the PP Act surprised me. Thereby the possession of the respondent of the premises has been perpetuated for over five years and at the cost of an important public project, construction whereof must have been held up / delayed owing to unauthorized occupation of the respondent.

13. Let us examine the reasons for which the learned District Judge has this time around vide order dated 2nd July, 2014 set aside the order of eviction passed by the Estate Officer.

14. One of the reasons given is that the plea of the respondent of being a tenant in the premises required adjudication by adducing evidence.

15. The learned District Judge in reasoning so has shown total disregard to the well established law that PP Act being a special law, prevails over the Delhi Rent Control Act, 1958. Reference if any required in this regard can be made to judgment of the Constitution Bench of in Ashoka Marketing Ltd. Vs. Punjab National Bank , (1990) 4 SCC 406 also laying down that PP Act has been enacted to provide for speedy eviction of unauthorized occupants from government property. Thus, even if it were to be held that the respondent was a tenant in the premises, he was not protected from eviction. It is not the case of the respondent that there is any registered Lease Deed in his favour. Supreme Court in Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF) , (2008) 2 SCC 728 has held that institution of proceedings for eviction itself acts as determination of tenancy. Thus, it cannot also be said that there was any need for determination of tenancy if any of the respondent before initiating proceedings under the PP Act. It cannot also be forgotten that this was the second round before the learned District Judge with the District Judge, having set aside the earlier order of eviction by remanding the matter.

16. I fail to fathom that in this state of law, what evidence the learned District Judge expected to be led and wherefrom it could be said that the respondent has a right to continue in the premises.

17. The only other reason given by the District Judge is of the difference in phraseology of the notices dated 27th January, 2009 and 11th October, 2012 under Section 4(1) of the PP Act. Again, I fail to understand what difference it makes. The learned District Judge also admits that the premises are public premises. Once that is so and the law is that the respondent even if having any tenancy rights in the premises becomes an unauthorized occupant upon his tenancy being determined, the phraseology does not make a difference.

18. The counsel for the petitioner No. 2 Institute has also referred to Jafar

Saddique Vs. Delhi Development Authority , 2003 (105) DLT 263 and to my judgment speaking for the Division Bench in Suresh Chand Gupta Vs. Municipal Corporation of Delhi 2013 (4) AD (Delhi) 84 and to the judgment dated 15th September, 2005 of this Court in W.P.(C) No. 7317/2002 titled Rawail Singh Vs. UOI.

19. The order dated 2nd July, 2014 of the learned District Judge is thus found to be perverse and vitiated and is set aside. The whole purpose and policy behind enactment of PP Act appears to have been given a go-bye, by requiring the Estate Officer to follow the procedure as of a suit. The petition is allowed. The order of eviction of the respondent is reinstated and the petitioner shall have liberty to immediately evict the respondent in accordance therewith.

20. The respondent is further burdened with costs of Rs. 10,000/- besides the costs earlier imposed of Rs. 10,000/- as costs of these proceedings.