
(2012) 10 DEL CK 0305
In the Delhi High Court
Case No : Writ Petition (C) 7294 of 2011

Vishwa Mittar Anand

APPELLANT

Vs

Govt. of India and Another

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(k), 14(11)

Citation : (2012) 10 DEL CK 0305

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : M.M. Hashmi, for the Appellant; Sarfaraz Khan, for R-1/UOI, Mr. Sunil Mittal and Ms. Jasmeet Kaur for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher

1. By this writ petition directions are sought qua the respondents for grant of permission to run a dry-cleaning and cloth pressing unit in the tenanted premises being: Shop No. 5, Property No. 100-A, Ramesh Nagar, Single Storey, New Delhi - 110015 (hereinafter referred to as the said property). The other prayer in the writ petition is general in nature, which seeks, directions of the Court which, it may deem fit and necessary in the facts and circumstances of the case. The present petition arises in the background of the following broad facts: The petitioner's mother was inducted as a tenant in the property in issue in September, 1973. Respondent no. 2 is, admittedly, the landlord of the said property. The superior landlord/head lessor is respondent no. 1.

2. It appears, on 13.02.1986 respondent no. 2 filed a petition u/s 14(1)(k) of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) against the then tenant of the property in issue before the Rent Controller, Delhi. During the pendency of the proceedings before the Rent Controller, the mother of the petitioner died, whereupon the petitioner's father Mr. N.D. Anand was impleaded

as a party to the said proceedings. Upon the demise of Mr. N.D. Anand, his legal heirs were impleaded as parties, in the said eviction proceedings, instituted u/s 14(1)(k) of the DRC Act, as indicated above.

3. It is the petitioner's case that all along in the property in issue, the petitioner was carrying on the business of dry cleaning and cloth pressing. It is precisely for this reason that the proceedings u/s 14(1)(k) of the DRC Act was taken out by respondent no. 2.

4. To cut a long story short, on 26.05.2003, respondent no. 2's petition was allowed and an inquiry was ordered by the Rent Controller u/s 14(11) of the DRC Act. It is not disputed by the petitioner that the Rent Controller, after recording evidence produced by parties came to a conclusion that the petitioner, alongwith other legal heirs of N.D. Anand, had been misusing the said property. Consequent to this finding, the petitioner and other legal heirs of N.D. Anand were directed to stop misuse of the property in issue and were in addition called upon to deposit, in the form of compensation/misuser charges, a sum of Rs. 57,000/-. The petitioner was given liberty to deposit the said money by way of a fixed deposit with a bank in his own name, with an endorsement on the FDR and notice to the bank concerned that, the FDR shall not be transacted on behalf of the petitioner.

5. The petitioner submits that needful was done by virtue of a FDR being made out, as directed for a sum of Rs. 57,000/-.

6. To the misfortune of the petitioner, upon an application moved by respondent no. 2, eviction orders came to be passed by the Rent Controller on 06.05.2005. The orders for eviction came to be passed since the Rent Controller came to the conclusion that there was non-compliance of the directions issued by him vide order dated 26.05.2003. The petitioner, of course, contends that there was only a technical flaw, though otherwise he had substantially complied with the directions of the Rent Controller. Nevertheless, the petitioner being aggrieved by the order of the eviction, preferred a first appeal before the Rent Controller Tribunal. Vide order dated 16.08.2005, the appeal was allowed and the order of the Rent Controller was set aside.

7. It was now the turn of respondent no. 2 to feel aggrieved and, accordingly, a petition was moved in this Court. The said petition was numbered as CM(M) 1920/2005. This court vide order dated 01.08.2006, was pleaded to dismiss the said petition, filed by respondent no. 2.

8. Respondent no. 2 being aggrieved by the judgment of this court dated 01.08.2006, preferred a Special Leave Petition. The Supreme Court, admitted the appeal and disposed of the same vide order dated 08.12.2010. The admitted appeal was numbered as : Civil Appeal no. 4540/2007. Since, the order of the Supreme court, is crucial to adjudication of the present writ petition and being short, it is extracted hereinafter:

We have heard learned counsel for the parties.

1. Learned counsel appearing for the landlord submits that in case the tenants gets the permission from the concerned authorities to start business of dry cleaning from the premises in question in that event landlord would also accord permission to the tenants.

2. The respondents (tenants) are granted time to vacate the premises upto 31st December, 2014 on filing usual undertaking by all the legal representatives within four weeks from today in the Registry.

3. In view of this order passed by this court, the impugned judgment is set aside and the appeal is allowed and disposed of accordingly. No costs.

9. The effect of the order of the Supreme Court is that: (i) the judgment of this court dated 01.08.2006 has been set aside; (ii) the petitioner has been given time to hold on to the property in issue till 31.12.2014 subject to the petitioner filing usual undertakings. It is not disputed that undertakings have been filed by the petitioner; and (iii) Lastly, Respondent no. 2 (who was the petitioner in the Supreme Court) would accord permission to the petitioner to commence the business of dry cleaning from the property in issue, in the event, the petitioner is able to obtain said permission from the concerned authorities.

10. The petitioner, pursuant to the order of the Supreme court dated 08.12.2010, eventually, moved two applications before respondent no. 1. The said applications were filed apparently on 17.11.2010 and 22.12.2010. Respondent no. 1, however, vide communication dated 29.06.2011 rejected the petitioner's request for grant of permission to carry on the business of dry cleaning and cloth pressing/ironing in the property in issue, on the ground that such permission can only be granted to the "lessee"(in this case respondent no. 2) under the "Lease Administration".

11. The petitioner being aggrieved by this stand of respondent no. 1 approached this court by way of the present writ petition. Learned counsel for the petitioner submits before me that the ground for refusal is unsustainable in view of the order of the Supreme Court dated 08.12.2010. Mr. Hashmi, who appears for the petitioner, says that the consent of the lessee, i.e., respondent no. 2 is inbuilt in the order passed by the Supreme Court as it was against the issue of misuser that the proceedings have reached the Supreme Court and culminated in the order passed by the Supreme Court. Mr. Hashmi has also referred me to the office order of respondent no. 1 bearing no. 7/83 (in short office order) to demonstrate that certain businesses, which are otherwise not permissible, as to the demised property is in residential area, fall under the Category of condonable breaches under the said office order. It is Mr. Hashmi's contention that as per item no. 69, appearing in the said office order, ironing of clothes is a condonable breach; being an activity which is permissible with the consent of lessee.

12. Mr. Hashmi says that, in these circumstances, the order of respondent no. 1

dated 29.06.2011 ought to be set aside and prayers as sought for in the writ petition be granted.

13. Mr. Khan, who appears for UOI, says that respondent no. 1 has no privity of contract with the petitioner. Respondent no. 1 only recognizes the lessee, i.e., respondent no. 2 and, therefore, permission, if any, would be granted if, respondent no. 2 were to approach respondent no. 1. It is thus submitted by Mr. Khan, since respondent no. 2 has not approached respondent no. 2, there could be no other order in the instant case but the order as passed by respondent no. 1 on 29.06.2011.

14. Mr. Mittal, who appears for respondent no. 2 submits that the petitioner's entire case is based on a premise that he has requisite trade license in his favour, to run a dry cleaning/cloth pressing business. Mr. Mittal has drawn my attention to page 33 of the paper book to demonstrate that the license, on which reliance is placed by the petitioner, is actually a license for cloth pressing business, which was issued on 25.04.2003 and which, has expired since long, i.e., on 31.03.2004. Mr. Mittal's contention is that the petitioner presently has no valid and subsisting license in his favour for running the aforementioned business.

15. Mr. Mittal further submits that respondent no. 2's inquiries under the Right to Information Act, 2005 (in short RTI Act) evinced a response from the Municipal Corporation of Delhi (MCD) dated 15.07.2003. A perusal of the said reply, to which, my attention was drawn, would show that the dry cleaning business is not permitted, and that the only business which is permissible is a cloth pressing business. The petitioner apparently was issued, a cloth pressing license under the ad hoc registration policy dated 27.09.2000, on the basis of an affidavit and rent receipt submitted by him.

16. In other words, Mr. Mittal says that MCD, will not issue a license for running a dry cleaning business and that in any case the license for cloth pressing has expired as per the petitioner's own showing on 31.03.2004.

17. Apart from the above, Mr. Mittal has also drawn my attention to item no. 99, in the very same office order, on which Mr. Hashmi placed reliance. Mr. Mittal submits that item no. 99, applies to a rehabilitation colony in Delhi. Under the said provision lessee and/or tenant residing in the premises are allowed to run dry cleaning business provided condonable area does not exceed 300 sq. ft. It is not disputed by Mr. Mittal that the property in issue falls within the rehabilitation colony. Mr. Mittal, however, submits that since the petitioner is not residing in the said premises, he cannot take advantage of the said provision.

18. Mr. Mittal concluded his submission by drawing my attention to respondent no. 2's affidavit wherein it is averred that the petitioner has closed his business in the property in issue and is presently operating from premises situated at WZ 508 A/1, Basai Darapur, New Delhi. It is Mr. Mittal's contention that in these circumstances the relief prayed for by the petitioner ought not to be granted. The petitioner is a businessman and not a dhobi and, therefore, provisions to which

reference has been made are put in place to benefit those persons, who do not have the necessary wherewithal.

19. Having heard the learned counsels for the parties and on perusal of the record, I am of the view that the following emerges:

(i) Undoubtedly, pursuant to the order of the Supreme Court dated 08.12.2010, the orders of the courts below (which include this court and the authorities constituted under the DRC Act) have merged in the said order of the Supreme Court. The petitioner can continue as a tenant in the property in issue, till 31.12.2014.

(ii) Respondent no. 2 cannot object to the petitioner seeking permission to commence the business of dry cleaning from the property in issue. As a matter of fact, respondent no. 2 took a stand before the Supreme Court that if any such permission is sought, he will accord permission to the tenant, i.e., the petitioner herein.

(iii) In view of the aforesaid, the stand taken by respondent no. 1 in its communication dated 29.06.2011, is completely unsustainable, since respondent no. 2's consent is already on record, as is reflected in the order of the Supreme Court dated 08.12.2010.

20. The question, however, still remains which is that, it could not be the intent of the order of the Supreme court that if any permissions are required under law, the petitioner could claim exemption qua those.

21. The petitioner has not been able to show anything to the court which would persuade the court at this juncture to come to a conclusion that he has a requisite license to run either the dry cleaning business or the cloth pressing business from the property in issue.

22. Therefore, the net effect of the discussion above will be that the petitioner would be free to once again apply to respondent no. 1 for seeking permission to run the dry cleaning business/cloth pressing business from the property in issue. The petitioner will, however, have to do the necessary work, including obtain a license from the MCD, if that is necessary to obtain the permission from respondent no. 1. Respondent no. 1, however, shall not reject, as it did vide order dated 29.06.2011, the petitioner's application on the ground that it is respondent no. 2, who should approach the petitioner.

23. I had put a specific query to Mr. Mittal as to whether Respondent no. 2 would oppose the application of the petitioner, if made. Mr. Mittal quite curiously, contrary to the stand taken before the Supreme Court, answered in the affirmative. This stand of respondent no. 2 borders on contempt. As indicated above, respondent no. 1 can not process the application of the petitioner on this ground.

24. At this stage, Mr. Mittal says that respondent no. 2 will support the cause of

the petitioner, if otherwise the petitioner is entitled to a permission, in accordance with the law, and that, there was no intention to take a stand contrary to what was taken in the Supreme court.

25. The petition is thus disposed of with liberty to the petitioner to approach respondent no. 1 with the requisite material and permissions so that the application for grant of permission can be processed. Respondent no. 1 thereafter is free to take a decision in the matter, in accordance with the law. The petition stands disposed of.