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**(2006) 05 DEL CK 0029**

**In the Delhi High Court**

**Case No : R.A.No. 76 of 2006 in WP (C) No. 2588 of 2002**

Yashwant Singh Negi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 19-05-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2006) 05 DEL CK 0029**

**Hon'ble Judges : Manmohan Sarin, J**

**Bench : Single Bench**

**Advocate : V.K. Makhija and Shiv K. Goyal, for the Appellant; Kailash Gambhir, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Manmohan Sarin, J.—The present Review Petition is directed against the order dated 19.4.2004 by which the writ petition was dismissed. Petitioner Yashwant Singh Negi had filed the writ petition seeking a restraint on the respondents from cancelling the license of Shop No. 3, Lodi Road Complex-II, New Delhi, allotted to him. Petitioner had also sought a direction for waiver of payment of license fee from the date of allotment up to the date when electricity was provided to the shop, namely, 2.6.2000. The plea being that in the absence of electricity and water facilities, it was not possible to use the shop and make the payment of license fee. Petitioner sought to place reliance on a decision of this Bench in CWP No. 2175/1999 titled "Vishnu Dev Bhagat and Ors. v. Union of India". In the said writ petition, the Court had considered the plea of allottees of shops at Vasant Vihar for waiver of license fee. Allottees complained of non-availability of basic amenities like water and electricity in the shops allotted and, Therefore, waiver of the license fee till the same were made available. The Bench, after examining all factors including the respondents' defense of the shops having been allotted on "as is where is" basis and the petitioner therein having continued in possession, had permitted waiver of 50% of license fee up to a date fixed by the

Court, considering the conflicting claims regarding the date on which electricity was available.

2. The present petitioner's writ petition had, however, been dismissed vide the impugned order dated 19.4.2004, holding that the petitioner was not entitled to pursue and prosecute the same in view of the sub-letting of the allotted shop in question to one Rohitswa Tiwari.

3. The impugned order records that Shri Rohitswa Tiwari had approached the MTNL for grant of STD/ISD booth in the allotted shop and had submitted a GPA by the petitioner in his favor. A show cause notice had been issued to the petitioner against the alleged sub-letting. In the said proceedings on 1.4.2004, the petitioner had admitted the factum of occupation of the shop by Rohitswa Tiwari and his carrying on business from the shop in question. In view of this admitted position, the Court had declined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India and to entertain the writ petition and dismissed the same. The petitioner preferred an LPA against the same. LPA was dismissed as withdrawn with liberty to the petitioner to move an application for review. The Division Bench also directed:

Accordingly, the appeal is dismissed as withdrawn with liberty, as prayed. We, however, direct that unless already evicted, appellant shall not be dispossessed from the subject premises till a final decision is taken in the review application, provided the application is filed within ten days from today.

4. Mr.Makhija, as regards the delay in institution of Review Petition, submitted that the Review Petition was filed within time, i.e., on 13.9.2004; objections were removed on 11.10.2004 and was for the second time, re-filed on 16.10.2004. It was not the petitioner's fault if the Registry did not put up the case till 17.2.2006.

5. Learned counsel Mr.Kailash Gambhir submits that the petitioner deliberately did not pursue the Review Petition and got it listed after a period of two years. The petitioner was enjoying the benefit of a stay order which was to last till the Review Petition was decided and, Therefore, it is obvious that petitioner was in no hurry to pursue the matter.

6. In these circumstances, with the consent of both the parties, the Review Petition was taken up for hearing on merits disregarding the objection of delay.

7. Mr.V.K. Makhija, learned Senior Advocate submits that this Court should not have declined to entertain the writ petition and dismiss the same on the ground that sub-letting was apparent from the record. He submits that no objection had been taken on this ground in the counter affidavit by the respondent and the writ petition should not have been dismissed on the said basis, by the Court itself taking cognizance and arriving at a prima facie finding. Mr. Makhija submitted that other license holders in Writ petition No. 2588/2002 have received the benefit of 50% of waiver of the license fee on account of the absence of water

and electricity, for the relevant period. He submits that petitioner, who was also not having facility of water and electricity for the shop has been denied relief on the allegations of sub-letting. Petitioner ought not to be denied the benefit of waiver of 50% of license fee.

8. Mr. Kailash Gambhir submitted that the Court has rightly exercised its jurisdiction in declining to interfere in the writ jurisdiction as the petitioner had concealed the factum of sub-letting. A person, who sub-let, was not entitled to the discretionary relief in writ jurisdiction. Having concealed facts while filing the writ petition, the petitioner's case was clearly distinguishable from others, where the Court had in exercise of discretion under Article 226 of the Constitution of India, granted 50% waiver of license fee. No sub-letting was involved in the said cases.

9. The question which arises for consideration in this Review Petition is whether the Court could have taken cognizance of the record before it from which prima facie sub-letting was evident, to deny to the petitioner relief in exercise of discretion under Article 226.

10. While it is correct that in the counter affidavit, the respondents had averred that the license/tenancy of the petitioner had been terminated on its failure to pay the license fee, the same had been challenged in the appeal under the Public Premises (Eviction of unauthorized Occupants) Act before the District Judge. The petitioner, while filing the writ petition, had not disclosed the filing of said appeal. It was also contended that shops were allotted on "as is where is" basis and 6% rebate in monthly license fee had been provided for the period when the electricity was not available. The petitioner had not even paid the amount claimed after giving the rebate.

11. The Court while deciding whether to entertain a writ petition or not can take into account facts, which may be revealed from the record before it even though the said objection may not have been taken by the respondents in their counter affidavit. The question is of exercise of jurisdiction which is discretionary. The Court can definitely examine whether the writ petition has been preferred for the benefit of the original allottee or it was proxy litigation by a person to whom the original allottee or petitioner has transferred his rights. In the latter event, the court need not permit the petitioner to pursue the writ petition for the benefit of the sub-lettee. In the instant case, the record shows that inspection revealed sub-letting, unauthorized construction and encroachment. In the proceedings dated 1.4.2004, both petitioner Yashwant Singh Negi as well as Rohitswa Tiwari were present. Shri Tiwari had applied to MTNL for permission to set up a STD/ISD booth. He claimed to be in possession of the said booth. It was also brought out that Rohitswa Tiwari's income tax returns showed business income from this very shop. On the basis of evidence available in the said proceedings, the authorities had come to the conclusion that it was Rohitswa Tiwari, who was actually carrying on business and not the original allottee. Both the petitioner and Rohitswa Tiwari had signed the said proceedings.

The said record had been produced during the hearing of the writ petition originally and today also it was available to the parties and was perused by the Court. There is thus no violation of principles of natural justice. Reference may also usefully be made to the decision of the Supreme Court in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . While dealing with the cases, where principles of natural justice were not adhered to, the Court observed that there can be certain situations, in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned interference under Article 226 was not necessary. The Court further observed that in addition to breach of natural justice, prejudice must also be proved has been developed by the Supreme Court in several cases. Since K.L.Tripathi's case - (1984) 2 Scc 43, the Supreme Court has consistently applied the principle of prejudice in several cases. The Supreme Court made the above observations while dealing with the cases where the order of deemed vacation of the post had been passed against the officer without calling for an Explanation. This was a case, where an employee while posted abroad sought further extension of one year. Show cause notice was not issued. The Court also noticed that conduct of the employee also dis-entitled him to relief under Article 226 of the Constitution of India.

12. On perusal of the record, I am satisfied that the present writ petition is being pursued by the petitioner for the benefit of the sub-letter and the party in possession namely, Rohitswa Tiwari. The Court was justified in declining to entertain the writ petition in view of conduct of the petitioner.

13. Review Petition has no merit and does not suffer from any error apparent on the face of the record. Accordingly, it is dismissed.