

(2012) 08 DEL CK 0178

Delhi High Court

Case No: Writ Petition (C) No. 811 of 2002

Suresh Chand Gupta

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision: Aug. 16, 2012

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: Vinay Kumar Garg, Mr. Lalit Gupta and Mr. Deepak Agarwal, for the Appellant;
Sparna Srivastava, Standing Counsel, MCD, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Gaur

1. Three fold relief sought in this petition is; firstly quashing of order of 12th September, 1988 whereby the lease of premises No. 1629, Queen Road, Delhi (hereinafter referred to as the subject premises) was allegedly terminated; secondly, quashing of order of 22nd August, 1991 (Annexure-L Colly.) vide which in proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 petitioner's eviction from the subject premises has been ordered by the Estate Officer; and thirdly, quashing of the appellate order of 13th July, 2001 (Annexure -A) upholding the eviction order. Show Cause Notice of 22nd July, 1988 (Annexure-E) was served upon the petitioner requiring removal of the sub-letting of a portion on the first floor of the subject premises and of stoppage of commercial use of part of the subject premises within seven days. In reply of 29th July, 1988 (Annexure-F), petitioner had disclosed that his relative-Pawan Kumar, the fourth respondent herein, was permitted to stay in one room on the first floor of the subject premises as a guest and that the petitioner is initiating legal proceedings to get the said Pawan Kumar evicted and that the subject premises were never used for any commercial activities whatsoever.

2. Not satisfied with the aforesaid reply (Annexure-F) of the petitioner, proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated against the petitioner, which resulted in passing of the Eviction Order (Annexure-L Colly.), wherein the finding returned is that termination of the lease of the subject premises is not in dispute and that proceedings for getting the portion of first floor vacated from the fourth respondent-Pawan Kumar were pending and that upon finding the reply of the petitioner not satisfactory, site inspection on the subject premises was conducted, which infact appears to be the basis of the eviction of the petitioner from the subject premises.
3. In the appeal filed by the petitioner, a ground was taken that neither any issue was framed nor evidence of the parties was recorded, which resulted in denial of opportunity to the petitioner to lead evidence.
4. Impugned order (Annexure-A) notes that the order of 12th September, 1988 terminating the lease of the petitioner in the subject premises was never challenged by the petitioner and while relying upon the Inspection Report of the subject premises, Eviction Order as well as order imposing damages for the misuse of the subject premises has been upheld.
5. At the hearing of this case, it was urged by petitioner's counsel that no Show Cause Notice prior to termination of the lease of the subject premises was issued and the Show Cause Notice of 29th October, 1987 was never received and the order of 12th September, 1988 purportedly terminating the lease of the subject premises was never produced before the Estate Officer or the Appellate Authority nor any evidence was recorded by the Estate Officer to the detriment of the petitioner.
6. While relying upon the decisions in Om Apartment Pvt. Ltd. Vs. DDA, 2009 (159) DLT 176; Damyanti Verma vs. LIC, 2011 (182) DLT 771 ; [Devasahayam \(D\) by LRs. Vs. P. Savithramma and Others](#), ; [New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another](#), ; Bhisham Dev vs. Estate Officer 2003(103)DLT 560; [State of Haryana and Another Vs. Mohinder Pal and Others](#), ; Union of India vs. Sunil Dutt 2010 (167)DLT 42, it was vehemently contended by learned counsel for the petitioner that in the absence of proof of the order terminating the lease of the subject premises, the petitioner cannot be treated as an unauthorized occupant and so, the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 stands vitiated and that denial of opportunity to lead evidence violates the principles of natural justice and that the ground of sub-letting no longer survives as the petitioner has been successful in getting the portion on the first floor on the subject premises vacated through a civil court order of 10th August, 2006 and some photographs of subject premises alongwith some receipts of electricity bills, cooking gas service (Annexure-C Colly) were placed on record alongwith short additional affidavit of the petitioner of 6th August, 2009 to indicate that the use of the subject premises is residential and finally, it was contended on behalf of the petitioner that there is no misuse of the subject premises by the petitioner and therefore the

orders impugned herein deserves to be quashed.

7. On behalf of the official respondents, it was urged that the eviction of the petitioner from the subject premises proceeds on the basis of the Inspection Report to which there is no worthwhile challenge and there is no infirmity in the orders impugned herein and that the petitioner had never sought an opportunity to lead the evidence and so, the petitioner suffers no prejudice. None had appeared on behalf of the private respondents to contest this petition.

8. Upon considering the submissions advanced, the orders impugned herein, the material on record and the decisions cited, it emerges that even prior to the stage of Show Cause Notice in the year 1987, the petitioner had taken steps to get the name of fourth respondent - Pawan Kumar removed from the MCD records in September, 1985 and upon receiving the Show Cause Notice petitioner had initiated proceedings before the civil court for getting one room on the first floor of the subject premises vacated from fourth respondent - Pawan Kumar and had ultimately succeeded in getting so done on 10th August, 2006 after the passing of the impugned order of 13th July, 2001 (Annexure-A). No doubt, the site inspection report of which reference is there in the MCD proceedings of 8th September, 1987, reveals that the occupation of the fourth respondent-Pawan Kumar was just on one room on the first floor of the subject premises but it also reveals that even the petitioner was putting another room on the first floor to commercial use.

9. A perusal of the record produced also reveals that on the basis of the aforesaid site Inspection Report, due to afore-noted violation of the Lease Deed, its cancellation was approved on 16th August, 1988 by the Competent Authority and so, the petitioner cannot be heard to say that no formal order terminating the lease of the subject premises was passed or that no Show Cause Notice was issued to the petitioner prior to the termination of the lease because in the proceedings of MCD of 10th August, 1988 it stands noted that the petitioner had sent reply of 29th July, 1988 (Annexure-F) which was considered prior to the termination of the lease of the subject premises. Therefore, the decisions relied upon by the petitioner are of no avail. Such a view is being taken because there is no worthwhile challenge to the site Inspection Report, which clearly indicates that the portion of the subject premises was being put to commercial use by the petitioner.

10. As regards the denial of opportunity to the petitioner to lead evidence by the Estate Officer is concerned, it is not shown by the petitioner that any application was filed by the petitioner seeking such an opportunity. Having not done so, now the petitioner cannot complain that the opportunity to lead evidence was not given to him. Moreover, it has not been disclosed by the petitioner what evidence he was to lead before the Estate Officer. Therefore, on this account, no prejudice is shown to have been caused to the petitioner and so, violation of principles of natural justice cannot be alleged. Though the Eviction Order is not liable to be sustained on the ground of sub-letting in view of the civil court order of 10th August, 2006 and also in

view of the fact that the petitioner had diligently initiated proceedings to get the name of fourth respondent-Pawan Kumar deleted from the records of MCD, much prior to the issuance of the Show Cause Notice but due to commercial use of part of the subject premises by the petitioner which stands established from the site Inspection Report, Eviction Order passed against the petitioner has been rightly sustained by the Appellate Authority. So, finding no infirmity or error apparent on the face of the impugned order, this petition is dismissed while leaving the parties to bear their own costs.