

(2014) 01 DEL CK 0308

Delhi High Court

Case No: Writ Petition (C) No. 5801 of 2013

Satinder Mahendru

APPELLANT

Vs

New Delhi Municipal
Council

RESPONDENT

Date of Decision: Jan. 17, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Constitution of India, 1950 - Article 14
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 9

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Rajat Joseph, for the Appellant; Arvind Sah, Advocate for N.D.M.C., for the Respondent

Final Decision: Dismissed

Judgement

Sudershan Kumar Misra, J.

WP(C) No. 5801/2013

1. In substance, the petitioner is aggrieved of the refusal of the NDMC to allot alternate premises to him for the, "Clock Tower Restaurant"; being run by him near the Shivaji Stadium, Connaught Place, New Delhi; that was taken over by the respondent for the Commonwealth Games, 2012. The petitioner alleges that as many as 17 other allottees were also similarly dispossessed; and enquiries under the Right to Information Act ultimately revealed that, all those 17 allottees were allotted alternate premises by the NDMC. However, the representation of the petitioner in this behalf has been rejected by the NDMC by an order passed on 17th August, 2012. In these proceedings, the petitioner has impugned that order. Counsel for the petitioner submits that the issue with regard to his claim for parity with the aforesaid 17 other allottees, who, according to the petitioner,

are similarly situated, has in fact, not even been addressed by the NDMC in the impugned order.

2. Admittedly, the license was originally granted to the petitioner's late father, Sh. L.C. Mahendru, to run a restaurant from the premises in question. Mr. Mahendru's license was not renewed after the year 1992; and he was thereafter declared an unauthorized occupant. He has since passed away. The petitioner is the son of late Sh. L.C. Mahendru. Admittedly, no license was ever issued by the N.D.M.C. in the name of the petitioner himself.

Ultimately, on 11.02.2008, the Estate Officer directed the eviction of the petitioner from the premises in question; and also found the petitioner liable to pay damages @ Rs. 7,020/- per month with effect from 16.02.1992, i.e. the date from which the premises came to be unlawfully occupied. The petitioner's appeal u/s 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, against that order was also dismissed. That order of the District Judge dismissing the petitioner's appeal was also upheld by this Court on 28th August, 2009, by the subsequent dismissal of Writ Petition (C) No. 9251/2009, that had been moved by the petitioner impeaching the said order. While dismissing the aforesaid Writ Petition (C) No. 9251/2009, this Court recorded the plea of counsel for the petitioner regarding his client's entitlement to an alternative allotment at par with other similarly placed persons. The following order was passed;

That apart, the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, do not envisage the relief of alternate allotment in lieu of a public premises occupied by a party. Hence the said plea of the petitioner is turned down.

While passing that order, this Court also noted that no reference had been made by the petitioner in the aforesaid Writ Petition (C) No. 9251/2009 to other similarly placed persons, in the petition.

At that stage, counsel for the petitioner then informed before that Court on 28th August, 2009 that he had already filed a representation with the respondent for alternative accommodation; and consequently, this Court observed as follows;

The petitioner is at liberty to pursue the said representation and to seek his remedies as may be available to him in law.

3. Counsel for the petitioner submits that whilst the matter was sub judice in the court below, and before it travelled up to this Court and was disposed off as aforesaid, the premises was taken over by the respondent.

4. The list of dates, filed by the petitioner, shows that the aforesaid representation, mentioned by him during the hearing of WP(C) No. 9251/2009, which happens to be dated 8th July, 2009, was not disposed off by the respondent. He, therefore, moved WP(C) No. 382/2012 which was withdrawn by him on 18th January, 2012 with permission

to approach the N.D.M.C. for redressal of his grievance.

Obviously, therefore, the scope of the instant petition is confined to the order of the N.D.M.C. dated 17.8.2012 declining the petitioner's representation for alternative accommodation on the sole plea of unfair discrimination between the petitioner and other similarly placed persons contrary to the fundamental rights of the petitioner guaranteed under Article 14 of the Constitution of India. The fact that there is no statutory right available to the petitioner for the grant of alternative allotment under the Public Premises (Eviction of Unauthorized Occupants)

Act, 1971 has already been noted by this Court in WP(C) No. 9251/2009 on 28th August, 2009 and turned down as aforesaid.

5. Counsel for the petitioner first tried to rest his plea on the ground that since his father was running restaurant from the premises for over 25 years, therefore, the petitioner was entitled to carry on in the premises. However, it was pointed out to counsel for the petitioner that as a matter of fact, it was his late father who had been granted license in question, which had also come to an end long ago; and his father had become an unauthorized occupant of the premises in question after the year 1992. Further, that there is a positive finding by the District Judge in his order dated 3rd March, 2009, upholding the eviction directed by the Estate Officer on 11th February, 2008, in terms of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which has also been upheld by this Court on 28th August, 2009 in WP(C) No. 9251/2009, as aforesaid.

6. The contention of counsel for the petitioner with regard to the impugned order passed on 17th August, 2012 is merely that the said order does not give, "a complete picture". He, however, did not dispute any factual statements in the said order despite being invited to do so. Counsel then attempted to rely on an interim order passed on 22.02.1990 on an application under Order 39 Rule 1 and 2 of the CPC, moved by the petitioner's father in a Suit bearing No. 585/1989, wherein certain interim directions were passed to the effect that the petitioner's father should continue depositing the license fee @ Rs. 7,020/- per month till the disposal of the Suit. It was further directed that electricity and water supply should not be disconnected, and that his father should not be dispossessed, "except in due process of law till the disposal of suit". In addition, the petitioner's father was also permitted to continue in occupation of the premises leaving it open to the respondent to proceed as per law for the recovery of its premises. In any case, to my mind, the said order has no relevance to the issue in hand.

7. Counsel for the petitioner has tried to make out a case for discrimination on the ground that the premises in question were required by the respondent for preparing the site for the use of the upcoming Commonwealth Games, and that, apart from the premises in question, other premises in the same area were also taken over for the same purpose; and whilst occupants of the other premises were allotted alternative premises, the petitioner was not. Unfortunately for the petitioner, his case is not that simple. Although it

is true that the entire area, comprising of different premises, was taken over by the respondent to prepare for the Commonwealth Games; as far as the petitioner is concerned, his removal was also on the ground of unauthorized occupation right from 1992 onwards, under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which has been duly upheld. That the premises in question were also required for the Commonwealth Games, which came about much later, is only a matter of chance. Despite being invited to do so, no precedent for grant of relief by the courts in similar circumstances has been cited by counsel for the petitioner.

Further, to my mind, even if the NDMC is shown to have accommodated someone else under similar circumstances; such action by the N.D.M.C. would be clearly without sanction of law; and hence would not form the basis of relief on the ground of unfair discrimination, as envisaged under Article 14 of the Constitution of India; and no direction could be issued to the N.D.M.C. to treat the petitioner also in such an illegal fashion. While there can be a valid policy to offer alternative premises to holders of valid and current licenses that the State was obliged to prematurely terminate because the premises in question were urgently required; the same cannot be applied to someone, like the petitioner, who has continued in unlawful occupation for more than a decade after his late father's licence to the premises was not renewed; and the eviction orders qua the said premises have also been upheld; merely because those premises are also urgently required.

8. It would be another thing entirely if the petitioner had been able to satisfactorily establish that, as on the date the premises in question were taken over for the use of Commonwealth Games, he was an authorized occupant or even deemed to be an authorized occupant. Unfortunately, petitioner's challenge in this behalf, right up to this Court in WP(C) No. 9251/2009, failed; and, therefore, the converse is true.

9. Counsel's attempt to place his client at par with, what he states, are 17 other occupants, whose licenses were all cancelled, declaring them unauthorized occupants just like the petitioner, and who were thereafter allotted alternative accommodations in lieu of the premises taken over from them, has no legal basis. Presumably, all those persons were holders of valid licenses, which came to be prematurely terminated solely on the ground that the respondent required their premises for the Commonwealth Games, thus placing them in the category of unlawful occupants only thereafter; and for that specific reason alone; whereas in the petitioner's case, his status of an unlawful occupant was on an entirely different basis right from the year 1992, when the license in question issued to his father was not renewed. Consequently, the petitioner could not be said to belong to that class of valid license holders, whose licenses were prematurely terminated because the premises occupied by them were required for the Commonwealth Games, thereby rendering their occupation unlawful. It follows therefore that the petitioner could not claim to be treated at par with them in the matter of any decision that may have been taken by the respondent to grant alternative accommodation to such persons. It bears reiteration that the petitioner's late father became an unlawful occupant of the premises

much earlier after the year 1992 itself for entirely different reasons, and the consequential eviction orders of the Estate Officer have been upheld, even by this Court.

10. For all these reasons, I find no force in the petitioner's plea of unfair discrimination by the respondent in declining his aforesaid representation on 17.08.2012. The petitioner's dogged persistence in the face of such obvious and glaring facts smacks of legal adventurism that must be discouraged by courts, specially looking to the problem of mounting arrears. The petition is, therefore, dismissed in limine, with costs of Rs. 25,000/-. The costs to be deposited by the petitioner with the Indigent and Disabled Lawyers' Fund of Bar Council of Delhi within eight weeks.