

(2001) 12 DEL CK 0087

Delhi High Court

Case No: L.P.A. No. 688 of 2001

Super Bazar Cooperative Stores
Ltd.

APPELLANT

Vs

The Court of the Estate Officer
and Others

RESPONDENT

Date of Decision: Dec. 21, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Drugs and Cosmetics Act, 1940 - Section 18

Citation: (2002) 96 DLT 189 : (2002) 62 DRJ 77

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: Rakesh Tikku, for the Appellant; Mukul Gupta, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

The short question which arises for consideration in this appeal is as to whether the All India Institute of Medical Sciences (in short, AIIMS) requires any license for running a medical store.

2. The appellant herein was having an outlet for selling drugs/medicines to general public within the premises of AIIMS. AIIMS granted license to the appellant to run the aforesaid outlet. The AIIMS withdrew this license and by communication dated July, 1997 asked the appellant to vacate the premises for the with. As the appellant did not vacate the premises, action was initiated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act and an eviction order was passed. Against the eviction order the appellant preferred an appeal which was dismissed by the Addl District Judge vide order dated 18th July, 2001.

3. Feeling aggrieved, the appellant herein filed a writ petition No. 4800/2001. The said writ petition was disposed of on 17th August, 2001. Upon his filing the requisite undertaking to vacate the premises, time to vacate the premises was extended to 30th November, 2001. Such grant of time was subject to granting license by All India Institute of Medical Sciences. The order dated 17th August, 2000 reads as under:

"Rule. With the consent of the parties, the matter is taken up today for hearing.

The principle plea of the learned counsel for the petitioner was that in the absence of a decision by the Cabinet Secretariat Litigation Cell and as per the judgment of the Hon^{ble} Supreme Court in 1992 (61) ELT 3 (SC) , the Litigation between public sector undertakings should not be resorted to without the examination of the matter and the recommendation of a High Powered Committee. Learned Counsel for the respondents in reply to this pleas contended that as per the judgment reported in [Steel Authority of India Ltd. \(Successor to Hindustan Steel Ltd.\) Vs. Life Insurance Corporation of India and Others](#), it has been held that the High Powered Committee was not supposed to look into the matters such as eviction of a company or a public sector undertaking under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which also happens to be the subject matter of the present writ petition.

In that view of the matter, it is clear that the pendency of the reference before the Cabinet Secretariat which has deferred the decision in its last meeting held on 28th of June, 2001 can be of no relevance at least in respect of matters relating to eviction from public premises. The learned Counsel for the respondents has also submitted that the apprehension of the petitioner that the premises in question shall be let out to a private chemist is unfounded as the respondent No. 2-AIIMS intends to open its own hospital pharmacy in the premises in question. I have also gone through the impugned order of Additional District Judge and I do not find any infirmity or error, requiring interference of this Court under. Article 226 of the Constitution of India.

Learned Counsel for the petitioner thereafter made a prayer that even if the respondent No. 2 - AIIMS- -intends to open its own hospital pharmacy, it would require considerable time before the appropriate license may be obtained for the said. purpose. Mr. Gupta, the Learned Counsel for the respondents states that respondents No. 2 expects to secure the relevant license within a period of three months from today. Accordingly, the petitioner is granted extension for a period of three months, from today, subject to its giving an undertaking to vacate the premises on or before 30th of November, 2001. The requisite undertaking shall be filed within a week from today in any case on or before 26th of November, 2001 and the respondents will file an affidavit in this Court stating as to whether the appropriate licenses and permissions have been secured by them. In case needful is not done within the stipulated period, affidavit shall also state the additional time required for securing the license and permissions. In case of an extension of time sought by the respondents to secure the license, extension of time may be granted

to the petitioner to vacate the premises. Time may be extended by the said period subject to the filing of another appropriate undertaking by the petitioner.

In this view of the matter, learned Counsel for the respondents states that the lock put in the premises shall be removed during the courts of the day.

The writ petition accordingly stands disposed of with no orders as to costs.

A copy of this order be given dusty to I earned Counsel for the parties."

4. An affidavit was filed by the All India Institute of Medical Sciences that the governments and its agencies and instrumentalities are exempted from obtaining any license in terms of Chapter IV of the Drugs and Cosmetics Act. This affidavit reads as under:

"I, Dr. P.K. Dave, Director, AIIMS, Ansari Nagar New Delhi, as Respondent No: 2, do hereby state on solemn affirmation as under:-

1. That I am filing this short affidavit in compliance to the order dated 17.8.2001, passed by this Hon"ble Court.

2. That pursuant to the order dated 17.8.2001, the answering respondent had taken steps, for operating the hospital Pharmacy and for that end in view the Drug Controller/Licensing Authority under the Drugs & Cosmetics Act, 1940, was contacted.

3. That the answering respondent has been informed and advised that the Hospitals run by the Govt. and its agencies and instrumentalities are exempted from the provisions of Chapter IV of the Drug & Cosmetics Act, which require it to be covered by a sale license, subject to usual requirement.

4. That it is also submitted that the AIIMS is already operating a pharmacy, for its employees and other beneficiaries, for which no license under the Drug & Cosmetics Act has been provided by the Drug Controller/Licensing Authority, as the same is not required at all.

5. That this affidavit is being filed in compliance to the order dated 17.8.2001, passed by this Hon"ble Court and the Petitioner in the matter is thus required to vacate the premises by 30.11.2001, as also undertaken by it as per the undertaking filed before this Hon"ble Court.

6. That even otherwise the Petitioner, being would up and Therefore as well has no locus or right to continue to occupy the premises in question any more"

5. That despite undertaking to vacate the premises by 30th November, 2001 the appellant did not vacate the premises by the stipulated date and instead filed CM 1245/2001 for grant of further time. In this application extension was sought mainly on the ground that AIIMS has not obtained license as directed vide order dated 17.8.2001 and Therefore, the appellant was not supposed to vacate the outlet or to

hand over possession thereof to the AIIMS.

6. The learned single Judge by impugned order dated 20.11.2001 dismissed the aforesaid application filed by the appellant herein after recording his opinion that the order dated 17.8.2001 stands complied with and it is not for the appellant to raise a question of validity of exemption granted to the AIIMS. According to the learned Judge this issue is for the Drug Controller and the appellant has no concern with the same. Aggrieved by this order the present Letters Patent Appeal has been filed.

7. Mr. Rakesh Tikku, learned counsel for the appellant would submit that although the petitioner/appellant herein has no objection to vacate the premises but an undertaking in this behalf was given on the presupposition that the All India Institute of Medical Sciences would license under the Drugs and Cosmetics Act. The (SIC) would contend that for the purpose of running a shop, such a license is medicines to the indoor patients. Our attention in this regard has been drawn to the provisions contained in Section 18 of the Drugs and Cosmetics Act, which reads thus:

Section 18. Prohibition of manufacture and sale of certain drugs and cosmetics:-

"From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf no person shall himself or by an other person on his behalf-

(a) [Manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute]-

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality or is misbranded or spurious;]

(iii) any patent or proprietary medicine, unless there is display in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];

(iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

(v) any cosmetics containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made there under.]

(b) [Sell, or stock or exhibit or offer for sale] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions

of this Act or any rule made there under;

(c) [Manufacture for sale or for distribution or sell, or stock or exhibit or offer for sale] or distribute any drug [or cosmetic] except under , and in accordance with the conditions of, a license issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the quantities of nay drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to nay conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality."

8. It is not at all in dispute that the license granted to the petitioner had been invoked. The petitioner, Therefore, does not have any legal right to continue to occupy the premises. The proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated. The order passed therein was the subject matter of the writ petition.

9. The learned counsel appearing on behalf of the respondents, Mr. Mukul Gupta, submits that the All India Institute of Medical Sciences intends to use the premises in question for keeping stock of medicines so that patients can be supplied the same.

10. Having regard to the fact that the area in question is to be utilized by the All India Institute of Medical Sciences itself, we are of the opinion that the respondents may not in law require any license as the medicines are required to be distributed amongst its patients and not outsiders. Having regard to the statements made in the affidavit, we are of the view that the appeal is not maintainable. Otherwise also, eviction order having been passed against the appellant under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the appellant cannot insist to stay at the premises on the ground that the All India Institute of Medical Sciences does not have any license to run a medical shop. Such a question cannot be permitted to be raised by the licensee. There is no merit in the appeal. It is dismissed accordingly.