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Delhi High Court

Case No: Writ Petition (C) 1860 of 2007

Renu	APPELLANT
Vs	
Estate Officer President Sectt. and Others	RESPONDENT

Date of Decision: May 11, 2012

Acts Referred:

- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: S.K. Gupta, Mr. Anurag Pandey and Mr. Manish Gupta, for the Appellant; Shobhana Takiar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sunil Gaur

1. Alleging non-application of mind, discrimination, petitioner''s eviction from Stall No. 11 in President''s Estate Market, New Delhi, (hereinafter referred to as the ''subject stall'') is assailed in this petition. Statutory Notice u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (Annexure- P-3) was issued to the petitioner on 1st April, 2006 wherein it was stated that the license agreement executed on 3rd March, 1998 came to an end on 31st December, 1998 and thereafter, petitioner''s husband had no authority to remain in the public premises in question. Prior thereto, petitioner was informed on 23rd January, 2006 by the second respondent vide Communication (Annexure- P-2) that her request for regularization of the subject stall in her name cannot be acceded to.

2. In the Eviction Order of 20th April, 2006 (Annexure- P-4), it stands noticed that the only response of the petitioner to the statutory Show Cause Notice (Annexure -P-3) was that

she has no source of livelihood and is therefore, continuing to occupy the subject stall for selling of pan, bidi, cigarette etc. and she was told by the Estate Officer that the subject stall is non-transferable. Petitioner had preferred a statutory appeal under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, against the Eviction Order which stands dismissed vide impugned order of 3rd March, 2007.

3. What was urged by petitioner''s counsel is as follows. Where an application is filed for eviction of an unauthorised occupant, it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorised occupation of the public premises and that he should be evicted. The Estate Officer with a view to determine the lis between the parties must record summary of the evidence. Summary of the evidence and the documents shall also form part of the record of the proceedings. Procedure laid down for recording evidence is stated in the Rules concerned. The Estate Officer being a creature of the statute must comply with the same.

4. Petitioner''s counsel precise challenge to the impugned eviction of the petitioner from the subject stall is on the ground that the petitioner is not an authorised occupant in the subject stall and there is no reason to evict the petitioner from the subject stall. Thus, it is contended by petitioner'' counsel that the Estate Officer has acted arbitrarily in passing the Eviction Order without returning a finding that the subject stall is a public premises and the impugned order also fails to take note of the afore-said defects and so, the impugned order as well as the eviction of the petitioner from the subject stall deserves to be set aside.

5. Reliance was placed by petitioner''s counsel upon decisions in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, ; State of Madhya Pradesh and Others Vs. Sardar D.K. Jadav, Union of India (UOI) and Others Vs. Mukesh Hans etc., The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, ; Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, Hindustan Construction Co. Ltd. Vs. State of Bihar and Others, ; Nandram and Others Vs. Union of India and Others, ; and New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another, , in support of the above submissions.

6. It was submitted by respondent''s counsel that the subject stall is on the Government land i.e. in the President''s Estate Market and so, it is plainly preposterous to urge that the subject stall is not a public premises under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It was also submitted on behalf of the respondent that the license in respect of the subject stall had expired in the year 1998 and thereafter, petitioner''s possession thereon is clearly unauthorised and the petitioner has no defence to her eviction from the subject stall and the impugned order upholding the Eviction Order does not suffer from any kind of infirmity and so, the decisions cited on behalf of the petitioner are inapplicable to the facts of the instant case and this petition deserves rejection.

7. Upon considering the submissions advanced by learned counsel for the parties and on perusal of the impugned order, the record of this case and the decisions cited, it becomes quite apparent that the impugned eviction of the petitioner from the subject stall is preceded by a statutory Notice (Annexure - P-3) in which it is clearly mentioned that petitioner is in unauthorised occupation of the public premises i.e. the subject stall and upon perusal of the aforesaid Show Cause Notice (Annexure P-3), this Court finds that it substantially satisfies the requirement of law, as enunciated by the Apex Court in Nusli Neville Wadia (Supra). In any case, petitioner is not prejudiced by any alleged technical defect in the Show Cause Notice (Annexure P-3), as there was no worthwhile response to the aforesaid Notice by the petitioner.

8. Eviction Order (Annexure P-4) is quite concise one and it is found to be not suffering from non-application of mind. Thus, impugned order upholding the Eviction Order does not suffer from any infirmity and so the decisions cited are of no avail to the case of the petitioner.

9. On the aspect of arbitrariness / discrimination, violation of the Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Sector Undertaking/ Financial Institutions of the year 2002, is alleged and that there are many shops etc. in the President Estate Market and the petitioner has been singled out.

10. First of all, the aforesaid Guidelines are not of binding nature, as has been recently held by a Division Bench of this Court in LPA No. 977/2011, Life Insurance Corporation of India. vs. Damyanti Verma, (DECD) Through Lrs., rendered on 23rd March, 2012. In any case, there is no basis for the petitioner to allege discrimination as the eviction of the other shop keepers in the President Estate Market has been already upheld by this Court in W.P.(C) No. 15014 of 2006, Farid Qureshi Vs. Union of India & Ors., rendered on 10th April, 2012 while observing that the eviction of the shopkeepers from President Estate Market is justified in view of the space crunch therein. Upon finding that the petitioner has no legal right to remain in the subject stall due to non-renewal of its license (which had expired by afflux of time way back in the year 1998), the conclusion arrived at, is that there is no palpable error in the impugned order upholding the eviction of petitioner from the subject stall. Consequentially, this petition is dismissed while leaving the parties to bear their own costs.