

(2002) 11 DEL CK 0104

Delhi High Court

Case No: Civil Writ No. 7248 of 2000 and C.M. No. 11150 of 2000

Shri Ravinder Kumar

APPELLANT

Vs

Lt. Governor of Delhi and
Another

RESPONDENT

Date of Decision: Nov. 4, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: A.K. Singh, for the Appellant; V.K. Shali, for the Respondent

Final Decision: Allowed

Judgement

S.K. Mahajan, J.
RULE.

2. With the consent of the parties matter has been heard and disposed of finally.

3. The Deputy Commissioner (Industry) is present with the file. Petitioner was granted lease of plot No. 313, Functional Industrial Estate, Pataparganj, measuring 450 sq. meter for running the industry of plastic (PVC) moulded parts. After construction of the building, petitioner appears to have let out a portion of the property to Pidilite Industries. Under the terms of the lease, the lessee could not sub-let the whole or any part of the property to any other person without obtaining requisite permission in writing from the concerned authorities. Since the petitioner had violated a condition of the lease, the respondents issued notice to the petitioner on 25.11.1999 calling upon him to show cause why the lease should not be terminated due to the lessee having sub-let the premises to M/s Pidilite Industries and their having started the commercial activity as a godown for storage of Fevicol. Reply to the show cause notice was given by the petitioner. The Deputy Secretary (Industries) by order dated 16.7.1999, held that the petitioner had sub-let a part of

the premises to Pidilite Industries who were using the same as a godown. It was held by her that the activities carried out by the Pidilite Industries were not allowed in the area and consequently the lessee had committed breach of the conditions of the lease. The respondents, Therefore, in exercises of its power under Clause 3 determined the lease, forfeited the premium money paid by the lessee and re-entered the premises for taking possession of the same. It was mentioned in the order that lessee can appeal to the Lt. Governor i.e. the Lesser within 30 days from the date of the issue of the order.

4. The petitioner filed an appeal against the order dated 16.7.1999, before the Lt. Governor. The Lt. Governor appears to have dismissed the appeal and the same was communicated to the petitioner by the Deputy Secretary (Industries) by his letter dated 25.11.1999. Being aggrieved by the order dismissing the appeal, the petitioner has filed the present petition.

5. By way of preliminary objections, the respondent has submitted that the parties are governed by the contract as contained in the lease deed and the present writ petition, Therefore, to challenge certain orders which are in the realm of a contractual action, was not maintainable. Reliance for this has been placed upon a judgment of this Court reported as [Civil Miscellaneous Mancat Ram Vs. Delhi Development Authority and Others](#), .

6. It was held in the aforesaid judgment that although the lease of the land was executed by the President of India under the Government Grants Act, its cancellation for breach of the terms of the lease deed would be purely a contractual action and not a statutory one and hence, it would not be open to the lessee to challenge the cancellation or in other words to enforce the contractual rights by a writ petition. In my view, the aforesaid observations of the Division Bench of this Court would not apply to the facts of the present case. Petitioner has challenged the order of the Lt. Governor on the ground that no opportunity of hearing has been given to the petitioner and that the Lt. Governor has not taken into consideration the fact that the breaches which were alleged to have been committed by the petitioner could be remedies in terms of the lease deed itself. In the aforesaid judgment, the Court had observed as under :-

"It cannot be said that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little saying regard to the terms and conditions to which he is supposed to have agreed. In this state of things situations are likely to arise which may justify interference under Article 226 even in such cases. There are two situations where such interference can be made. The first

covers cases where, after entering into a contract, the Government purports to exercise certain rights under the contract but, in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. In such cases, though the Government is ostensibly acting under the terms of a contract it can be said, in reality to be an exercise of the executive power of the State that is being challenged. The second situation involves an extension of the above principle. This is of cases where a term of a contract "imposed" by the State or authority on the citizen is contrary to law and, thus, nonest. An action of the State, insisting on the observance of such a term of the contract would, in substance, be an act in the exercise of its executive or statutory power rather than as a contracting party simpliciter."

7. It is clear from the aforesaid observations that the Court in the exercise of its jurisdiction under Article 226 of the Constitution can interfere with the order of cancellation of lease in case the same is arbitrary or unreasonable so as to violate the common law. In this case admittedly, the Lt. Governor had not given an opportunity of hearing to the petitioner. This, in my view, a clear violation of the principles of natural justice and this Court can interfere in the exercise of its jurisdiction under Article 226 to the jurisdiction with the said order. Without, Therefore, going into the question as to whether the breaches alleged to have been committed by the petitioner could be remedied under the lease deed or whether or not any ground for cancellation of the lease existed, in my view, ends of justice will be met if a direction is given to the Lt. Governor to re-hear the appeal of the petitioner after giving him an opportunity of hearing. Without, Therefore, going into the merits of the case or any other question raised in this petition, I allow this writ petition and direct the Lt. Governor to re-hear the appeal of the petitioner after granting him an opportunity of hearing. The Lt. Governor would make an endeavor to decide the appeal within three months from the date of this order. The date of hearing will be communicated to the petitioner by the office of the Lt. Governor. Till the matter is finally decided by the Lt. Governor, the parties will maintain status quo.

8. With these observations, the petition stands disposed of.