

Triloki Nath Dhir Vs N.D.M.C. and Another

Court: Delhi High Court

Date of Decision: Aug. 20, 2010

Acts Referred: Constitution of India, 1950 " Article 226, 227

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 " Section 5, 5A, 5B, 5C

Citation: (2010) 171 DLT 628

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: V.K. Malik and M.F. Khan, for the Appellant; Manoj K. Singh and Nilava Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.

By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner seeks setting aside of the eviction order dated 2nd November, 2007 passed by the Estate Officer and the order dated 24th December, 2009 passed by the learned District

Judge upholding the order of eviction passed by the Estate Officer.

2. Brief facts of the case relevant for deciding the present petition are that a licence deed in respect of the property bearing Shop No. 31 South

Market, Kidwai Nagar East, New Delhi was executed in favour of the petitioner by the respondents w.e.f 19.6.1997. A show cause notice dated

26.12.2006 was served by the Estate Officer on the petitioner on the ground that some additions and alterations were undertaken by the petitioner

without the permission of the respondents and consequently an eviction order dated 2.11.2007 was passed by the Estate Officer. Feeling

aggrieved with the said order, the petitioner preferred an appeal to the ADJ which vide judgment and decree dated 24.12.2009 was dismissed.

Hence, feeling aggrieved with the above said two orders, the petitioner has preferred the present petition.

3. Mr. V.K. Malik, counsel appearing for the petitioner vehemently submits that the petitioner had removed all the violations complained of by the

respondents in their show cause notice dated 26.12.2006 and after the removal of the said breaches, the eviction order passed by the Estate

Officer cannot sustain. Counsel further submits that the respondents have acted malafidely and discriminately against the petitioner although similar

violations have been committed by other shopkeepers by erecting mezzanine floor and basement, etc. Counsel further submits that the alleged

violations carried out by the petitioner were temporary in nature and the same were immediately removed by the petitioner, therefore, with the

removal of the said breaches the respondents in fact should have withdrawn the show cause notice dt. 26.12.2006. Counsel further submits that in

fact the petitioner had made a representation dated 30th November, 2007 to the respondents but the said representation of the petitioner has not

yet been decided. Counsel also submits that pursuant to the said eviction order, the respondent has taken over the possession of the said property

from the petitioner. Counsel also submits that the principles of natural justice have not been followed by the Estate Officer as no proper

opportunity was given to the petitioner to defend his case.

4. Mr. Manoj K. Singh, counsel appearing for respondent No. 1, strenuously refutes the submissions made by counsel for the petitioner. Mr.

Manoj K. Singh submits that the petitioner did not contest the proceedings before the Estate Officer, and hence he, cannot complain of violation of

principles of natural justice. Counsel further submits that the licence of the petitioner came to an end in the year 2002 and the same was not

renewed by the respondent. Counsel further submits that the petitioner has carried out additions and alterations in the said shop allotted to him and

the same were not removed by him despite the service of show cause notice and even during the pendency of the proceedings before the Estate

Officer. Counsel further submits that in the reply submitted by the petitioner himself before the Estate Officer, he admitted that he had already

removed mezzanine floor, wooden planks and other unauthorized additions made by him and brought the shop to its original shape, but even after

filing of the said reply it was found by the respondents on 30th June, 2007 that the said unauthorized structures still remained on site and were not

removed by the petitioner. Counsel also submits that after having taken over the possession of the said shop, the same was put to auction and in

the said auction the petitioner was a successful bidder and consequently the petitioner alone is in occupation of the said shop.

5. I have heard learned Counsel for the parties at considerable length and gone through the records.

6. Proceedings against the petitioner were initiated by the respondent complaining raising of certain unauthorised structures in the shop in question.

An inspection of the premises was carried out by the officials of the respondent on 19.12.2006 who found some violations committed by the

petitioner. These violations have been reproduced in the order of the Estate Officer, which is as under:

A mezzanine floor was erected and the ground level of the shop was also lowered. A steel stair case was provided for mezzanine floor and

verandahs were covered and 4 STD Booths were made.

7. The show cause notice was served upon the petitioner thereby calling upon the petitioner to remove the above said breaches and in the reply

thereto the petitioner took a stand that he had already removed the said breaches. However, on inspection by the respondent it was found that the

petitioner took a false stand in the reply and in fact the breaches were not removed by the petitioner. Finally on 23rd July, 2007 the allotment of

the shop of the petitioner was cancelled and proceedings against the petitioner were initiated by the Estate Officer under Sections 5, 5A, 5B & 5C

of the Public Premises Act. Referring to Clause 13 of the license agreement signed between the parties, the Estate officer found that a condition

was imposed on the licensee not to construct any additional structure in the shop and the petitioner will not raise any construction which could alter

the shape of the basic unit given to him on license basis. It is not in dispute that the petitioner had filed his reply before the Estate officer, but failed

to contest the said proceedings, resulting into passing of the said eviction order by the Estate officer. After the said eviction order, the petitioner

had filed a representation before the respondent and in the meanwhile the petitioner had also challenged the order of the Estate Officer before the

learned District Judge. The appeal filed by the petitioner was also dismissed in default on 12th August, 2009 and the said appeal was restored by

the learned District Judge vide order dated 20th November, 2009. However, in the meanwhile, the possession of the said shop was taken over

from the petitioner by the respondent. A consistent stand was taken by the petitioner that he has removed the unauthorized structure and the same

was temporary in nature. The license of the petitioner had also expired in the year 2002 itself and the same was not renewed by the respondent.

Since no fresh license deed was executed by the respondent in favour of the petitioner so the petitioner became unauthorized occupant in respect

of the said shop. The said notice was served on the petitioner after the expiry of the license when it was also complained that the petitioner had

carried out certain additions and alterations in the said shop thereby violating the terms and conditions of the license deed. The petitioner failed to

remove those additions and alterations despite having taken a stand in his reply that he has removed the said additions and alterations. After having

perused the proceedings taken place before the learned Estate officer, the learned District Judge found that the petitioner was given reasonable

opportunity to contest the said proceedings, but the petitioner failed to contest the same. The petitioner even did not take steps to seek setting

aside of the ex parte order of the learned Estate Officer. The learned District Judge also placed reliance on the reply filed by the petitioner before

the Estate officer wherein he categorically stated that he had removed the unauthorized additions and alterations in the said shop. The learned

District Judge thus found that with such a stand taken by the appellant it was quite apparent that the appellant had admitted the fact that he had

carried out the unauthorized additions and alterations in the said premises. When the said stand was taken by the petitioner, a fresh inspection was

carried out by the respondent on 13th June, 2007 and it was found by the respondent that the petitioner did not remove the unauthorized additions

and alterations and the same still existed. Clause 11 of the license agreement executed between the parties clearly prohibits the licensee to carry

out any additions and alterations in the licensed shop unless a request to this effect in advance is made by the licensee to the licensor. The license

deed further provides that if the licensee commits breach of any of the terms and conditions of the license then the said license can be revoked by

the licensor. License of the petitioner had expired in the year 2002 itself and there was no fresh license deed executed by the respondent in favour

of the petitioner. The petitioner was also found to have breached the terms of the license deed by carrying out the said additions and alterations.

8. I do not find any merit in the argument of the counsel for the petitioner that certain other occupants had also raised additional structures in their

shops which were not objected to by the respondents. In the notice served by the respondent the violation inter alia comprises of digging ground

level approximate 1 foot, erection of mezzanine floor, erection steel stair for mezzanine floor, covering verandah by making 04 STD Booths

(wooden cabin), putting counter in front of shop in corner and refrigerator also, and, therefore, it was not merely the construction of the mezzanine

floor alone, but there were other breaches also made by the petitioner. The Estate Officer also found that the petitioner made a false statement by

taking a stand that he had already removed the breaches by restoring the shop to its original position. The petitioner had filed the reply, but

thereafter absented himself before the Estate officer and, therefore, the petitioner cannot be heard to complain that principles of natural justice were

not followed by the Estate Officer.

9. In the light of the above, I do not find any illegality or perversity in the order passed by the learned District Judge or by the Estate Officer. There

is no merit in the present petition and the same is hereby dismissed.