

(2011) 5 AD 591 : (2011) 181 DLT 73

Delhi High Court

Case No: Writ Petition (C) No. 1755 of 2006

Sh. Surender Kumar
Chawla

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: May 19, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Delhi Municipal Corporation Act, 1957 - Section 415
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 9

Citation: (2011) 5 AD 591 : (2011) 181 DLT 73

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Aviral Tiwari, for the Appellant; R.N. Singh and A.S. Singh for R-1 to R-3, H.S. Phoolka and Mansi Gupta, for MCD and Prasoon Kumar and Local Commissioner., for the Respondent

Judgement

Kailash Gambhir, J.

By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the W.P.(C) 1755/2006 Page 1 of 12 orders dated 13.11.2001 and 6.11.2003 passed by the learned Estate Officer and the order dated 05.10.2005 passed by the learned Addl. District Judge.

2. The grievance raised by the Petitioner in the present petition is that the impugned orders passed by both the courts below are clearly erroneous as both the courts below failed to consider the basic issue raised by the Petitioner that the Petitioner could not carry on the business of running the meat shop as he was not granted the license by the MCD on account of the fact that the size of the shop did not conform to the size requirements as were laid down by the MCD for running a meat shop. The Petitioner has

also submitted that the Delhi Vidyut Board and the CPWD failed to provide any basic amenities in the Vasant Vihar Shopping complex where the shop in question was located. The Petitioner also submitted that he had applied for the grant of license with the municipal authorities on 14.09.1998, but vide their letter dated 21.09.1999 the said request of the Petitioner was rejected by the Respondent-MCD and it is only then the Petitioner came to know that in order to run a meat shop the minimum area as it was then required was 85 sq. ft., whereas the shop allotted to the Petitioner by the Directorate of Estates was only 61 sq. ft. The Petitioner has further stated that he made lot of efforts through various representations made by him to impress upon the concerned authorities to allot him some alternate shop which could conform to the size requirement as laid down by the MCD, but all the said efforts made by the Petitioner did not yield any result. It is further stated that because of the absence of basic amenities in the said shopping complex, allottees of various shops had earlier approached this Court by filing writ petition bearing WPC No. 2195/1999 and vide order dated 01.11.2000 this Court by way of an interim order directed that the allottees will pay only 50% of the license fee from the date of allotment up to end February, 2000 and from 01.03.2000 they were directed to pay the entire amount of license fee in terms of their license deeds. It is also the case of the Petitioner that the Petitioner could not pay the said amount of license fee as the case of the Petitioner was exceptional as he could not operate the meat shop in the absence of a municipal license. The Petitioner has also stated that despite the fact that he could not conduct any business in the said allotted shop, but still the Respondent No. 2 cancelled his allotment and issued a show cause notice under the provisions of Public Premises Act to seek his eviction from the said shop. The Petitioner had appeared before the Estate Officer to contest the said eviction proceedings, but the learned Estate Officer had passed the eviction order dated 13.11.2001 without taking into consideration the pleas raised by the Petitioner. Being aggrieved by the said order, the Petitioner then approached the learned Addl. District Judge by way of filing an appeal u/s 9 of the Public Premises Act and vide order dated 05.10.2005 the said appeal filed by the Petitioner was also dismissed by the learned trial court. Feeling aggrieved by the said two orders the Petitioner approached this Court by way of filing the present writ petition.

3. Mr. H.S. Phoolka, learned senior counsel appearing for the Respondent-MCD very fairly submits that the Petitioner is now eligible for the allotment of the said shop which was earlier allotted by the Union of India in favour of the Petitioner and could not be used by the Petitioner because the required size of the said shop did not conform to the laid down requirements and as now the rules for running a meat shop have been modified and as per the amended rules, the Petitioner can now be allowed to run the said meat shop. Counsel also submits that the Petitioner was given the license for a period of three years and since the Petitioner could not obtain the license to run the said meat shop because of the size problem, therefore, in fact, he could not put to use the said shop for running the meat business.

4. I have heard learned Counsel for the parties and gone through the records.

5. Clearly, through an advertisement, the Directorate of Estates, Govt. of India had called for the tenders for the allotment of various shops situated in Vasant Vihar Shopping Complex and the specified purpose against these shops in the said advertisement was also indicated. In response to the said advertisement the Petitioner participated in the bidding process to seek allotment of shop No. 24 in the said shopping complex for running a meat shop and after the Petitioner was declared successful for the allotment of the said shop, allotment letter in his favour was issued by the Directorate of Estates. The Petitioner then completed all the required formalities and he had also made the deposit of Rs. 72,006/- and Rs. 19,749/-. Pursuant to the said deposit, a lease deed was duly executed by the said department in favour of the Petitioner. The Petitioner also took possession of the said shop on 14.08.1998, but was shocked to find out that there was no provision of electricity and water in the entire shopping complex and it was also found by the Petitioner that the said shop fell outside the electrified zone of the DVB. The Petitioner made considerable investment so as to make his said shop operational and simultaneously he had also made an application to the MCD for the grant of municipal license for running the said meat shop. The said application of the Petitioner was, however, rejected by the MCD through their letter dated 21.09.1999 on the ground that the said shop did not meet the space requirements in terms of Section 415 of the DMC Act, as the area of the shop was 61 sq. ft whereas the laid down requirements for running a meat shop at the relevant time was 85 sq. ft. The Petitioner thereafter made various representations and requests and even made personal visits, but with no result. Due to non-availability of basic amenities in the said shopping complex, various allottees had approached this Court by filing a writ petition bearing W.P.(C) No. 2175/1999 and in the said writ petition this Court by way of an interim order gave directions that the allottees of the shops will make only 50% payment of the license fee from the date of allotment up to the end of February, 2000 and from 01.03.2000 they were directed to pay the entire amount of license fee in terms of their license deeds. However, the Petitioner did not pay the said amount as the case of the Petitioner was exceptional as he could not run the meat shop in the absence of a municipal license.

6. The case in hand is a classic example of apathy and nepotistic behavior of the Government towards its citizens. Through an advertisement, applications were invited by the Directorate of Estates, Govt. of India to allow certain shops in Vasant Vihar Shopping Complex with a specified purpose and the Petitioner had participated in the bid to seek allotment of shop No. 24, Vasant Vihar Shopping Complex for running a meat shop. The space/area of the said shop was 61 sq. ft.. Vide letter dated 05.08.1998, the said shop was allotted by the Directorate of Estates in favour of the Petitioner and thereafter vide letter dated 14.09.1998 the Petitioner had applied to the MCD for grant of a municipal license. The said municipal license was not granted by the MCD to the Petitioner for running the meat shop on the sole ground that the area of the shop was less than the laid down requirements and since then the Petitioner had been running from pillar to post impressing upon the authorities either to increase the area of the shop or to allot him some other shop so that he could run his business of meat shop.

7. It is quite shocking that the Directorate of Estates, Govt. of India had invited tenders for the allotment of the said shop bearing No. 24 for the specified purpose of running a meat shop without bothering to find out that the area of the said shop i.e. 61 sq. ft. was less than the laid down norms of the MCD which permits minimum area of 85 sq. ft. for the purpose of running the meat shop. Instead of coming to the rescue of the Petitioner to resolve his problem which was the sole creation of the Government, it started eviction proceedings against the Petitioner before the Estate Officer and simultaneously raised a demand of Rs. 4,08,688/- and Rs. 1,56,078 towards the arrears of the license fee and damages. The learned Estate Officer instead of acting in a judicious manner passed the eviction order dated 13.11.2001 without taking pains to know the exact reasons behind non-payment of license fee by the Petitioner. The learned appellate court also gave no redress to the grievance of the Petitioner except remanding the matter back to the learned Estate Officer for fresh determination of the dues after giving due opportunity to the Petitioner and after taking note of the directions given by the High Court in WPC No. 2175/1999. It is thus quite manifest that the Petitioner was made to suffer right from the date of allotment of the said shop for no fault of his own and he has been deprived to run the said meat shop for more than a decade. During this period, the Petitioner would have established his business but he was deprived to establish himself and also to earn his livelihood from the said shop for such a long period at the despotic hands of the Government authorities. Instead of lending a helping hand, huge demand towards license fee and damages was raised by the Respondents so as to bring more misery and agony in the life of the Petitioner. It is thus seen that the Petitioner is a victim of gross injustice at the hands of the Respondents. The Government did not bother that the said shop No. 24 allotted to the Petitioner with the space of 61 sq. ft. could not be allotted for running the meat shop.

8. Looking into the exceptional circumstances of the present case, the impugned orders dated 13.11.2001 and 6.11.2003 passed by the learned Estate Officer and the order dated 05.10.2005 passed by the learned Addl. District Judge are hereby set aside. Since the Petitioner has suffered a lot at the hands of the Respondents, therefore, the following directions are given to the Respondents for immediate compliance:

(a) The Respondent-MCD shall waive off the entire licensee fee/damages as have been levied by them on account of the arrears of license fee payable by the Petitioner in terms of the license deed and the damages after the termination of his license.

(b) It is also directed that the Respondent-MCD shall execute a fresh license in favour of the Petitioner for a period of three years commencing from the date of execution of the license deed on the monthly license fee in terms of the license fee charged by the Directorate of Estates in the earlier license deed.

(c) The Respondent-MCD shall also issue a municipal license in favour of the Petitioner for running the meat shop within a period of one week from the date of his moving an application in this regard subject to his fulfillment of all other laid down/specified

requirements/norms.

(d) A cost of Rs. 25,000/-is also imposed upon the Respondents for causing unnecessary harassment to the Petitioner.

9. With the above directions, the present petition stands disposed of.