

inderjeet Singh Vs. Ndmc

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Court : Delhi

Decided On : Feb-10-2003

Reported in : 2003IIIAD(Delhi)474; 103(2003)DLT470; 2003(69)DRJ44

Judge : Sanjay Kishan Kaul, J.

Acts : [Constitution of India](#) - Article 226; Public Premises (Eviction of Unauthorised Occupants) Act, 1971

Appeal No. : C.W. No. 1296 of 2001

Appellant : inderjeet Singh

Respondent : Ndmc

Advocate for Def. : Jayant K. Sud, Adv.

Advocate for Pet/Ap. : Manu Nayar, Adv

Disposition : Writ petition allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The petitioner has impugned the order of the Appellate Authority under the Public Premises (Eviction of Unauthorised Occupants) Act (hereinafter called 'the said Act') dated 21st October, 2000.

2. Shri Harinder Singh Saluja, respondent No. 3 was the original allottee of shop No. M-34, Palika Bhawan, R.K. Puram, New Delhi in pursuance to a license dated 17th July, 1984. Proceedings were initiated against him by respondent No. 2 on 15th May, 1985 in respect of license fee from September, 1984 to August, 1992 and an eviction order was passed on 14th October, 1987 as also an order for damages. The appeal preferred by Shri Saluja was allowed on 29th July, 1988 and the impugned order dated 14th October, 1987 was quashed, The review petition filed to modify the order as one of a case of remand in respect of quashing was also dismissed on 29th July, 1988. Fresh proceedings were initiated on 11th January, 1993 against Sri Saluja and on 28th July, 1993, an application was filed to implead the petitioner as a party alleging that respondent No. 3 has sub-let the shop to the petitioner. The petitioner was given the opportunity to file objections and an eviction order was passed on 9th February, 1998 directing the petitioner to pay license fee up to 5th February, 1985 and damages from 6th February, 1985 to 31st July, 1993 as also the period thereafter.

3. An appeal was preferred by the petitioner before the Appellate Authority and interim stay orders were granted but the same were vacated on 27th January, 2000. In February, 2000, possession was taken from the petitioner and the appeal was dismissed on 21st October, 2000, The petitioner filed the present writ petition impugning the order of the Appellate Authority in respect of damages and seeking to restore possession as also for regularisation in the name of the petitioner.

4. On the last date of hearing, learned Counsel for the respondent took time to obtain instructions whether there could be any regularisation of the occupation of the petitioner in terms of the policy under Regulation 6/1999. It is informed in Court today that the shop in question already stands re-tendered and fresh license has been granted.

5. Learned Counsel for the respondent however, contends that the petitioner was imp leaded as a party in pursuance to the application dated 28th July, 1993 and that at best, the petitioner should be made liable for the period three years prior to the application and the remanding damages, if any, be recovered from the original licensee, respondent No. 3. Learned Counsel has referred to the judgment of the

Supreme Court in *NDMC v. Kalu Ram & Anr.*, : AIR 1976 SC1637 , where it has been held that the word payable referred to in Section 7 of the afore said Act can only mean 'legally recoverable' and in case any amount is barred by law of limitation, the Estate Officer could not still insist that the said amount was payable. Learned Counsel has referred to the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908 to contend that in view of the same, the damages against the petitioner cannot be recovered for a period three years prior to 28th July, 1993.

6. Learned Counsel for the petitioner further contends that in view of the fact that the proceedings initiated earlier against respondent No. 3 were quashed in terms of the order of the Appellate Authority dated 29th July, 1988 and the review petition filed against the order requesting for modification of the order to one of remand of case instead of quashing was also dismissed vide order dated 29th July, 1988, the proceedings had to commence afresh and the earlier proceedings could not be revived as was sought to be done by the respondent Nos. 1 and 2. Learned Counsel in this behalf has referred to the judgment of the Supreme Court in *Superintendent (Technical-I) Central Excise v. Pratap Rai*, : 1978 CriLJ1266 . In the said case, the earlier proceedings were set aside on account of non-observance of rules of natural justice and the Court held that the jurisdiction to start the proceedings afresh was not barred.

7. Learned Counsel for respondent Nos. 1 and 2, on the other hand, contends that in *Kalu Ram's* (supra), the Supreme Court was concerned only with the issue of recovery of rent under Section 7 of the Act and not of damages. Reference has also been made to the judgment of the learned Single Judge of this Court in *Nand Ram & Ors. v. Union of India & Ors.*, 87 (2000) DLT 244.

8. The learned Single Judge while examining the issue of the claim of adverse possession held that the provisions of Limitation Act were not applicable to a special Act like the one in the present case and thus no such rights had ensued.

9. It may be noticed that *Kalu Ram's* case (supra) was not referred to in the said judgment.

10. Insofar as the contention of the petitioner arising from the proceedings not starting de nova is concerned, learned Counsel for the respondent submits that the request for reopening of the case has to be appreciated in view of the fact that a fresh notice was issued in pursuance to the said request and the word 'reopen' was used in a loose sense. Since fresh notice was issued, these proceedings were stated afresh and, therefore, the petitioner cannot give a grievance in respect of the same.

11. I have considered the submissions advanced by learned Counsel for the parties.

12. Insofar as the contention of the learned Counsel for the petitioner arising from the quashing of the earlier proceedings is concerned, there can be no doubt that the consequence of quashing of the proceedings will be that the proceedings had to start afresh. The notice has been issued under the Act once again and though the word used was 'reopen' really there was initiation of fresh proceedings in view of the notice having been issued afresh. In view thereof, I am unable to accept the contention of the learned Counsel for the petitioner that the proceedings had not started afresh which was a consequence of the quashing of the earlier proceedings. The question of the date of the accessibility of the petitioner to damages has to be appreciated taking into consideration the fact that in pursuance to the earlier proceedings which were quashed on 29th July, 1988 and the review against which was dismissed on 29th July, 1988, the respondent Nos. 1 and 2 took no steps to start any proceedings afresh till 11th January, 1993. The notices to implead the petitioner were issued only on 28th July, 1993. The judgment of the Supreme Court in Kalu Ram's case (supra) has dealt with the provisions of Section 7 of the Act which deals with the power to require payment of rent or damages in respect of public premises. The provisions of the said Section 7 are as under :

'7. Power to require payment of rent or damages in respect of public premises.--(1) Where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such Installments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the Estate Officer may, having regard to such principles of assessment of damages as may be prescribed assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such Installments as may be specified in the order.'

13. A reading of the aforesaid provision would show that the expression payable has been used in Sub-section (1) in the context of arrears of rent which was analysed in the judgment of the Kalu Ram's case (supra). In Sub-section (2) there is no such expression used and what is prescribed is assessment of damages on account of use and occupation of such premises and the requirement of such person to pay damages within such time and in such Installments as may be specified in the order. It is the expression 'payable' which was interpreted in the case of Kalu Ram's case (supra). In Nand Ram & Ors. case (supra), the Court was seized with the issue of the unauthorised occupation of the premises and it was held that there could be no plea of adverse possession or applicability of the provisions of the Limitation Act to the special Act. Respondent Nos. 1 and 2 thus cannot be debarred from recovering damages.

14. The petitioner having come into occupation unauthorisedly cannot take advantage of his own wrong. The petitioner knew that the occupation of the earlier occupant had become unauthorised and further proceedings had already been initiated against the earlier occupant.

15. There are, however, certain material facts which are relevant for purposes of fixing the responsibility on the petitioner in the present case. These arise from the fact that earlier proceedings were actually quashed in 1988. Respondent Nos. 1 and 2 took no steps thereafter to revive the proceedings for five years and that too were revived only against the earlier unauthorised occupant on 11th January, 1993 and the petitioner was sought to be imp leaded in pursuance to the application dated 28th July, 1993 since the petitioner had come into occupation. In view of this long gap of time in respondent Nos. 1 and 2 taking any action, I am of the considered view that the time period for which the recovery can take place can

only be the period of three years prior to the initiation of the proceedings against the original allottee since the petitioner only stepped into the shoes of the original allottee. Thus, the damages should be confined to the period of three years prior to 11th January, 1993 when the proceedings were re-initiated.

16. It is made clear that this concession is being given to the petitioner in the present case in view of the gross delay on the part of the respondent Nos. 1 and 2 in re-initiation of proceedings for damages.

17. In view of the aforesaid, the impugned order of the Appellate Authority is modified to that extent and it is directed that the respondent Nos. 1 and 2 shall be liable to recover damages commencing from 12th January, 1990 till the possession of the shop was handed over on 27th January, 2000. The payment already made will be adjusted against these dues and a demand can be raised against the petitioner for the balance amount.

18. The writ petition is allowed to the aforesaid event leaving the parties to bear their own costs.