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Court : Delhi

Decided On : Mar-30-2007

Reported in : 2007(96)DRJ548

Judge : Badar Durrez Ahmed, J.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 2, 5(2) and 9

Appeal No. : WP (C) 9383/06

Appellant : Dda

Respondent : Parsu Ram and ors.

Advocate for Def. : Manoj Kumar Singh, Adv.

Advocate for Pet/Ap. : Ajay Varma, Adv

Disposition : Petition allowed

Judgement :

Badar Durrez Ahmed, J.

1. All these petitions arise out of the common order passed by the learned Additional District Judge on 8.2.2006 passed in appeals preferred by the respondents under Section 9 of the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971. The appeals were preferred by the respondents against the separate eviction orders passed by the Estate Officer.

2. The impugned order, according to the learned Counsel for the petitioner, suffers from an infirmity as it was passed upon a misconstruction that the decision of the Supreme Court in the case of *Express Newspapers Pvt. Ltd. and Ors. v. Union of India and Ors.* : AIR 1986 SC872 held that in the case of a perpetual lease, the Estate Officer did not have authority or jurisdiction to direct eviction under Section 5(2) of the said Act under a summary process. The exact words used by the learned Additional District Judge are as under:

However, in any view of the matter, it is worthwhile to note here that the said premises i.e. Plot No. , 30, Block B, in Rewari Line Industrial Area, Phase-4 was vested in M/s Shyam Type Foundry by way of perpetual lease deed. Admittedly, the proceedings against the appellant were initiated being in unauthorised occupation, pursuant to determination of lease of the allottee/the lessee. It is also a matter of record that the allottee/lessee had made representation that he is ready to remedy the breaches and prayed for restoration of his lease hold rights of the said premises. The same involves consideration of question of facts in dispute. It would be pertinent to mention here that the Hon'ble Supreme Court in *Express News Papers Pvt. Ltd. and Ors. v. Union of India and Ors.* : AIR 1986 SC872 held that in case of perpetual lease, the Estate Officer does not have authority or jurisdiction to direct eviction Under Section 5(2) of PP Act, by summary process. Due process of law in a case like this necessarily implies filing of a suit by the Lesser for enforcement of the alleged right to re-entry, if any, upon forfeiture of lease due to breach of terms of the lease. This dictum of Supreme Court was discussed by the Hon'ble High Court of Delhi in its order dated 15.9.2003 in *Suneja Towers Pvt. Ltd. and Anr. v. DDA and Anr.* in CWP No. 542 of 2001. It was observed by the Hon'ble High Court that

Learned Senior Counsel for the petitioner placed strong reliance in the judgment of the Hon'ble Supreme Court in *Express News Paper Pvt. Ltd. and Ors. v. Union of India and Ors.* wherein it has been held that, 'proper recourse available to Lesser in such a case would be by filing a civil suit for possession and not by taking

recourse to the summary proceedings under the said Act (PP Act).

I find force in the contention of Ld. Senior counsel for the petitioner and in fact the matter is not rest integra in view of the judgment of the Supreme Court in Express News Paper Pvt. Ltd. and Ors. v. Union of India and Ors. (Supra).

In view of the aforesaid, the notice issued by respondent No. 2 (Estate Officer) under the said Act (PP Act) is hereby quashed leaving it open to respondent No. 1 to take recourse in accordance with law against the petitioner in pursuance to the order cancelling the lease in favor of the petitioner.

4. Thus in view of the above, the appropriate course for the respondent was to file suit for enforcement of its right of re-entry, if any, upon determination of lease deed. The proceedings initiated under the PP Act are, therefore, non est. The impugned order is thus, set aside. The appeal is allowed.

It is upon the understanding that the case of Express Newspapers (supra) prohibited action under the said Act and that the petitioner could enforce its right of re-entry only by way of filing a suit, that the learned Additional District Judge held that the proceedings initiated under the said Act were non est and, accordingly, he set aside all the eviction orders.

3. This understanding of the learned Additional District Judge in respect of the ratio of Express Newspapers (supra) is clearly incorrect. The position has been clarified by a Division Bench decision of this Court in Delhi Development Authority v. Ambitious Gold Nib . LPA No. 976/2004 dated 21.2.2006. After examining the decisions in Express Newspapers (supra) and Ashoka Marketing Ltd. and Anr. v. Punjab National Bank and Ors. : [1990]3SCR649 in some detail, the Division Bench concluded as under:

10. Thus in Express Newspapers case itself the Supreme Court has clarified that it has not held that the Government does not have the power to take action under the Public Premises ?Act where admittedly there is unauthorized construction by a lessee or by any other person on Government land and such person is in unauthorized occupation thereof.

xxxx xxxx xxxx xxxx xxxx13. Thus the Supreme Court has clearly observed that the second part of the definition of unauthorized occupation in Section 2(g) of the Public Premises Act expressly covers continuance in occupation by any person of public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. In the present case, it is alleged by the DDA that on account of violations of the terms of the lease deed, the DDA has determined the lease of the writ petitioner. We are not going into the correctness or otherwise of these allegations of the DDA as that will be decided by the authority under the Public Premises Act but we are certainly of the opinion that it would be pre-mature to entertain such a writ petition at this stage.

14. It is open to the writ petitioner to appear before the authority under the Public Premises Act and contend that it had not committed any breach of the terms of the lease deed; that there was no determination of the lease deed, etc. These are matters to be adjudicated by the concerned authority under the Public Premises Act and we would not like to deal with them. Suffice it to say that this is not a fit case to exercise discretion in writ jurisdiction. The allegation of the DDA was that it had determined the lease deed for breach of the conditions of the lease deed and, in our opinion, this allegation gives sufficient jurisdiction to the authority under the Public Premises Act to proceed with the hearing of the matter before it and adjudicate all these questions.

15. The writ appeal is allowed and the impugned judgment of the learned Single Judge dated 4th August, 2004 is set aside and the writ petition is dismissed. However, it is open to the writ petitioner to raise the questions mentioned above, that is, whether there was any violation of the lease deed, whether there was any valid determination of the lease deed, etc. before the authority under the Public Premises Act who will deal with these contentions and decide the same expeditiously after hearing the parties concerned in accordance with law.

4. The above extracts from the Division Bench decision in DDA v. Ambitious Gold Nib (supra) makes it more than clear that the Express Newspaper's decision (supra) does not in any way held that in cases involving the relationship between

the Lesser and lessee, the same would be outside the purview of the Public Premises Act. Accordingly, following the Division Bench decision in DDA v. Ambitious Gold Nib (supra), the impugned order is set aside. The matter is remanded to the Additional District Judge to consider all points raised by the parties afresh after giving them an opportunity of hearing. The respondents, if they seek any interim protection, may approach the learned Additional District Judge.

5. These matters be placed before the learned Additional District Judge on 25.4.2007 in the first instance. These petitions are allowed to the extent indicated above. The parties shall bear their own costs.

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