Mcd Vs. Dena Bank

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SooperKanoon Citation : sooperkanoon.com/713803

Court : Delhi

Decided On : Feb-14-2006

Reported in : 127(2006)DLT673; 2006(87)DRJ564

Judge : R.S. Sodhi, J.

Acts : Public Premises (Eviction and Unauthorised Occupants) Act, 1971 - Sections 2 and 9; Public Premises Act - Sections 10; Constitution of India - Article 227

Appeal No. : CM (M) 141/1997 and CM Appl. Nos. 16134-16135/2005

Appellant : Mcd

Respondent : Dena Bank

Advocate for Def. : R.K. Dhawan, Adv.

Advocate for Pet/Ap. : Amita Gupta, Adv

Judgement :

R.S. Sodhi, J.

1. This petition is directed against the order dated 8.2.1996 passed by the Additional District Judge, Delhi in PP Act Case No. 535/1995, whereby the learned Judge has allowed an appeal under Section 9 of the Public Premises (Eviction and

Unauthorised Occupants) Act, 1971, which appeal arose from the order of the Estate Officer dated 6.4.1992 passing an eviction order in respect of the premises bearing Shop Nos. 48, 49, Lodhi Road, Municipal Market, New Delhi and directing payment of Rs. 1,14,000/- as arrears of license fee due up to 17.8.1989 and for subsequent period at Rs. 12,000/- per month till the premises is vacated.

2. The facts of the case as have been noted by the learned Estate Officer are as follows.

i) that shops No. 48-49 Lodhi Road Municipal Market, New Delhi are Municipal property and as such are public premises as defined under Section 2 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

ii) that these shops were allotted to the respondent on license fee basis @ Rs. 3000/- p.m. For each shop as license fee under the terms and conditions as laid down in letter No. DA/NDSZ/637/LandE/Mkt./78/Pt/4216 dt. 6.1.84 and the respondent agreed to the same vide letter No. NDR/GAD/954-84. The shops were to be vacated by the respondent on expiry of the period of 5 years i.e. on 16.2.89.

Whereas a notice was served upon the Bank on 13.9.90 and they filed their replies on 23.10.90, denying the allegations.

Whereas a rejoinder was filed by the petitioner on 13.11.90 and the respondent on 22.11.90.

Whereas the petitioner produced Shri Narinder Kumar Dealing Asstt. of Lands and Estate Department and his statement was recorded on 22.11.90 and cross-examination was made by the respondent on 18.12.90.

Whereas respondent (Shri V.K. Thukral, Manager, Dena Bank, Lodhi Road Branch, New Delhi) gave his statement on 15.1.91 and cross examined by the petitioner. Subsequent the statement of Shri R.L.Tang, GAD, Dena Bank, Regional Office, Delhi, was also recorded on 3.12.91 and crossed by the petitioner. Whereas written arguments were submitted by the petitioner and the respondent on 30.1.92 verbal arguments also heard. The respondent had inter pointed out that the Lease Deed has not been executed far. However, the petitioner stressed that all the terms and conditions were communicated to the respondent and accepted by the respondent vide his letter dt. 20.1.84 (Ex.PW1/2). thereforee, the contention of the respondent cannot be accepted.

3. It is contended by counsel for the petitioner that the Additional District Judge/the First Appellate Court has gone wrong in reversing the order of the leaned Estate Officer on the ground that the license has never been cancelled. When according to counsel for the MCD the order dated 8.1.1990 clearly indicates the cancellation of license prior thereto and also by a flux of time. She submits that since the license was never renewed, the same stood cancelled. Counsel also submits that the findings of the First Appellate Court that hundred per cent increase in license is unjustified cannot be sustained as it is not for the Court to indicate as to what the Corporation can charge as its license fee for the use and occupation but it is a matter of contract for use and occupation of its premises by the respondent.

4. Counsel for the respondent on the other hand has contended that there is nothing on record to show that the license was ever cancelled. He submits that no order dated 8.1.1990 was ever produced nor was ever adverted to during the proceedings. He also submits that any unilateral increase by the MCD cannot be justified and that the same would necessarily be open to judicial review. In any event, such a course has not been insisted upon by the MCD qua any other premises in the area to justify the increase sought for from the respondent. Counsel also takes up the plea that a petition under Article 227 of the Constitution of India would not be maintainable in view of the provisions of Section 10 of the Public Premises Act which makes the Appellate Authority's decision final for all intent and purpose.

5. Heard counsel for the parties and have gone through the order under challenge. It appears to me that in the pleadings before the learned Estate Officer, the MCD had specifically taken a plea in paragraph 8 that vide order dated 8.1.1990 the license stood cancelled and proceedings under the Public Premises Act for realisation of damages and for use and occupation were initiated. Narender Kumar in his examination in chief refers to such a Resolution as also the order dated 8.1.1990 cancelling the license. In cross- examination, this witness has not been

confronted with his statement that there was no such order dated 8.1.1990, however he has been asked whether there was any justification in increase of rent to which he replied in the negative. It is this statement of Narender kumar which the Appellate Court has sought to rely upon to say that 'the increase in rent cannot be insisted upon.' To my mind, such a deduction from the statement of Narender Kumar is not warranted. The original license was for a period of five years and could be renewed on terms and conditions mutually agreed upon. Since the terms and conditions were not mutually agreed upon, the license stood terminated by flux of time. That being the position, the learned Estate Officer was well within his right to impose a rate for use and occupation of the premises beyond the period of license. I am also of the view that the Additional District judge was not right in condemning the MCD for seeking an increase in the existing license fee. This is a matter between the contracting parties and it is not for the Court to justify or adjudicate upon its correctness. Consequently, I am of the view that the order dated 8.2.1996 is not based on sound reasoning.

6. As regards the maintainability of the petition under Article 227 of the Constitution of India, no doubt Section 10 makes the appellate order final but the extraordinary constitutional remedy available under Article 227 of the Constitution of India cannot be circumsized. Judicial review by this Court of the order of the Additional District Judge/the First Appellate Court is maintainable.

7. In view of the above, the order dated 8.2.1996 is set aside. CM(M)141/1997 is allowed and disposed of. CM APPL. Nos. 16134-16135/2005 stand disposed of.