

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.5878 OF 2008
(Arising out SLP(C) No.586 of 2007)**

DENA BANK

Appellant(s)

Versus

MUNICIPAL CORPN. OF DELHI

Respondent(s)

O R D E R

Delay condoned.

Leave granted.

The legality/validity of the judgment and order dated 14.2.2006 passed by the learned Single Judge of the High Court of Delhi at New Delhi, is in question in this appeal which arises out of the judgment and order dated 8.2.1996 passed by the Additional District Judge, Delhi acting as the appellate authority, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short, “the Act”) setting aside the order of the Estate Officer dated 6.4.1992 directing eviction of appellant herein.

Appellant was a licensee of the Municipal Corporation of Delhi (Respondent) in respect of Shop Nos. 48-49, Lodhi

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Road Municipal Market, New Delhi. The period of licence was said to be for a period of five years. The licence fee, according to the respondent was determined at Rs.3,000/- per month per shop. Upon expiry of the period of licence i.e. on 15.2.1989, the licence fee was enhanced to Rs.6,000/- for each shop. Appellant refused to pay the said enhanced amount of licence fee. A request for renewal of the period of lease in respect of the said premises allegedly had not been acceded to.

On the aforementioned premise, proceeding in terms of Sections 4 and 5 of the said Act was initiated before the learned Estate Officer, who, by an order dated 6.4.1992, directed eviction of appellant in terms of Section 5 of the Act. In exercise of its power under Section 7 of the said Act the appellant was furthermore directed to pay damages at the rate of Rs.12,000/- per month with effect from 7.2.1989 amounting to Rs.1,14,000/- upto 17.8.1990 together with interest at the rate of 18% per annum. The Appellate Authority, however, reversed the said decision opining as under :

“Before E.O., the M.C.D. had examined only one witness namely Shri Narender Kumar, dealing assistant in its Land and Estate Department who admitted in his cross examination that the appellant being a tenant rent cannot be increased. The E.O. has totally ignored the said admission of the

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witness examined by the MCD. Even otherwise I am of the opinion that the demand of the MCD for 100% increase in the then existing licence fee as a term for renewal of licence is highly unjustified, unreasonable and unconscionable.

There was no such clause in the original allotment letter regarding increase of licence fee by 100% after expiry of initial five years of the said licence/lease. It has been submitted by the

counsel for the appellant that the appellant has been regularly paying agreed licence fee to the MCD and there is no default on this account. I am of the opinion that the unilateral decision of the MCD to hike the licence fee by 100% cannot be thrust upon the appellant without giving him an opportunity to proper hearing on this aspect of the matter.”

Respondent filed a writ petition before the High Court under Article 227 of the Constitution of India, which by reason of the impugned judgment, has been allowed by a learned Single Judge of the said Court *inter alia* opining as under :

“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 licence 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 licence. 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

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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 licence 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 licence 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 licence. 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 licence 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.”

Mr. M.A. Chinnasamy, learned counsel appearing on behalf of the appellant contends that the judgment of the Appellate Authority being a reasoned one, the High Court acted illegally and without jurisdiction in interfering therewith in exercise of its jurisdiction under Article 227 of the Constitution of India.

Mr. Nagendra Rai, learned senior counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

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The basic fact of the matter is not much in dispute. Shops nos. 48-49 were allotted to the appellant on a licence basis for a period of five years with effect from 1.2.1984. On the expiry of the said period of five years respondent asked for 100% increase in rent with retrospective effect. Indisputably, appellant refused to accede to the said request resulting in initiation of the proceedings under the Act. Admittedly, the request of the appellant for renewal of the said period of licence have not been acceded to.

Section 2(g) of the Act defines “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.” The said definition

being an inclusive one is of wide importance. The construction of the said provisions came up before the Constitution Bench of this Court in Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & Ors. reported in 1990 (4) SCC 406, wherein it was held :

“The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in

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two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words “whether by way of grant or any other mode of transfer” in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law.”

Referring to a large number of decisions of this Court it was held that unauthorised occupation will include occupation by a tenant or a licensee after the expiry of the period of licence/tenancy.

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Appellant has, thus, been rightly evicted by the Estate Officer. The Appellate Authority, in our opinion, could not have interfered with that part of the finding of the learned Estate Officer.

So far as the question as regards determination of the damages for occupation of the premises by the appellant even after 1.5.1969 to 15.2.1986, however, is concerned, we are of the opinion, keeping in view the fact that appellant did not agree to the demand of respondent that the quantum of licence fee would be at the rate of Rs.12,000/- per month, it was obligatory on the part of the Estate Officer to determine the amount of damages upon consideration of the materials placed before it by the parties.

He has not referred to the materials brought on record by the parties, if any. The demand made on the part of the respondent by itself could not have been the determinative factor so far as quantum of damages is concerned. For the said purpose, the Estate Officer was required to give opportunity to the parties to lead evidence. He should do so.

For the said purpose only, the matter is remitted to the Estate Officer.

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We make it clear that all contentions of the parties in this behalf shall remain open.

The appeal is accordingly, disposed of.

**.....J.
(S.B. SINHA)**

**.....J.
(CYRIAC JOSEPH)**

**New Delhi,
September 26, 2008.**