

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 27th July 2022**

+ **W.P.(C) 3095/2021 & CM APPL. 9364/2021**

S.D. BEARING CO & ANR Petitioner

Through: **Mr. Sanjeev Manchanda, Advocate**

versus

DELHI DEVELOPMENT AUTHORITY AND ANR

..... Respondent

Through: **Mr Siddhant Nath, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition has been filed on behalf of the petitioners under Article 226 of the Constitution of India against the order dated 21st October 2016 passed by the Estate Officer, DDA and order dated 2nd February 2021 passed by learned Principal District and Sessions Judge, West, Tis Hazari Courts, Delhi in SD Bearing vs. DDA, PPA 22/2016 and S.K. Trader vs. DDA, PPA 23/2016.

2. The background of the matter reveals that M/s Desh Raj Engineering was allotted Plot No. B-31, Rewari Line, Industrial Area Phase-II, Mayapuri, New Delhi (hereinafter "the property") with perpetual lease deed

executed between the proprietor Desh Raj Ahuja and the Delhi Development Authority on 14th November 1972.

3. A survey was conducted on the property and report dated 3rd October 2002 was made by the Assistant Engineer (Industrial) DDA, wherein it was found that the said property was rented to four different persons, namely, Mr. Surender Kumar (LR of the Proprietor of M/s S.K. Traders), Mr. Sridar Jaiswal (Proprietor of M/s S.D. Bearing Company, the petitioner herein), Mr. Vishal Yadav and Mr. Santosh Kapoor. In pursuance to the report, a Show Cause Notice dated 6th October 2002 was issued to the unit with directions to stop the misuse of the plot and deposit misuse charges within 15 days, failing which cancellation of lease deed was contemplated.

4. After having received no reply to the Show Cause Notice, the Lt. Governor cancelled the lease deed of the property vide order dated 19th August 2003 and cancellation letter dated 11th September 2003 was issued to Desh Raj Ahuja, with direction to handover the vacant and peaceful possession of the property on 26th September 2003. The concerned lessee, Desh Raj Ahuja failed to comply with the aforesaid order and therefore, proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter "PP Act") were initiated before the Estate Officer (Land Management), West Zone, DDA.

5. A Show Cause Notice dated 23rd January 2014 was issued under Section 4 of the PP Act to the lessee, however, he failed to appear and answer the questions. The property was inspected again and it was found that two firms, that is, M/s S.K. Traders and M/s S.D. Bearing Company, the

petitioner herein, were in occupation of the unit and they had sub-divided the property in three parts. Inspection was again carried out on 18th April 2015 and it was found that two shops running at the property were not in the name and business of the original lessee. Thereafter, vide Survey Report dated 27th September 2016 it was confirmed that the original lessee had handed over the possession of the two shops by renting it out to M/s S.K. Traders and the petitioner.

6. In the aftermath of the survey report, notice dated 26th August 2005 was served upon the tenants under Section 4(i) of the PP Act and subsequently, the order dated 21st October 2016 was passed whereby the petitioner and other tenants were found to be in unauthorised occupation of the public premises and were directed to vacate the property within 15 days from the communication of the order failing which the use of force to evict was contemplated.

7. The petitioner herein assailed the order dated 21st October 2016 before the learned Principal District & Sessions Judge, West District, Tis Hazari Courts, Delhi (hereinafter “Appellate Court”) wherein the impugned judgement dated 2nd February 2021 was passed dismissing the appeal. The petitioner is before this Court challenging the order dated 21st October 2016 and judgement dated 2nd February 2021.

8. The learned counsel appearing on behalf of the petitioner submitted that the Appellate Court failed to appreciate that there was sufficient material on record to show that the petitioner and the tenants were not in unlawful occupation of the property.

9. It is submitted that the original lessee, Desh Raj Ahuja and his wife had expired and the property was transferred in the name of one Gurdeep Singh, however, no Show Cause Notice was issued in his name under Section 4 of the PP Act. The original owner was not made party to the proceedings before the Estate Officer and the eviction orders were also not passed against him, instead were passed against the tenants. Moreover, the eviction order was passed only against the two entities that is, M/s S.K. Traders and the petitioner whereas the rest two tenants were not a party to the proceedings before the Estate Officer or the Appellate Court.

10. It is submitted that the order of eviction as well as the order of the Appellate Court have taken a harsh view since the petitioner is only running a small business on the property and it is the only source of income for the proprietor of the petitioner.

11. It is submitted that the Estate Officer as well as the Appellate Court has failed to appreciate the material on record and therefore, have passed the impugned order and judgement which are liable to be set aside.

12. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that there is no error or illegality in the order dated 21st October 2016 and judgement dated 2nd February 2021.

13. It is submitted that the petitioner is an unauthorised occupant carrying out business on the property and despite several Show Cause Notices being served upon the Unit, it failed to comply and vacate the premises in accordance with the notices and orders of the concerned authorities, that is,

the DDA and the Estate Officer.

14. It is submitted that the order of cancellation of lease, order passed by the Estate Officer as well as the judgment of the Appellate Court was passed after proper adjudication and appreciation of facts and material on record. It is further submitted that the instant petition is liable to be dismissed for being devoid of any merit.

15. Heard the parties and perused the record.

16. The lease deed in the name of the original lessee was cancelled when it was found that he had rented out the property to four persons, including the proprietor of the petitioner, without authorisation, for commercial use. A perusal of the order of the Estate Officer dated 21st October 2016 reveals that upon cancellation of lease of property on 19th August 2003, the original lessee was given several opportunities to appear before the Estate Officer, however he failed to appear and make out his case and hence, the order of vacation of the premises was passed.

17. In the said order, the observations made by the Estate Officer have been based on the material on record which indicated that the property had been unauthorizedly rented out to the concerned unauthorised occupants who failed to show their bona fide use of a public premises. The instant petitioner, being a business entity, was using the public property for commercial use, which would not have been the purpose or intent for which the lease deed dated 14th November 1972 was signed between the original lessee and the DDA.

18. Further, the Appellate Court while adjudicating the challenge to the order of the Estate Officer found that all the requirements as per law, including the issuance of Show Cause Notices under Section 4 and 5 of the PP Act, were followed by the concerned authorities to constantly intimate and direct the occupants of the property that the lease deed had been cancelled for the reason of it being rented out to unauthorised occupants. The said notices were not only issued and served upon the owner/lessee, but also the six individuals, including the petitioner. Yet the petitioner failed to comply with the ultimatums given by way of such notices and remained in the unauthorised occupation of the property.

19. The property being a public premises was subject to the provisions under the PP Act and there was a definite and absolute bar on its sale, transfer, assignment or parting of possession, except with the consent of the lessor, under Clause 5 (a) of the lease deed. Despite the same being in operation, the property was rented out for commercial use to four persons, who remained in its unauthorised occupation even after the lease was cancelled in 2003. Instead of vacating the property after the lease was cancelled, the petitioner herein challenged such cancellation. However, the petitioner had no *locus standi* to challenge the cancellation order, based on which the eviction order was passed, for the reason of itself being an unauthorised occupant and not the original owner or the lessee.

20. The PP Act had come into force for the very reason which this Court is adjudicating upon in the instant petition. Under the garb of the schemes of DDA and the provisions of the PP Act, the owners/lessees often find a way to manipulate and misuse the benefits and protection provided to them for

use of public land. The misuse of these welfare provisions has been widely witnessed and the same also seems to be the case in the instant matter. The very purpose of the Act would be defeated if illegal and unauthorised occupants are given the protection to use public premises for their person and commercial gain without them having a right or title in said premises.

21. Upon perusing the order of the Estate Officer as well as the judgment passed by the Appellate Court, it is found that the original lessee had no right to rent out the property to the concerned individuals for commercial use of a public premises. As per the terms of the lease deed, at the very first instance, in the absence of the consent of the lessor, the petitioner neither had the authorisation to be in possession of the property nor did it have any authorisation to remain in the possession of the property after cancellation of the lease and despite being served several notices and orders for eviction.

22. In view of the aforesaid facts and circumstances, this Court does not find any cogent reason to allow the prayer as made by the petitioner, since the order dated 21st October 2016 passed by the Estate Officer, West, and judgement dated 2nd February 2021 passed by learned Principal District and Sessions Judge, West, Tis Hazari Courts, Delhi do not suffer from any illegality or infirmity. This court also finds that both the impugned order and judgment were passed after proper adjudication and consideration of the material on record and after arriving at the conclusion that the petitioner was in unauthorised occupancy of the property in question. This Court does not find any merit in the instant petition.

23. Accordingly, the instant petition is dismissed.

24. Pending applications, if any, also stand disposed of.
25. The judgment be uploaded on the website forthwith.

**CHANDRA DHARI SINGH
JUDGE**

**JULY 27, 2022
Aj/Ms**