

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

**SUBJECT: PUBLIC PREMISES (EVICTION OF UNAUTHORIZED OCCUPANTS)  
ACT, 1971**

Date of decision: 12th December, 2012

LPA No.760/2012

**BALAJI ENTERPRISES** ..... Appellant  
Through: Mr. S.K. Sharma & Mr. Rakesh Sharma, Adv.

Versus

**DELHI DEVELOPMENT AUTHORITY** ..... Respondent  
Through: Ms. Shobhana Takiar, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 17.09.2012 of the learned Single Judge, of dismissal of W.P.(C) No.5118/2011 preferred by the appellant. The said writ petition was preferred impugning the judgment dated 26.05.2011 of the District Judge, exercising powers as an Appellate Authority under Section 9 of the Public Premises (Eviction of unauthorized Occupants) Act, 1971 (PP Act) dismissing the appeal preferred by the appellant against the order dated 16.06.2008 of the Estate Officer of the respondent DDA, of eviction of the appellant from a shop in his possession in property bearing Plot No.20, Block 12-A, W.E.A., Bankim Chandra Chatterjee Marg, Karol Bagh, New Delhi.

2. The lease granted of land underneath the aforesaid property bearing Plot No.20, was determined by the DDA for violation of the lease conditions; while the lease was granted for residential purposes, the property constructed thereon was being misused for commercial purposes. Thereafter proceedings under the PP Act were commenced. The appellant being the tenant in one of the shops in the said property, under the lessee of the land underneath the property, also contested the said proceedings.

3. The Estate Officer, in order dated 16.06.2008 supra:

(i) negated the plea of non-maintainability of proceedings under the PP Act and for which purpose reliance was placed on Express Newspapers Pvt. Ltd. Vs. Union of India AIR 1986 SC 872 and held that the said judgment stood distinguished in the subsequent judgment in Ashoka Marketing Ltd. Vs. Punjab National Bank AIR 1991 SC 855;

(ii) negated the plea, of the Estate Officer having not been delegated the requisite powers. It was held that DDA had authorized all its Zonal Deputy Directors of Land Management Wing to act as Estate Officer; and,  
(iii) negated the plea of the appellant being protected under the provisions of the Delhi Rent Control Act, 1958 and held PP Act to be overriding the said Act, and accordingly passed the order of eviction.

4. The learned District Judge dismissed the appeal preferred by the appellant, further relying on judgment dated 21.02.2006 of a Division Bench of this Court in LPA No.976/2004 titled Delhi Development Authority Vs. Ambitious Gold Nib Manufacturing Company Pvt. Ltd. It was further observed that the appellant had not even disputed the use of the premises in contravention of the lease conditions. It was yet further held that the plea of protection of the Rent Act had been rightly declined in view of Ambitious Gold Nib Manufacturing Company Pvt. Ltd. supra. Before the District Judge, the appellant also argued that vide subsequent decision, the government had allowed commercial use of 20 sq. mtrs. The District Judge however and in our opinion rightly, held that in the present case misuse was of the entire property and that relaxation even if any granted subsequent to the determination of lease could not revive the lease.

5. Before the learned Single Judge, the only contention raised by the appellant was on the basis of order dated 09.07.2012 of this Court in W.P.(C) No.2204/2006 titled Ashoka Builders & Promoters Vs. Union of India. The Single Judge however rejected the aforesaid contention relying on the judgment dated 21.11.2011 of the Division Bench of this Court in LPA No.965/2011 titled Vijay Rehal Vs. Delhi Development Authority, relating to the same property. Reliance in this regard was also placed on Ambitious Gold Nib Manufacturing Company Pvt. Ltd. supra and Escorts Heart Institute & Research Centre Ltd. Vs. Delhi Development Authority AIR 2008 Delhi 70 (DB).

6. We heard the counsel for the appellant on 23.11.2012 when the appeal came up first. The contention of the counsel for the appellant was that vide Notification dated February, 2007, the street on which the premises in question is situated was declared as a commercial street with commercial activities being permissible in the properties situated thereon; that the ex-lessee of the land underneath the property and / or his successors in interest are misusing the provisions of the PP Act to evict from the property old tenants in the property who are protected from eviction under the Rent Act, with the intent to after the said tenants had been evicted, apply for restoration of the lease on payment of requisite charges as is permissible vide Circular dated 09.04.2008 of the DDA. It was further his contention that since owing to the subsequent Notification the ground of misuse on which lease had been determined did not persist, the order of eviction should be set aside. It was yet further argued that the abuse of the process of the PP Act is evident from the fact that though the Estate Officer had directed eviction of all the occupants of the property including the ex-lessee from the portion in his / her occupation but DDA was not enforcing the eviction order against the ex-lessee and enforcing the same against the tenants of the ex-lessee only. It was further contended that the Division Bench in Vijay Rehal (supra) had failed to notice the conversion of the land use of the street in which the property is situated.

7. No merit is found in any of the pleas aforesaid. The lease of the land underneath the property was determined way back in 1998 i.e. much before the date since when it is argued that commercial use is permitted. Moreover, there is no plea of the DDA having changed the conditions on which the lease was granted. The proceedings under the PP Act before the Estate Officer were admittedly pending since the year 1999 i.e. again since before the change of user pleaded. We concur with the learned Single Judge in holding that such subsequent change of use even if effected, would not alter the position.

8. However we were a little alarmed on that date by the argument of abuse of the process of PP Act for evicting the tenants protected from eviction under the Rent Act and accordingly we had asked the counsel for DDA who was appearing on advance notice on that date to inform the action taken against the other occupants of the property in question and whether the ex-lessee of the plot in question can still apply for withdrawal of re-entry and restoration of lease, after the tenants of the ex-lessee in the property had been evicted under the provisions of the PP Act.

9. The counsel for the DDA has today categorically stated that restoration of the lease is not permissible once eviction order under the PP Act has been passed and the appeal thereagainst has been dismissed. She further assures that action for enforcement of the order of the Estate Officer against all the occupants of the property is being taken.

10. We, on the basis of the aforesaid submission are satisfied that there is no possibility of abuse of the process of the provisions of the PP Act. We bind the DDA to the submission aforesaid.

11. The appellant claims title to a portion of the property only as a tenant under the ex-lessee and once the ex-lessee has been ordered to be evicted, the appellant who was also independently issued a show cause notice by the Estate Officer and was heard and has appealed against the order of the Estate Officer would also be evicted from the premises. The Division Bench of this Court in Vijay Rehal has already noted that ex-lessee has not even challenged the order of eviction. The counsel for the DDA today also affirms the said position. Doubts were expressed in Vijay Rehal as to the very locus of a tenant of the ex-lessee with whom the superior lessor i.e. the DDA does not even have any privity, to maintain a challenge to the order of eviction. We may observe that the premises are public premises and it is the duty of the Court to ensure eviction of unauthorized occupants therefrom.

12. We therefore do not find any merit in this appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 12, 2012

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