IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14120-2021
Date of Decision: 24.03.2022

Pt. B.D. Sharma University of Health and Sciences

....Petitioner

VS

Kavita and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Ojas Bansal, Advocate and
Mr. Tejas Bansal, Advocate
for the petitioner

Mr. Sumeet Goel, Sr. Advocate with
Mr. Dinesh Arora, Advocate
for respondent No. 1

Mr. Rajneesh Chadwal, AAG Haryana for respondent No. 2

Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Nitin Sachdeva, Advocate
for respondent No. 3

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SUDHIR MITTAL, J.

A property identifiable as Shop No. 5 was given on licence to respondent No. 1 pursuant to tender submitted by her on 10.06.2010. The tender was provisionally accepted vide communication dated 08.07.2010. In terms thereof an undertaking by way of agreement dated 09.07.2010 was executed by respondent No. 1. Licence was for a period of one year w.e.f. 27.09.2010 till 26.09.2011 on payment of monthly licence fee of Rs. 9,75,000/-.

2. Clause 16 of the agreement entered into between the parties provides that licence fee was payable upto 7th of every English calender month. On failure to do so fine of Rs. 1000/- per day was payable upto 15th of the english calender

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month and on failure to deposit the licence fee alongwith fine by 15th of the month, the competent authority could cancel the licence and lock the premises without issuing notice alongwith forfeiture of security amount and other deposits. Clause 36 stipulates that on failure to vacate the premises on the last date of completion of licence period, the licencee would be liable to pay penal licence fee @ 10 times of the licence fee for the first three months and thereafter @ 20 times for the next three months. On expiry of six months the competent authority could lock the premises.

3. Vide notice dated 05.09.2011, respondent No. 1 was directed to hand over vacant possession on completion of one year period. To avoid vacating the shop, respondent No. 1 filed a civil suit for injunction restraining the petitioner from dispossessing her from the shop in dispute forcibly. An order dated 24.09.2011 came to be passed in the said suit directing the petitioner not to dispossess respondent No. 1 except in accordance with law. Thus, a petition dated 17.01.2012 was filed under Sections 4, 5 and 7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as 'the Act'). This petition was allowed vide order dated 31.12.2020 i.e. after almost 9 years of the filing of the same. It was held that licence expired on 26.09.2011 and upon failure to vacate the shop even after issuance of notice, the possession became illegal and respondent No. 1 was liable to vacate the same. She was also held liable to pay utilization fee equal to the licence fee from the date of her illegal possession i.e. 26.09.2011 till actual date of vacation with annual 10% increase. Penalty @ 6% of the licence fee would also be payable from 26.09.2011 till date of payment. Respondent No. 1 was directed to make payment within 30 days from receipt of payment details to be furnished by the petitioner within two weeks. If she failed to do so she was directed to furnish property worth 15 times of the amount payable as security and make payment in six monthly installments. The

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installments would carry interest @ 12 % p.a. This order was challenged by respondent No. 1 by way of appeal filed in the Court of the Commissioner, Rohtak Division, Rohtak. One of the grounds taken was that proper opportunity was not granted to her to cross-examine the witness of the petitioner and was also not given opportunity to lead her own evidence. This ground found favour with the appellate Court who set aside the order of the Collector vide order dated 24.03.2021 and remanded the case for a fresh decision. It was also held that the order of the Collector was without jurisdiction as it had been passed in capacity of Assistant Collector 1st Grade.

4. While issuing notice of the writ petition this Court impleaded the then Commissioner, Rohtak Division, Rohtak as respondent No. 3 as the Court was *prima facie* of the opinion that the appellate Court had passed the order on account of extraneous consideration. Thus, a separate written statement has been filed on her behalf.

5. Learned counsel for the petitioner has argued that the appellate Court was in error in remanding the case for a fresh decision. A perusal of the zimni orders on the file of the Collector show that evidence on behalf of the petitioner was presented in Court on 19.02.2013 and the mater was adjourned to 21.03.2013 for cross-examination of the witness. Thereafter, the matter was adjourned for cross-examination of the witness of the petitioner at request of counsel for respondent No. 1 on every date till 25.10.2018. A total of 55 opportunities were granted. On 25.10.2018, a fresh affidavit by way of examination-in-chief was filed on behalf of the petitioner as the earlier official had been transferred. Counsel for respondent No. 1 again sought an adjournment for cross-examination and the adjournment was granted on every date till 14.11.2019, which involved 13 adjournments. On the said date, a fresh affidavit was filed on behalf of the petitioner alongwith related documents and again the matter was adjourned on

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number of dates till it was finally decided on 31.12.2020. The zimni orders clearly show that respondent No. 1 had been granted large number of opportunities to cross-examine the petitioner's witness and to lead her own evidence but she never availed the same. If she was interested in cross-examining the witness and leading her own evidence she could even have filed an application for this purpose but the same was not done and thus, the appellate Court was in error in remanding the case on the ground that respondent No. 1 had not been granted opportunity to cross-examine the petitioner's witness. It was also in error in concluding that the order of the first Court was without jurisdiction as it had been passed by the Sub Divisional Officer in his capacity as Assistant Collector 1st Grade. Infact, the Assistant Collector 1st Grade had been vested with the powers of the Collector and merely because the said fact was not mentioned in the order did not render the same without jurisdiction. The appellate Court appears to have been influenced by respondent No. 1 and the impugned order has been passed for extraneous consideration. It, thus, deserves to be set aside and respondent No. 1 deserves to be evicted.

6. On behalf of respondent No. 1, it has been argued that the appellate order only remands the case for a fresh decision and the same does not cause any prejudice to the petitioner. At best, a direction may be issued to the Collector to decide the matter afresh within a limited time frame. It has also been submitted that the petitioner has raised an exorbitant demand on account of arrears which is not sustainable in law. Fine amounting to Rs. 1,90,65,300/- has been imposed whereas in accordance with Clause 16 of the agreement only a sum of Rs. 1,28,000/- was payable as fine. The zimni orders have not been translated correctly. A correct translation has been placed on record as Annexure R-3/2 with the written statement of respondent No. 3 which shows that on 14.11.2019 the matter was adjourned for arguments. Subsequent orders are annexed as Annexure

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R-3/3 to Annexure R-3/5 and all these orders show that the matter was adjourned for arguments and no opportunity was granted to respondent No. 1 for cross-examination or for leading her own evidence. Thus, the appellate Court was justified in remanding the case for a fresh decision.

7. In separate written statement filed on behalf of respondent No. 3 it has been averred that the order dated 24.03.2021 was passed in official capacity and in good faith. The zimni orders dated 14.11.2019 onwards show that the matter was adjourned for arguments and not for cross-examination. Right of cross-examination is a valuable right and denial of the same would result in violation of principles of natural justice. Hence, order dated 24.03.2021 was justified and bonafide. It has also been pleaded that the petitioner is equally to blame for the inordinate delay in decision of the case by the Collector as it never objected to the repeated adjournments. There is no evidence of any extraneous consideration on record and the allegation is frivolous. Para wise submissions on merits have also been made.

8. The merits of the case are being considered first and the conduct of respondent No. 3 shall be considered thereafter.

9. From the facts it is evident that respondent No. 1 was a licencee and the period of licence extended from 27.09.2010 till 26.09.2011. Notice dated 05.09.2011 was issued to her to vacate the shop in dispute on the expiry of the licence but instead she filed an injunction suit and order dated 24.09.2011 was passed restraining the petitioner from dispossessing her in accordance with law. The petitioner could have sought setting aside of the order by filing an appeal or could have sought ejectment under the Act and it chose to adopt the latter remedy. This fact coupled with the fact that the matter remained pending before the Collector for almost nine years shows some collusion with the ministerial staff of the petitioner and the petitioner would do well to set its house in order. Be that as it may, respondent No. 1 is undisputedly a licencee. She has exploited the loop

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holes in the law to retain possession of the shop in dispute for over 10 years in excess of the licence period. There is, thus, no equity in her favour. Zimni orders dated 19.02.2013 onwards show that time was sought for cross-examination of the witness of the petitioner for over 50 dates and, thus, the argument that on 14.11.2019 the matter was adjourned for arguments and no opportunity of cross-examination was granted is completely misplaced. An error in the language is sought to be exploited. Had she been serious about the cross-examination and about an opportunity to lead evidence, an application could very well have been filed for the purpose but no such attempt was made. In any case, opportunity to cross-examine would be an exercise in futility as admittedly respondent No. 1 was a licencee for a period of one year only. Nothing material could have been elicited in cross-examination and nothing useful could have been brought on record even if opportunity to lead evidence had been specifically granted. Even before this Court nothing has been averred or argued to establish that respondent No. 1 had a legal right to retain possession after expiry of a period of licence.

10. It is by now fairly well settled that the plea of violation of principles of natural justice is not entitled to be accepted unless and until it is shown in the facts and circumstances of a particular case that rights of a party have been prejudicially affected. If the facts are such that only one result is possible then even if principles of natural justice have been violated the Court will ignore the same. In a recent judgment passed by the Hon'ble Supreme Court in ***State of Uttar Pradesh vs. Sudhir Kumar Singh and others, 2020 AIR (Supreme Court) 5215*** it has been held as follows:-

> *"39. An analysis of the aforesaid judgments thus reveals:*
>
> *(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the* ***audi***

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alteram partem *rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

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11. From the above, it is clearly evident that the rules of natural justice are not rigid and have to be applied keeping in view the fact situation of a particular case. A party claiming violation of the rule must show prejudice especially in a case where the facts are indisputable and only one conclusion is possible. The "useless formality" theory is clearly applicable in this case because respondent No. 1 could not have elicited anything substantial by way of cross-examination nor could she have led any evidence to protect her possession. The attempt is clearly to prolong the litigation so as to retain possession of the shop in dispute without there being any right to continue in possession.

12. The order of the appellate authority, thus, can not be sustained in law and is, accordingly, set aside. Under normal circumstances the matter would have been remitted to the said authority for a fresh decision but keeping in view the fact that respondent No. 1 has managed to remain in illegal possession for over 10 years in excess of the licence period I deem it appropriate to decide the lis between the parties here itself. Respondent No. 1 has claimed herself to be a lessee in the written statement filed before the Collector but before this Court the status of licencee is admitted. Licence is terminable on expiry of the period thereof and thereafter possession is illegal. No argument regarding her right to continue in possession has been raise nor has any material been placed on record which would justify retention of possession. She is, thus, directed to hand over possession of the shop in dispute within two weeks from the date of receipt of certified copy of this order. Arrears, if any, would be payable in accordance with the order of the Collector. The petitioner would be entitled to take into possession the stock lying in the shop in case arrears are not cleared.

13. Coming to the conduct of respondent No. 3 herein. She has given two reasons to allow the appeal :-

(i) opportunity to cross examine the petitioner's witness and to lead

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her own evidence was not granted to respondent No. 1 and;

(ii) the order had been passed by the Assistant Collector 1st Grade and not by the Collector.

14. In the written statement filed on her behalf, the order is alleged to be bonafide in nature and there being no proof of any extraneous consideration, the allegation in that regard ought to be rejected. Reply on merits has also been filed and it has been averred that the petitioner itself was equally to blame for the delay before the Collector.

15. The Divisional Commissioner is a senior officer with sufficient experience of quasi judicial work. The least that is expected from such an official is use of common sense while passing any order. Such an official is also expected to be judicious in his/her approach towards a dispute. Common sense and judicious approach are absent in this case. Even a lay man would have realized that a period of nine long years had elapsed before the Collector gave his decision. Thus, the logical question would have arisen whether respondent No. 1 was entitled to an opportunity of cross-examination and leading evidence. A perusal of the zimni orders dated 19.02.2013 onwards would have clearly shown that the claim of violation of principles of natural justice could not be made as more than 50 opportunities had been granted to respondent No. 1 to cross-examine the witness of the petitioner and to lead evidence in affirmative. Respondent No. 3 has read the record only selectively and this is not expected of a senior official exercising quasi judicial authority. The finding that the order dated 31.12.2020 was passed by the Assistant Collector 1st Grade shows that some justification, however, misplaced was sought to be given for allowing the appeal. An officer of the level of Divisional Commissioner would be expected to know that an Assistant Collector 1st Grade could be vested with the authority of the Collector. An

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inadvertent mistake while passing the order is sought to be capitalized upon in most unsatisfactory manner as the remand is to the same officer. To me it is clear that respondent No. 3 was influenced by other considerations rather than the merits of the case. The fact that reply has also been filed on merits of the case supports my conclusion. It is, thus, directed that a copy of this order be sent to the Chief Secretary to the State of Haryana for taking appropriate action to record an adverse remark in the Annual Confidential Report of the Officer after following the process prescribed under the law for such endorsement of such a remark.

16. The writ petition is, accordingly, allowed.

(SUDHIR MITTAL)
JUDGE

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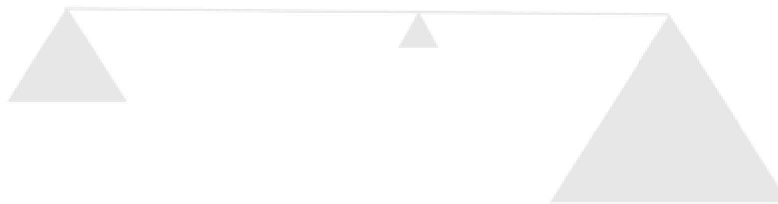
Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No



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