

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3364/2007 **Date of Decision: 02nd February, 2010.**
KARAMBIR SINGH Petitioner
Through Mr. Pramod Swarup, Sr. Adv. with
Mr. S.N. Pandey and Ms. Vandana
Mishra, Advocates.
versus
UOI Respondent
Through Mr. R.V. Sinha and Mr. R. Upadhyay,
Avocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
ORDER

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Learned Additional District Judge by the impugned order dated 25th April, 2007 dismissed the appeal of the petitioner under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the Act) and upheld the order passed by the Estate Officer.

2. Counsel appearing for the petitioner has submitted that the impugned orders are perverse as the inspection report was not furnished, has been misread and is per se unbelievable. He further states that the petitioner had taken permission from the respondent to share the accommodation with one Smt. P.S. Malini, UDC in CPWD w.e.f. 1st April, 2001 to 31st August, 2001. He relies upon telephone bills of telephone No.6183809 in the name of Ms. S.N. Ramamani with the address Sector-8/357, R.K. Puram, New Delhi.

3. A writ Court is not an appellate Court that can examine facts as an appellate Court. This Court is concerned with the decision making process and not merits. The aforesaid contentions of the petitioner have been duly considered and examined in the detailed order dated 25th April, 2007 passed by the Additional District Judge. With regard to the inspection report and contents thereof, learned Additional District Judge has referred to statement dated 16th December, 2002 made by the petitioner before the departmental appellate authority against the order of cancellation of allotment dated 6th June, 2002. The relevant portion of the statement of the petitioner recorded by the appellate authority reads as under:-

“I, Sh. Karambir Singh..... The contents of the inspection report were revealed to me and I presented my case accordingly. I belong to Sonapat (Haryana). At the time of inspection neither I nor any of our family members were present as we were constructing our own house at Sonapat. My wife have been visiting Sonapat otherwise she was residing with me. My children with my parents at Sonipat. Instead the persons found at the time of inspection were friends of my friend Sh. Pillai, who is also working in Delhi. They were staying at Munirka and the only stayed with me 5-6 days. I am not aware of the telephone number at my allotted qr. (quarter) installed by Mrs. Rama Mani. I have a gas connection in the allotted qr.

(quarter) is since April, 2002. I have got my two children, Ms. Kiran and Mr. Sandeep Nagar admitted in Kerala School, R.K. Puram, Sector-8 from April, 2002. They were studying in 4th and 9th class. Now I have constructed my house at Sonapat and I have shifted my family in Delhi. Now, I have also got telephone connectin No.26191051 installed at my allotted qr. (quarter) in January, 2002. I have nothing else to say.

4. Thereafter, on 12th September, 2003, PW-1, Mr. J.V. Garg, Additional Director of Estate was examined by the Estate Officer and the petitioner was given opportunity to cross examine him. Mr. J.V. Garg was a member of the inspection team which had conducted inspection of the property on 24th July, 2001. The petitioner declined to cross examine Mr. J.V. Garg, PW-1 on 12th September, 2003. Thereafter, the Estate Officer passed the eviction order dated 22nd September, 2003. The contention of the petitioner that he was not permitted to examine the inspection report is incorrect. The petitioner was shown the report and he had read and understood the same as stated by him in his statement dated 16th December, 2002. It is not a case of the petitioner that he had moved an application

asking for a copy of the inspection report during the proceedings before the Estate Officer. No prejudice is pleaded and shown.

5. The stand of the petitioner that he had applied for permission for occupation of the premises by Smt. P.S. Malini, UDC in CPWD w.e.f. 1st April, 2001 to 31st August, 2001, has been also dealt with and rejected by the Additional District Judge on the ground that it is an afterthought and cover up. In the statement dated 16th December, 2002, the petitioner did not take the said stand and instead had stated that at the time of inspection, the persons found in the said premises, were friends of his friend, Mr. Pillai. He had further stated that they were staying in Munirka and they had stayed with him for 5-6 days. The findings given by the Additional District Judge are:-

“4.4 So far as the appellant’s contention that he had not sublet the said premises but was only sharing the same with Smt. PS Malini, is concerned it is seen that in the first instance i.e. on receipt of show cause notice issued prior to cancellation of allotment, the appellant did not mention anything about the sharing of accommodation with Smt. Malini, in his reply filed before the Deputy Director of Estates. He simply stated he has been residing continuously in the said premises and refuted the allegations of sub-letting. Only after passing of order of cancellation, the appellant stated this fact in his appeal challenging the cancellation order dated

6.6.2002 before the Departmental Appellate Authority. It is also interesting to note that the appellant, in his statement made on 16.12.2002 before the Appellate Authority, as reproduced in para 4.3.3 (supra), stated that the persons found in the said premises at the time of inspection were friends of his friend Sh. Pillai. He further stated that they only stayed with him for 5-6 days, whereas before the Estate Officer and in this appeal, the appellant has stated that he was sharing accommodation with Smt. PS Malini w.e.f. 01.04.2001 to 31.08.2001. Thus the appellant had been making contradictory statement at different stages.

Be that as it may. In view of the appellant's failure to establish that he was actually residing in the said premises, even if for a while, the appellant's plea that he had intimated about sharing of the said premises with Miss Malini, is accepted, the same leads to only one conclusion that only Miss Malini along with her family members was residing in the said premises. Appellant and his family members were not residing in the said premises."

6. Counsel for the petitioner has relied upon column 15 of the inspection report under the heading 'any other information', which reads as under:-

"Allottee belongs to Sonapat. His wife and children lives in Sonapat. Allottee lives in Sonapat. However on Friday, Saturday and Sundays, allottee alongwith his family lives in this quarter (on holiday) Mrs. Rama Mani is Reader (Sanskrit) in Lal Bahadur Shastri Sanskrit

Vidya Peeth, Katwaria Sarai.

Full subletting suspected”

7. It is obvious that the said column reproduces the statement of the persons, who were found to be in occupation and then records the finding of the inspection team “Full subletting suspected”. The said statement has been considered by the Additional District Judge and it has been rightly held that the said statement shows that the petitioner had in fact sub-let the premises. The persons in occupation of the premises at the time of inspection, were obviously trying to help the petitioner, when it was stated that the petitioner on Friday, Saturday and Sundays, alongwith his family resides in the quarter. The petitioner did not produce the said persons/occupants before the Estate Officer. Even the persons, who were members of the inspection team, were not cross-examined before the Estate Officer. The inspection team has recorded that telephone No.6183809 in the name of Mrs. S.N. Ramamani was found installed in the premises. It is accepted that this telephone number is in the name of Mrs. S.N. Ramamani. Obviously, the inspection team would not have recorded the said fact, without information being furnished or without on spot verification. In these circumstances, I am not inclined to accept the

contention of the petitioner, relying upon telephone bill in the name of Mrs. S.N. Ramamani which is bearing a different address with due date 8th August, 2001. The documents produced by the petitioner in support of his contention that he was also residing in the premises at the time of inspection have been considered and rejected by the Additional District Judge, noticing that the said documents pertain to period subsequent to the date of inspection, which was conducted on 24th July, 2001. The petitioner had produced copy of gas connection taken on 6th April, 2002, copy of telephone bill installed in his name for the period 8th February, 2002 and copy of the receipts dated 7th May, 2002 and 10th July, 2002, issued by the Kerala Education Society (Regd.). CGHS card etc. produced by the petitioner and evidential value attached to the same have also been considered by the Additional District Judge.

8. The present writ petition has no merit and the same is dismissed with costs of Rs. 10,000/-.

SANJIV KHANNA, J.

FEBRUARY 02, 2010

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