

Roshanara Club Limited & Anr vs Delhi Development Authority & Anr on 21 April, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5110/2023 & CM APPLs. 20003/2023, 20004/2023
20005/2023

ROSHANARA CLUB LIMITED & ANR. Petitioners

Through: Mr. Sandeep Sethi with

Mr. Mohit Mathur, Senior

Advocates with Mr. Samee

Rohatgi, Mr. Nishant Yad

Mr. Lalitaksh Yadav,

Mr. Manish Aggarwal,

Ms. Shreya Sethi, Mr. Vi

Singh Dalal, Ms. Tanvi T

Mr. Virender Mehta,

Mr. Abhinav Shokeen,

Mr. Prabhat Gandhi

Advocates with Mr. Manis

Aggarwal, President of

Roshanara Club.

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versus

DELHI DEVELOPMENT AUTHORITY &

ANR.

..... Resp

Through: Ms. Manika Tripathy, Standi

counsel with Mr. Shubham

Hasiya, Advocate.

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

% 21.04.2023 [Physical Hearing/ Hybrid Hearing] CM APPL. 20003/2023 (Application under Section 151 CPC for exemption from filing certified copy of the impugned notice) & CM APPL. 20004/2023 (Application under Section 151 CPC for exemption from filing dim annexures/original/certified typed copies of the documents along with supporting affidavit)

1. Allowed, subject to just exceptions.

2. Applications are disposed of.

W.P.(C) 5110/2023 & CM APPL. 20005/2023 (Application on behalf of petitioner under Article 226 of the Constitution of India read with Section 151 CPC for interim stay till disposal of petition)

3. The present writ petition has been filed challenging the Eviction order dated 12.04.2023 issued under Section 5(1) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act). By way of the said Eviction order, the petitioner herein has been directed to give possession of the club in question to the respondent DDA. There is further prayer for directions to the DDA to renew the lease/licence of the petitioner club, with prayer for directions to respondent no. 2/DDA to formulate its policy for renewal of expired term leases, which has been under their consideration.

4. Mr. Sandeep Sethi, learned senior counsel appearing on behalf of the petitioner submits that the impugned Eviction order dated 12.04.2023 has been issued irrationally and without application of mind. It is submitted that the said Eviction order has been issued without considering the fact that the petitioner club has been in possession of the premises for the last 100 years.

5. It is the case on behalf of the petitioner that the respondent no. 1 itself had written a letter dated 27.03.2023 calling upon its own Old Scheme Branch to submit the status of the representation dated 02.08.2018 submitted by the petitioner for extension of its lease.

6. It is submitted that response dated 11.09.2018 of the Old Scheme Branch of the DDA was received, wherein it was stated that the representation by the petitioner for extension was under

examination. It was further mentioned in the said letter dated 11.09.2018 of the Old Scheme Branch of the DDA that eviction proceedings against the petitioner cannot be concluded during the pendency of the request for renewal of lease.

7. It is submitted that despite the aforesaid wherein the request of the petitioner for renewal of lease is pending with the DDA, the DDA has issued the impugned Eviction order, contrary to its own stand.

8. It is further submitted that the impugned Eviction order does not anywhere refer to the representation dated 02.08.2018 submitted by the petitioner for extension and the response dated 11.09.2018 of the Old Scheme Branch of the DDA that the said representation was under examination. Thus, it is submitted that the impugned notice suffers from non-application of mind.

9. It is further submitted that pursuant to the representation of the petitioner for renewal of their lease, their representation was forwarded to the Government of India. Pursuant to the same, the petitioner was granted hearing by the Government, wherein it was recorded that the case of the petitioner was under consideration and that the policy of the DDA for renewal of the expired lease was also under consideration.

10. Attention of this Court has also been drawn to the replies dated 11.09.2018, letter dated 03.01.2019 and letter dated 12.06.2019 issued by the DDA. Further, attention of this Court has also been drawn to the Minutes of the Meeting dated 21.07.2022, wherein the meeting of the petitioner

was undertaken with the Delhi Division (DD) of the Ministry of Housing and Urban Affairs, Government of India.

11. By referring to the said Minutes of the Meeting dated 21.07.2022, it is submitted that it is the clear stand of the DDA itself that DDA has requested the Delhi Division (DD) of the Ministry of Housing and Urban Affairs, Government of India to give necessary directions so as to enable the DDA to take a decision on the request of the Roshanara Club vis-a-vis the policy of the DDA for renewal of the lease of the clubs for further period, after the expiry of the lease beyond the permissible period of 90 years.

12. Learned senior counsel for the petitioner has also drawn the attention of this Court to the letter dated 14.03.2023 issued by the DDA, wherein it is categorically stated that the Old Scheme Branch of the DDA had sought comments with respect to the representation of the petitioner herein.

13. Learned senior counsel for the petitioner has also referred to the letter dated 27.03.2023 issued by the DDA, wherein it is stated by the DDA that the representation of the petitioner for renewal is still pending.

14. Learned senior counsel also relies upon the judgment in the case of B.K. Bhagat Vs New Delhi Municipal Council, reported as MANU/DE/1609/2015 to contend that under the provisions of Section 5 of the PP Act, the Estate Officer cannot give directions to the government authorities to renew the licence or negotiate the licence fee. Thus, it is submitted that the present writ petition has been filed, and would be maintainable.

15. Further, attention of this Court has also been drawn to the agenda items for the meeting of the Delhi Development Authority dated 18.01.2022, as available on the official website of the DDA. By reference to the said document, it is submitted that the policy of the DDA for renewal of all expired licences, is still to be finalised.

16. On the other hand, learned standing counsel appearing for the DDA has vehemently opposed the present writ petition. She submits that the present writ petition with prayer for challenging the Eviction order dated 12.04.2023 issued by the DDA under Section 5 of the PP Act would not be maintainable, as statutory appeal under Section 9 of the PP Act is the alternative remedy available to the petitioner. She further submits that as far as the lease of the petitioner is concerned, the same has already expired way back on 30.04.2013 and 31.12.2017. Thus, she submits that the petitioner is an unauthorised occupant. She further submits that the representations of the petitioners with respect to their renewal have already been rejected by way of letter dated 07.05.2018. Thus, she submits that when the stand of the DDA has already been communicated to the petitioner vide letter dated 07.05.2018, there is no question of subsequent representations by the petitioner in this behalf. She further submits that the petitioner cannot continue to occupy the premises in question by giving fresh representations time and again, when their earlier representation has already been rejected vide letter dated 07.05.2018 issued by the DDA. She further submits that the stand of the DDA has remained the same as given in the letter dated 07.05.2018 and that any subsequent representations given by the petitioner are not required to be answered by the DDA.

17. Learned standing counsel for the DDA further submits that the lease in the present case was granted in the year 1922 for the social purpose of Europeans in India. Thus, she further submits that prime land of more than 1,10,00 sq meters of DDA is under the occupation of the petitioner, despite their lease having been expired. She further submits that there is no right in favour of the petitioner to continue the occupation of the land after the expiry of the lease. Thus, she submits that the present writ petition ought to be dismissed.

18. Learned standing counsel for the DDA further submits that the representation of the petitioner has already been rejected by the Ministry on 09.09.2022.

19. In response, learned senior counsel appearing for the petitioners further submits that on 12.09.2022, the Ministry of Housing and Urban Affairs, Land and Development Office, Government of India itself has been writing to the petitioner club requesting to furnish the various documents. Thus, he submits that the stand of the DDA that the representation of the petitioner was rejected in September, 2022, is wholly incorrect.

20. Responding to the submissions made on behalf of DDA, learned senior counsel appearing for the petitioner submits that the DDA cannot have different policy and response for different clubs in Delhi. It is submitted that the lease of the Delhi Golf Club had expired, and DDA after expiry of the lease of the Delhi Golf Club had renewed the same in the year 2018. It is further submitted that there are major clubs in Delhi like the Gymkhana Club, the Chelmsford Club and the Delhi Race Course Club, whose lease have already expired and the issue is under consideration with the DDA. It is further submitted that till the policy of the DDA with respect to renewal of the expired leases is finalised, no action can be taken against the petitioners.

21. I have heard learned counsels for the parties.

22. At the outset, it is noted that prayer "a" with respect to the Eviction order dated 12.04.2023 issued under Section 5(1) of the PP Act, would not be maintainable before this Court.

23. Considering the aforesaid position, learned senior counsel appearing for the petitioner submits that he does not press prayer "a" with respect to challenging the Eviction order dated 12.04.2023 and that the petitioner shall take appropriate steps for challenging the same in terms of the statutory remedy available under Section 9 of the PP Act.

24. Considering the prayer made on behalf of the petitioner, it is recorded that prayer "a" is not being pressed on behalf of the petitioner.

25. Recording the aforesaid, this Court proceeds to deal with the other prayers as made in the present case.

26. The documents on record clearly show that the policy of the DDA with respect to renewal of the 90 years expired term leases has still not been finalised. In this regard, the document of agenda items for the meeting of the Delhi Development Authority dated 18.01.2022, as available on the

official website of the DDA records as under:-

" Policy for renewal of all expired leases be expedited. - The proposal relating to policy for renewal of 90 years expired term leases of residential as well as Mix-land-use in 23 Nazul-I Estates under Old Scheme Branch of DDA up to 31.12.2021 has been approved by the Authority vide agenda item No. 63/2019 dated 13.08.2019. Accordingly, the same had been forwarded to MoHUA for approval and notification vide letter dated 22.08.2019. It is mandatory to have conversion of the expired lease properties done at the time of renewal of the lease. The Ministry has insisted that updation/revision of conversion rates be done (which was fixed in 2011) by the DDA before the proposal is agreed to.

Revision of conversion rates is under examination "

27. Perusal of the aforesaid clearly shows that the scheme and policy of the DDA for renewal of the long term expired leases, is still under consideration and no final decision with respect thereto has been taken.

28. This Court also takes note of the fact that in similar circumstances when the lease deed of Delhi Golf Club expired in the year 2018, the DDA renewed the lease/licence of the Delhi Golf Club in the year 2018.

29. This Court also cannot be oblivious of the fact that the petitioner club has been existing for more than 100 years, and has contributed immensely to the society in terms of various sports and has granted access to various players of national importance for playing in its grounds. In this regard, attention of this Court was drawn to paras 6 to 11 of the writ petition, which are reproduced as below:-

"6. The office of the BCCI also used to function from the Club's premises. It is pertinent to note that the Club has produced over a dozen Ranji players and has been regularly used Ranji Trophy matches, IPL practice sessions. Players like Gautam Gambhir, Ishant Sharma and Virat Kohli has regularly used the grounds in the Petitioner No. 1 club to hone their skills.

7. The Petitioner Club has also been actively involved in tennis too. In the year 1962, Davis Cup match between India and Phillippines was played at the Club Courts.

8. The Petitioner Club has produced three commonwealth champions in the sports of powerlifting and also promotes other sports like badminton, billiards, table tennis and squash.

9. Quite often, the Petitioner Club provides sports facilities to various NGOs, Government Institutions and the underprivileged without charging anything from them.

10. The membership of the Petitioner Club has grown to around 4500 families and their dependents which total up to 25,000 people from all over Delhi who are actively availing the facilities of the Club.

11. To maintain the Club premises and various facilities, the Petitioner Club has a permanent staff and generate opportunities for approximately 500 casual employees which amount to 2000-2500 family members which include widows and dependents of those employees who died in service of the Petitioner Club."

30. In view thereof, issue notice to the respondents.

31. Notice is accepted by learned counsel appearing for respondent no. 1.

32. Let notice be issued to respondent no. 2.

33. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

34. It is also to be noted that there is no allegation against the petitioner club that the club has mis-used the premises in any manner or that the club is in default of the fees as payable to the DDA. The only ground for taking action against the petitioner club is that the lease of the petitioner has expired.

35. When the policy of the DDA with respect to renewal of the expired long terms leases, is still under consideration and has yet not been finalised, it is considered expedient to grant interim relief to the petitioners at this stage.

36. In view of the aforesaid detailed discussion, it is directed that no coercive steps be taken against the petitioner club solely on the ground that the lease of the petitioner club has already expired.

37. It is made clear that as far as the Eviction order dated 12.04.2023 is concerned, liberty has already been granted to the petitioners to take appropriate steps in terms of the statutory remedies which are available.

38. List for consideration on 28.08.2023.

MINI PUSHKARNA, J APRIL 21, 2023 c