



\$~66

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

+ W.P.(C) 14739/2023 and CM APPL.58620/2023 (Seeking Opening the Premises of R-4), CM APPL.58621/2023 (Seeking Appointment of Administrator), CM APPL.58622/2023 (Seeking Summoning of R-1), & CM APPL.58623/2023 (exemption)

SH. MANISH AGGARWAL

..... Petitioner

Through: Mr. Nitin Dayal, Advocate with
Ms. Seema Singh, Adv. Along with
petitioner in person.

versus

THE ESTATE OFFICER & ORS.

..... Respondent

Through: Mr. Sandeep Kr. Mahapatra, CGSC
with Ms. Mrinmayee Sahu & Mr.
Tribhuvan Kashyap, & Mr. Aakash
Meena, GP. for R-1 & R-3.
Mr. Aakash Meena, Govt. Pleader
with Mr. Sandeep Mahapatra, CGSC
for R-3,/UOI.
Mr. Manik Dogra, Adv. With Mr.
Lalltaksh Joshi, Adv. For R-4.
Ms. Manika Tripathy, Adv. with
Mr. Ashutos kaushik, Adv. for DDA.
Mr. Rajendra Gupta, Mr. Yash Vijn,
Mr. Brijesh Gupta, Mr. Nakul
Tandon, Mr. Suresh Sansi, Mr.
Abhijeet Kapoor & Mr. Raj Kapoor,
Memebrs of Roshnara Club in person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

09.11.2023

%



1. The petitioner before this Court has filed the present petition praying for the following reliefs.

“(A) Issue appropriate writ, order or direction striking down/declaring that Section 3 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is Ultra Virus to The Constitution Of India;

(B) Issue appropriate writ, order or direction declaring that the sealing/locking the premises of Respondent No. 4 Club and stopping the activities of the Respondent No. 4 Club on 29.09.2023 on the basis of order dated 27.09.2023 were unconstitutional and in violation of fundamental and statutory rights of the club, its members and employees;

(C) Issue appropriate writ, order or direction declaring that the sealing/locking the premises of Respondent No. 4 Club and stopping the activities of the respondent no. 4 on 29.09.2023 at 05:00 AM - 06:00 AM (before sun rise) in the morning (before sunrise) was void ab-initio since it was in direct contravention of rule 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as such the entire sealing was unconstitutional and in violation of fundamental and statutory rights of the club and its members;

(D) Issue appropriate writ, order or direction to quash the Draft Policy to run the Club as the said policy is against/ in contravention of the statement made by Ld. Additional Solicitor General (ASG) in order dated 06.10.2023 in LPA no 497/2023 and also being void ab-initio as the same is hit by the provisions of Articles 13-15, 19, 21 and 301-A of Constitution Of India.

(E) Pass any other and further writ(s), order(s), direction(s) and/or any other relief(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favor of the Petitioner.”

2. The record of the case reveals that the similar writ petition has been preferred before this Court i.e., W.P.(C) No. 5110/2023 titled *Roshanara Club Limited and Anr v. Delhi Development Authority* and the order was passed by the learned Single Judge on 21.04.2023 and the matter was subjected to judicial scrutiny in LPA no. 497/2023 wherein, on 06.10.2023 the following order was passed:-



"1. The Appellant before this Court Delhi Development Authority ["DDA"] has filed the present appeal being aggrieved by the order dated 21.04.2023 passed by the learned Single Judge in W.P.(C) No. 5110/2023 titled Roshanara Club Limited and Anr v. Delhi Development Authority and Anr. [hereinafter, "impugned order"].

2. The facts of the case reveal that the Respondent - Roshanara Club Limited [interchangeably, "RCL" or "Club"], established in 1922, had been operating on land allotted to them under lease deeds executed by the Secretary of State for India and the DDA, as renewed from time to time. This extended lease duration lapsed on 31 December, 2017, whereafter, RCL sought renewal of the lease from DDA. Subsequent to a series of communications, their request was not acceded to, and an eviction notice was issued by the DDA on 12.04.2023. Aggrieved, RCL preferred the aforementioned writ petition, seeking the following reliefs:

"(a) issue an appropriate Writ, order or Direction quashing Eviction Notice dated 12.04.2023 issued under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 whereby the Respondent No. 1 has malafide, irrationally, discriminately, without application of mind, in absence of reasons and in an ultra vires manner issued an order evicting the Petitioner, who has been in possession for the last more than 100 years, in an arbitrary manner within a period of 15 days and issued in violation of Article 14, 19(J)(g), and 21 of the Constitution of India; and

(b) direct the Respondents, particularly Respondent No.2, to renew the subject matter leases/ licenses of the Petitioner Club; and

(c) direct the Respondent, particularly Respondent No.2, to formulate policy for renewal of expired term leases which has been under their consideration;"

Insofar as prayer (a) challenging the eviction notice is considered, the learned Single Judge, at the outset, had noted that the same would not be maintainable in view of the alternative remedies available under law. When confronted with the same, learned Senior Counsel appearing for RCL submitted that they shall not be pressing for prayer (a), extracted above. In these circumstances, the learned Single Judge proceeded to consider the remaining prayers, and passed the impugned order.

Vide the impugned order, the learned Single Judge, has issued the following interim direction:



"36. I 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.

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."

The Appellant has therefore, been restrained from taking any coercive action against RCL, solely on the ground that their lease term stands expired. Insofar the eviction order dated 12.04.2023 is concerned, RCL was permitted to take recourse to appropriate statutory remedies. Consequently, they filed an appeal [being PPA No.07/2023] against the eviction notice dated 12.04.2023 before the Principal District Judge (Headquarters), Tis Hazari Courts, New Delhi. On 02.06.2023, this Court had permitted the proceedings in the aforesaid appeal to continue without being influenced by the impugned order of the learned Single Judge. The order dated 02.06.2023, as modified on 14.06.2023, is reproduced below:

"CM APPL. 31718/2023 (Exemption)

Allowed, subject to all just exceptions.

LPA 497/2023 & CMAPPLs. 31719/2023, 31720/2023

1. The present LPA arises out of the Order dated 21.04.2023 passed by the learned Single Judge in W.P.(C) 5110/2023.

2. Issue notice.

3. Learned Counsel appearing for the Respondents accept notice.

4. Learned Counsel appearing for the Appellant/DDA has argued before this Court that an appeal has been preferred against the Order passed by the Competent Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the same is pending before the Principal District Judge, Headquarters, Tis Hazari, Delhi. It has been argued that on account of Interim Order dated 21.04.2023 passed by the learned Single Judge, stay has been granted by the learned Principal District Judge. She prays that the learned Principal District Judge may be directed to decide the appeal in accordance with law without being influenced by the Order passed by the High Court. The prayer made by the learned Counsel appearing for the Appellant/DDA is a genuine prayer.



The prayer is allowed.

5. In light of the aforesaid, it is made clear that the Order passed by the High Court will not come in way of the learned Principal District Judge while deciding the appeal. It is also made it clear that in case, an application for vacation of stay is preferred before the learned Principal District Judge, the same shall be decided on merits at an early date.

6. List on 13.09.2023. "

3. Today, we are informed by the learned Senior Counsel for the parties that the afore-noted appeal before the Principal District Judge, Tis Hazari Courts has been dismissed by an order dated 25.09.2023. Pursuant thereto, the DDA has taken over the possession of the Club in question, and at present, the members are not being allowed to utilize the Club's services.

4. Mr. Chetan Sharma, learned ASG, has stated before this Court that DDA is the owner of the land that was given on lease to RCL. Given that the full tenure of the lease has expired, as also the eviction order passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the possession of the Club premises and other assets have been taken over by them. There is no provision under the lease deed or any other statute for further renewal. Further, Mr. Sharma submits that no proposal for renewal of the lease is under consideration, and RCL's request to this effect has already been rejected.

5. On the other hand, Mr. Sandeep Sethi, learned Senior Counsel appearing for RCL, stresses that the DDA, after taking possession of the Club, has locked the premises with the equipment and other facilities, resulting in preclusion of the members from using club services. RCL has invested substantially towards building the said equipment, and is now being prevented from utilizing them. To this, Mr. Sharma fairly submits that the DDA is willing to resume RCL's functioning under their control, within two weeks from today. The DDA is also agreeable to permit RCL to remove their equipment and other assets installed by them. He highlights that DDA has a vast, veritable, and time-tested experience of running sports clubs in Delhi; the prominent ones being the Siri Fort Sports Complex and the Qutab Golf Course. At present, DDA is running 16 state-of-the-art sports complexes and 2 golf courses in Delhi, for which it has the requisite rules and framework in place.

6. The Court has considered the afore-noted submissions. The present appeal assails the impugned order directing that no coercive action shall be taken against RCL. This direction was premised on the learned Single



Judge's observations that the policy of the DDA for renewal of the long-term expired leases was under consideration, and no final decision had been taken as yet. While the challenge to the legality of the impugned order is under deliberation, our primary concern is the detriment caused to the interests of members and employees due to the Club's operations coming to a standstill. As urged by Mr. Sethi, the enrolled members, who have paid the membership fee, are being deprived of availing the services. Several staff members have also been engaged for RCL's daily operations, whose interests are also adversely affected by the current situation. In these circumstances, in view of the larger public interest involved, the Court is of the opinion that while the merits of the appeal are pending consideration, as an interim measure and without prejudice to the parties' rights and contentions, immediate measures must be undertaken for resumption of RCL's functioning.

7. Considering Mr. Sharma's statement that the DDA is willing to recommence the club's activities, the following directions are issued:

7.1. The DDA is directed to formulate a scheme elucidating the proposed course of action for functioning and management of the Club as they have already taken over the possession.

7.2. Such a scheme shall take into consideration larger public interest and ensure that the facilities are put to best possible use for the members and sports-loving public in general.

10.3. This exercise be conducted within two weeks from the date of release of the order, whereafter the report/ scheme shall be filed with the Court.

10.4. The scheme so formulated shall be circulated amongst the respective counsel for the parties, before the next date of hearing.

8. It is clarified that the above directions are being issued without prejudice to the rights and contentions of the parties. The Court has not expressed any opinions on the merits of the case.

9. List for reporting of outcome and further directions on 07.12.2023."

3. The Division Bench of this Court has not granted relief to the Roshanara Club and on the contrary, has directed the DDA to devise a scheme to run the club, and the possession was not handed over to the ex-management of the club.



4. Against the order passed by the Division Bench, an SLP was also preferred and the Hon'ble Supreme Court, vide its order dated 19.10.2023 in Special Leave to Appeal (C) No(s). 23731/2023 titled as *Roshanara Club Limited versus Delhi Development Authority & Ors.*, passed the following order:-

"At this stage, there is no question of restoring the possession of the club in favour of the petitioner as the lease granted in favour of the petitioner has expired and as of today, the authorities have not renewed the lease. Moreover, an order of eviction under the Public Premises (Eviction of unauthorised Occupants) Act, 1971, has already been passed.

Our attention is invited to Clauses 10.1 to 10.4, which read thus:-

" 10.1. The DDA is directed to formulate a scheme elucidating the proposed course of action for functioning and management of the Club as they have already taken over the possession.

10.2. Such a scheme shall take into consideration larger public interest and ensure that the facilities are put to best possible use for the members and sports-loving public in general.

10.3. This exercise be conducted within two weeks from the date of release of the order, whereafter the report/scheme shall be filed with the Court.

10.4. The scheme so formulated shall be circulated amongst the respective counsel for the parties, before the next date of hearing.

What is important is paragraph '11', which reads thus:-

11. It is clarified that the above directions are being issued without prejudice to the rights and contentions of the parties. The Court has not expressed any opinions on the merits of the case."

On conjoint reading of the paragraphs '10' and '11', it is very clear that the Delhi High Court has not taken any final decision on the question of allowing Delhi Development Authority to run the club. That is the reason why the High court has said that the scheme formulated



shall be circulated to the respective counsel for the parties so that everybody can be heard.

Therefore, at this stage, it not necessary for us to interfere with the directions issued in paragraph '10' as the same are not final. The High Court will hear the parties on the scheme before issuing the directions in terms of paragraph '10'.

With the above clarification, the present special leave petition is dismissed.

The learned senior counsel appearing for the petitioner pointed out that according to the case of the petitioner, in breach of ad-interim order passed by the learned Single Judge of the High Court, the petitioner has been dispossessed and therefore, there is a contempt petition pending. All that we have stated in this order is that in this special leave petition, we cannot pass order of restoration of possession in favour of the petitioner. It is open for the petitioner to prosecute other remedies.

Pending application(s), if any, shall stand disposed of.”

5. Before the Hon'ble Supreme Court also a prayer was made to restore the possession to the Roshanara Club and the relief was not granted in the matter.
6. Now, a petition has been filed by certain persons who are members of the club.
7. In the considered opinion of this Court, as this Court is already dealing with the issue of running the club and the writ petition is also pending on the subject, no interim order can be granted in the present writ petition.
8. Learned Counsel for the DDA has stated before this Court, that they are finalizing the scheme for the smooth running of the club and the same shall be finalized at an early date and therefore, the prayer for grant of interim relief is rejected.



9. In view thereof, CM APPL. 58620/2023 stands dismissed.
10. List the matter alongwith LPA No.497/2023 on 07.12.2023.

SATISH CHANDRA SHARMA, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 9, 2023/rl