

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **WP(C)No.3682/2008**

Date of Pronouncement: July 01, 2009

# M/S.EXCLUSIVE MOTORS PVT. LTD                      ....                      Petitioner  
Through                      :                      Mr.Ravi Gupta and Mr. Ankit  
                                                                                                                         Jain, Advocates

Versus

ITDC & ORS.                                                                                                                           ....                      Respondent  
Through                      :                      Mr. Shanti Bhushan, Sr. Adv.  
                                                                                                                         with Mr.Sushant Kumar, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether reporters of local papers may be allowed to see the judgment? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

**G.S. SISTANI, J:**

1. Brief facts which have given rise to filing of the present petition are that respondent owns and runs a hotel under the name and style of Ashok. In the year 2003 petitioner was in need of a premises, for carrying on its business for retailing of luxury Cars and other related goods. Pursuant to negotiations between the parties, petitioner accepted the offer of the respondents vide letter dated 27.1.2004. Peaceful possession of an area measuring 3013.49 sq. ft. located adjacent to out gate, forming part of Ashok Hotel, was handed over to the petitioner for running the office/show-room on 8.4.2003.
2. A licence deed was executed between the parties on 8.4.2003 initially for a period of three years commencing from 8.4.2003

and expiring on 7.4.2006. The document provided that the licence was renewable with the enhanced licence fee @11% of the last paid fee. It is the case of the petitioner that although the documents were styled as licence deed, however, the nature of transaction entered into between the parties was in fact a lease created by the respondent in favour of the petitioner. The petitioner was in independent occupation of the premises and also had free and uninterrupted use. It is stated that the premises are not in the shopping arcade of the hotel, but an independent show-room near the parking at the convention hall entrance of the hotel and only a bare structure without any paint or fixtures were handed over to the petitioner, who carried out substantial renovations, including flooring, false ceiling, air conditioning, erection of walls, development, greening and landscaping of the common area, erection of toilet and a pantry etc. The petitioner is stated to be running his show-room since the year 2003 onwards.

3. It is contended that in order to make the premises usable and more presentable the petitioner had incurred expenses of several lacs on taking over the possession. As the licence of the premises was to expire in April 2006, the petitioner had written a letter on 5.12.2005 to respondent *inter alia* requesting them to renew the licence for a further period of three years ending on 7.4.2009. Petitioner also sent letters dated 7.1.2006, 15.2.2006 and 31.3.2006 to respondent as reminders to consider the request of the petitioner for fresh execution of the licence deed for the renewed period. In response to the letter

of request, a meeting was attended by the petitioner with the licensing committee on 29.3.2006 and the licence was extended for a further period of two years w.e.f. 8.4.2006 to 7.4.2008. Vide letter dated 31.3.2006 two sets of licence deeds were also delivered and the petitioner was requested to sign the same and return it for necessary action. Petitioner is stated to have signed the licence deed dated 1.4.2006 and thereafter sent it back to the respondents. The licence was for a period of two years commencing from 8.4.2006 and expiring on 7.4.2008. This licence deed also contained a renewal clause on the enhanced licence fee @ 11% over and above the existing licence fee. Petitioner also considered it necessary to carry out some additions and alterations. A request was made on 7.3.2006 which is stated to have been considered by respondents and petitioner was permitted by a letter dated 17.5.2006 to carry out the same. Petitioner is stated to have incurred an expenditure of 20-22 lacs on the renovation.

4. Petitioner was thereafter served with a letter dated 14.9.2006. Vide this letter respondents not only proposed to terminate the licence agreement executed by them in favour of the petitioner in regard to the premises in question, but also required the petitioner to hand over peaceful and vacant possession of the same to respondents. It is submitted that the action on the part of the respondent was absolutely arbitrary, mala fide, illegal and highhanded. It is contended that there was no occasion for the respondent to issue the letter after having entered into an agreement with the petitioner for a period of two years starting

w.e.f. 8.4.2006 ending on 7.4.2008. The respondents could not have cancelled the licence deed after giving three months notice, as the clause of three months notice could not have been exercised unreasonably and without any cause. It is contended that the licence was for a fixed period of two years and could not have been terminated before the stipulated time besides the petitioner was permitted to carry out additions and alterations in the premises in the month of May, 2006 which renovation could only be completed by the month of August, 2006 and the petitioner spent a huge amount on renovation besides paying licence fee. Thus the action of the respondent of issuing the letter was mala fide. It is also stated that the respondents being a State owned agency was required to act reasonably while dealing with the public at large. It is submitted that once after having taken a considered decision to renew the licence in its meeting held on 29.3.2006, there was no reason to terminate the said licence in the month of September, 2006 as there was no change in the circumstances neither there was any breach of any terms of the agreement. Counsel further submits that the intention of the respondent was to increase the licence fee and black-mail and pressurize the petitioner to agree to their illegal demands. Such notices were issued to other shop keepers and business being run in the premises of the same hotel. Reply to the letter was sent on 6.11.2006 stating that the impugned action of termination of licence on the part of the respondent was totally unjustified, unfair and illegal. It was also brought to the notice of the

respondent that there was no violation of any of the terms of the agreement and thus the respondent should withdraw the impugned termination. In order to protect the possession, the petitioner was constrained to challenge the letter and communication dated 14.9.2006 by filing a civil suit being CS(OS)No.2308/2006 titled **M/s. Exclusive Motors Pvt. Ltd. Vs. ITDC and Anr..** The matter came up for hearing before the High Court on 14.12.2006. While issuing summons, this Court had directed that till the next date of hearing, letter dated 14.9.2006 issued by defendant be not given effect. The petitioner thereafter withdrew the aforesaid suit on 7.4.2008. Relevant portion of the order reads as under:

“Counsel for the defendant states that in view of the fact that the agreement itself has run out its course during the pendency of the present proceedings and stands exhausted by efflux of time, the defendant does not rely on the letter dated 14.9.2006 issued to the plaintiff and it does not wish to act on the same. He further submits that the suit is rendered infructuous.

In view of the aforesaid submission made by the counsel for the defendant, counsel for the plaintiff seeks permission to withdraw the present suit while reserving its rights to seek its remedies against the defendant as may be available to it in law, in terms of the Agreement dated 1.4.2006.

The suit and the pending application are disposed of.

The interim order stands vacated.

The date of 28.7.2008 is cancelled.”

5. On 7.4.2008 learned counsel for the respondent had made a statement to the effect that during the pendency of the suit even the subsequent agreement dated 1.4.2006 had exhausted

as the same was effective from 8.4.2006 to 7.4.2008 which time has also run out, therefore, the defendant did not wish to rely upon letter of 14.9.2006 and the suit thus became infructuous. Based on the statement of counsel for the defendant, learned counsel for the plaintiff sought permission to withdraw the suit while reserving its rights to seek its remedies against the defendant as may be available to it in law in terms of the agreement dated 1.4.2006.

6. It is submitted by counsel for the petitioner that suddenly on 10.5.2008 Mr.A.K.Nigam, Mr.Rajindra Nigam, Mr.Chopra, Mr.Singh, Mr.Pankaj Mittal, Mr.Vats, Mr.Kishore and their associates at about 4:00 p.m. barged into the show room premises of the petitioner. They trespassed into the premises with 2-3 trolleys and took forcible entry in the premises. The goods of the petitioner were sought to be shifted, the director of the company was manhandled and signboard was damaged. The entry to the showroom was blocked and they interrupted the ingress and egress to the showroom. Local police was called, who did not render any help to the petitioner. Many people gathered outside the showroom premises, however, belongings like furniture, fixtures, cars are still lying in the premises while various goods have been taken away by the officers of the respondents. Two cars Bentley (blue colour) and another Lamborghini (blue colour) were still lying stationed / parked in the showroom at the time of filing of the present petition which have since been removed by the petitioner in terms of order dated 30.5.2008. The normal working of the

petitioner from the premises has been disturbed. It has also been urged before this court that the licence executed in favour of the petitioner is irrevocable in nature as the petitioner has been permitted to carry out structural changes in the premises and permission on the part of the respondent for carrying out such changes by the petitioner makes the licence in question, irrevocable. It is contended that petitioner had executed the work of permanent nature and had incurred huge expenses in execution thereof. The aforesaid works have been carried out with the consent/approval and permission of respondents.

7. It is contended that the impugned action of respondent – Corporation and its officers is wholly unauthorized and illegal. They acted like local goondas and hooligans and took law in their own hands. It is submitted that the action of the respondent is mala fide, arbitrary, dishonest and the petitioner cannot be forceably dispossessed without due process of law. As per the petitioner the respondents were obliged to take action for eviction of the petitioner under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act and not in an illegal manner. In the above circumstances, the petitioner seeks the following prayers:

“Issue a writ of mandamus, directing the respondents to execute a license deed in favour of the petitioner company by way of renewal of the licence, concerning and in regard to the property and premises admeasuring 3013.49 sq. ft. (located adjacent to out gate of the perimeter wall of Annexe and beneath the Samrat Parking lot at Ashok/Samrat gate) forming part of Ashok Hotel situated at 50-B, Chanakya Puri, New Delhi

FURTHER FOR A WRIT, ORDER AND /OR DIRECTION  
IN THE NATURE OF:

Mandamus, directing the respondents to remove their goods which have illegally and unauthorisedly being stuffed by the respondents in their suit premises on 10.5.2008 after 7:00 p.m. in the evening and also to restore back the goods and belongings of the petitioner, which have illegally been taken away by the offices of the respondent corporation without any rights in the suit premises.

AND FURTHER FOR A WRIT, ORDER AND /OR  
DIRECTION IN THE NATURE OF:

PROHIBITION interalia directing and restraining the respondents, their officers, employees, servants, agents, contractors etc. etc. from causing any interference in the peaceful use and enjoyment of the petitioner and running of its business of world class luxury premier cars from the suit premises admeasuring 3013.48 sq. ft. (located adjacent to out gate of the perimeter wall of Annexe and beneath the Samrat Parking lot at Ashok/Samrat gate) forming part of Ashok Hotel situated at 50-B, Chanakya Puri, New Delhi.”

8. To buttress his argument that even a trespasser can only be removed by due process of law, learned counsel for the petitioner has relied upon **Bishan Das Vs. State of Punjab**, AIR 1961 SC 570. In the case of **Bishan Das (Supra)** the petitioners had approached the Supreme Court under Article 34, 14, 19 and 31 of the Constitution of India on the ground that interference with their fundamental rights to property by the executive action without any authority or specific rule of law, is illegal. The petitioners were occupying the dharamsala in an adjoining temple and some appurtenant shops standing on a piece of land near the railway station at Barnala, district Sangrur, State of Punjab. The officials and the Municipal Committee Barnala by force and without any authority of law

had dispossessed them from the Dharamsala. The respondents were restrained from interfering with the possession of the petitioners by the Court.

9. Petitioner has also relied upon **Ram Rattan Vs. State of U.P.** 1977 SC 619 and more particularly para 4, which reads as under:

“it is well settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law.”

10. Reliance has also been placed upon **Krishna Ram Vs. Mrs. Shobha Venkat** JT 1989 (3) SC 489, **State of U.P. Vs. Maharaja Dharmander** 1989 (2) SCC 505, wherein it has been held that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression ‘re-entry’ in the lease deed pertains to a lease does not authorize extra judicial methods to resume possession. Under law the possession of a lessee, even after the expiry of its earlier termination is in juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. It has also been held that the “Government authorities should have a ‘legal pedigree’ and do not have an extra judicial

right of re-entry. The possession can be resumed by Government only in a manner known to or recognized by law.

11. Counsel for the petitioner has also placed reliance on **R.C.Patuck Vs. Fatima A. Kindasa** 1997 5 SCC 334 and more particularly paragraphs 7 and 12.

**“7.** The learned Senior Counsel for the petitioner, Mr Soli J. Sorabjee, contended that the orders passed by the Chief Metropolitan Magistrate dated 26-4-1996 and the further orders passed by the High Court on 9-7-1996 were liable to be set aside as the possession of the respondents was a continuing wrong. He also contended that this was a hard case in which an old lady aged about 75 years was being victimised by the respondents who were in the habit of illegally occupying various premises in Bombay and that in exercise of the powers of this Court under Article 142 of the Constitution of India, this Court could grant relief in spite of the fact that the dispossession was more than 2 months next before the preliminary order under Section 145(1).

**12.** Relying upon the aforesaid passage, learned Senior Counsel contended that the limitation of two months in the proviso to sub-clause (4) of Section 145 would not come in the way of this Court while exercising powers under Article 142 for granting possession to the petitioner even though the dispossession of the petitioner was for a period in excess of two months next before the date of the preliminary order passed under Section 145(1). It will be seen that even according to the petitioner, she permitted the first respondent in November 1991 to temporarily occupy 2500 sq. ft. on the ground floor of the premises. Subsequently the first respondent did not vacate and on the other hand, the first respondent allowed the second respondent to occupy the property claiming that he was her husband and thereafter they constructed a wall dividing the said portion from the other portion occupied by the petitioner. On these facts we do not find any special circumstances which are different from ordinary cases where a person permits a licensee or a tenant to occupy the premises and upon termination of the licence or the lease, the licensee or the tenant, as the case may be, does not vacate the premises or makes some construction on the property. No doubt the petitioner is an old lady of 75 years and there is some material to show that Respondents 1 and 2 have been indulging in similar

litigations in Bombay. But that in our opinion is not sufficient to persuade us to exercise powers under Article 142 of the Constitution of India. The petitioner has adequate remedies under the law for recovery of possession. For the aforesaid reasons this special leave petition is dismissed."

12. Reliance has also been placed on **State of Haryana Vs. Mohinder Pal** AIR 2000 SC 3580, wherein the Apex Court has held that government cannot take law on its own hand while dispossessing the petitioner but should have followed the due process of law. Learned counsel has also relied upon **State of West Bengal Vs. Vishnunarayan and Associates (P) LTd & Anr.** AIR 2002 SC 1493 wherein the Apex Court has held that State Government could not have taken steps for securing possession by use of force. Learned counsel has also relied upon **Jafar Saddiqui & Ors. Vs. DDA** 2003 V AD Delhi 149, a decision of Single Judge of this Court wherein it has been held that if a person is a tenant, licensee or occupier of a property in any legal capacity and if rights are terminated, proceedings must be taken in accordance with law and it is not open to the parties to forcibly dispossess such a person. In the same vein, learned counsel has relied upon **Krishna Ram Mahale Vs. Mrs.Shobha Venkat Rao** JT 1989(3) SC 489, wherein it has been held that where a person is in settled possession of property, even on the assumption that he has no right to remain on the property, he cannot be dispossessed by the owner except by recourse to law. Learned counsel has also relied upon **Chandu Lal Vs. MCD** AIR 1978 Delhi 174 and **East India Hotels Vs. Syndicate Bank** 1(1992) BC 1 (SC) as well

as on **R.V. Bhupal PD. Vs. State of A.P.** (1995) 5 SCC 698 and **Rattan Lal Vs. MCD**, 100 (2002) DLT 213 a decision of Single Judge decision of this court.

13. *Per contra*, learned senior counsel for the respondent submits that a person who invokes the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, has to approach this court with clean hands and in case the person approaches the Court with unclean hands, he is not entitled to any relief whatsoever. It is submitted that the petitioner is an illegal occupant of the licensed premises, as the licence has already come to an end on 7.4.2008 by efflux of time and as such has no right to continue with the possession over the licensed premises beyond the period. It is next contended that the petitioner cannot be allowed to perpetuate its illegality and in order to continue its illegal possession over the licence premises. It is also contended that the court should not interfere in the contractual relations entered into between the parties and no arbitrary action or discriminatory practice has been followed by the respondent.
14. It is strongly argued before this Court that the respondents have entered into a contractual relationship with the petitioner by means of a licence deed dated 7.4.2003, which was further renewed on 1.4.2006. The relationship between the parties is purely governed by law of contract and therefore, the appropriate remedy available to the petitioner would be to claim damages against eviction. It has also been contended that invoking jurisdiction of this Court under Article 226 is not

an appropriate remedy. It is also submitted that even assuming that the respondent had failed to follow the due process of law, still the respondents have taken possession on 10.5.2008 and after taking possession they have started using the same as F&B function area/Salad Bar from 10.5.2008, photographs in support of this plea have been placed on record. It has also been contended that no force was used to dispossess the petitioner and the goods inventory lying within the licensed premises have been removed within the parameters of law and with the active support of cooperation of the employees agents of the petitioner.

15. Learned counsel for the respondent submits that admittedly, the licence of the petitioner has expired, thus the Court cannot be asked to interfere in such circumstances. Learned counsel for the respondent has relied upon various clauses of the licence deed to show that initially the licence deed was signed between the parties on 8.4.2003 for a period of three years, which was subsequently renewed for a period of two years which period has since come to an end. The licence was to be renewed at the option of the licensor on the expiry of the stipulated period under clause 3, and on such terms and conditions as the licensor may impose in its own discretion. It would be necessary and useful to reproduce the relevant terms of this licence deed.

“3. This licence is granted for a period of 3 years commencing from 8<sup>th</sup> April, 2003 and shall expire on 7<sup>th</sup> April, 2006 subject to the provisions for earlier termination hereinafter contained.

4. The licence may be renewable at the option of the Licensor on the expiry of the period stipulated under clause 3, and on such terms and conditions as the Licensor may impose in his own discretion. The duration of the extended period shall be determined by the Licensor but will not be for more than 3 years for each such extension. At the time of each such renewal or extension, the parties, hereto, shall execute a fresh Licence Deed in respect of the premises given on license on the same terms and conditions with an enhanced Licence Fee @ 11% of the Licence Fee as mentioned in Clause 39 of this Deed. The Licensee will apply for the renewal of his licence 3 (three) calendar months before expiry of the licence and on failure to do so, the Licensor will be free to negotiate with any other party to allot the space. It is also clearly understood by and between the parties that the licensor will exercise the sole discretion with regard to the renewal of the licence and also the terms and conditions of the renewed licence and the Licensor's decision in this regard shall be final and binding on the licensee.

6. The right conferred upon these presents is only that of a Licensee. It is expressly stated that the possession of the premises lies with the Licensor, and, the licensee can have only a right to use and occupation of the portion hereby licensed and not other right whatsoever. This not a lease and the relationship is only that of a Licensor & Licensee and not that of Landlord & Tenant OR Lessee.

9. It is agreed that the licensee will not be permitted the use of licensed premises, in any form, for any other purpose other than what has been agreed under this licence or sublet to any individual/ party/ company/ organization. The licensee alone and no other party or person will be permitted to carry on business in the said licensed premises nor will the benefits under the licence or any of them be assigned, transferred, shall or otherwise parted with, in whole or part by the licensee. Any such act by the licensee shall be considered violation of licence deed and the licensor shall have the right to terminate the licence. In such circumstances, the licensee will have to settle all the outstanding dues and hand over vacant possession of the licensed premises within 15 days on receipt of such communication from the licensor.

12. The licensee shall get the licensed space organized and carry out the interior decoration of the premises at its own cost after getting the plans and overall design of the furnishing approved by the General Manager, Ashok Hotel. The licensee shall be further required to make such additions and alterations or changes in the furniture, carpets etc. as and when felt necessary by the General Manager of the Hotel to keep the décor of the licensed space to meet the standard of the Hotel. Failure to carry out such modifications within the period as prescribed by the General Manager of the Hotel, shall entitle the licensor to disallow the licensee from opening the licensed premises to customers till such time the required modifications and refurnishing as asked for is carried out by the licensee.

14. The licensee shall keep the premises clean, orderly condition and for the purpose the licensee shall do at their own cost whatever is required and desired by the Licensor. Since the licensor is in possession of the property and the licensee is permitted only use and occupation of the premises, the licensee shall not do any act by which such peaceful possession and enjoyment of the licensor is endangered in any way.

48. It is agreed that the licensee can terminate the licence agreement after giving three months notice in writing from either side. However, in case the licensee terminates or abandons the licence prior to the above said period of notice, the licensee shall be liable to pay the liquidated damages equivalent to the licence fee payable to the Licensor for the unexpired notice period.

49. On termination of the licence, the licensee shall have no right under the licence and shall further have no right to enter the premises of the Hotel as a licensee. The licensee shall remove his articles goods from the licensed premises within such periods as may be informed by the licensor and in case the licensee does not remove his articles and goods, the same shall be removed by the licensor at the risk and cost of the licensee and the licensee shall have no claim whatsoever on this account against the licensor. The licensor shall, however, have lien over the goods and the articles and the licensee shall not be allowed to remove the same unless all the dues of the licensor have been paid by the licensee. The licensor also reserves the right to auction the materials & goods of the licensee if the licensee does not remove the

goods and articles within a reasonable time after clearing all outstanding dues. In such an event, the licensor shall adjust the auction proceeds with the amount due and return the balance to the licensee.

56. Notwithstanding anything contained herein, it is agreed that the said licensed premises shall at all times be under the control and supervision of the licensor and the licensor shall retain domain and possession of the said licensed premises and shall have the right to direct the mode and manner of the said use of the said licensed premises so as to more effectively provide for facilities and amenities to customers and visitors of the Hotel.

60. In respect where provision of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be invoked by the licensor in respect of the licensed premises the provisions of the said Act shall apply. In respect of any other dispute or difference relating to the terms of his licence deed, the matter shall be referred to the sole arbitration of the Vice President (Hotels) or any other person appointed by him on his behalf. The award given by the arbitrator shall be binding upon the parties. It is specifically agreed by the licensees that it will have no objection to any such appointment that the arbitrator so appointed is an employee of the licensor or he has already expressed view on, for or any of the matters in dispute or difference. The arbitrator so appointed shall have power to extend the time for making an award. Save as above, the said Arbitrator shall act under provisions of the Arbitration and Conciliation Act, 1996. Subject to above, only Delhi Courts will have jurisdiction.”

16. Leaned counsel for the petitioner submits that in terms of clauses 3 and 4 of the licence deed, any renewal was at the sole option of the licensor, thus the submission of counsel for petitioner that merely because the petitioner was allowed to carry out certain renovations, would not lead to the conclusion that the licence is for an indefinite period.

17. Learned counsel for respondent submits that the argument of learned counsel for the petitioner that although the agreement was signed as the licence deed, but in fact it was a lease deed,

is unfounded and baseless. The counsel has relied upon clause 6 of the licence deed wherein it has been categorically agreed that the arrangement is only that of a licensee and the possession of the premises lies with the licensor and the licensee can only have a right of use and occupation of the portion and further the agreement is not a lease and the relationship is only that of a licensor and licensee and not that of landlord or tenant or lessee. Counsel while relying upon clause 12 of the licence deed submits that any interior decoration carried out by the petitioner was part of the terms of the licence agreement. Learned counsel submits that possession of the premises has all along been with the respondents. Learned counsel has also drawn the attention of the court to clauses 49, 50, 56 of the licence agreement.

"49. On termination of the licence, the licensee shall have no right under the licence and shall further have no right to enter the premises of the Hotel as a licensee. The licensee shall remove his articles goods from the licensed premises within such periods as may be informed by the licensor and in case the licensee does not remove his articles and goods, the same shall be removed by the licensor at the risk and cost of the licensee and the licensee shall have no claim whatsoever on this account against the licensor. The licensor shall, however, have lien over the goods and the articles and the licensee shall not be allowed to remove the same unless all the dues of the licensor have been paid by the licensee. The licensor also reserves the right to auction the materials & goods of the licensee if the licensee does not remove the goods and articles within a reasonable time after clearing all outstanding dues. In such an event, the licensor shall adjust the auction proceeds with the amount due and return the balance to the licensee.

50. Upon the expiry of the period of this licence or earlier termination of the licence for any cause whatsoever, the licensee shall have no right to carry on business at the said licensed premises. The

licensor shall have undisputed right to make use of the said licensed premises at his discretion thereafter. It will be lawful for the licensor without notice to enter upon the licensed premises after the termination/ expiry of the license.

56. Notwithstanding anything contained herein, it is agreed that the said licensed premises shall at all times be under the control and supervision of the licensor and the licensor shall retain domain and possession of the said licensed premises and shall have the right to direct the mode and manner of the said use of the said licensed premises so as to more effectively provide for facilities and amenities to customers and visitors of the Hotel."

18. It is also contended by counsel for the respondent that the rights and liabilities of the parties are clear, unambiguous and reduced into writing in the form of a licence deed which is an admitted document. Petitioner has committed an illegality and he cannot be permitted to approach this court once having committed the illegality. Counsel has vehemently submitted that admittedly the licence has come to an end and the original owner, the respondent herein is in possession and thus the owner is defending his possession and, therefore, it is really the petitioner, who seeks to take illegal possession which is being resisted by the actual owner. In support of this proposition learned counsel has relied upon a full bench decision of this court in the case of **Chandu Lal Vs. MCD (Supra)** and more particularly paragraphs 24, 26, 27, 34, 36, 37 and 38, which read as under:

"24. The petitioners in the instant petitions were given the liberty to occupy the Kiosk for 11 months "for purposes of trade." They were forbidden from parting with possession of the Kiosk or allow any other person to occupy the same or to use any part thereof or to enter into partnership with any other person without the written permission of the Commissioner of the Corporation. The liberty to occupy the Kiosk was personal to the petitioners alone. Besides,

the petitioners were required "faithfully and diligently" to "comply with all the directions, general or special" that may be given by the Commissioner of the Corporation from time to time. The infringement of any of the terms and conditions of the license was to result in the cancellation of the license. the petitioners having, no claim whatsoever on that account. Further, the license was liable to be cancelled at any time by the Commissioner of the Corporation or other authorised officer without assigning any reason. All these conditions militate against "lease", no interest in the premises passed to the petitioners. The Corporation in the circumstances in enforcing its right of re-entry by self help cannot be said to have taken the law into its own hands or that it was in any manner acting without recourse to law in resuming the possession. The underlying assumption in the case of a license is that the owner continues to be in possession and control of the property. In such circumstances the Court cannot throw its protection round the trespasser having no vestige of any right what so ever, and his unlawful act of continuing to occupy the premises, by the issue of a prohibitory order against the lawful owner.

26. There is a catena, of authorities in support of the proposition that in the case of a license there is something less than a right to enjoy the property in the licensee; it cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer to a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an Interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defense of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If, however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will Infringe no right of the licensee, No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.

27. In the instant cases the petitioners' possession of the premises (Kiosk) on the facts and circumstances of the case, cannot be held to be conclusive evidence of their

being a lessee as the grant was not coupled with an interest in the property. The principle once a licensee always a licensee applies proprio vigore in these cases. The petitioners are not entitled to retain possession against the Corporation, which can take possession of the Kiosk and would not be driven to a Court of law as the mere physical possession of the petitioners confers no right on them. The petitioners, therefore, in law are not entitled to retain possession against the Corporation, having only the personal privilege to carry on their business which otherwise without the permission granted by the Corporation would be an unlawful act. These well-settled principles - find support from *Satwant Singh v. Assistant Passport Officer, New Delhi* AIR 1967 SC 1836; *Associated Hotel's case* (AIR 1959 SC 1262) (SUPRA); *B. M. Lall v. M/s. Dunlop Rubber Co. (India) Ltd.*, AIR 1958 SC 175; *Miss Aninha D'Costa v. Mrs. Parvatibai M. Thakur*, AIR 1966 Bom 113; *Beant Singh v. Cantonment Executive Officer, Jammu* AIR 1960 J and K 83, *Chinna Pillai v. N. Govindaswami Naidu*, AIR 1969 Mad 191; *Milka Singh v. Diane* AIR 1964 J and K 99 and *Raj Singh v. Union of India* 1972 Ren CR 718; (AIR 1973 Delhi 169) (A Bench decision of this Court).

34. Shri Saigal. then submitted that the petitioners were in possession of- the Kiosk since Jan- 1974 and being in settled possession, the petitioners were not liable to be evicted except in due course of law and that they were further entitled to defend their possession even against the rightful owner who may try to dispossess them. This submission was sought to be reinforced on the basis of case in *Puran Singh v. State of Punjab* AIR 1975 SC 1674. Reliance then was placed on a Branch decision of East Punjab High Court in *State of Patiala and E P. States Union v. Mohinder Singh*, AIR 1958 Punj 325 and *Vasudeva Kurup v. Ammini Amma*, 1964 Ker Lt 468 wherein it was observed that a person in possession albeit without title, was entitled to remain in possession, even against the lawful owner until evicted in due course of law and that a right course of action in such a case was to bring an appropriate action against the person in possession and secure his eviction in accordance with the provisions of law. It was accordingly contended that the Corporation was not entitled to take the law into its hands and throw out the petitioners. There is a fallacy in the submission. The petitioners being licensees with liberty to occupy and use the Kiosk for a period of 11 months in the first instance could not be said to be in legal possession of the premises, the legal possession all along remained with the Corporation. On revocation of the license they ceased to enjoy the liberty to continue to occupy the Kiosk so as to drive the Corporation to evict them in due course of law, nor can the petitioners' possession be said to be "settled possession" as was sought to be made out.

36. Reliance on Lallu Yeshwant Singh v. Rao Jagdish Singh, Air 19-68 Sc 620 and Mohan Lal v. State of Punjab 1970 Ren C J 95 (SC) is wholly misplaced, the former case dealt with tenancy rights while the latter case pertained to lease rights. It was in that context that it was observed that even an unauthorised occupant could be evicted only in the manner authorised by law.

37. No assistance can be derived by the petitioners from Delhi Simla Catholic Archdiocese v. State of U. P., AIR 1976 Delhi 251. In that case the right of the State as landlord to seek forcible eviction of the petitioners by exercising the right of re-entry was repelled as the petitioners, on the facts of the case, were held to be lessees.

38. Temporary injunction sought by the petitioners could be granted, if their case was covered by the three well established principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in their favor, in that the refusal of the injunction would cause greater inconvenience to them and (3) whether on refusal of the injunction they would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the petitioners have a friable case. Before invoking the jurisdiction of the Court to seek temporary injunction the petitioners were bound to show that they have a legal right and that there was an invasion of that right. They have failed to show a legal right. Facts and circumstances. on the contrary, prima facie show that the petitioners on the revocation of the license are trespassers, there exists no justification for allowing them to continue perpetuating their unlawful act."

19. While learned counsel for the petitioner has also relied upon a decision of a Single Judge of this Court in the case of **Jafar Saddique and Others, Vakil Ahamad and Liaqat Ali Vs. Delhi Development Authority and Anr.**, reported at 2003 V AD (Delhi) 149, in support of his submission that even a trespasser is to be removed by a due process of law and it is not open to a party to forcibly dispossess a person, since one party cannot be permitted to decide the status of the occupant and the occupant has a right to defend himself. Learned counsel for the respondent submits that the aforesaid judgment

does not support the argument of the petitioner.

20. In the case of **Jafar Saddique and Others, Vakil Ahamad and Liaqat Ali** (supra), the petitioners were unauthorized occupants and were even paying damages under the Public Premises (Eviction of Unauthorised Occupants) Act 1971. The case set up by the petitioners was that they could not be dispossessed without due process of law. In the light of these facts, while dismissing **Jafar Saddique and Others, Vakil Ahamad and Liaqat Ali** (supra), Single Judge of this Court directed the petitioners to remove themselves from the land, in question within a period of fifteen days. It will be useful to reproduce paras 15 to 18 of this judgment:-

*“15. The payment of damages itself under the PP Act cannot create a right in favour of the petitioner as it only implies that the petitioner is in unauthorized occupation of the land for which he is being charged. It has been held so in the case of Aisha Jalal (supra).*

*16. The question is: whether the petitioners are entitled to the protection of the PP Act and the proceedings? In my considered view, the answer to this is in the negative.*

*17. The menace of occupation of public land acquired for planned development of Delhi by unauthorized encroachers has assumed alarming proportions. Lands are acquired for such development after following the due procedure under the LA Act. Compensation is paid for such land. Thereafter, these lands are occupied by persons without any right, title or interest and then they are sought to be evicted from the land. All kinds of benefits and rights are claimed. Even then these lands are occupied without there being any right in favour of the occupants. The general principles of trespasser cannot apply to such persons who occupy public land which is duly acquired after meeting the provisions of the LA Act and are unauthorized occupants. It is necessary to take steps to clear the occupation by such persons. Unfortunately, these steps get delayed for reasons best known to the authorities and when these people continue to occupy such land, pleas, as are sought to be raised in the present petition, arise.*

*18. I am of the considered view that the petitioners having no right, title or interest in the land are not entitled to any protection and are liable to be evicted from the land in question. In fact, demolition action also took place and the structures of most of the petitioners were demolished. However, they were permitted to be reconstructed in terms of the orders passed by this Court subject to the petitioners removing the structures themselves from the property in question in case it was found that the demolition had taken place in accordance with law. Since I find no case in favour of the petitioner and in view of the directions passed on 16<sup>th</sup> October, 1996 permitting the petitioners to reconstruct, I consider it appropriate to direct the petitioners to remove themselves from the structure and the land in question within a maximum period of 15 days from today."*

21. While relying on the case of **Jafar Saddique and Others, Vakil Ahamad and Liaqat Ali** (supra) counsel for the respondent submits that the rights between the parties are governed by a licence deed, which is an undisputed document. Facts being crystal clear the illegality of the possession of the petitioner is writ large on the face of the record and therefore it is a fit case where a writ should be issued against the petitioner itself and the Court cannot grant any protection to such a petitioner.
22. Learned counsel for the respondents has relied upon **D.T.T.D.C. Vs. D.R. Mehara & Sons**, reported at AIR 1996 Delhi 351, wherein Division Bench of this Court has held that a licensee, who continues to occupy the premises after the expiry of the licence, would be deemed to be in unlawful and illegal possession and such an agency would not be entitled to an injunction against the owner. It will be useful to reproduce paras 9, 13 and 16.

*"9. The point that arises in this appeal is whether a person who himself asks the owner to enter into a 'Licence' and enters into such an agreement can, after 'expiry thereof and express request of the owners to*

*vacate, seek the helping hand of the Court for a temporary injunction against the owner and whether the appellant can contend that till he is dispossessed by due process of law, he is entitled for an injunction?*

13. We shall now refer to the other aspect of the matter. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief act, can the trespasser seek injunction against the true owner? In our view this question does not entirely depend upon Section 6 of the Specific Relief Act but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunctions? Recently, the law in this behalf has been clarified by the Supreme Court in clear terms in **Mahadeo Savlaram Shelke V. Pune Municipal Corporation**, 1995 (3) SCC 33 : JT 1995 (2) SC 504. It was there held by Ramaswamy, J., after referring to Woodroffe on 'Law relating to injunction, L.C. Goyal 'Law of injunctions; David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context the Supreme Court quoted *Shiv Kumar Chadha v. MCD*, (1993) (3) SCC 161 wherein it was observed that injunction is discretionary and that

*"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court."*

His Lordship Ramaswamy, J., also referred to *Dalpat Kumar V. Prahlad Singh*, (1992) (1) SCC 719: (AIR 1993 SC 276) in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in *Mahadeo Savlaram Shelke*, (1995 (3) SCC 33) (*supra*) at p. 39.

*"It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession".*

Therefore as pointed by the above decision of the Supreme Court it is settled law that a trespasser cannot seek injunction against the true owner. It has been so held also by several High Courts stating that an injunction cannot be granted in favour of a person who is a trespasser against the true owner (*Hosiar Singh v. Gaon Sabha*, 1988 (36) DLT 428). In *K.V. Narayan v S. Sharana Gowda*, AIR 1986 Karn. 77, *Alamelu Achi v. Ponnaiah*, AIR 1962 Mad 149; *Biswabam Pvt. Ltd. v. Santosh*, (AIR 1964 Cal 235), *Bishni v. Bahadur Singh*, AIR 1980 All 209; *Padmanabhan v. Thomas*, AIR 1989 Ker 188. The above

*decisions accord with the view taken by the Supreme Court in Shiv Kumar Chadha's case and in Mahadeo Savlaram Shelke's case, (1995 (3) SCC 33).*

16. *It is argued for the appellant that this may be anomalous. It is said that the trespasser has a "right" to an injunction against the true owner, and this is complementary to the duty of the owner not to evict the trespasser outside the judicial process. In our view, there is no anomaly. Each of these is based on a different legal principle. If the plaintiff wants the defendant to act in accordance with law he must first abide by the law himself and vacate the property as one would expect a law abiding citizen to behave."*

23. Learned counsel for the respondent has relied upon ***Mahadeo Savlaram Shelke & Others Vs. Pune Municipal Corporation And Another***, reported at (1995) 3 Supreme Court Cases 33. It will be useful to reproduce paras 9:-

*"9.It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession. It is true that the appellants placed reliance in their plaint on resolutions passed by the Municipality on 11.11.1972 and 29.11.1972. A reading of those resolutions would prima facie show that possession would be taken where the acquisition proceedings have become final and land acquisition proceedings would not be pursued where award has not been made as on the date of the resolutions. In this case, since the acquisition proceedings have become final, then necessarily possession has to be taken by the Corporation for the public purpose for which the acquisition was made. In that context the question arises whether the appellants can seek reliance on two resolutions. They furnish no prima facie right or title to the appellants to have perpetual injunction restraining the Corporation from taking possession of the building. The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the appellants to remain in possession. Their possession is unlawful and that therefore, they cannot seek any injunction against the rightful owner for evicting them. There is thus neither balance of convenience nor irreparable injury would be caused to the appellants.*

24. Learned counsel has also relied upon ***Deep Chand Vs. Kulanand Lakhera & Ors.***, reported at 2007, INDLAW Delhi 1123.
25. Learned counsel for the respondents submits that the judgments relied upon by learned counsel for the petitioner would not be applicable to the facts of this case for the reason that the present case pertains to a licence, possession of the premises was all along with the respondent and further in this case the rights of the parties are not in dispute; the terms and conditions have been reduced into writing and the licence deed is an admitted document. The relationship between the parties is not in dispute and the said judgments are decisions where the rights of the parties were disputed or matters related to tenancy. In this case, petitioner was a licensee and the possession of the premises continued to remain with the respondents.
26. Learned counsel for the respondents submits that in the case of ***Bishan Das And Ors. Vs. State of Punjab***, reported at AIR 1961 Supreme Court 1570, would not be applicable to the facts of this case, in view of the fact that the Supreme Court had noticed in paragraph 11 that it was not clear whether a lease was executed in favour of the firm Faquir Chand Bhagwan Das or whether it was a licence coupled with a grant or an irrevocable licence. It is contended that in this case, admittedly, the parties had entered into a licence, which was for a fixed period and rights and liabilities of the parties were to be governed by the licence deed.

27. Learned counsel submits that the case of ***Ram Rattan & Others Vs. State of Uttar Pradesh***, reported at (1977) 1 Supreme Court 188 would also not be applicable to the facts of this case as the Apex Court had noticed in para 5 of the judgment that the complainant had encroached upon the land, in dispute, and had converted it into culturable land and had grown the paddy crop and he was thus in possession of the land.
28. Learned counsel also contends that the case of ***Krishan Ram Mahale Vs. Ms. Shobha Venkat Rao***, reported at JT 1989 (3) SC 489 would also not be applicable to the facts of this case as in the said case the right of renewal had remained in favour of the plaintiff whereas in this case the right of renewal was with the respondent herein.
29. Learned counsel has also contended that the case of ***State of U.P. Vs. Maharaja Dharmender Prasad Singh and Others***, reported at (1989) 2 SCC 505 is not applicable as it does not pertain to a case of a licence. Licensor in this case was in the juridical possession of the premises, in question, and to the extent that even the furniture sought to be purchased for the premises was to be approved by the respondent herein.
30. In the case of ***State of West Bengal Vs. Vishnunarayan and Associates (P) Ltd. and Ors.***, reported at 2002 SC 1493, which was relied upon by the petitioner, learned counsel for the respondent submits that paras 2 and 4 of the aforesaid judgment would show that the respondents in the said matter

were tenants in the shop and the Apex Court had noticed that it was not disputed that there was a relationship of landlord and tenants between the parties, and, thus, it was held that the tenants could not be evicted without due process of law.

31. Mr. Shanti Bhushan, learned senior counsel submits that the case of ***R.V. Bhupal Prasad Vs. State of Andhra Pradesh***, reported at AIR 1996 SC 140 would also have no application to the facts of the present case as the aforesaid matter pertains to a lease.

32. The submissions of learned counsel for the petitioner can be summarized as under:-

(1) Although the documents were styled as a licence deed dated 08.04.2003, however, the nature of transaction entered into between the parties was in fact a lease created in favour of the petitioner;

(2) The petitioner was an independent occupant and had free and uninterrupted use;

(3) The petitioner was given a bare structure and he has spent several lakhs on renovation, thus, the licence executed was irrevocable in nature.

(4) The petitioner cannot be dispossessed except by following due process of law.

33. The submissions of learned counsel for the respondent can be summarized as under:-

- (1)Writ petition is not maintainable as petitioner has approached this court with unclean hands and is not entitled to any relief;
- (2)Petitioner is an illegal occupant as licence has admittedly come to an end on 07.04.2008;
- (3)Petitioner cannot be allowed to perpetuate its illegality in order to continue its illegal possession;
- (4)Court should not, under Article 226 of the Constitution of India, interfere in contractual relations entered into between the parties vide licence deed dated 07.04.2003, which was further renewed on 01.04.2006;
- (5)Appropriate remedy available to the petitioner would not be to claim damages against eviction;
- (6)Assuming that the respondents have failed to follow the due process of law, still the respondents have taken possession on 10.05.2008;
- (7)Rights and liabilities of parties are clear and unambiguous and reduced into writing;
- (8)Petitioner's own case before the High Court was that the licence stood renewed upto 07.04.2008; and
- (9)Licence having come to an end, the original owner/respondent herein is in possession and the petitioner cannot put back into possession.

34. In the light of the submissions made and the judgments relied upon by counsel for the parties, is the petitioner entitled to the reliefs prayed for in this petition? Petitioner has prayed for

issuance of a writ of Mandamus, directing the respondents to execute a licence deed by way of renewal; for issuance of directions to the respondents to remove their goods and prohibit the respondents from causing interference in the peaceful use of the premises. Mr.Ravi Gupta, learned counsel for the petitioner has submitted that licence deed was in fact a lease deed as petitioner was in independent possession of the premises and petitioner was permitted to carry out extensive renovation for which large amounts were spent and thus the licence deed was irrevocable. Besides this, petitioner can only be dispossessed by due process of law.

35. Mr.Shanti Bhushan, learned senior counsel for the respondents has submitted that parties had signed a licence deed, which also governed the rights and liabilities of the parties. Possession of the premises all along remained with the respondents. No doubt, petitioner was in lawful occupation till the period of the licence, however, after completion of the period of licence, petitioner was not in lawful occupation. Hence, Court should not come to the aid and rescue of a defaulter.

36. Admittedly, parties had executed a licence deed on 8.4.2003, initially for a period of three years, commencing from 8.4.2003 and expiring on 7.4.2006. At the request of the petitioner licence was further renewed for another period of two years. The rights and liabilities of the parties are governed by this document. Aggrieved by the communication dated 14.9.2006 issued by respondent, proposing to terminate the licence

agreement dated 1.4.2006, petitioner had filed a suit bearing No.2308/2006 for declaration and injunction. Copy of the plaint has been filed on record. According to the plaint, there was no occasion for the respondent to issue the impugned letter after having entered into a contract with the plaintiff to licence the premises for a fixed period of two years. The plaint further goes on to state that parties held negotiations after which a licence deed was executed on 8.4.2003. In the suit the plaintiff relied upon the initial licence which was subsequently renewed on 8.4.2006 upto 7.4.2008. The petitioner had entered into a licence deed on 8.4.2003 and subsequently at their request the same was renewed for another period of two years on 8.4.2006.

37. The argument sought to be raised in the present proceedings with regard to the transaction entered into between the parties being a lease or that the licence executed was irrevocable in nature should have been raised at the very first opportunity available or at least when the petitioner filed a civil suit in this Court, however, in the plaint petitioner had relied upon the terms of the renewed licence deed.

38. The petitioner entered into this relationship with the respondents with open eyes, the only declaration sought in the suit was declaring communication dated 14.9.2006 proposing to terminate the licence agreement as bad, illegal and void. No declaration was sought that the licence deed was in fact a lease. Neither any such grievance was made. The petitioner had entered into a contractual relationship and this relationship is purely governed by law of contract. By clause 3 duration of

the licence deed has been fixed. Clause 4 deals with the renewal of the licence deed. Based on clause 4 the petitioner had sought renewal which was granted for another period of two years. As per clause 6, the rights conferred on the petitioner were only that of a licensee and possession of the premises was of the licensor. Licensee was only entitled to a right of use and occupation and no other right whatsoever. The same very clause expressly stated that the document was not a lease and the relationship between the parties was only of a licensor and licensee and not that of a landlord and tenant. To say that the petitioner had carried out renovations as well as incurred huge expenses in making changes that by itself would make the licence irrevocable, is a submission without any force and basis. Clause 12 of the licence permitted the licensee to carry out the interior decoration, but only at its own costs and only after getting the plans and overall designs approved by the General Manager. Thus once having derived the benefit of the document dated 8.4.2003 which was renewed for another period of two years on 8.4.2006, at the request of the petitioner, at this stage, it is not open for the petitioner to state that the document was in fact a lease deed or that the licence was irrevocable. In any case in the present proceedings which are summary in nature under Article 226 of the Constitution of India this question cannot be agitated as it requires detailed examination of evidence.

39. The Supreme Court of India in a catena of judgments has repeatedly held that even a trespasser can only be removed by

due process of law. In support of this proposition, learned counsel for the petitioner has relied on various decisions which have been noticed by this Court.

40. A bare reading of the documents placed on record particularly the licence deed, would show that the petitioner was only a licensee. The licence was granted for a period of three years, which was extended for another period of two years. The period of licence has come to an end on 7.4.2008. The respondent by a communication dated 14.9.2006 had sought to terminate the licence agreement which forced the petitioner herein to file a suit for declaration and injunction and the ground taken was that the licence stood renewed upto 7.4.2008. So the admitted position which emerges is that the licence came to an end on 7.4.2008. As per clause 4, this licence could be renewed at the option of the licensor, in its discretion, which was not done.
41. Clauses 14 and 56 of the Licence Deed also make it clear that the licensed premises shall at all times be under the control and supervision of the licensor, thus it cannot be said that the respondent was in legal occupation after the period of licence came to an end. Under these circumstances, when admittedly the period of licence had expired and petitioner even thereafter continued to occupy the licensed premises, should the court interfere and come to the aid and rescue of such a petitioner. The answer is certainly in the negative. Once the period of licence comes to an end, it is the owner of the premises who would be in lawful possession of the premises. In view of the agreed terms of the licence deed, it cannot be said that the

petitioner was in legal or settled possession thus making the case of the petitioner different to the case of a tenant or a case where the termination was pre-mature. The petitioner in his own wisdom had withdrawn the suit No.2308/2006, which was filed, on the statement made by counsel for the respondent /defendant that the agreement had run out of its course during the pendency of the proceeding. Arguments raised and submissions made by counsel for the petitioner are similar to the arguments raised in the case of **Chandu Lal Vs. MCD (Surpra)**, wherein *kiosks* were given on licence for a period of eleven months. After completion of the period of licence, the Corporation had enforced its right of re-entry, which was challenged and ultimately came up for decision before a Full Bench. The Full Bench had observed that the Corporation in enforcing its right of re-entry cannot be said to have taken the law in its own hand as the underlying assumption in the case of a licence is that the owner continues to be in possession and control of the property. The Court had declined to throw its protection round the trespasser. The position in this case is no different.

42. Petitioner entered into a licence agreement with respondent no.1 initially for a period of three years on 8.4.2003. At the end of the term of the licence petitioner made a request for renewal of the licence and at his request the licence was renewed for a period of two years w.e.f. 8.4.2006 to 7.4.2008. The respondent no.1 had sought to terminate the licence before the expiry of the period of two years by a communication dated

14.9.2006, which was subject matter of a Civil Suit [CS(OS)No.2308/2006]. The petitioner had relied upon the licence deed and sought protection from the High Court on the ground that the licence stood renewed up to 7.4.2008 and the same could not have been terminated during the period of licence. Having placed reliance on this document, the High Court had granted interim protection to the petitioner. Even at the stage of filing the suit in the High Court the petitioner did not challenge any of the terms of the licence deed and did not raise the argument which is sought to be raised at this stage that the licence deed was in fact a lease and that even licence was irrevocable. Once the period of licence expired, the petitioner withdrew the Civil Suit [CS(OS)No.2308/2006], and filed the present writ petition.

43. A bare reading of the licence deed would show that the licence was not renewed after 7.4.2008 and thereafter the petitioner had no right to continue with the possession over the licensed premises. The relationship between the parties was purely governed by the licence deed which was executed between the parties. As per clause 4 of the licence agreement, licence could be renewed at the sole option of the licensor – respondent no.1 herein. As per clause 6 of the licence agreement it was clearly understood between the parties that the right conferred by the document is only that of a licensee and also that the possession of the premises would lie with the licensor and that the licensee would only have right to use and occupy the portion – licenced premises – and no other right whatsoever. The parties agreed

that the document executed between them was not a lease and the relationship between the parties was only that of licensor and licensee and not that of a landlord and tenant. Any renovation which was carried out by the licensee was governed by clauses 12 and 14 of the licence agreement executed between the parties. As per clause 49 of this licence deed on termination of the licence, the licensee would have no right under the licence and also have no right to enter the premises of the hotel, as a licensee. As per clause 56 parties agreed that the licensed premises shall at all times be under the control and supervision of the licensor and the licensor shall retain domain and possession of the licensed premises and would also have the right to direct the mode and manner of the use of the said licensed premises. The terms of the licence make it abundantly clear that the licensor continue to remain in possession and control of the premises and in such circumstances the Court cannot throw its ring of protection around the petitioner, who is a defaulter and once the terms of the licence came to an end, his occupation over the premises is unlawful. Any protection granted to the petitioner by this Court in these proceedings would amount to putting premium on the defaults of the petitioner and would result in allowing the petitioner's continuous use and occupation over the premises beyond the term of a written document signed and executed between the parties. In other words, while the illegal occupant would enjoy the property, the true owner would seek aid of the court,

besides that, this would be against the very terms and conditions of the licence.

44. There is no doubt that the petitioner was in lawful occupation of the premises during the period of licence. The possession however, continued to remain with the respondent, as per the terms of the licence which is an admitted document. This very document was the basis on which the petitioner had filed a suit for declaration and injunction and derived the benefit of interim protection. The same very document has to be interpreted at this juncture as well.

45. Defaulters, such as the petitioner, have already flooded the Courts with frivolous litigations, they cannot be permitted to further block the stream of justice, in this manner. Petitioner had entered into a licence deed with open eyes, knowing fully that the duration was three years, which was renewed for another period of two years at the sole option of the respondent. Learned counsel for the petitioner has not been able to show any right accrued in its favour which would entitle the petitioner to use the premises thereafter. In these circumstances petitioner is not entitled to any relief in these proceedings. Accordingly, petition stands dismissed with no order as to costs.

**G.S. SISTANI, J.**

**July 01, 2009**  
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