

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

+ **LETTERS PATENT APPEAL NOS. 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 454, 455, 456, 457, 459, 460, 461, 485, 599, 600, 601, 735 & 736 OF 2008.**

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Date of decision: May 18th , 2009

K.T. CORPORATION & ANOTHER	 Appellants in LPA 441/2008
TOBACCO GIFT CORNER & ANOTHER	 Appellants in LPA 442/2008
UNIVERSAL TRAVELS & ALLIED SERVICES	
& ANOTHER	 Appellants in LPA 443/2008
LITTLE KASHMIR & CO. & ANOTHER	 Appellants in LPA 444/2008
MANOHAR LAL BHUJJAN MALL & ANOTHER	
	 Appellants in LPA 445/2008
BHAG CHAND JAIN & ANOTHER	 Appellants in LPA 446/2008
RAMADAN & ANOTHER	 Appellants in LPA 447/2008
VINOD KUMAR	Appellant in LPA 448/2008
RUBY PALACE	 Appellant in LPA 449/2008
MACRO SERVICES P.LTD& ANOTHER	 Appellants in LPA 450/2008
MACRO OUTSOURCING P. LTD & ANOTHER	
	 Appellants in LPA 454/2008
VICTORY CARPETS	 Appellant in LPA 455/2008
MAHALAXMI	Appellant in LPA 456/2008
RAMZANA & CO. & ANOTHER	 Appellants in LPA 457/2008
RAJESH KUMAR KAUSHIK & ANOTHER	 Appellants in LPA 459/2008
SUSHMA KAUSHIK & ANOTHER	 Appellants in LPA 460/2008
HEERA MIDHA & ANOTHER	 Appellants in LPA 461/2008
REGAL SHOES	 Appellant in LPA 485/2008
DEEP CHAND JAIN & ANOTHER	 Appellant in LPA 599/2008
SUNIT KUMAR JAIN & ANOTHER	 Appellants in LPA 600/2008
ROMILA BAHL & ANOTHER	 Appellants in LPA 601/2008
HIMALAYAN TOURS & TRAVELS	 Appellants in LPA 735/2008
SATPAL FOTRA & ANOTHER	 Appellants in LPA 736/2008

Mr. Manish Sharma, Advocate with Mr. Rohan Sharma and Mr. Vishal Malhotra, Advocates for appellants in LPA Nos.441/2008, 450/2008 and 454/2008.

Mr. H.L. Tikku, Sr. Advocate with Mr. Thakur Sumit and Ms. Yashmeet Kaur for appellant in LPA Nos. 443/2008, 444/2008, 447/2008, 449/2008, 445/2008, 456/2008, 457/2008, 485/2008 and 736/2008.

Mr. Jagdeep Kishore, Advocate for the appellants in LPA Nos. 459/2008, 460/2008, 461/2008, 599/2008, 600/2008 and 601/2008.

versus

INDIA TOURISM DEVELOPMENT
CORPORATION AND ANOTHER

.... Respondents

Through, Mr. Rajiv Nayar, Senior Advocate with Mr. Atul Sharma, Advocate for the respondent ITDC in LPA Nos. 442/2008, 443/2008, 445/2008, 446/2008. 447/2008 and 448/2008.

Mr. Ajay Kapur with Mr. G. Panmei, Advocate for respondent in LPA Nos. 441/2008, 444/2008, 447/2008, 449/2008, 450/2998, 454/2008, 455/2008, 456/2008, 457/2008, 459/2008, 460/2008, 461/2008, 485/2008, 599/2008, 600/2008, 601/2008, 735/2008 and 736/2008.

CORAM:

**HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA**

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

SANJIV KHANNA, J.:

1. This common judgment will dispose of the present intra court appeals filed by occupants of shops/office spaces in Hotel Ashoka, Hotel Janpath and Hotel Samrat allotted to them by the respondent-India Tourism Development Corporation (hereinafter referred to as ITDC, for short). By the impugned judgment under appeal dated 1st July, 2008, learned Single Judge has dismissed the writ petitions filed by the appellants challenging the action of ITDC to

initiate proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as Act, for short) and for direction to ITDC to renew the license arrangement with them.

2. The appellants herein have been in occupation of shops/office spaces as per details set out in para 4 of the impugned judgment, which are not being repeated for the sake of brevity.
3. The case made out by the appellants before us and the learned single Judge was that ITDC has been renewing license deeds from time to time on enhanced license fee after increasing the last paid license fees by 10-30%. It is stated that no uniform policy was/is followed and the license fee of different shops/office spaces was/is different, with substantial variation between the amount being demanded and paid from the allottees. It is stated that ITDC does not have any policy or guidelines for renewal or increase in license fee and is guilty of adhocism and arbitrariness. It is alleged that in 26th August, 2006, ITDC decided not to renew the license though the appellants had already made request for renewal. Thereafter, ITDC decided to renew the license in respect of the shops/office space on enhanced license fee of Rs.250/- per sq. ft. for Hotel Ashoka, Rs.225/- per sq. ft.

for Hotel Samrat and Rs.176-220/- per sq.ft. for Hotel Janpath. It is stated that in many cases the increase demanded was 450% higher than the earlier license fee being charged. It is submitted that the increase is arbitrary and ITDC being a State cannot act as a private landlord and demand exorbitant license fee. It is also submitted that in the absence of any policy framed by ITDC, Office memorandum dated 19th February, 1992 and the guidelines dated 30th May, 2002 issued by the Government of India for proceedings under the Act are applicable. It is stated that ITDC has violated the said guidelines/memorandum and therefore their decision to initiate proceedings for eviction and to claim damages under the Act should be quashed and set aside.

4. The relevant Clauses of the terms and conditions of the license deed, which are identical except for the quantum of license fee, read as under:

"2. The license may be renewable at the option of the Licensor on the expiry of the period stipulated under clause 1 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 two years for each such extension. The License will apply for the renewal of his license 6 (six) calendar months

before expiry of the license and on failure to do so, the Licensor will be free to negotiate with and to allot the license premises to any other party. 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 license and also the terms and conditions of the renewed license and the Licensor's decision in this regard shall be final and binding on the Licensee.

3. At the time of each such renewal, the Licensee shall execute a fresh License Deed in respect of the premises given on license to it. In case the Licensee fails to get the license renewed for the period coming into effect from the expiry of this License Deed, the Licensee shall be considered to be in unauthorized occupation of the Licensed Space and the Licensor shall be within its right to initiate proceedings under the due process of law.

4. If any fresh license agreement/deed is not executed for any reason, whatsoever, thirty (30) days prior to the expiry of the initial period of **Two Years** granted hereunder, it will be presumed that the License has not been renewed and the use of the premises by the Licensee, after such date shall be considered as unauthorized. The company/Licensor shall be at liberty to enter into such arrangements as it may deem fit, with any other party permitting the use of the premises by such other party after the expiry of the initial period of license with the Licensee and the Licensee shall not interfere with the same directly or indirectly nor shall cause any damage, loss or expenses to the Licensor in this

regard.

II. LICENSE FEE & SECURITY DEPOSITS.

1. x x x x x
2. x x x x x
3. x x x x x
4. x x x x x
5. x x x x x
6. Any payment made by the Licensee after the expiry of license agreement or termination of Agreement and till execution of new Agreement or renewal of the agreement shall be treated by the Licensor as damages and not license fee, except payments made towards outstanding license fee pertaining to a period prior to the date of termination or expiry of the license agreement as the case may be. The fact that the License terms any such payment as license fee and not damages shall not alter the nature of such payment.

III. TERMINATION OF LICENSEE

1. x x x x x
2. x x x x x
3. x x x x x
4. Upon the expiry of the period of this license or earlier termination of the license 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.
5. x x x x x x

V. APPLICABLE LAWS & NOTICE

1. In respect where provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 can be invoked by the Licensor in respect of the licensed premises the provision of the said Act shall apply.”

5. In view of the aforesaid Clauses of the written instrument, the appellants cannot as per the contractual terms claim right to renewal by proportionate increase in the license fee. The appellants were always aware of their rights and obligations, while giving their tenders or agreeing to renewal terms, which were accepted without demur and protest. The license as per the written instrument was for a fixed period on the license fee as stipulated, with no vested or legal rights to the appellants to claim mandatory renewal, with or without proportionate or fixed increase. As per terms of the contract i.e. written instrument the appellants cannot claim any right to renewal and compel ITDC to extend the license period.

6. The next question is whether ITDC being a State under Article 12 of the Constitution can be compelled and mandated by issue of a Writ direction to extend or renew the license on terms which the court feels are just, fair and reasonable. Another contention of the appellants is that the

ITDC has acted in an arbitrary, discriminatory and highhanded manner.

7. ITDC, respondent herein is a Government Corporation and therefore State under Article 12 of the Constitution of India. However, ITDC as a Corporation is not performing any public functions or duties. It is operating and maintaining hotels as a commercial venture. The object and purpose of ITDC is to earn profit and as such ITDC performs limited social obligations or purpose, keeping in view the nature of its activities. ITDC is a business venture in which commercial considerations and profit motive are primary/main concern and guiding factor. With this objective, ITDC is competent and entitled to frame its own policies in respect of grant of licenses and their renewal. However, the policy so framed cannot be discriminatory and one which is arbitrary, so as to offend Article 14 of the Constitution of India. Action should not be actuated by bias or malafides. Quantum or the increase as demanded by ITDC cannot be set aside in exercise of power of judicial review unless the same is arbitrary and takes into consideration irrelevant facts. The scope of judicial interference by this Court under Article 226 of the Constitution of India is therefore limited and narrow. Keeping these aspects and principles in mind, we have

examined the contentions raised by the appellants with reference to alleged arbitrary exercise of power and discretion by ITDC.

8. Learned Single Judge while examining the aspect of quantum of enhanced license fee has noticed that ITDC had given offers fixing the rent or license fee. The rent/license fee as mentioned by ITDC was based on license fee being paid by the occupants in other five star hotels. ITDC while fixing the rates was also influenced by the offers received by them in new tenders for the vacant shops and office spaces. In some cases said rates were accepted by some of the existing occupants. We do not think that the policy decision of ITDC taken in July, 2006 to insist and ask for market rent/market license fee can be faulted and interfered with on the ground of violation of Article 14. Learned counsel for the petitioner submitted that the ITDC has not taken into consideration certain aspects like location disadvantages, mandatory low profit services in five star hotels etc. We are not concerned with the individual cases or a particular problem. On the other hand, the Court has to examine whether the price or the rate fixed was determined with due consideration and regard to relevant material and whether extraneous matters have been excluded from determination.

(Refer, ***Sita Ram Sugar Company Ltd versus Union of India***, (1990) 3 SCC 223). Right and desire to get market license fee for shops and offices in a five star hotel is valid and not extraneous consideration. In the present cases, market rates can be a valid criteria for fixing license fee. Further, the appellants always have the right to participate in the tenders which will be floated by ITDC and make their offers. This will take care of individual aspects like location disadvantage or low profit services.

9. The appellants herein are commercial establishments who have set up shops or commercial offices in the premises located in the said three Hotels. The prime aim and objective of these commercial establishments managed and run by the appellant allottees is to earn profit for their personal gain. There is no public function or duty being performed by the appellants or for that matter even by the ITDC. A lower license fee will obviously result in higher profit earning by the appellants. In a way by charging lower license fee, ITDC is subsidizing business costs of the appellants and providing and benefiting the appellants with State largesse. There is no justification and reason for ITDC to do so and in fact ITDC will be guilty of violation of Article 14 by conferring State largesse and giving benefits to the appellants to the exclusion

of others. In case, ITDC renews licenses and enters into contracts or renews the licenses at less than the market fee, it will be guilty of administering largesse to selected individuals at the expense of public. There must be adequate and justifiable reasons why State largesse should be granted to a particular person to the exclusion of others. We agree with the findings given by the learned Single Judge that the license fee charged by ITDC can be market driven and they are entitled to charge license fee as per the rates prevailing in the five star hotels. ITDC is not expected and cannot be compelled to continue and renew license agreements so as to subsidize private vendors, whose purpose and motive is to enhance private profits by occupying low cost accommodation.

10. In ***Ramana Dayaram Shetty versus International Airport Authority of India*** reported in (1979) 3 SCC 489 the Supreme Court agreed with the observation of Mathew, J. in ***V.Punnan Thomas versus State of Kerala*** reported in AIR 1969 Ker. 81 and held:

“The Government is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic

Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

11. Referring to the above two judgments, the Supreme Court in ***Style (Dress Land) versus Union Territory, Chandigarh*** reported in (1999) 7 SCC 89 upheld the increase in lease money from Rs.2,671/-p.m. to Rs.14,000/-p.m. after expiry of the earlier lease period w.e.f. 1st March, 1992. Referring the stand taken by Union territory of Chandigarh that the shops in question were occupied by private individuals and some of them were further let-out the Supreme Court agreed that the State Authority was entitled to charge market rent and the same was justified, reasonable and constitutional. The judgment of the High Court was upheld and it was held that the procedure adopted and made basis for enhancing the rent to market value cannot be said to be arbitrary, discriminatory or unreasonable. In the said case, the Supreme Court also reiterated the principle that inaction in respect of some individual/tenants cannot be made basis for setting aside action initiated against others. Reference was made to the decision of the ***Chandigarh Administration versus Jagjit Singh*** , (1995) 1 SCC 745 wherein it has

been held that if an Order in favour of a third person is found to be contrary to law or not warranted by facts and circumstances, such illegal or unwarranted order cannot be made the basis for issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. In such cases, a party cannot urge violation of Article 14 of the Constitution alleging discrimination.

12. ITDC does not enjoy monopoly and is in open and direct competition with privately run hotels which are in abundance in Delhi. ITDC does not enjoy any special privilege or advantage being an instrumentality of the State, unlike Development Authorities or housing boards under special statutes constituted for social and public purpose and obligations in mind. Appellants per force because of status of ITDC as a State are not compelled to negotiate, deal and interact with the ITDC. ITDC does not enjoy a dominating position or substantial market share to control market rents/license fee for floor spaces in five star hotels. In a competitive market, ITDC is competing with others and cannot charge exorbitant license fee. Market or license fee is per se determined and fixed by market forces. Letting of shops and offices is a part of the business of ITDC and constitutes a portion of its profits and commercial activity.

ITDC being a hotel and in hospitality business has to be given full freedom and play in joints to determine and decide what is more beneficial and commercially profitable for them, unless for some justified public reason ITDC being a State should not be permitted to do so or acts in a discriminatory manner in violation of Article 14 of the Constitution. ITDC while taking commercial or financial decision have to be given freedom of play in joints. It is for ITDC to determine how and in what manner they want to manage and run the hotel including shops and offices which are let out/given to third parties on license fee basis. Renting out is a part of the commercial venture and contributes to their income. In purely commercial or financial matters, the Courts should not substitute their judgments for that of ITDC. The Court cannot supplant its own views for they are more equitable, reasonable, better suited or viable. The Court is only concerned with the decision making process and whether extraneous matters have been taken into consideration for reaching the final conclusion and whether the decision falls foul of Article 14 being arbitrary or discriminatory. The action of the ITDC cannot be faulted on the said grounds and its desire and attempt to get market license fee is not arbitrary or unreasonable.

13. The Policy decision questioned was taken by the ITDC in the end of 2006, cannot be declared arbitrary and illegal because some renewals had taken place prior to the said decision. Renewals which had taken place prior to the policy decision form a separate class. In these circumstances, the learned Single Judge has rightly accepted the plea of the ITDC that arrangements finalized before the policy decision cannot be the basis for declaring the policy as violative of Article 14 and arbitrary.
14. Learned counsel for the appellants has heavily relied upon the Office Memorandum/Guidelines dated 19th February, 1992 and 20th February, 2002. In support of the contention, it was submitted that these guidelines are binding and in terms thereof ITDC like a private landlord cannot evict the appellants for commercial motives.
15. The 1992 guideline in Clause (iii) thereof has crystalised the object of issuing the said guidelines as under :-

“...At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State, or move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.”

16. The 19th February, 1992 guidelines were issued as State and State controlled Corporations had been granted immunity from rent control legislations enacted to protect tenants from landlords. It was highlighting this aspect that the Supreme Court in M/s. ***Dwarkadas Marfatia and Sons versus Board of Trustees of the Port of Bombay*** (1989) 3 SCC 293 examined the action of the Port Trust in initiating proceedings under the Act and in that context it was observed:

“23. The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.

24. x x x x x

25. x x x x x

26. x x x x x

27. We are inclined to accept the submission that every activity of a public authority especially in the background of the assumption on which such authority enjoys immunity from the rigours of the Rent Act, must be informed by reason and guided by the public interest. All exercise of discretion or power by public

authorities as the respondent, in respect of dealing with tenants in respect of which they have been treated separately and distinctly from other landlords on the assumption that they would not act as private landlords, must be judged by that standard. If a governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. See the observations of this Court in *Kasturi Lal Lakshmi Reddy* and *R.D.Shetty v. International Airport Authority of India.*"

17. After 1989, the Delhi Rent Control Act, 1958 is no longer applicable to the properties fetching rent of Rs.3,500/- p.m. or more and the normal law of eviction i.e. under the Contract Act, 1872 and the Transfer of Property Act, 1882 apply. In the present cases, license fee being paid by the petitioners is admittedly more than Rs.3,500/- p.m. They are, therefore, even otherwise not protected under the Delhi Rent Control Act, 1958. The advantage and benefit of the Act stands neutralized and immunity from rent control legislation is inconsequential.

18. The 2002 guidelines are in similar terms and the words of 1992 guidelines quoted above have been reproduced therein.

In **New India Assurance Company Ltd. Vs. Nuslee N. Wadia**, (2008) 3 SCC 279 the Supreme Court noticed that there are number of guidelines which had been issued from time to time to ensure that action of the State under the Act is

fair, reasonable and not arbitrary. Reference was specifically made to the Circular dated 23rd July, 2003 drawing a distinction between business houses or commercial entrepreneurs vis-à-vis other tenants who may require succor and protection. Para 3 of the Circular dated 23rd July, 2003 reads as under:-

"3. The Government Resolution dated 30-5-2002 embodies the guidelines dated 14-1-1992 for observance by the public sector undertakings. However, clarification was issued vide OM No.21011/790Pol.1 IV.H.11 dated 7-7-1993 that the guidelines are meant for genuine non-affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs."

19. Learned Single Judge in the impugned judgment has referred to the decisions of the Supreme Court in ***Hari Singh and others versus Military Estate Officer***, 1973 (1) SCR 515, ***Ashoka Marketing Ltd versus Punjab National Bank***, AIR 1991 SC 855, ***Kaiser- I- Hind versus National Textile Corporation (Maharashtra North) Ltd.***, (2002) 8 SCC 182 and observed that Constitutional validity of the Act has been repeatedly upheld even in relation to commercial premises. Learned Single Judge has further observed that the guidelines and the administrative instructions can supplement and not supplant the law and the statutory provisions and therefore the guidelines cannot be read as undermining the provisions of

statutory enactment and the consequences enjoined by the definition of "unauthorized occupant" under the Act. The guidelines cannot re-write and negate the definition of the term "unauthorized occupation" as defined in Section 2(g), which reads as under:-

"unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

20. The Supreme Court in ***New India Assurance Company Ltd. (supra)*** had the occasion to consider the effect of the said guidelines and similar plea of the tenant/licensee. Referring to the guidelines it was observed that the same cannot control the statutory provisions and the effect thereof is advisory in character and no legal right is conferred upon the tenant or the occupant. However, in the said case as the New India Assurance Company had themselves referred to the guidelines issued by the Central Government, the ultimate effect of the application of the guidelines was not finally determined.

21. The appellants have also relied upon the doctrine of legitimate expectation. Legitimate expectation is not a legal right but a benefit, relief or a remedy which may ordinarily flow from a promise or an established practice. The term "established practice" refers to regular, consistent and practicable certain conduct, process or activity of the decision making authority. However, the expectation should be legitimate i.e. logical, reasonable and valid. As legitimate expectation is not a right, it is not legally enforceable as such and is given a class just above "fairness in action" but below promissory estoppel. Referring to the said principle in ***Ram Pravesh Singh versus State of Bihar***, (2006) 8 SCC 381, the Supreme Court has observed that legitimate expectation can only entitle a person to seek opportunity to show cause before the expectation is dashed or ask for explanation as to the cause for denial. In the present case, in view of the written contract and the explanation given by the ITDC, the plea based upon doctrine of legitimate expectation cannot be accepted. The action of the ITDC in floating tenders or asking for market license fee cannot be categorized as unreasonable, illogical or invalid while exercising power of judicial review.

22. The respondent-ITDC being a State even in matters of contractual obligation must act uniformly and guided by reason.

Without adequate reasons and justification ITDC cannot exclude any person dealing with them or take away the largesse arbitrarily. It cannot act on its own sweet-will and like a private individual pick and choose as they please. All equals should be treated in a similar manner and should not be discriminated. Supreme Court in ***Style (Dress Land)* (supra)** has held that all powers of the State must be exercised for public good and action of renewability should be gauged not by the nature of function but public nature of the body exercising that function and action of a state contrary to Article 14 is open to judicial review even if it pertains to contractual field. Therefore there is need and it is desirable that ITDC should have a uniform policy for the like. No one should be given special advantage or favour without valid grounds in conformity with Article 14 of the Constitution. Of course policy can be amended and modified from time to time as per the needs and requirements.

23. Some of the appellants in their written submissions have expressed their willingness to abide by the terms and pay license fee as in the case of ***Barlingtons and Maharani of India***. In case ITDC has renewed the contract with the said two parties, the appellants will be entitled to ask for renewal on the same terms and conditions subject of course to ITDC

rejecting their requests for valid and cogent reasons which differentiates their case. However, we do not agree with the contention of the appellants that ITDC should give first offer of renewal/refusal to the present occupants depending upon the highest tender received by ITDC in the open tender. It is rightly pointed out by ITDC that this will have an adverse impact on the offers made by the third parties and cause prejudice. This is a matter of policy, and the stand and reasons given by ITDC are not arbitrary or based on irrelevant considerations. Similarly, the plea raised by the appellant-occupants relying upon the order in O.M.P. No. 394/2008 titled *Decibel Versus I.T.D.C.* is misconceived. In the said case, the Court while disposing of an application under Section 9 of the Arbitration and Conciliation Act, 1996 had merely recorded the contention of counsel of the occupant that they should be permitted to meet the best offer received by ITDC. Learned single Judge had merely observed that the occupant therein shall be entitled to make an offer and the same if maintainable under the law can be considered by the respondent ITDC. Thus no directions or findings have been given to ITDC.

24. In view of the above findings, the Appeals are dismissed. The appellants cannot be given any relief as prayed for. However the appellants have liberty to make an offer to ITDC

in terms of renewal, if any, in the case of ***Barlington*** and ***Maharani of India*** . It will be open to the ITDC to consider the said offers, accept or reject the same. While rejecting any offer, the respondent-ITDC will examine whether the case of the said licensee is different from the ***Barlington or Maharani of India*** and communicate reasons for rejection.

No costs.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MAY 18, 2009
P/VKR