

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

+ W.P.(C) 12722/2009

Date of decision : December 16, 2009.

KRISHNA KHURANA AND ORS Petitioner
Through: Ms. Gita Luthra, Sr. Advocate with Mr. Parinay
D. Shah, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI AND ORS Respondent
Through: Mr. Ajay Arora & Mr. Kapil Dutta, advocates
for MCD.
Mr. Shoaib Haider for Mr. N. Waziri, Advocate
for GNCT of Delhi.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

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

GITA MITTAL, J (ORAL)

1. The present writ petition has been filed by five persons apprehending eviction from kiosks located at the Vishnu Digambar Marg. So far as factual matrix is concerned to the extent necessary, the same may be briefly noticed hereinafter.

2. Pursuant to an action conducted in the year 1974, five persons including petitioner no.1-Smt. Krishna Khurana and petitioner no.5-Shri Vinay Kumar claim to have been allotted kiosks at Shaheed Bhagat Singh Park, near Indian Express Building. Pursuant to the allotment, a standard licence deed was executed between the allottee and the MCD. The relevant terms thereof are read as

follows :-

1. The licence shall be deemed to be a bare licensee having only a personal right in the said premises and nothing herein contained shall be deemed to be a demise at law of the said premises or any part thereof so as to give the licensee any interest therein.
2. The licence is purely temporary and the Corporation reserves the right to revoke it any time by giving 48 hours notice in writing without assigning any reason to the licensee.
3. That the allotment/licence of the premises shall only permit the licensee to occupy and use the premises till the expiry of the period of licence or termination, whichever is earlier, without assigning any reason whatsoever.
4. The right of licensee shall be the right of the user only and not of possession and the Corporation reserves the right of re-entry as mentioned above and no possession will be deemed to have been transferred to the licensee.

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8. If the licence fee hereby reserved or any part thereof shall at any time be in arrears or remain unpaid after the due date or if the licensee at any time fails or neglects to perform or observe any of the terms and conditions and covenants herein contained and on his part to be observed and performed and in any such case the Corporation may without prejudice to their other rights by giving thirty days notice in writing to the licensee, determine the licence and re-enter upon the said premises or in part thereof. The licensee shall upon such determination peacefully stop use of the said premises without any right to compensation whatsoever and thereupon this licence shall be absolutely determined without any right to compensation whatsoever to the licensee in any of the following events that is to say :-

(i) If the licensee(s) being an individual or if a firm, any partner in the licensee firm shall die or at any time be adjudged insolvent or shall have a receiving order or for administration of his estate made against him or shall take any proceedings for liquidation or composition under any insolvency Act, for the time being in force or make any conveyance or assignment of his effects or enter into any arrangement or composition with

his creditors or suspend payment or shall introduce a new partner or shall change the constitution of the partnership of if the firm be dissolved under the Partnership Act or

(ii) If the licensee(s) being a company shall pass resolution or the court shall make an order for the liquidation of its affairs or a receiver or manager on behalf of the debenture holders shall be appointed or circumstances shall have arisen which entitle the court of debenture holders to appoint a receiver or manager.

provided always that such determination shall not prejudice any right of action or remedy which shall accrue or shall accrue thereafter to the Corporation.

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12. The licensee shall not permit the said premises or any part thereof being used by another person for any purpose whatsoever without the previous consent in writing of the Commissioner, MCD and in default thereof shall be liable for forfeiture. The licensee shall not introduce any partner nor sell and transfer use of the premises or part thereof or otherwise carry on the business in the premises with any other person or assign, transfer, change or otherwise alienate his use of the premises.

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22. The period of licence will be five years or on termination of the licence whichever is earlier from the date of the taking over the user of the premises, and the extension of allotment for further period will be at the absolute discretion of the Commissioner, MCD."

3. The MCD has disputed the rights of petitioners no.2, 3, 4 & 5 contending that they are not the original allottees. It is explained by Ms.Geeta Luthra, learned senior advocate for petitioner that recently petitioner no.5 has undergone an operation for removal of his kidney and for this reason was unable to come to this Court. In this background, the writ petition is filed

through Mr.S.P.Gupta, who is brother/attorney holder on his behalf. This position is disputed by Mr.Ajay Arora, learned counsel for the MCD who contends that the case appears to be one of illegal transfer of the kiosks and has been so considered by the MCD.

4. The respondents had proposed to shift the original allottees from the allotted site at Shaheed Bhagat Singh Marg. Aggrieved thereby a writ petition bearing WP(C) No.3145/2000 was filed by these allottees. This writ petition was disposed of by order dated 9th June, 2000 in the following terms :-

"C.W.No.3145/2000 & CM No.479/2000

Notice.

Mr.Butcher accepts notice.

Learned counsel for the parties agree that the petition be disposed of at this stage itself.

Heard learned counsel for the parties.

The only grievance of the petitioners is that they are being ousted from the kiosks they are occupying at present without being provided alternative accommodation. Learned counsel for the MCD-respondents states that the site from where eviction is sought is a public park which is being developed as such and the petitioners remaining there is hampering the development works. Learned counsel for the respondents undertakes that the petitioners will be reallocated alternative accommodation at Vishnu Digambar Road and the structures for shifting the petitioners will be completing within one month from the date of their vacating the present site. He also undertakes to hand over possession of the alternative accommodation to the petitioners on their settling the dues and arrears that may have fallen due.

In view of this, learned counsel for the petitioners undertakes that the petitioner will vacate the kiosks by 29th June, 2000 respondents undertakes to make the alternative site available by 20th July, 2000.

In this view of the matter nothing remains in the petition.

The petition is disposed of accordingly.”

5. It is an admitted position that pursuant to the undertakings given to the court in these proceedings, the kiosks in question were constructed and numbered as kiosk nos.5 to 9 on the Vishnu Digambar Marg. The possession thereof was also handed over to the original allottees of the Shaheed Bhagat Singh Park.

The present writ petition has been filed aggrieved by the proposal of the respondent to evict the occupants of these kiosks from the Vishnu Digambar Marg and to relocate them temporarily in kiosks opposite the Bal Bhawan or the Kotla Road. The MCD has sent a letter dated 27th November, 2009 to the petitioner no.1 who is the allottee of kiosk no.A-5 to this effect. Similar letters have been sent to the original allottees of kiosks No.A-6 to A-9. The petitioner nos.2 to 4 claimed to be valid transferees of rights in the subject kiosks from the original allottees. The petitioners have assailed the authority and the jurisdiction of the respondents to relocate them at the proposed sites.

6. The writ petition is vehemently opposed by learned counsel appearing on behalf of the respondents. When the matter came up for hearing on 28th October, 2009, this court was informed that the relocation of the petitioners was only temporary for the purposes of executing a major construction work of road widening and that the alternate sites to which the kiosks were to be relocated had been shown to the petitioners. On the 30th October, 2009 learned counsel for the MCD had handed over in court an affidavit sworn by

Shri Vijay Singh, Deputy Commissioner, City Zone, MCD which was taken on record.

7. On the 8th December, 2009 a stand was taken on behalf of the MCD that the factual position with regard to the inspection conducted by the MCD as well as the disentitlement of the petitioners to file any relocation had not been correctly placed by the officers who had appeared in court on the earlier occasions. Leave was sought to file an affidavit to deal with the individual cases of the petitioners on record. Such affidavit was permitted to be filed. The MCD has accordingly placed an affidavit before this court. The petitioners have assailed the stand of the respondents in their response.

8. It appears that while the matter has remained pending in court, the MCD has taken action against such persons who were not the original allottees of kiosks. This action stands taken after issuance of notices to show cause. It is contended by Mr.Arora , learned standing counsel for the MCD that such representations as were received in response have been duly considered. It is vehemently contended that except the case of petitioner No.1, orders of cancellation of the allotment in the remaining four cases, where original allottees were not found in possession have been passed. The submission is that the respondents are in the process of communicating such orders.

9. Ms.Geeta Luthra, learned senior counsel for the petitioners has objected to these contentions and has contended that petitioners have not been afforded any proper opportunity of showing cause before passing of any such order. She submits that no such orders have been communicated so far to the

petitioners.

10. Inasmuch as it is not disputed that the orders of cancellation have not been communicated. It is not necessary for me at this stage and in these proceedings to examine the legality and the validity of such cancellations. It shall be open for the respondents to ensure service of the orders which are stated to have been passed. It shall be open to the petitioners to assail the same by way of appropriate legal remedies, if aggrieved thereby.

11. So far as the present proceedings are concerned, the consideration is confined to shifting of the relocation of the subject kiosks which was the only issue which has been pressed. There is no dispute that the allotment was on licence basis. The respondents have submitted on affidavit that the relocation is necessary for the reasons that the work of widening and construction of footpath and drain on Vishnu Digambar Marg and Kotla Road has been started by the Project Division of City Zone, MCD. The allocation of the kiosks on the Vishnu Digambar Marg which includes the subject kiosks was effected by the Remunerative Projects Cell of the MCD. A communication dated 7th September, 2009 was received by the Cell from the Executive Engineer (Project), City Zone for removal of the kiosks/tehbazari at the earliest so that the aforementioned work could be carried out without hindrance. As a result the impugned letter dated 23rd October, 2009 was issued to the allottees for temporary shifting opposite Bal Bhawan till a permanent site for relocation is finalised.

12. So far as the relocation is concerned, Mr.Arora submits that temporary relocation of allottee would be effected to the Bal Bhawan site for about two

months and thereafter the MCD proposes to permanently allocate the kiosks site on the Kotla Road to the original allottees with subsisting rights as licensee

13. Learned senior counsel Ms.Luthra has urged that the respondents cannot discriminate between original allottees and transferees. She has placed reliance on payments which have been accepted by the MCD from the transferees. It is also contended that in some cases the transferees have been making payment by cheque and such payments have been accepted unconditionally and without any objection by the respondents.

14. As observed, heretofore, the issue with regard to the legality of the action of the MCD regarding the cancellation of the allotments in cases where kiosks stood transferred is concerned, the same is not being considered in the present writ petition inasmuch as no such challenge is laid before me. This question is required to be considered as and when appropriate writ petition is filed assailing the orders of the cancellation as they have not been communicated so far.

15. It cannot at all be contended or held that the relocation is not required to be undertaken in public interest. A licensee, in any case cannot claim a permanent and indefeasible right to continue with the licence permanently. It has repeatedly been held by the Supreme Court that public projects cannot be interdicted by the orders of the court. Interests of the public overrides the interests of the individual.

16. So far as factual matrix is concerned, there is no dispute that the petitioners are in physical possession of the kiosks. The petitioner no.1 is

admittedly an original allottee.

17. The issue with regard to the legality or the validity of the right of petitioners no.2 to 5 to continue to occupy kiosks would be determined in the proceedings challenging the cancellation of the allotment. Similarly, the question as to whether the MCD has rightly cancelled allotment of the four of the kiosks is also not before this court.

18. Relocation results in physical shifting of the occupancy. The same does not create any right, title and interest in favour of any person. The relocation would have the impact of physically relocating a person with the same legal status as he has with regard to the site from where he has been relocated. It creates no new rights or legal relationships.

19. Ms.Geeta Luthra, learned senior counsel for the petitioner contends that the respondents are taking a relook at their policy with regard to the transfers of kiosks by original allottees and are proposing to consider the request of transferees for regularisation. She submits that this submission is made without prejudice to the contentions that the petitioners have a legal right, title and interest to continue as valid occupants of the kiosks. Needless to say that in case such a policy come into vogue, it is also for the MCD to examine cases of the petitioners in the light thereof if the policy is so formalised.

20. Ms.Geeta Luthra submits that the petitioners were under an impression that no redevelopment work was proposed and that no period of the relocation was indicated which circumstances really led to the filing of the present writ petition. In view of the above discussion, these apprehensions do not survive.

It is accordingly directed as follows :-

the respondent no.1 shall relocate the petitioners to the temporary site proposed at Bal Bhawan in terms of the statement made in court. The petitioners shall facilitate the relocation and shift to the temporary sites.

- (i) In case orders of cancellation of allotment in respect of subject kiosks have actually been made, the same be communicated to the petitioners, who are the occupants as well.
- (ii) The respondents shall not evict the petitioners in any case from the relocation site for a period of four weeks from the date of service of the cancellation of the order.
- (iii) It is made clear that nothing herein contained is an expression of opinion on the merits of the rival contentions on the issue of entitlement of the petitioners to regularisation of allotment of the kiosks and the cancellation(s) thereof, or to relocation to the permanent site.

This writ petition is disposed of in the above terms.

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GITA MITTAL,J

DECEMBER 16, 2009
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