

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

+ **W.P.(C) 11945/2009, 11946/2009, 11947/2009,
11948/2009, 11949/2009 AND 11950/2009**

% **Date of decision :** 29th January, 2010.

M/S MAHALAXMI Petitioner in 11945/2009.
M/S LITTLE KASHMIR Petitioner in 11946/2009.
M/S. HARADAN Petitioner in 11947/2009.
M/S. RUBY PALACE Petitioner in 11948/2009.
M/S. VICTORY CARPET Petitioner in 11949/2009.
M/S. RAMZANA & CO. Petitioner in 11950/2009.
Through Mr.H.L.Tiku, Sr.Advocate with
Mr.Sumit Thakur, Ms.Jasmeet Oberoi,
advocates.

versus

INDIAN TOURISM DEVELOPMENT
CORPORATION LTD AND ANR Respondents
Through Mr.Vinod Kumar, advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

1. Admit. With the consent of the parties the matter is taken up for final disposal.
2. The petitioners herein were granted licences in respect of shops situated in Shopping Complex, Hotel Ashoka, Chanakyapuri, New Delhi on different dates. The period for which the said licences were granted has expired. The respondent-Indian Tourism Development Corporation Ltd. refused to extend the licence period, except on certain terms and conditions. The action of the said respondent was challenged by the petitioners and other shop owners. The said writ petitions were

dismissed vide judgment in **Heera Midha & Anr. v Indian Tourism Development Corporation**, (151) 2008 DLT 479. Appeal filed by the petitioners and other shop owners was also dismissed vide Order dated 18th May, 2009 in **K.T. Corporation & Ors. v Indian Tourism Development Corporation**, (LPA No. 441/2008). The petitioners have not challenged the said decision and the same has become final.

3. The respondent-ITDC had initiated eviction proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act, for short). The Estate Officer passed eviction Order dated 29th July, 2008. The said Order was made subject matter of appeal before the District Judge-IV and the appeal has also been dismissed vide Order dated 18th September, 2009.

4. Learned senior counsel for the petitioners did not seriously challenge the eviction order passed by the Estate Officer and upheld by the learned District Judge-IV. It is not disputed that the term of the licence had expired before the eviction proceedings were initiated. There is no renewal or extension of the licence. The petitioners occupation was/is therefore unauthorised. Petitioners had challenged the action of the respondent-ITDC in not renewing and granting fresh licences for further period but the writ petitions have been dismissed and the said order has been upheld in appeal. It cannot be also disputed that the premises in question are public premises.

5. The contention that the respondent-ITDC should have first led evidence on the question of eviction before the Estate Officer is no longer *res integra*. Principles of Evidence Act and the Code of Civil

Procedure, 1908 are not applicable to eviction proceedings before the Estate Officer under the Act. However, Principles of Natural Justice have to be complied with. In ***New India Insurance Company versus Nusli Neville Wadia*** (2008) 3 SCC 279 the Supreme Court examined the language of Sections 4 and 5 of the Act and observed :

“49. Section 5 of the Act, on a plain reading, would place the entire onus upon a noticee. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect thereof but also adduce evidence and make oral submissions in support of his case. Literal meaning in a situation of this nature would lead to a conclusion that the landlord is not required to adduce any evidence at all nor is it required even to make any oral submissions. Such a literal construction would lead to an anomalous situation because the landlord may not be heard at all. It may not even be permitted to adduce any evidence in rebuttal to the one adduced by the noticee nor it would be permitted to advance any argument. Is this contemplated in law? The answer must be rendered in the negative. When a landlord files an application, it in a given situation must be able to lead evidence either at the first instance or after the evidence is led by the noticee to establish its case and/or in rebuttal to the evidence led by the noticee.”

6. In the present case there was no need and necessity for the respondents to lead evidence on the question of eviction in view of the admitted and accepted factual position. Onus is upon the noticee. As quoted above, Supreme Court has clarified that in a given situation the Authority may be asked to give evidence in the first instance or after evidence is led by the noticee or rebuttal evidence. It has also been observed in the said decision that the Estate Officer is expected to expeditiously arrive at his decision and matters should not be delayed

and prolonged. The contention relating to the question of waiver of notice, etc. under Sections 4 and 5 is also without merit as the writ petition was pending and thereafter the matter was taken up in LPA. Eviction proceedings pending before the Estate Officer were not withdrawn.

7. The contention that the petitioners are lessees and not licencees and therefore the provisions of the Act do not apply is without any substance. In ***Ashoka Marketing Ltd. versus Punjab National Bank*** 1990 (4) SCC 406 it has been held that the provisions of the Act will apply when the premises are public premises. It does not matter whether the person in occupation is a tenant/lessee or a mere licencee.

8. In view of the aforesaid facts, I do not find any ground to interfere with the eviction order passed by the Estate Officer and upheld by the District Judge-IV.

9. The main plea raised by the learned counsel for the petitioners is on the question of computation of damages and interest awarded. It is pointed out that no evidence was led by the respondent on the question of quantum of damages. My attention is also drawn to the order passed by the District Judge-IV wherein the quantum of damages had been reduced to Rs.250.00 p.sq.ft./p.m. plus applicable taxes, and interest has been awarded @ 18% after holding that the Estate Officer has not given any reason for awarding damages @ Rs.7850/- per day.

10. On the question of evidence as regards the quantum of damages, the Supreme Court has observed in ***New India Assurance***

Company (supra) that although the provisions of the Evidence Act are not applicable but the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. It further held that when an application for damages is based on such grounds, which require production of positive evidence on the part of the landlord, it would be for it to adduce evidence first. It is apparent that the respondents were under the impression that they were not required to lead any evidence to prove damages. As noticed by the District Judge IV, the Estate Officer has not revealed and stated as to how the market rate/damages were assessed as Rs.7850/- per day. Rule 8 was also not taken into consideration by the Estate Officer. District Judge IV, however directed the petitioner to pay damages @ Rs.250/- p.sq.ft. plus applicable taxes. District Judge-IV has erred in directing damages @ Rs.250/-p.sq.ft. However, at the same time it is noticed that some of the petitioners had in their reply filed before the Estate Officer had stated that they were ready and willing to renew and extend the period @ Rs.250/-p.sq.ft. plus taxes. The said statement was made without prejudice to the rights and contentions of the occupants/petitioners.

11. During the course of hearing, learned counsel for the respondent-ITDC states that on the question of quantum of damages the matter may be remanded back to the Estate Officer for fresh adjudication. The statement made by the learned counsel for the respondent is accepted and the matter is remanded back to the Estate

Officer for adjudication on the question of damages. Parties will be at liberty to adduce evidence before the Estate Officer.

Writ Petitions are accordingly disposed of.

SANJIV KHANNA, J.

JANUARY 29, 2010
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