

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 6054/2003

Reserved on: February 28, 2011

Decision on: March 16, 2011

SAUDAGAR SINGH Petitioner
Through: Mr. Rishikesh, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: Mr. N. Waziri, Standing Counsel with
Mr. Anjum Javed, Mr. Shoaib Haider, Mr. Prem
Kumar Mishra & Ms. Neha Kapoor, Advocates

W.P. (C) 5060/2008 & CMs 9694/08 & 1722/2011

UPDESH BAKSHI Petitioner
Through: Mr. Rishikesh, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: Mr. N. Waziri, Standing Counsel with
Mr. Anjum Javed, Mr. Shoaib Haider, Mr. Prem
Kumar Mishra & Ms. Neha Kapoor, Advocates.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

JUDGMENT
16.03.2011

1. Both these writ petitions involve common questions and are accordingly being disposed of together by this judgment. The Petitioners

were licencees of shops at the Inter-state Bus Terminal ('ISBT') at Kashmere Gate. The challenge in the present petitions is to the amount of licence fee being charged from the Petitioners on the ground that it is exorbitant and arbitrary. Also, challenge is to the omission of the Respondents in allotting alternative shops to those shopkeepers at the ISBT who were dislocated on account of the project of the Delhi Metro Rail Corporation ('DMRC').

2. The case of the Petitioners is that in 1999 they were asked to hand over the vacant possession of the shops for the DMRC project with the assurance that they would be allotted shops at Dhaba Block and Departure Block.

3. The Petitioner in Writ Petition (Civil) No. 6054 of 2003, Saudagar Singh, states that he was initially allotted Shop No. 57, opposite a public lavatory in the DTC Block. But he was unable to earn even the licence fee there for want of sufficient business due to the continuous foul smell. At his request, he was shifted to Shop No. 68 admeasuring 27 sq. ft. at the Departure Block. He states that he was made to pay the licence fee of Rs. 17,500/- per month and his request for being shifted to a small shop in any other ISBT as per policy was not acceded to by the Respondents. In the circumstances the present petition was filed.

4. As regards the Petitioner in Writ Petition (Civil) No. 5060 of 2008, Updesh Bakshi, he was allotted an alternative shop being Shop No. 5 at a monthly licence fee of Rs. 16,660/-. He relies on an order dated 3rd August 2004 passed by this Court in a batch of similar other writ petitions. In Writ Petition (Civil) No 3005 of 2003, this Court directed that the Petitioner Suresh Kumar Arora be treated at par with the other evictees of the ISBT who were rehabilitated.

5. Initially Saudagar Singh's petition was disposed of on 3rd August 2004 by the learned Single Judge of this Court holding that the terms of the agreement entered into between the parties could not be re-written and that the Petitioner was bound to pay the licence fee in terms of the said agreement. The said order was set aside as regards Saudagar Singh by a Division Bench of this Court on 14th December 2009 stating that the individual facts of the petition have not been discussed.

6. In the counter affidavit in Writ Petition (Civil) No. 6054 of 2003 by Saudagar Singh the Department of Transport ('DoT'), Government of NCT of Delhi ('GNCTD') stated that the Petitioner had been allotted Shop No. 68 in the Departure Block of the ISBT, Kashmere Gate admeasuring 37.06 sq. ft. on 8th June 1989. One of the terms and conditions was to clear the arrears in respect of the earlier Shop No. 28 in

Dhaba Block and Shop No. 57, DTC Block. He had to deposit one month's advance licence fee amounting to Rs. 9,096/- and three months' licence fee as security deposit. The licence was for a period of 11 months. The licence was kept renewed. The last renewal was for a period up to 19th May 2001 whereby the Petitioner agreed to pay a monthly rental fee of Rs. 15,561/-. It is stated that his licence has not been renewed thereafter. However, the Petitioner stopped paying the licence fee after 19th May 2001. As on 12th December 2003, i.e. the date of filing the counter affidavit, the Petitioner owed to the Respondents Rs. 2,75,400/- as arrears of licence fee.

7. It is pointed out in the counter affidavit that the Petitioner Saudagar Singh had filed Civil Suit No. 140 of 2002 in the court of Senior Civil Judge, Delhi which he subsequently withdrew stating that he would try to settle the matter outside the court. The suit was dismissed as withdrawn on 9th September 2003.

8. It is pointed out that the Petitioner's shop was not at the Dhaba Block and, therefore, was not covered by the decision of the GNCTD to allot alternative shops to those situated at the Dhaba Block in the ISBTs at Kashmere Gate, Anand Vihar and Sarai Kale Khan by increasing the licence fee by 25%.

9. Petitioner Saudagar Singh's application for amendment of the writ petition was allowed by this Court. The amended prayer was for a direction to the Respondents to fix licence fee in accordance with the provisions of the Delhi Rent Control Act, 1958 ('DRC Act') and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('PP Act') after taking into consideration the area of land, the cost of construction and determination of standard rent.

10. As regards Updesh Bakshi, in the counter affidavit filed, it was pointed out that this is the third round of litigation. Updesh Bakshi had earlier filed Writ Petition (Civil) No. 14616 of 2004 and Writ Petition (Civil) No. 3297 of 2007 which he then withdrew with liberty to move an application before the Respondent "for consideration of the quantum of the licence fee in terms of the policy applicable to allottees such as the Petitioner." However, Updesh Bakshi's representation was declined. The stand of the Respondents is that Updesh Bakshi has not been treated any differently from the allottees of alternative shops which were originally in the Dhaba Block.

11. By an order dated 7th July 2010 passed by this Court Updesh Bakshi was also permitted to amend his petition on similar lines as in the companion writ petition by Saudagar Singh. In the said order this Court

noticed that in the earlier round of litigation a Division Bench of this Court had permitted the Petitioners to deposit 50% of the arrears of licence fee as a condition for grant of stay. This Court required the Petitioners to produce details of the payments made by them in compliance with the above directions. On 30th July 2010 this Court directed the Respondents to file an affidavit explaining the basis for fixation of licence fee for the shops at the ISBTs.

12. Pursuant to the above directions, the Respondents filed an additional affidavit on 20th August 2010 enclosing a chart explaining the basis for fixation of the licence fee. It was mentioned that the licence fee was on the basis of the highest tendered rate offered by the licencees of particular shops. Copies of the policy dated 10th November 1993 and the relevant Circulars concerning fixation of licence fees were enclosed with the said affidavit. In addition, it was pointed out that a new corporation, the Delhi Transport Infrastructure Corporation Ltd. ('DTICL') had taken over the ISBTs. DTICL was, therefore, now responsible for allotment of shops and charging of licence fee.

13. In view of the above development, the DTICL was impleaded as a party Respondent in Writ Petition (Civil) No. 6054 of 2003 on 10th February 2011.

14. Numerous adjournments were sought thereafter by the counsel for the Petitioners for one reason or the other. The petitions were finally heard on 28th February 2011.

15. Mr. Rishikesh, learned counsel appearing for the Petitioners relied upon the decisions of the Supreme Court in *Kumari Shrilekha Vidyarthi v. State of U.P. (1991) 1 SCC 212* and *Jamshed Hormush Wadia v. Board of Trustees, Port of Mumbai (2004) 3 SCC 214*, to urge that licence fee charged from the Petitioners could not be fanciful or arbitrary.

16. On the other hand, Mr. Najmi Waziri and Mr. Anjum Javed, learned counsel appearing for the Respondents pointed out that the Petitioners were not discriminated against in the matter of charging of licence fees. It was submitted that the Petitioners' licences were no longer valid as the respective periods of licence had expired. It was submitted that the fixation of licence fees was a matter of policy and the Court ought not to interfere.

17. The above submissions have been considered by this Court. The primary grievance of the Petitioners is about the quantum of licence fees charged by the Respondents for the shops allotted to the Petitioners. The licences issued to both the Petitioners having expired, they do not have a

vested right to ask for continuation of the licence. The Division Bench of this Court in *Antra Rajya Bus Adda Samachar Patra Vikreta Upbhokta Co-operative Store Society Ltd. v. GNCTD* (decision dated 23rd November 2010 in LPA No. 285/2010), has been held that there is no vested right in a licensee to ask for continuation of the licence. As regards the quantum of licence fees, this Court cannot possibly direct Respondents to re-write the terms and conditions of the licence. The chart annexed with the additional affidavit filed by the Respondents shows that there was a rational basis for fixation of licence fee. The Petitioners cannot insist that the revision of licence fee should be in accordance with the provisions of the DRC Act or the PP Act.

18. In the circumstances, there is no merit in either of the writ petitions and they are dismissed as such, but in the circumstances, with no orders as to costs. The interim orders are vacated and the pending applications are dismissed.

S. MURALIDHAR, J.

MARCH 16, 2011

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