

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

Date of decision: 27th July, 2011

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W.P.(C) 8555/2003

SMT. MEERA SAINI

..... Petitioner

Through: Mr. K.C. Mittal, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Najmi Waziri, Ms. Neha Kapoor & Mr. Prem Kumar Mishra, Adv. for GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner was in the year 1991 allotted Counter-F in Arrival Block of the Old Bus Stand ISBT, on licence basis. During the implementation of the Metro Rail Projects Scheme, the petitioner as well as several other allottees were required to be displaced. This writ petition was filed seeking direction to the respondents to frame a scheme for

allotment of alternative site/shop to the petitioner and also as to the rate of licence fee to be charged therefor.

2. Notice of the petition was issued and dispossession of the petitioner stayed vide order dated 16th December, 2003. Thereafter this petition was taken up along with several other petitions. All the said petitions including this petition were disposed of vide order dated 3rd August, 2004 holding that no general direction qua licence fee could be issued in as much as each of the petitioners was to be governed by the terms & conditions of his/her respective agreement with the respondents and with a direction to the respondents to consider the entitlement if any of the petitioners to alternative site.

3. Intra court appeals were preferred including by the petitioner herein and which were disposed of vide judgment dated 14th December, 2009. The Division Bench held that the case of the petitioner, who had been allotted the counter/shop aforesaid without tender and under the Policy of Allotment to Handicapped Persons could not be treated at par with the case of others who had been allotted such counters/shops pursuant to tender.

The case of the petitioner having not been considered in the said light, the matter was remanded to this Bench for decision afresh.

4. Upon such remand, on 18th May, 2010, it was noticed that the petitioner was intended to be shifted/accommodated in the proposed food court in the vicinity of ISBT in lieu of the shop/counter aforesaid. On 30th July, 2010 the counsel for the respondent informed that the petitioner owed a sum of ₹16,57,380/- towards arrears of licence fee. The petitioner of course controverted the same. However on 21st March, 2011 the counsel for the respondents stated that the dispute concerning the arrears of licence fee was referable to arbitration between the parties. It was further stated that the licence of the petitioner had come to an end as far back as in the year 2000 and had not been renewed since then. It was contended that the petitioner had no vested right to demand continuation of the licence and there was currently no Policy for allotment of shops to disabled person and as and when such allotment is to be made, the petitioner shall be considered therein. Reliance in this regard was placed on judgment dated 23rd November, 2010 of the Division Bench of this Court in LPA

No.258/2010 titled *Antra Rajya Bus Adda Samachar Patra Vikreta Upbhokta Co-operative Store Society Ltd. v. Govt. of National Capital Territory of Delhi* . On 26th July, 2011 the counsel for the respondents expressed urgency since owing to the interim order in this petition the petitioner could not be removed and which was stated to be coming in the way of the development work underway at ISBT. The counsels have been heard today.

5. As far as the dispute qua licence fee is concerned, the same as aforesaid does not fall for adjudication in this petition and is left to be decided in accordance with law. The counsels also have not addressed on the said aspect.

6. The occupation of the petitioner of the allotted site being as a licensee, the petitioner cannot have and in fact the counsel for the petitioner has not urged that the petitioner has any indefeasible right with respect thereto. It is also not in dispute that the work of re-development of ISBT is underway. Thus it cannot be said that the proposed removal of the petitioner therefrom is *malafide* in any manner whatsoever.

7. The only question which remains is thus of the entitlement of the petitioner to relocation. The counsel for the respondents has stated that the petitioner has already been allotted alternative Shop No.10 in the food court outlet at ISBT, Kashmiri Gate. A copy of the letter dated 21st June, 2011 of the Delhi Transport Infrastructure Development Corporation Ltd. in this regard has been handed over in the Court along with a site plan showing the location of the said shop. The counsel for the respondents has contended that the petitioner cannot claim any right to continue at the existing site, thereby holding up the entire work of re-development. He has in this regard also invited attention to the judgment dated 16th March, 2011 of this Court in W.P.(C)6054/2003 titled ***Saudagar Singh v. Govt. of NCT of Delhi*** and which writ petition also was preferred by allottees of shops in ISBT. This Court held that being a licensee, there is no vested right to ask for continuation of the licence and the terms & conditions of licence prescribing the licence fee could not be re-written by this Court.

8. The only grievance left of the counsel for the petitioner is as to the alternative site. It is contended that the Shop No.10 allotted in the food

court is not accessible to handicapped persons as the petitioner and her husband are. They thus claim that the same is not a suitable alternative site for the petitioner and the petitioner cannot be compelled to vacate the existing site till a suitable site is allotted.

9. Mr. Waziri, Counsel for the respondents controverts the aforesaid and has stated that the Shop No.10 is accessible on a wheelchair. He also assures that if the petitioner is found to be having any difficulty with respect thereto, arrangement therefor will be made.

10. I may record that though it is recorded in the judgment dated 14th December, 2009 aforesaid of the Division Bench in intra court appeal preferred by the petitioner that the initial allotment to the petitioner was on account of her physical disability but the counsel for the respondents has controverted the said fact and the counsel for the petitioner has been unable to show any documents of allotment on such ground. The counsel for the petitioner could also not controvert that the licence of the petitioner had expired as far back as on 11th March, 2000.

11. I therefore do not find the petitioner to be entitled to the relief claimed in this petition. The petition is dismissed; however the respondents are directed to ensure that the alternative shop allotted to the petitioner is accessible to persons with physical disability and in accordance with the guidelines in that regard. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 27, 2011
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