

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 10.08.2011

+W.P.(C) No.4179/2007 and C.M.No.1394/2010

Shri Mohan Singh

.....Petitioner

Through: Mr. Anil K. Batra & Mr. Prins
Kumar, Advocates

Vs.

Union of India & Ors.

.....Respondents

Through: Mr. R.V. Sinha & Mr. A.S. Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the Order dated 11.5.2007 whereby the Directorate of Estates,

Government of India has revoked the licence of the petitioner in respect of Quadrangle No.IV, Mohan Singh Market, New Delhi.

2. The grievance raised by the petitioner in the present petition is that the action of respondent No.2 of terminating the licence of the petitioner in respect of Quadrangle No.IV, Mohan Singh Market, New Delhi is violative of Articles 14, 19(1)(g) and 21 and 300 A of the Constitution of India and the petitioner has also stated that respondent No.2 has not taken into consideration the objections raised by the petitioner in his reply dated 14.10.2004 to the show cause notice dated 29.9.2004 and had passed an unjustified and baseless order. The petitioner has further stated that respondent No.2 also did not consider that the licence of the shop and the quadrangle was a composite licence and, therefore, the licence of said quadrangle No.IV could not have been revoked alone, which licence was a part of the composite licence. It is also stated that respondent No.2 also did not appreciate that there was no evidence that the petitioner had obstructed the access of the CPWD to the quadrangle for carrying out the

maintenance and also the fact that the CPWD had independent access to the quadrangle through its own gate under their own lock and key. It is also the case of the petitioner that no violation or contravention on the part of the petitioner in breach of the terms of the licence was ever complained of by the respondent and, therefore, without there being any breach on the part of the petitioner, the licence of the petitioner in respect of quadrangle could not have been terminated. It is also the case of the petitioner that after the demise of his father on 31.1.1985, the respondent no.1, i.e., Government of India, had regularized the licence in favour of the petitioner under a single Licence Deed for the shop and the quadrangle vide Licence Deed dated 25.11.1985 and execution of such a Licence Deed in favour of the petitioner would clearly show that the quadrangle was always treated as an integral part of the composite licence deed for the shop and the quadrangle. It is also the case of the petitioner that the Union Cabinet of the Central Government, on 20.10.1989, had taken a decision to confer ownership rights on leasehold basis to all the authorized allottees of

Mohan Singh Market, New Delhi along with seven other similar markets of Delhi and accordingly the petitioner applied for ownership of Shop No.27 and the quadrangle. It is also the case of the petitioner that the request of the petitioner for the grant of ownership rights of Quadrangle No.IV, Mohan Singh Market, New Delhi was rejected on the premise that the said Quadrangle No.IV is a common area for circulation/ventilation and such an area is being required for maintenance purposes. It is also the case of the petitioner that the petitioner had agreed to provide access to the said Quadrangle No.IV through his Shop No.207 as and when CPWD would require for the purposes of maintenance. It is also the case of the petitioner that the petitioner had separately challenged the show cause notice dated 29.9.2004 in WP(C) No.17550/2004. It is also the case of the petitioner that the petitioner had filed a Letters Patent Appeal (LPA) vide LPA No.393/2006 so as to challenge the order of the learned Single Judge, whereby the petition was dismissed. In the background of the aforesaid facts of this case, the petitioner has approached this Court to seek quashing of the

order dated 11.5.2007 passed by the Directorate of Estates whereby the said licence has been revoked.

3. In the counter affidavit filed by respondent no.2, the stand taken is that the father of the petitioner was granted a licence in respect of Quadrangle No.IV with the stipulation that the said licence was purely temporary which could be revoked by the respondent at any time by giving thirty days notice without even assigning any reason. The respondent has also submitted that the licensee cannot question the said decision of the Government to cancel the licence, and even in the case of a wrongful termination of the licence, the only remedy available is to claim damages. The respondent has also submitted that the petitioner has made unauthorized encroachment by converting the Quadrangle No.IV into a full-fledged shopping market and has blocked the two passages leading to the said Quadrangle No.IV and as such the licence of the petitioner with regard to Quadrangle No.IV was rightly terminated. It is also the case of the respondent that the said Quadrangle No.IV consists of common service area where drainage pipelines are laid down for carrying waste water

etc. from the shop area to the main municipality and by raising construction on the Quadrangle No.IV the petitioner has blocked the said approach to the drainage pipelines, making it impossible for the CPWD to carry out day-to-day maintenance of the drainage system. It is also the case of the respondent that the petitioner had blocked the ventilators of other shops that open into the said Quadrangle No.IV. It is also the case of the respondent that the action of revocation of licence of the respondent cannot be called arbitrary, baseless and unjustified. It is also the stand of the respondent that in the writ petition filed by the petitioner, being WP(C) No.17550/2004, the petitioner sought directions for the grant of ownership rights in respect of shop and Quadrangle No.IV, Mohan Singh Market, New Delhi and for withdrawal of the show cause notice dated 20.9.2004. Both the said reliefs were declined by the learned Single Judge by dismissing the said petition filed by the petitioner vide judgment dated 6.9.2005. It is also the stand of the respondent that during the pendency of the present petition, the LPA No. 393/2006 filed by the petitioner was also dismissed by the Hon'ble

Division Bench vide order dated 21.9.2007. With the aforesaid defence raised in the counter affidavit, the respondent has justified its stand of terminating the licence of the petitioner in respect of the said Quadrangle No.IV, Mohan Singh Market, New Delhi.

4. Mr. R.V. Sinha, learned counsel appearing for the respondents, has strongly contended that the petitioner has no right to challenge the said order of revocation as the petitioner was made a licensee and the respondent was well within its rights to revoke the licence even without assigning any reason. Learned counsel also contends that the show cause notice was duly served upon the petitioner before taking the said decision of revoking the licence of the petitioner and, therefore, the petitioner cannot complain that the principles of natural justice were not adhered to by the respondent. Learned counsel further submits that the respondent was not obligated to deal with the objections raised by the petitioner in his reply in the order of termination as it was sufficient compliance of the principles of natural justice that the said decision to revoke the licence

of the petitioner was taken after service of the show cause notice and after taking into consideration the reply filed by the petitioner. The contention of learned counsel for the respondent is that in the discharge of administrative functions, not necessarily the authority concerned is expected to deal with each and every objection raised by the affected party as it would be suffice that before taking any decision, there is a sufficient compliance of serving a show cause notice and then looking into the stand taken by such party in his reply.

5. Having heard learned counsel for the parties at considerable length, I have given my thoughtful and careful consideration to the arguments advanced by them.

6. Indisputably, the petitioner was a licensee in respect of said Quadrangle No.IV, Mohan Singh Market, New Delhi. Earlier, in the year 1968, only Shop No.207 was licensed at a monthly license fee of Rs. 235/- to the grandfather of the petitioner, i.e., Late Moti Singh, and then later on Quadrangle No.IV, Mohan Singh Market, New Delhi, which is contiguous to the said shop, was also given on a licence by

the Government. After the death of Mr. Moti Singh, the Government had transferred the said licence in favour of Mr. Mohan Singh the petitioner herein. As per the copy of the Licence Deed dated 13.12.1974, placed on record, the said licence, which was granted in favour of the father of the petitioner, was purely temporary and the Government reserved its right to revoke the same at any time by giving thirty days notice without assigning any reason to the licensee. The relevant Clauses of the Licence Deed dated 13.12.1974 are produced as under:-

And whereas the Licensee had requested the Government to grant a licence to him in respect of the Quadrangle aforesaid also and to execute a fresh licence in respect of the shop as well as the Quadrangle adjacent thereto more particularly described in the Schedule hereunder written (hereinafter called "the said premises".) and the Government have agreed to do so upon the terms and conditions hereinafter following:-

The Licensee(s) shall be deemed to be bare Licensee(s) having by a personal right in the said premises and nothing herein confined shall be deemed to be a demise at law of the said premises or a part thereof so as to give the licensee(s) any interest therein.

The licence is purely temporary and the Government reserve the right to revoke it at any time by giving thirty days' notice without assigning any reason to the licensee(s).

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The Licensee(s) shall make use of the said premises for business purposes only and in so doing shall keep the verandah in front of the said premises, the compound and lane or by-lane of the market clear, and he/they shall not cause any obstruction or encroachment whatsoever in the verandah, the compound lane or by-lane of the market under any circumstances. If at any time it

comes to the notice of the Government that the verandahs in front of the said premises or the compound or lane or by-lane of the market is being used by an unauthorized person with the connivance of the Licensee(s) or that the Licensee(s) has/have put up any hoardings, show-cases, etc., stacked any goods in the verandah, compound or lane or by-lane of the market, or is/are carrying on any activities in the verandah, compound, lane or by-lane of the market which obstruct normal movement of customers or other licensees or which cause nuisance to other licensees, the Government shall be entitled forthwith to determine the Licence without assigning any reason and without service of notice to the Licensee(s), and to claim damages at such rates as may be decided by the Government.

7. A fresh Licence Deed was also executed between the present petitioner and the respondents vide licence deed dated 25.11.1985. The basic terms of the licence deed substantially remained the same. Vide show cause notice dated 29.9.2004, the petitioner was called upon to remove the breaches committed by him on the said area of Quadrangle No.IV, Mohan Singh Market, New Delhi in a manner that obstructed CPWD to have access to the common area for carrying out facilities like planning, maintenance, etc.. The contents of the said show cause notice dated 29.9.2004 are referred as under:-

Dear Sir,

The allotment of Quadrangle No.IV Mohan Singh Market(INA) was made to you under the condition that the said space would be accessible for carrying out facilities of the common maintenance by the CPWD.

In breach of terms of the allotment letter dated 6.12.1974, you have blocked the entire area of quadrangle in such a way that CPWD is unable to have access to the common area for carrying out facilities like cleaning, maintenance work of the shops.

Kindly show cause as to why the Licence of the Quadrangle No.IV, Mohan Singh Market(INA) should be cancelled in the wake of breach of the terms of allotment by you.

You are requested to remove the breaches mentioned above and send your confirmation to this Directorate along with a clearance report from CPWD to this effect within 21 days from the date of issue of this letter, failing which action for cancellation of allotment of quadrangle will be taken per Market Rules.

8. The petitioner had submitted a reply to the said show cause notice vide reply dated 14.10.2004, thereby refuting the said grounds taken by the respondents in their show cause notice. The said show cause notice was a subject-matter of challenge in a writ petition filed by the petitioner, being WP(C) No.17550/2004 and in the said writ petition, the petitioner had also sought directions for the grant of ownership rights in his favour in respect of said Quadrangle No.IV, Mohan Singh Market, New Delhi and the shop bearing No.207. The said writ petition filed by the petitioner was dismissed by this Court vide order dated 6.9.2005 which is placed on record. The Court in the said order clearly observed that no infirmity could be found in the show cause notice of the respondent calling upon the petitioner to give

access to the CPWD for cleaning and maintaining the site. The said order of the learned Single Judge was upheld by the Division Bench vide order dated 21.9.2007 in LPA No.393/2006. It would be relevant to refer to the following paragraphs from the said judgment of the Division Bench as under:

12. It could not be disputed before us by the counsel for the appellant that the quadrangle, which is the service area, contains all drainage including gully traps and manholes with underground drainage pipelines from where the waste water is taken out of the service area to the Municipal drains. If the ownership right is given to one person or if the same is blocked from all sides, the said area will not be available even for maintenance. Besides, the said area is also stated to be common area for circulation/ventilation. The aforesaid viewpoints arrived at by the CPWD and also by the respondents cannot be said to be in any manner arbitrary or unreasonable. The underground drainage is always managed for the benefit of all the shopkeepers of the market. If exclusive ownership right is granted or if there is no access to the area, the same may prevent and obstruct the Public Works Department from having the access to the said drainage system etc. to remove any kind of blockage.

13. Considering the entire facts and circumstances of the case, we are also of the considered opinion like the learned Single Judge that there is no arbitrariness or unreasonableness on the part of the respondents in issuing the aforesaid show cause notice, as the said area is required to be managed as a public area for easy access and for easy movement and ventilation. Besides the matter is only at the show cause stage. On the basis of the reply to the appellant, a final decision has to be taken in accordance with law. Therefore, we find no reason to interfere with the aforesaid show cause notice as also with the order of the learned Single Judge.

9. It will be thus seen that the reasons given by the respondents in their show cause notice were found to be justified and it is the same show cause notice based on which the licence of the petitioner in respect of Quadrangle No.IV, Mohan Singh Market, New Delhi has been revoked by the respondents vide their impugned letter dated 11.5.2007. It is quite surprising that the petitioner did not bring the said fact of revocation of the licence to the notice of the Hon'ble Division Bench in the proceedings in said LPA No.393/2006 although the same was decided after the revocation of the said licence based on the said show cause notice challenged by the petitioner. Be that as it may, the respondents in the impugned letter dated 11.5.2007 have clearly observed that the petitioner failed to comply with the various breaches pointed out by them in their show cause notice dated 29.9.2004 and, therefore, this Court cannot find any illegality, irrationality or arbitrariness in the decision to revoke the licence of the petitioner. It is an admitted fact that there are drainage pipelines over the said Quadrangle No.IV, in question and any blockage in the said pipelines of drainage

will be unhygienic for the entire area of the shopping complex. Regular access of Quadrangle No.IV for proper maintenance is necessary and by blocking the area of Quadrangle No.IV, the petitioner certainly prevented the access to the said common area to the CPWD for carrying out cleaning and maintenance work and this ground given by the respondents in their show cause notice, and for which no remedial steps were taken by the petitioner, constituted enough ground for the respondents to revoke the said licence of the petitioner.

10. Licence is defined in Section 52 of the Indian Easements Act, 1882 as under:

"52. 'License' defined:

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

The definition of licence makes it clear that a licence granted by the owner enables a licensee a right to do or continue to do certain specified things in or upon an immovable property and had it not been for the permission,

the right to do anything on that immoveable property would be unlawful. It would be useful to refer to the judgment of the Apex Court in the case of ***Associated Hotels of India Ltd. v. R.N. Kapoor (1960) 1 SCR 368*** wherein it was observed that:

"Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof it will be a license. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission his occupation would be unlawful. It does not create in his favor any estate or interest in the property."

It is a settled legal position that the licensee's possession is only a permissive right and does not transfer any interest in the premises. The Apex Court in the case of ***Pradeep Oil Corporation vs. MCD & Anr. (2011)5SCC 270*** while distinguishing between a licence and lease held that the features of a licence are that (a) is not assignable; (b) does not entitle the licensee to sue the stranger in his own name; (c) it is revocable and (d) it is determined when the grantor makes subsequent assignment. In the facts of the case at hand, the petitioner is merely a licensee and, therefore, cannot claim that any right in the said Quadrangle

No.IV, Mohan Singh Market, New Delhi has been transferred in his favour in perpetuity. It is also not the case of the petitioner that his licence was not terminated in accordance with the terms of the licence deed which permitted the licensor to revoke the licence of the petitioner in the event of any breach committed by the petitioner and also without assigning any reasons. Here, the respondents have duly served a show cause notice upon the petitioner and, therefore, it cannot be complained by the petitioner that prior to the revocation of the licence, he was not duly put to notice and, in fact, the said revocation letter clearly disclosed that despite the service of the show cause notice, the petitioner failed to comply with the same which ultimately led the respondents to terminate the licence of the petitioner. Hence, in the face of such an admission, the petitioner cannot be heard to complain that the principles of natural justice have been violated.

11. In the light of the above, this Court does not find any illegality or arbitrariness in the impugned letter dated 11.5.2007. There is no merit in the petition and the same is hereby dismissed. Pending application also stands dismissed.

KAILASH GAMBHIR, J

AUGUST 10, 2011

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