

*

HIGH COURT OF DELHI : NEW DELHI

Reserved on : March 26, 2012

Pronounced on : April 10, 2012

+ (i) W.P.(C)15014/2006

FARID QURESHI Petitioner
Through: Ms. Anjana Gosain, Advocate
versus

UNION OF INDIA AND ORS. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (ii) W.P.(C)15015/2006

SHARWAN KUMAR GOEL Petitioner
Through: Ms. Anjana Gosain, Advocate
versus

UNION OF INDIA AND ORS. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (iii) W.P.(C) 6848/2007

S.P.GOEL AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (iv) W.P.(C) 6849/2007

NARESH KUMAR AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (v) **W.P.(C) 6850/2007**

PREM KUMAR AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (vi) **W.P.(C) 6851/2007**

SANTOSH KUMAR AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (vii) **W.P.(C) 6852/2007**

BALWANT RAI AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

+ (viii) **W.P.(C) 6853/2007**

YOGINDER LAL SOOD AND ANR. Petitioners
Through: Mr. Ajay Kumar Jha, Advocate
versus

UNION OF INDIA AND ANR. Respondents
Through: Ms.Shobhana Takiar and Ms.Heena
Takiar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

%

ORDER

10.04.2012

1. Apart from petitioners being in arrears of license fee, bonafide necessity/space crunch in President's Estate, New Delhi, is the reason

disclosed by the contesting respondent in the eviction petition but in the Notice under Section 4 of *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* issued by the Estate Officer, the reason to seek petitioners' eviction from the shops/residential premises allotted under License Agreements, is that the petitioners are in arrears of license fee and upon expiry of notice period, their possession upon *Shop Nos.2 to 7, and Quarter Nos.75 to 80, in Block 13; Shop-cum-Quarter No.96 to 98, G-Point; and Shop/Garage No.12/4 and Quarter No.12/6, in President's Estate Market, New Delhi*, (hereinafter referred to as the subject premises), is unauthorized.

2. Eviction proceedings were initiated against the petitioners in the year 2003, in pursuance to Notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* which culminated in passing of the Eviction Orders by the Estate Officer in the year 2005-2006, as it was found that the petitioners except petitioner-*Farid Qureshi* had no subsisting right to occupy the subject premises after the year 1991 and they were in arrears of the license fee and that respondent had required the subject premises for bonafide use and commercial use of the subject premises was a high security risk and was affecting the tranquility in the area. The possession of the petitioner-*Farid Qureshi* on his shop/residence in the subject premises was purportedly unauthorized after the year 1993.

3. The statutory appeal, preferred by the petitioners stands dismissed vide impugned order which is assailed by way of above captioned writ petitions, in which the grounds of challenge to the impugned order are common one and therefore, with the consent of learned counsel for the parties, these writ petitions were heard together and are being disposed of, by this common order.

4. It is beyond realm of controversy that after the year 1993, there was no subsisting right of the petitioners to remain in possession of the subject premises, as the last Agreement between the parties, to permit the petitioners to remain in the subject premises came to an end by efflux of time in the year 1993 itself. The impediment to further renewal of the License Agreements between the parties was the enhancement of the license fee which was unsuccessfully challenged by the petitioners by way of W.P.(C) No. 2071/1992, titled as *S.P. Goel vs. Union of India*, which was disposed of on 17th April, 2000. During the interregnum, Petitioners had been paying the license fee under the interim orders of the Court.

5. In the year 2003, 'notice to evict' was served upon the Petitioners, as they were in arrears of the license fee and the ground of bonafide necessity was also taken by the contesting respondent in the eviction petition. In reply to the eviction petition, the factum of Petitioners being in arrears of license fee was contested but of there being bonafide necessity of the contesting respondent in respect of the subject premises was not disputed and willingness to pay the dues subject to renewal of the License Agreements was expressed. However, 'notice to evict' was contested by the Petitioners on the plea that old license fee was payable upto December, 1999 and from January, 2000 onwards, revised license fee was payable but the contesting Respondent had been illegally demanding the revised license fee from the year 1992 till May, 2002. Aforesaid plea was negated by the Estate Officer and in appeal, the Eviction Order was contested on the ground that termination of the License Agreements by the contesting Respondent was not by the authorised person and the Eviction Order on the ground other than the one mentioned in the Notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* stands vitiated.

6. Ms.Anjana Gosain, learned counsel for the Petitioners - *Farid Qureshi and Sharwan Kumar*, had vehemently contended that the Respondent's plea of bonafide requirement of the subject premises and of there being high security risk due to commercial use of the subject premises by the Petitioners in the *President's Estate, New Delhi*, which is accepted by the Estate Officer as well as the Appellate Authority, does not stand established and was not the subject matter of the '*notice to evict*' under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* and on these twin grounds, the impugned order as well as Eviction Order are rendered unsustainable.

7. So far as the ground of Petitioners being in arrears of license fee is concerned, with much vehemence, it was urged by Ms.Anjana Gosain, learned counsel for the Petitioners that during the litigation period in respect of enhancement of the license fee, Petitioners were paying the arrears of license fee in installment of Rs.10,000/- per month and thereafter, a consensus was arrived at between the parties that for the period prior to the December, 1999, Petitioners would be paying the license fee at the old rate and from January, 2000, they would be paying the license fee at the revised rates but suddenly vide communication of 17th July, 2002 the contesting Respondent had called upon the Petitioners to pay the license fee from the year 1992 till the year 2002 at the revised rates, which is clearly arbitrary.

8. Adopting the arguments advanced by Ms.Anjana Gosain, learned counsel for the Petitioner - *Farid Qureshi and Sharwan Kumar*, Mr. Ajay Kumar Jha, learned counsel for the remaining Petitioners, had asserted that the very initiation of the Eviction proceedings against the Petitioners on the basis of the '*notice to evict*' in question being the third one, is hit by principles of *res-judicata* and acceptance of the rent/license fee after the termination notice amounts

to waiver and since the ground of bonafide requirement is not specified in the '*notice to evict*' under Section 4 of *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* therefore, eviction of the Petitioners on the said ground stands vitiated in view of the decisions in *Ex.Hawaladar Kailash Singh vs. Union of India*, 106 (2003) DLT 660; *Mrs.Premalata Bhatia vs. Union of India & Ors.*, 108(2003)DLT 346; and *Sudhir Goel and Ors vs. M.C.D. & Ors.*, 2004 (75) DRJ 195; *State of U.P. vs.Nawab Hussain*, (1977) 2 SCC 806; and *Workmen of Cochin Fort Trust vs. Board of Trustees of the Cochin Port Trust and Anr.*, (1978) 3 SCC 119.

9. It was also asserted by Mr.Jha, learned counsel for the Petitioners that on account of factual inaccuracies in the termination notice and on account of the same being in contravention of the *Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Section Undertaking/Financial Institutions of the year 2002*, impugned order as well as Eviction Order deserves to be set aside. Legal bias alleged against the Estate Officer by Mr. Jha, learned counsel for the Petitioners is that on the application of the Petitioners, Estate Officer had carried out inconsequential corrections in the cross-examination of Respondent's witness but material corrections were deliberately left out and thereby violating the principles of natural justice as the irregularities committed by the Estate Officer while conducting the eviction proceedings adversely affected the Petitioners and on this score as well, the impugned order is rendered illegal and liable to be set aside.

10. Ms.Shobhna Takiar, learned counsel for the Respondents, in support of the impugned order, had vociferously contended that upon expiry of the License Agreements in question, proceedings under Section 4 of the *Public Premises (Eviction of Unauthorised*

Occupants) Act, 1971 were validly initiated in view of the decisions in *Sushila Verma vs. Union of India*, 2002 (65) DRJ 795; *Delhi State Industrial Development Corporation Ltd. vs. K.C. Bothra & Ors.*, 108(2003) DLT 447; and *Jeewan Das vs. Life Insurance Corporation of India & Anr.*, 1994 Suppl. (3) SCC 694 and so, question of termination of the License Agreements in question by Competent Authority pale into insignificance.

11. It was contended by respondent's counsel that there was no question of refusal on the part of the contesting Respondent to accept the license fee as the same had to be accepted towards damages without prejudice to the rights of the Respondents as the Petitioners had no authority to remain in the subject premises upon non-renewal of the License Agreements and that in any case, mere acceptance of license fee does not amount to acquiescence. It was also contended that the plea of malafide and the alleged irregularities in the conduct of eviction proceedings, raised by the Petitioners remains unsubstantiated and that the fact of Petitioners being in arrears of license fee and of bonafide necessity of the Respondents stands firmly established and therefore, these petitions deserve rejection.

12. The contentions raised on behalf of the Petitioners to assail their eviction from the subject premises has to be considered in the light of the averments made, decisions cited and the record. So far as the mandatory nature of the *Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants from Public Premises under the Control of Public Section Undertaking/Financial Institutions of the year 2002* is concerned, a Division Bench of this Court in a recent decision in LPA No.977/2011, *Life Insurance Corporation of India. vs. Damyanti Verma, (DECD) Through Lrs.*, rendered on 23rd March, 2012 has endorsed the earlier dicta of larger bench of this Court holding these guidelines to be not binding.

13. It is true that the issue of security concern was not there either in the notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* or in the eviction petition filed by the Respondent but, the plea of contesting Respondent needing the subject premises for bonafide use was certainly there in the Eviction petition, though it was not there in the notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*.

14. In the decisions relied upon by the Petitioners ' counsel to assail notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* regarding impermissibility of eviction being on a ground other than the one mentioned in the said notice, has been considered in the cited decisions, in the perspective of the effected party having a reasonable opportunity to meet the ground upon which the Eviction Order is based. So, the Eviction Order is required to be tested upon the touch stone of prejudice being suffered by the Petitioners on account of ground of bonafide necessity being not there in the 'notice to evict' under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. Apparently, Petitioners do not suffer any prejudice on this account, as the ground of bonafide necessity is very much there in the eviction petition and the finding returned against the Petitioners on the aspect of bonafide necessity remains unassailable as in the evidence, plea of bonafide necessity stands substantiated with no worthwhile challenge to it in the cross-examination. In this view of the matter, it has to be held that on this score, the impugned eviction of the Petitioners cannot be dented.

15. In WP (C) 391/2003, ***Sharvan Kumar Goel & Anr. vs. UOI & ors***, a coordinate Bench of this Court on 3rd August, 2004, while dealing with aforesaid communication of 17th July, 2002 had passed the following order:-

""After some hearing, it is agreed that in view of the Orders passed on 11.03.2003 by learned Single Judge of this Court in CWP 1834/2003 and connected matters, benefit of the said judgment should also be made available to the petitioners in the present petition as the present petitioners are also similarly situated.

In view of the aforesaid position, it is directed that case of the petitioners will be dealt with by the Estate Officer in terms of the directions passed as aforesaid on 11.03.2003.

It is also agreed that the payments made by the petitioners in the meantime will be accepted by the respondent without prejudice to the rights and contentions of the parties in respect of the proceedings before the Estate Officer.

The writ petition stands disposed of in the aforesaid terms.

16. Though, afore-referred order of W.P.(C) No. 1834/2003 has not been placed on record in the instant matter but it appears that in terms of the aforesaid order the Petitioners had been paying installment of the arrears of license fee but even after the orders passed in the aforesaid writ, still Petitioners were in arrears of the license fee when '*notice to evict*' was served upon them. Not only this, Petitioners had remained in arrears of the license fee even at the time of passing the Eviction Order, with the exception of Petitioner-*Farid Qureshi*, who had cleared the outstanding arrears of the license fee on 1st January, 2003. However, eviction of Petitioner - *Farid Qureshi* is sought to be justified by the Respondent's counsel on the plea of bonafide necessity of the Respondent.

17. The factum of petitioners being in arrears of license fee on the day of issuance of '*notice to evict*', has to be seen in the light of the afore-noted order of 3rd August, 2004 in W.P.(C) No. 391/2003, ***Sharvan Kumar Goel & Anr. vs. UOI & ors***, whereby liberty was granted to the petitioners to urge on this aspect before the Estate

Officer. The finding returned by the Estate Officer in the Eviction Order is of petitioners being in arrears of license fee, to which there is no serious challenge in these petitions. Otherwise also, the Writ Court is not required to sit in appeal over the factual finding returned in the Eviction Order as the same is not shown to be vitiated by any material procedural lapse. In this context, all that is required to be said is that the so called procedural lapses in the conduct of eviction proceedings, pointed out by learned counsel for the petitioners regarding material corrections not being carried out in the deposition of the witness, the assertion made in this regard is blissfully ambiguous, as it was not specifically pointed out at the hearing as to what was the material corrections, which has been omitted. In any case, not much will depend upon the factual aspect of petitioners being in arrears of license fee because this Court is inclined to sustain the impugned eviction of the petitioners on the ground of bonafide necessity of the respondent, to which there is no worthwhile challenge.

18. As regards the plea of constructive *res-judicata*, *legal bias*, etc. raised on behalf of the petitioners to assail the impugned eviction is concerned, I find that since liberty was granted to issue fresh notice under Section 4 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* therefore, the plea of constructive *res-judicata* fails and the decisions relied upon in support of this plea are of no avail to the petitioners. The plea of legal bias raised is required to be substantiated by tangible evidence. Having failed to do so, petitioners cannot succeed in assailing the impugned eviction on the ground of the legal bias of the Estate Officer.

19. Even the plea of Mr.Ajay Kumar Jha, learned counsel for the petitioners of respondent failing to produce the License Agreements in question is concerned, the same is noted to be rejected outrightly, as this plea is contrary to the averments made in the writ petition

regarding License Agreements being executed between the parties in the year 1990 as well as 1991. Though, no such agreements have been placed on record by Mr. Ajay Kumar Jha, but the existence of these agreements is not in dispute and similar agreements are there in the petitions filed by petitioner - *Farid Qureshi and Sharwan Kumar*, which indicate that these agreements are License Agreements.

20. During the course of hearing in these matters, issue of termination of the License by the contesting respondent in the year 2002 being not by Competent Authority was raised with much vehemence by learned counsel for the petitioners, but in view of the decision in *Jeewan Das* (supra), *Sushila Verma* (supra), this issue does not survive for consideration as the License Agreements in question had come to an end by efflux of time way back in the year 1993 and so, question of termination of these agreements in the year 2002 is hardly of any consequence. It is so said because in the period post the year 1993, the status of the petitioners in the subject premises was not authorised in the absence of non-renewal of the License Agreements in question. Therefore, initiation of the eviction proceedings in the year 2003 in pursuance to notice under Section 4 of *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* cannot be faulted with.

21. In *Prem Grover & Ors. vs. New Delhi Municipal Committee*, 1999 (48) DRJ (DB) 419, upon failure to accept the renewal of license on increased license fee which was ten times the original license fee, such licensees were held to be unauthorised occupants.

22. Petitioners' plea of acquiescence does not cut any ice in view of the dictum of the Full Bench of this Court in *Chandu Lal vs. Municipal Corporation of Delhi*, AIR 1978 Delhi 174, holding that mere acceptance of the license fee merely extends the period of

license but does not affect licensor's right to evict the licensee. Mere acceptance of payment from the petitioners during the period post termination of the License Agreements, would not justify raising the plea of acquiescence and in W.P.(C) No. 391/2003, *Sharwan Kumar Goel & Ors. Vs. Union of India & Ors.*, it was agreed by the parties that the payments made in respect of the subject premises would be accepted by the respondent without prejudice to its rights.

23. On the strength of the evidence on record regarding bonafide necessity of the subject premises by the respondent, this Court is of the considered view that the finding returned on this aspect being unassailable, justifies the eviction of the petitioners from the subject premises. Impugned eviction of the petitioners from the subject premises does not suffer from any arbitrariness or material procedural lapse, warranting any interference in these writ proceedings. Upon arriving at such a conclusion, I dismiss these petitions while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

April 10, 2012
pkb