

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

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Date of decision: 9th May, 2014.

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FAO (OS)219/2014

**M/S GESTURE HOTELS AND FOOD
PVT. LIMITED**

..... Appellant

Through: Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Abhijat, Mr. Manish Sangwan &
Mr. Mayank Wadhwa, Advs.

Versus

THE NEW DELHI MUNICIPAL COUNCIL **..... Respondent**

Through: Mrs. Rachna Golcha & Ms. Monisha
Handa, Advs.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.397/2014

1. The counsel for the respondent NDMC / caveator appears.
2. The caveat stands discharged.

CM No.7825/2014 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

FAO (OS)219/2014 & CM No.7824/2014 (for stay)

5. We have, with consent, heard the counsels finally at the stage of admission only.

6. The appeal impugns the order dated 22.04.2014 of the learned Single Judge of this Court (exercising Ordinary Civil Jurisdiction) of dismissal of the application filed by the appellant / plaintiff for interim relief in CS(OS) No.1914/2012. The suit filed is, a) for the relief of specific performance by directing renewal / extension of the licence granted by the respondent / defendant to the appellant / plaintiff vide Licence Deed dated 24.09.2002; and, b) for declaration of the letter dated 28.06.2012 issued by the respondent / defendant to the appellant / plaintiff of rejection of the request of the appellant / plaintiff for renewal / extension of the licence as *void ab-initio*; and, c) for permanent injunction restraining the respondent / defendant from dispossessing the appellant/plaintiff from the licenced premises or from creating any impediments to the use by the appellant / plaintiff thereof. Interim relief of restraining the respondent / defendant from dispossessing the appellant / plaintiff or from causing any impediments to the use by the appellant / plaintiff of the licenced premises was claimed.

7. The appellant / plaintiff being the highest bidder in a tender floated by the respondent / defendant for grant of licence aforesaid, was on the terms and conditions contained in the Licence Deed dated 24.09.2002 granted licence to use space ad-measuring 9657 sq. ft. at ground / lower ground floor at Akbar

Bhawan Annexe, behind Akbar Bhawan, Chanakya Lane, Chanakya Puri, New Delhi for a period of 10 years and on the terms and conditions contained therein. As per the said deed, the respondent / defendant as a licensor, was entitled to re-enter the premises on the expiry of the period of the licence and assume exclusive charge thereof and deal with it in the manner deemed fit and to auction the belongings if any remaining of the appellant / plaintiff in the said space, unless claimed within one month of assumption of such possession by the licensor. Clause 1 of the said Licence Deed is as under:

“1. That the licence shall be for a period of 10 years ending upto 11-7-2012 and thereafter it shall be entire discretion of the licensor to extend or not to extend the period of licence. In case it is decided by the licensor that the licence be renewed / extended, it shall be renewed / extended for a further period as decided by the licensor from the day following the date on which the term of the licence expires at a monthly licence fee payable under the present licence plus its 5% (or by the percentage as applicable under the policy of the council for the time being in force) as monthly licence fee of the renewed licence provided the licensee exercises his / her option for renewal of licence in writing for another term of 10 years within 60 days before the date of expiry of the present

licence and the licensee completes all the required formalities for renewal of licence within the stipulated period of 60 days. In case the option for renewal is not so exercised and / or the formalities are not completed within the stipulated period to the satisfaction of the licensor, it shall be presumed that the licensee is not interested in further extension / renewal of his / her licence beyond the date of expiry of the term of the licence and in the event of the licensee not surrendering the vacant possession of the shop within the stipulated period under this deed, the licensee shall render himself / herself liable for action for eviction and recovery of damages under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.”

8. The appellant / plaintiff claims to have exercised the option for renewal of the licence as per the terms aforesaid and to be ready and willing to perform its part of the terms and conditions of such renewal.

9. The learned Single Judge has declined interim relief to the plaintiff finding / observing / holding:

- (i) that the appellant / plaintiff in the plaint selectively extracted the portion of the clause aforesaid, to convey that the

respondent / defendant was bound to renew the licence when as per the actual clause it is not so;

- (ii) that under the aforesaid clause in the Licence Deed between the parties, the discretion of the respondent / defendant, whether to extend or not to extend the term of the licence is absolute and unfettered and it is only if the respondent / defendant decides to exercise the discretion of renewing the period of the licence that the other formalities as stipulated in the said clause are to be performed by the licensee;
- (iii) that the reference in the clause aforesaid to the policy of the respondent / defendant is only to the policy as to the percentage of increase in the licence fee and not to the policy for renewal and all the policies of the NDMC are not made *ipso facto* applicable;
- (iv) that the reliance by the appellant / plaintiff on the policy / guidelines dated 30.08.2000 of the respondent / defendant is unfounded as the said policy refers to a decision that in case of renewal of shop / kiosk/ thada/ office unit / restaurant, the licence would be renewed for a period of 10 years on a year to

year basis; the said clause of the policy comes into play only in cases where there is a decision to renew the licence and that where renewal is decided to be granted, the renewal has to be for a period of 10 years; the said policy does not stipulate or lay down that in every case irrespective of its facts and circumstances, renewal has to be granted; where the NDMC decides not to renew, the said policy would have no application;

- (v) there was thus no obligation on the respondent / defendant to grant renewal, of which specific performance could be sought by the appellant / plaintiff;
- (vi) it is also not as if the respondent / defendant had not considered the request of the appellant / plaintiff for renewal; The Chairman of the respondent / defendant had appointed a Sub-committee to consider the request of the appellant / plaintiff and which Sub-committee submitted a report dated 22.02.2012 and for the reasons recorded wherein the request of the appellant / plaintiff for renewal of the licence was rejected;

- (vii) Even otherwise, under Section 141(2) of the NDMC Act, 1994, it is lawful for the respondent / defendant to try to get maximum profits from its properties; reliance in this regard was placed on *Aggarwal & Modi Enterprises (P) Ltd. Vs. New Delhi Municipal Council* (2007) 8 SCC 75;
- (viii) that there is no merit in the claim of the appellant / plaintiff of discrimination as there was no policy whereunder such renewal was / is mandatory;
- (ix) that even otherwise, the dispute between the parties are purely contractual and there is no allegation of personal bias against any of the officers of the respondent / defendant.

10. We have at the outset invited the attention of the senior counsel for the appellant / plaintiff to Section 64 of the Indian Easement Act, 1882 which provides that where a licence has been granted for a consideration and the licensee, without any fault of his own is evicted by the grantor before he has fully enjoyed under the licence the right for which he contracted, he is entitled to recover compensation from the grantors and have enquired from the senior counsel whether not the same is indicative of an agreement, even if any of the renewal of licence, being incapable of specific performance and even if the

licensee has a right of renewal and the licensor wrongfully denies such renewal, the claim if any of the licensee would be for damages /compensation only.

11. The only answer forthcoming is that the respondent / defendant has not raised such a defence and the respondent / defendant having failed to raise a defence available to it, the same is not so available.

12. Even if that be so, this Court is bound by the law and cannot pass any order in oblivion thereof.

13. Reference in this regard can be made to *The Corporation of Calicut Vs. K. Sreenivasan* AIR 2002 SC 2051 laying down that under Section 64 even if a licensee is evicted, though grounds for revocation of licence do not exist, or forcefully evicted, his only remedy is to recover compensation from grantor and not to resume occupation. The same view is also taken by a Division Bench of the Kerala High Court in FAO No.63/2013 titled as *Trivandrum Golf Club Vs. State of Kerala*. One of us (Rajiv Sahai Endlaw, J.) also in *M/s Keventer Agro Ltd. Vs. M/s Kalyan Vyapar Pvt. Ltd.* MANU/DE/1479/2013 and FAO(OS) No.278/2013 preferred whereagainst was dismissed by a Division Bench of this Court on 30.05.2013, has taken the same view and which was subsequently also taken in *Ashok Kumar Vs. Paramjeet Kaur* MANU/DE/3900/2013.

14. In view of the aforesaid legal position and when in terms of the same the appellant/plaintiff has no chance of succeeding in the claim for specific performance, the question of protecting the possession of the appellant/plaintiff in the interregnum does not arise.

15. The senior counsel for the appellant / plaintiff has contended that the learned Single Judge has erred in holding that there was / is no policy of renewal and has invited our attention to a document at page 213 of the paper book, referring to a Resolution / policy dated 30.08.2000 of the respondent / defendant in this regard. The recital to the said Resolution, though in the context of increase in licence fee, records that a decision is necessary *inter alia* to bring uniformity of renewal made after every 10 years for shops / stalls / kiosks/ thada / office unit etc. and one of the recommendations approved by the Chairman is that in case of shops / stalls / kiosks/ tharas / office units / restaurant etc., licence will be renewed for a period of 10 years on year to year basis subject to enhancement in licence fee at the uniform rate by 7% per annum and that hotels, cinemas and similar projects etc. be governed as per the mutually agreed terms and conditions as entered into by the Council from time to time. Attention is also invited to Resolution No.3 (xxi) dated 30.08.2000 titled “Estate Policy / Guidelines for dealing with Estate Matters” but we fail to

see as to how the same come to the rescue of the appellant / plaintiff. The same, rather are against the appellant / plaintiff. The respondent/defendant NDMC vide the said Resolution resolved that on expiry of “present term of licences” of all hotels/cinemas and other similar commercial complexes, the licenses shall not be renewed and the fresh licence shall be as per the provisions of Section 141(2) of the NDMC Act.

16. Faced therewith, the senior counsel for the appellant / plaintiff states that the appellant / plaintiff be allowed to continue in the premises and the electric supply to the said premises which has been disconnected after the impugned order of the learned Single Judge be ordered to be restored, till the respondent / defendant re-auctions the licence with respect to the premises and a right be given to the appellant / plaintiff to match the highest bid.

17. The counsel for the respondent / defendant states that a decision has been taken to allow the use of the premises by government departments / public sector undertakings which are in dire need of space. The same is also borne out from the record.

18. Be that as it may, the aforesaid takes the wind out of the claim of the appellant / plaintiff of specific performance. It is not the case of the appellant / plaintiff in the plaint that the appellant / plaintiff has a right to match such

subsequent highest bid received by the respondent/defendant. The case with which the appellant / plaintiff has come before the Court is of being entitled to renewal at an enhancement of licence fee by 5%.

19. We, on a reading of the renewal clause aforesaid in the licence are satisfied that the renewal thereof was in the sole discretion of the respondent / defendant. The appellant / plaintiff thus cannot force the respondent / defendant to renew the lease.

20. Reference in this regard may also be made to the judgment of the Division bench of this Court in ***Kirloskar Brothers Ltd. Vs. Life Insurance Corporation*** 191 (2012) DLT 575 where the guidelines notified by the Government of India on 30.05.2002 providing that in case of public premises where eviction is sought on the ground of the term for which the premises was allowed to be occupied having lapsed / expired, eviction should be sought through ordinary Civil Court and not by resorting to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were held to be not binding and merely directory and to be not an impediment to action under the PP Act. The said Guidelines dated 30.05.2002 are found to be similar to the resolutions / decision of the NDMC relied upon in the present case.

21. We may record that the senior counsel for the appellant / plaintiff has also argued that one of the reasons given for rejecting the request of the appellant / plaintiff for renewal of licence is the FIR registered against the officials of the respondent NDMC relating to the grant of licence to the appellant / plaintiff but which reason is misconceived owing to the said FIR having been quashed. However the counsel for the respondent / defendant has contended that the same has not been quashed against all the accused and appeal is pending.

22. However, in view of the above, we do not deem it necessary to go into the aforesaid aspect, as we find the entitlement of the respondent / defendant in the matter of renewal, to be in the absolute discretion of the respondent/defendant whether for right or wrong reasons.

23. There is thus no merit in the appeal which is dismissed with costs of Rs.20,000/- payable to the respondent / defendant.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

MAY 9th, 2014
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