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

+ W.P.(C) 5980/2014

M/S. FUSION FOODS Petitioner
 Through Mr. Ashish Upadhyay, Advocate
 versus

INIDAN TOURISM DEVELOPMENT
 CORPORATION LIMITED Respondent
 Through Mr. Sushant Kumar, Advocate

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Date of Decision : 08th September, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 14576/2014 in W.P.(C) 5980/2014

Allowed, subject to just exceptions.

W.P.(C) 5980/2014 & CM APPL. 14575/2014

1. Present writ petition has been filed under Article 227 of the Constitution challenging the judgment and order dated 29th August, 2014 passed by learned District Judge and Sessions Judge, New Delhi whereby petitioner's appeal being PPA No. 04/2014 challenging the eviction order dated 09th January, 2014 passed by Estate Officer was dismissed.

2. Learned counsel for the petitioner states that the eviction proceeding had been initiated in violation of the guidelines issued by the Department of Public Enterprises, Ministry of Industry, Government of India inasmuch as the petitioner had made a huge capital investment and was entitled to an initial licence for a period of five years along with a renewal for another five years. In support of his contention, learned counsel for the petitioner draws this Court's attention to the cross examination of respondent's General Manager Mr. Vipin Garg. The relevant portion of the cross-examination referred to and relied upon by learned counsel for the petitioner is reproduced hereinbelow:-

“.....It is correct that the premises which is presently in the occupation of the respondent was earlier let out to two independent units i.e. Hunt Room and Kamakashi Restaurant. Vol. Hunt Saloon Bar was run by Samrat Hotel while Kamakshi Restaurant was licensed out. It is correct that these two units were divided by a wall in between. It is correct that as per the policies of ITDC of the year 1995, the premises wherein no capital expenditure was required was let out initially for a period of three years and the premises in which capital investment was required was let out for a period of five years. It is also correct that all the agreements as per the policy of 1995 used to cover “subsequent renewals”. It is correct that the respondent removed the wall between the two units of Samrat Hotel to join them as one unit presently known as “CHAKRAS”. It is also correct that as both the units were joined to one unit as CHAKRAS, a lot of structural and operational changes in the interiors, equipments etc. were made. AC ducting was also made by the respondent.

It is correct that the respondent had requested the applicant to grant him an initial period of five years in place of three years as stated in the licence agreement as expenditure of capital nature was incurred by him on the premises. It is not in my knowledge if the then General Manager of the applicant had assured the respondent that the licence agreement will be

extended to a period of five years in place of three years as capital investment was made by the respondent.....”

3. Learned counsel for the respondent, who appears on advance notice has handed over copies of licence deeds dated 30th August, 2005 and 07th February, 2011 executed between the petitioner and the respondent. The same are taken on record.

4. The period of licence and the renewal clause therein are reproduced hereinbelow:-

**“1. PERIOD OF LICENCE & RENEWAL CLAUSE OF
LICENCE DEED DATED 30TH AUGUST, 2005**

“PERIOD OF LICENCE & RENEWAL

1.This Licence is granted for a period of 3(three) yrs commencing from 01.09.2005 and shall expire on 31.08.2008 subject to the provisions for earlier termination hereinafter contained, for air conditioned/non air-conditioned space measuring approx. 367 sq. mtrs. Area on “as is where is basis”.

2.The Licence may be renewable at the option of the Licensor on the expiry of the period stipulated under Cl.1 and on such terms and conditions as the Licensor may impose in his own discretion. The duration of the extended period shall be determined by the Licensor but will not be for more than Three years for each such extension. The Licensee will apply for the renewal of his license six (6) calendar months before the expiry of the license and on failure to do so, the Licensor will be free to negotiate with and to allot the licensed Space to any other party. It is also clearly understood by and between the parties that the Licensor will exercise the sole discretion with regard to the renewal of the license and also the terms and conditions of the renewed license and the Licensor’s decision in this regard shall be final and binding on the Licensee,....”

**2. PERIOD OF LICENCE & RENEWAL CLAUSE OF
LICENCE DEED DATED 07TH FEBRUARY, 2011**

“PERIOD OF LICENCE & RENEWAL

1.This licence is renewed for a period of 3 (Three) years commencing from 01.09.2008 and shall expire on 31.08.2011 subject to the provisions for earlier termination hereinafter contained for air condition/non-conditioned space measuring approx 367 sq mts area on “as is where is basis”.

2.No second renewal will be permitted, after the expiry of the first renewal period. Open tender will be invited in which the existing licensee will be at liberty to participate unless otherwise debarred.....”

(emphasis supplied)

5. Learned counsel for the respondent has also drawn this Court’s attention to the relevant portion of the order passed by the Estate Officer as well as the District Judge. The relevant extract of the impugned orders passed by the District Judge and the Estate Officer are reproduced hereinbelow:-

A) Order dated 29th August, 2014 passed by the District Judge:-

“14 The contention of ld. Counsel for the appellant that since the appellant has invested a huge amount at the behest of ITDC, licence should have been for a initial period of five years got no force. It is an admitted fact the the appellant/respondent was given the space of 367 sq. mts on “as is where is basis” through the advertisement in news paper and further he entered into a licence agreement dated 30.8.2005 on the basis of his being highest bidder. The appellant / respondent is aware of the fact and the circumstances and terms and conditions laid down in the agreement.

So far the report of Unit Level Committee Ex. PW1/1a and the statement of RW S. K. Mehra, Vinod Sharma and Kuldip Chandra are concerned, the same is not helpful to the appellant / respondent in presence of the licence agreement dated 30.8.2005 and 7.2.2011.

15 *The contention of ld. Counsel for the appellant that the application of the petitioner ITDC U/s 4 & 5 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is without cause of action and not maintainable in view of section 60 of Easement Act is without force.*

Bare perusal of the licence deed shows that what was let out was space of 367 sq. mts located inside Samrat Hotel for a particular purpose as mentioned in the licence deed. The licence given was mere permission to use the property for a particular purpose as mentioned in the document and does not create any right to use it in any other manner in favour of the appellant / respondent. The reliance is place on Chandu Lal V/s Municipal Corporation of Delhi AIR 1978 Delhi 174 and M/s Exclusive Motors Pvt Ltd V/s ITDC & Ors WP (C) No. 3682 of 2008.”

B) Order dated 9th January, 2014 passed by the Estate Officer:-

“Even otherwise the parties to the present dispute are covered under the License agreement and the rights of the respondent were merely that of a Licensee and once such right or permission was withdrawn such a licensee becomes an unauthorized occupant as in the present case the Respondent after the termination of the License due to efflux of time has become an unauthorized occupant and cannot be permitted to perpetuate its illegality by abusing the due process of law.

The present application was filed in May 2012 much after the date of termination, as such the Applicant validly terminated the License Agreement and no illegality was committed in the Termination of the Licence Agreement. To my mind no mercy or leniency should be shown to a defaulter who himself is in default and has failed to fulfil his solemn promise made in the agreement.

In any event I cannot lose oversight of the fact that while on one hand the License Agreement was terminated due to efflux of time, the Respondent is occupying the Licensed Premises without any authority or permission and in terms of the judgment passed in Chandulal (Supra), the Respondent is a trespassers and any relief to such trespassers would amount to perpetuating the illegality, which no court of law can permit.”

6. Having heard learned counsel for the parties, this Court is constrained to observe that the petitioner has deliberately suppressed the most material and relevant documents, i.e., licence deeds dated 30th August, 2005 and 07th February, 2011. After all, all the terms and conditions on the basis of which licence had been granted to the petitioner are contained in the aforesaid documents.

7. In any event, this Court is of the view that the contention advanced by learned counsel for the petitioner is clearly barred by Sections 91 and 92 of the Indian Evidence Act, 1872. The said Sections are reproduced hereinbelow:-

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.—*When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.*

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [admitted to probate in [India]] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation. 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

92 - Exclusion of evidence of oral agreement—*When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

Proviso (1).-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party [want or failure] of consideration, or mistake in fact or law:

Proviso (2).-The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3).-The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).-The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).-Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract:

Proviso (6).-Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

8. There is also no explanation from the petitioner-firm as to what prevented it from assailing the licence period sanctioned to it at the time of entering into the licence agreement on 30th August, 2005. This Court is of the view that having accepted and acted upon the licence deeds dated 30th August, 2005 and 07th February, 2011 and having taken advantage thereof for more than six years, the petitioner cannot now turn around and challenge the provisions of licence deeds at this stage.

9. This Court also finds that a similar argument was rejected by a Coordinate Bench of this Court in ***M/s. Hotel Natraj v. Union of India & Ors. ILR (2008) Supp. 6 Delhi 82***. In the said judgment, it was held as under:-

“23. Even otherwise, the claim of the petitioner that it was entitled was licence period of five years, and not three years, appears to be highly belated and an afterthought. The license was originally granted to the petitioner on 15.9.2002, and upon its expiry on 14.9.2005, was renewed for two years from 15.9.2005 to 14.9.2007, and thereafter, for one year from 15.9.2007 to 14.9.2008. There is no explanation from the petitioner as to what prevented the petitioner from assailing the license period sanctioned to it at the time of entering into agreement with the I.T.D.C on 1.8.2002. Having accepted and acted upon the License Deed dated 1.8.2002 and having taken advantage thereof for the last six years, the petitioner cannot now contradict the provisions of the License deed at this stage of the matter.”

10. The aforesaid judgment was also cited with approval in FAO 14/2013 filed by petitioner.

11. This Court is of the opinion that the petitioner has indulged in unnecessary and frivolous litigation contrary to a written document and contrary to settled legal position.

12. Consequently, the respondent is directed to issue notice to the petitioner as to why it should not be blacklisted and prohibited from participating in any contract/tender for lease/licence of premises.

13. Till the blacklisting proceedings are decided, the respondent-ITDC is directed not to licence/lease out any premises to the petitioner.

14. With the aforesaid observations, the present petition and application are dismissed.

MANMOHAN, J

SEPTEMBER 08, 2014

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