

\$~10

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

%

DECIDED ON: 19.01.2016

+

LPA 306/2015
CM APPL.9156/2015

LALITA SHARMA

..... Appellant

Through: Mr. Vineet Chaddha with Mr.
Rajiv Sharma, Advocates.

versus

**CHAIRPERSON KIOSK, SCOOTER, CAR & CYCLE STAND
PARKING COMMITTEE & ORS**

..... Respondents

Through: Mr. Sanjay Dewan, Advocate for
Resp-1.

Mr. Neeraj Jain, Advocate with Mr. Sarfaraz
Ahmad, Govt. pleader, for Resp-3/UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. Heard counsel for the parties.
2. The appellant is aggrieved by the judgment and order of the learned Single Judge dismissing W.P.(C) 4407/2015. The subject matter of challenge in the writ petition was order dated 24.04.2015 issued by the District & Sessions Judge with respect to kiosk No.6 at Tis Hazari Courts, Delhi.
3. The brief facts are that Late Jai Prakash Sharma was the allottee of kiosk No.6. He ran a dhaba in the said kiosk. He died on 11.08.2007. In

line with the prevailing practice, the appellant, his daughter-in-law had sought for allotment of the kiosk as legal heir of the late allottee. This application, styled as the one for transfer, was made as far back as on 24.01.2009. Even before that, the appellant's husband - son of the late allottee on 30.10.2007 had requested for permission to renovate the dhaba which was still running despite the death of the original licensee. He had expressed the willingness to deposit the license fee w.e.f. May, 2007 and further stated that: -

“Also the Restaurant/Dhaba is in very bad (sic) condition & needs immediate repairs. There is no proper flooring & ceiling in the place. It looks very odd & therefore customers hesitate to come & eat at the place. Kindly allow me to carry out the aforesaid construction work at the place.”

4. The District & Sessions Judge who was the Incharge of the overall maintenance of the Court premises did not respond. The request for substitution/transfer remained pending. It is a matter of record that the appellant used to deposit the license fee - the last instance brought on record is a letter dated 16.01.2014 by the Establishment asking the licensee to pay the due license fee till January, 2014. Even thereafter license fee was deposited - it is not disputed that the liabilities in that regard had been discharged till April, 2015.

5. In these circumstances, on 16.04.2015 in the vicinity of the kiosk premises, an incident occurred which involved the murder of a practicing Advocate. This led to inspection by the concerned Committee constituted by the District & Sessions Judge to look into the matters. The Delhi High Court Supervision Committee of the District Court (Tis Hazari) visited the site on 18.04.2015. Apparently, on that occasion, the Chairperson of the

Delhi High Court Supervision Committee orally directed that since the dhaba in question was in a shabby condition, it should be renovated and allotted afresh by calling for tenders. Acting pursuant to this, an order of sealing was made on 21.04.2015 and the premises were actually sealed the next day, i.e., 22.04.2015. The appellant approached this Court for relief of a direction that the sealing of the kiosk was arbitrary and not in accordance with law. A consequential direction for declaring a notice - issued on 24.04.2015, asking the appellant to hand over the premises - as illegal, was also sought.

6. The learned Single Judge was considerably swayed by the fact that the original licensee had expired and that the observations on the record were that the premises were in a very shabby and unhygienic condition. Therefore, it was felt that since the nature of the right itself was tenuous, the appellant could not complain of arbitrariness in the sealing of the premises and the subsequent cancellation of the allotment. The appellant urges that the learned Single Judge failed to take note of the fact that right from 2007, the request for substitution/allotment to her had been pending. The respondents were accepting the license fee from time to time and had never expressed that the appellant was dis-entitled to the license. It was also urged that in the past, whenever kiosk allottees had expired, the names of their legal representatives were substituted and the kiosks were allotted to them. Learned counsel relied upon an RTI reply dated 01.11.2010 in this regard issued by the office of the District Judge. It was furthermore contended that given the circumstances that the appellant's request for renovation itself was pending and not replied to, a criminal incident in which the appellant had no

role could not be used to arbitrarily shut down and deprive the appellant of possession of the kiosk.

7. Learned counsel for the respondents has relied upon the Minutes of the meeting dated 22.09.2015 of the Kiosk Committee of the Tis Hazari Courts. The meeting was conducted during the pendency of the present appeal. The Minutes re-count the incident which occurred on the night of 16.04.2015, the inspection of the dhaba/kiosk in question and the subsequent Minutes recorded pursuant to the inspection by the Chairperson of the BMCC of this Court. The said Minutes as well as the subsequent Minutes of 17.04.2015 were taken note of in the Minutes of the Meeting of 22.09.2015 which records as follows: -

- 1) That the Dhaba in question be sealed with immediate effect under the orders of Ld. District & Sessions Judge (HQ) and after verifying litigation, if any regarding the said dhaba.*
- 2) All the Kiosks/eating houses be checked by the BMC by personally visiting the spot and their license/list of employees be also got checked and appropriate action be taken thereafter.*
- 3) **Since the Dhaba in question was found to be in a very shabby condition, Hon'ble Justice had directed that Dhaba be got renovated and be allotted by calling the tenders.***
- 4) The Police officials were directed to prepare a blue print with regard to the installation of additional CCTV wherever needed and further to check and upgrade the existing cameras installed at Tis Hazari Court premises with immediate effect. It was further directed not to allow any unauthorized persons to enter the Tis Hazari Court Complex on Sunday/holidays to play cricket or any other game and all the entries and exit points be thoroughly monitored by the police.*
- 5) It was also discussed that the Bar should not allow any persons/clerks to stay overnight in the chambers. It was further directed that timings of eating houses be also regulated after discussing amongst the Bar Members."*

8. It was contended that having regard to the policy decision to not continue the allotment or grant the license to the appellant since the term of the license had itself expired, and the death of the original allottee on 11.08.2007, the applicant could not assert any right. It was, therefore, submitted that the appeal does not merit consideration.

9. What emerges from the above facts is that upon the death of the original allottee Mr. Jai Prakash Sharma on 11.08.2007, the appellant had sought for transfer of the license in her favour. As early as in October, 2007 itself a request for renovation was made having regard to the dilapidated/shabby condition of the kiosk. Neither was the application for transfer ever turned down nor was the application for renovation accepted. In these conditions, when the unfortunate incident occurred leading to the killing of an Advocate on 16.04.2015, naturally the issue was one of concern; it led to inspection on behalf of the District Judge as well as by the Chairperson of the BMCC of this Court. The Minutes of the meeting of that date are on record. They undoubtedly state that the “dhaba in question was found to be in a very shabby condition”, this influenced the Chairperson - according to the record - to direct that the dhaba should be renovated and allotted by calling for tenders. It is quite apparent that the Committee - even on 22.09.2015, i.e., after the sealing and after filing of the writ petition never took note of the previous pending application either for transfer or the circumstance that payment of the license fee was up to date and had in fact been paid by the appellant till 16.04.2015. Furthermore, vitally the District & Sessions Judge does not appear to have taken any decision for eight long years on the application requesting for renovation. In these circumstances, the appellant could not be faulted for the shabby condition of the dhaba.

10. This Court is also conscious of the fact that in the past - even according to the respondents - allotment of no less than six kiosks was changed and the original allottees were substituted, by others after death. This information was supplied by the office of the District Judge to the appellant's husband on 01.11.2010. It reads as follows: -

“With reference to your letter no.91479/Admn.I/RTI/2010/3557 dated 29/10/2010, the information sought as per the query is as under: -

1. As per record following shops/kiosks have been transferred in the name of transferee at Tis Hazari Courts, Delhi by the order/direction of Kiosk, Scooter, Car & Cycle stand parking Committee, Tis Hazari Courts, Delhi.

<i>Sl. No.</i>	<i>Kiosk no.</i>	<i>Location</i>
<i>1.</i>	<i>01</i>	<i>Beside gate no.1A, Main gate, Tis Hazari Courts, Delhi.</i>
<i>2.</i>	<i>07</i>	<i>Near gate no.3, Tis Hazari Courts, Delhi.</i>
<i>3.</i>	<i>09</i>	<i>Near gate no.4, B.G.S. Block, Opp Central Hall, Tis Hazari Courts, Delhi.</i>
<i>4.</i>	<i>10</i>	<i>Near gate no.4, B.G.S. Block, Opp Central Hall, Tis Hazari Courts, Delhi.</i>
<i>5.</i>	<i>11</i>	<i>Near gate no.4, Tis Hazari Courts, Delhi.</i>
<i>6.</i>	<i>12</i>	<i>Central hall, ground floor, Tis Hazari Courts, Delhi.</i>

2. As per record there was no relation between transferor & transferee.

3. As per record, No Objection Certificate (NOC) & Identify proof with address were submitted by them for transfer of shops/kiosks.”

11. The above discussion would show that there were two glaring omissions on the part of the Committee which rejected the request of the appellant - firstly, that no final decision had been taken on the request for

substitution which was in line with the prevailing practice at that time; secondly, that the District Judge had not permitted the appellant to carry out renovation in the kiosk - an application for which was made as early as in October, 2007. In the circumstances, the impugned letter of 24.04.2015 directing the appellant to handover the possession of kiosk no.6 was not in order. Clearly, the respondent did not take into account all the antecedent facts. In this regard, the Court is of the opinion that whilst the Single Judge's appreciation of law with respect to the nature of licensee's right is undoubtedly correct, nevertheless, the circumstances in which the appellant was virtually forced to handover the possession cannot be lost sight of. Clearly, there was no fault on her part.

12. In the light of the above, the impugned order is hereby set aside. The District Judge is hereby directed to decide within two weeks the request for transfer, of the original allotment of kiosk no.6 to the appellant after taking into consideration the policy prevailing as on the date of the application, i.e., 24.01.2009 and the reply given by the office of the District Judge on 01.11.2010 (extracted above). A further direction to deseal the premises and hand over the possession of the same to the appellant within the next three days is hereby issued.

13. The appeal is allowed in the above terms.

Order dasti.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 19, 2016/vikas/