

\$~27 and 31

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

+ **W.P.(C) 9817/2017 and CM No. 39972/2017**

M/S LAYBA MNS HEALTH AND BEAUTY
SPA PVT, LTD.

..... Petitioner

Through: Mr Uttam Datt and Ms Riya Gulati,
Advocates.

versus

THE JANPATH HOTEL AND ORS.

..... Respondents

Through: Mr Sushant Kumar and Mr Anitesh
Sharma Advocates for R-2.
Mr Ruchir Mishra, Mr Sanjiv K.
Saxena and Mr Mukesh Tiwari,
Advocates for R-3.

AND

+ **W.P.(C) 9825/2017 and CM No. 39985/2017**

POOJA MOTWANI

..... Petitioner

Through: Mr Uttam Datt and Ms Riya Gulati,
Advocates.

versus

THE JANPATH HOTEL AND ORS.

..... Respondents

Through: Mr Sushant Kumar and Mr Anitesh
Sharma Advocates for R-2.
Mr Ruchir Mishra, Mr Sanjiv K.
Saxena and Mr Mukesh Tiwari,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

07.11.2017

1. The petitioners have filed the present petitions, *inter alia*, impugning letters dated 8.07.2017 and 18.10.2017 (hereafter 'the impugned letters')

✓

issued by respondent no.1 terminating their respective licence agreements for premises located at Hotel Janpath. Respondent no.2 (ITDC) had entered into the licence agreements (two in number) dated 16.12.2015 with M/s Layba MNS Health and Beauty SPA Pvt. Ltd. - the petitioner in W.P.(C) 9817/2017 - and the licence agreement dated 22.12.2015 with Ms Pooja Motwani - the petitioner in W.P.(C) 9825/2017. The licences were in respect of running commercial enterprises within the premises of Hotel Janpath (which is one of the units of ITDC).

2. Respondent no.3 (Ministry of Tourism, Govt. of India) has decided to re-develop Janpath Hotel and had, accordingly, proposed that the premises be handed over to Ministry of Urban Development for the purposes of re-development. Apparently, the proposal has been accepted. The learned counsel appearing for the respondents states that the entire building of Janpath Hotel is to be demolished and a new complex is to be constructed, thereon.

3. In view of the aforesaid proposal, the licence agreements entered into by ITDC with the petitioners have been terminated by ITDC. It is the petitioners' case that the said termination is in breach of the licence agreements. It is further contended on their behalf that in terms of the licence agreements, they had a choice of shifting the premises to another location but the said option has not been provided to the petitioners.

4. Insofar as the petitioner's challenge to the termination of their respective licence agreements is concerned, the same is a matter of private dispute between the petitioners and ITDC. It is also seen that the licence agreements include an arbitration clause and, therefore, any disputes

pertaining to wrongful termination of the licences can be agitated by the petitioners by taking recourse to the alternate dispute resolution mechanism.

5. Indisputably, the license agreements in question are determinable agreements. Thus, even assuming that the petitioners are correct in their contention that ITDC has wrongfully terminated their respective licences, the petitioners would, nonetheless, not be entitled to the relief claimed by them as the same would effectively amount to directing specific performance of the licence agreements.

6. This Court has in various decisions, examined the rights of a licensee. It is well settled that a licensee does not acquire any interest in the property by virtue of grant of a license. In *Thomas Cook (India) Limited v. Hotel Imperial and Ors: 127 (2006) DLT 431*, this Court had observed as under:

“26. The nature of occupancy is clearly permissive. In fact it does not amount to possession at all. The relationship between the plaintiff and the defendant in terms of the compromise decree was that of Licensor and Licensee and not Lessor and Lessee. The plaintiff had use of the two rooms under a licence. A licence does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as the legal possession continues with the owner (licensor).”

Thus, after ITDC has terminated the licenses, the petitioners cannot retain possession of the licensed premises. (Also See: *B.K. Bhagat v. New Delhi Municipal Council: W.P.(C) 3417/2015, decided on 19.05.2015, M/s Gesture Hotels and Food Pvt. Limited. v. The New Delhi Municipal Council: 210 (2014) DLT 359* and *M/s Aresko Restaurant Pvt. Ltd and Ors. v. New Delhi Municipal Corporation and Ors: 219 (2015) DLT 350*).

7. In view of the aforesaid, this Court is not inclined to interfere with the decision of ITDC in these proceedings. The petitioners, of course, would be at liberty to take appropriate remedies for claiming damages or any other relief as the petitioner may be advised.

8. Insofar as the petitioners' claim for being re-located to another location is concerned, the petitioners rely on Clause VIII(6) of the Licence Agreement, which provides for an option of shifting to the licencees. The said clause reads as under:-

“VIII General Clauses

6. In case any time during the period of License, Government or any other Authority competent for the purpose, decides or issues directives for the closure or shifting of the premises, the Licensee will have a choice to close or shift his business within a prescribed period. The Licensee will not be entitled or eligible to claim damages compensation or reimbursement of any amount spent by the Licensee on renovation/construction/erection, installations, fittings, fixtures etc. from the Unit.”

9. It is the petitioners case that the petitioners are entitled to insist on being shifted to another location. It is seen that the petitioners already made a request in this regard. ITDC is directed to consider the aforesaid request/demand of the petitioners and take an appropriate decision, thereon. ITDC shall communicate its decision to the petitioners in this regard within a period of two weeks from today. If dissatisfied with the decision of ITDC, the petitioner would be at liberty to take such remedies as available in law.

10. It is clarified that nothing stated in this order shall be construed as an

5

expression of opinion of this Court on the merits of the dispute and all rights and contentions of the parties are reserved.

11. The petitions and the applications are disposed of with the aforesaid directions.



VIBHU BAKHRU, J

NOVEMBER 07, 2017
RK