THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.05.2015

+ **W.P.(C) 3417/2015 & CM No.6115/2015 & 6891/2015**

B.K. BHAGAT ..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Kailash Vasdev, Sr. Advocate with Mr Ashish Bhogal and Mr Abdhesh Choudhary.

For the Respondent : Mr Sanjay Poddar, Sr. Advocate with Ms Rachna Golchha, Mr Govind Kumar and Ms Pavni Poddar alongwith Mr Kishor Prashad, Sr. Assistant, NDMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 24.03.2015 (hereafter the 'impugned order') passed by the District and Sessions Judge in an appeal preferred by the respondent under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter the 'Act'). The said appeal (being PPA No. 09/2015) was preferred by the respondent against an order dated 04.02.2013 passed by the Estate Officer under Section 5(1) and Section 7 of the Act, whereby the proceeding initiated by the respondent for eviction of the petitioner from the premises known as Hotel Asian International situated at Janpath Lane behind Janpath Hotel, New Delhi (hereafter the 'said premises'), was rejected. In addition, the

Estate Officer had also issued further directions with regard to renewal of the licence with respect to the said premises.

2. The petitioner contends that the petitioner has a vested right to continue in occupation of the said premises for a further period of 30 years commencing from 11.05.2007. The respondent disputes that the petitioner has any right to continue in the said premises as, according to the respondent, the licence for use of the said premises granted to the petitioner has expired and with the expiry of the licence, the petitioner's occupation of the said premises is no longer authorised.

3. The respondent had offered to renew the licence for the said premises at a licence fee of ₹169 per sq. feet per month for a period of 10 years beyond 10.05.2007. However, the said licence fee was not acceptable to the petitioner, as according to the petitioner, the same is exorbitant and much in excess of the prevailing market value. Since the parties could not arrive at a mutual agreement, the licence for the said premises was not renewed. In the given circumstances, the respondent initiated the proceedings under Section 5(1) and Section 7 of the Act for evicting the petitioner. These proceedings were disposed of by an order passed by the Estate Officer dated 04.02.2013.

4. The Estate Officer held that the petitioner had an inherent right of renewal of the licence. The Estate Officer further set aside the order of determination of the licence w.e.f. 10.05.2007 and further set aside the respondent's demand of ₹169 per sq. feet per month for use of the said premises after 10.05.2007.

5. The District Judge, by the impugned order, held that the directions issued by the Estate Officer for renewal of the licence were nullity as the Estate Officer has no jurisdiction to pass such directions. The District Judge had further held that the petitioner had no inherent right of renewal of licence as the offer made by the respondent was not responded to and this clearly suggested that the petitioner had become an unauthorised occupant.

6. In the aforesaid circumstances, the principal controversy to be addressed is whether the District Judge has erred in holding that the power of the Estate Officer was limited to determining whether the petitioner was an unauthorised occupant.

7. In addition, the petitioner has advanced extensive arguments in support of his claim that he is not an unauthorised occupant as he has a vested right of renewal of the licence and the proceedings for eviction initiated under Section 5 of the Act are, thus, untenable. It is further urged that the action of the respondent in offering to extend the licence for a further period of ten years at the rate of ₹169 per sq. feet per month, is arbitrary and unreasonable.

8. In the circumstances - although not strictly arising from the impugned order - this court has also been invited to consider whether the petitioner is an unauthorised occupant of the said premises and whether the action of the respondent in not renewing the licence and/or offering the aforementioned terms for licence are unreasonable and arbitrary.

9. Briefly stated, the relevant facts necessary to appreciate the controversy are as under:-

9.1 The respondent had invited offers for grant of license for running a Tourist Lodge from the said premises. The tender was opened on 01.09.1976 and the offer of M/s Girdhar Bhagat & Co. – a partnership firm – was the highest. Accordingly, a license was granted to the said firm on the terms and conditions as enclosed with the Memorandum of Information. By virtue of Clause 5 of the terms and conditions, it was expressly stipulated that the allotment of the said premises would be on license basis and the said premises would be public premises within the meaning of the Act. Clause 9 of the terms and conditions specified that the said premises would be licensed for 30 years from the date of commencement of the license fee and would be renewable for a further period of 30 years on mutually agreed terms. It was also provided that the license was revocable at the will of the licensor and it did not create or vest any interest in the said premises.

9.2 Apparently, Shri Girdhar Gopal a partner of the firm M/s Girdhar Bhagat & Co. retired from the partnership business and executed a relinquishment deed dated 21.12.1977 and Mr B.K. Bhagat (the petitioner) became the sole proprietor of the concern and approached the respondent for grant of license in the name and style of M/s Girdhar Bhagat & Co. as a sole proprietor w.e.f. 21.12.1977. The initial license was for a period of 30 years commencing from 11.05.1977 to 10.05.2007. The request of the petitioner was accepted and the license granted to the partnership firm M/s Girdhar Bhagat & Co. was restricted to the period 11.05.1977 to 20.12.1977 on the terms and conditions as contained in the tender documents. The petitioner was granted the license for the remaining period

– from 21.12.1977 to 10.05.2007 – on the terms and conditions as provided in the License Deed executed between the petitioner and the respondent on 08.05.1987. Clause 3 of the said License Deed stipulated the term of the license to be from 21.12.1977 to 10.05.2007. The License Deed dated 08.05.2007 expressly stipulated the license to be revocable.

9.3 The respondent sent a letter on 25.04.2007, *inter alia,* stating that with the expiry of the license on 10.05.2007, the petitioner would be an unauthorized occupant. The petitioner applied for renewing the license on 03.05.2007, which was followed by a representation on 30.05.2007. The respondent by a letter dated 08.08.2007 offered to extend the license by a further period of 10 years at the rate of ₹169 per sq. feet per month. The petitioner did not accept the said offer as according to the petitioner the rate offered was exorbitant.

9.4 Since the petitioner had neither accepted the offer nor vacated the said premises, the respondent filed an application under Section 5 and Section 7 of the Act seeking eviction of the petitioner from the said premises and further seeking recovery of damages at the rate of ₹169 per sq. feet per month for the period after the expiry of the license on 10.05.2007.

9.5 The petitioner filed a suit for specific performance, *inter alia,* praying for a decree for specific performance of the agreement dated 08.05.1987 (i.e. the License Deed). The petitioner further prayed for a decree declaring the petitioner to be in lawful possession of the said premises on the basis of the said agreement.

9.6 The Additional District Judge passed an interim order restraining the respondent from interfering with the petitioner's possession of the said premises and as an interim measure directed the petitioner to continue paying the license fee at the rate of ₹35,551/- per month (the License fee as agreed under the License Deed).

9.7 In the proceedings under the Act, the Estate Officer passed an order dated 04.02.2013. The Estate Officer not only rejected the eviction proceedings initiated by the respondent but passed certain additional directions directing the respondent to consider the license fee of ₹2,51,684/- per month with biennial increase of 9.5%. The said license fee was held to be payable w.e.f. May 2007. Further, the respondent was directed to renew the license and the petitioner was directed to withdraw the civil suit.

9.8 The petitioner filed a Writ Petition (being W.P.(C) 6859/2013) for implementation/execution of the Order dated 04.02.2013. The respondent, on the other hand, filed an application before the Estate Officer for reviewing the order dated 04.02.2013.

9.9 The review application filed by the respondent was allowed by the Estate Officer on 23.12.2013. The petitioner then filed a second Writ Petition (being W.P.(C) 363/2014) impugning the order of the Estate Officer dated 23.12.2013, whereby the order dated 04.02.2013 was sought to be reviewed. A coordinate bench of this Court disposed of the Writ Petition (being W.P.(C) 363/2014) by an order dated 21.01.2014 and held that the Estate Officer had no power to review its own order and further observed that the tone and tenor of the order dated 04.02.2013 clearly indicated that the respondent's application under Section 5 of the Act had been rejected. The respondent, thereafter, filed an appeal (being LPA No.498/2014) before a Division Bench challenging the order dated 21.01.2014 passed in W.P.(C) 363/2014. However, the said appeal was withdrawn with liberty to challenge the order dated 04.02.2013.

9.10 The Writ Petition (W.P.(C) 6859/2013) filed by the petitioner was allowed by an order dated 06.05.2014 passed by a Coordinate Bench of this Court and the respondent was directed to accept the license fee as per the order passed by the Estate Officer. This order was challenged by the respondent in an appeal (being LPA No.725/2015) which is pending before the Division Bench of this Court.

9.11 The respondent challenged the order dated 04.02.2013 by way of another Writ Petition (being W.P.(C) 8358/2014) which was disposed of by a consent order dated 30.01.2015, with the following directions:-

> "1. That the petitioner is at liberty to file an appeal under Section 9 of the Act impugning the order dated 04.02.2013 passed by the Estate Officer.
>
> 2. In the event such appeal is filled by the petitioner within a period of 12 days from today, the same would be considered by the Appellate Authority on merits uninfluenced by the question of delay.
>
> 3. The respondent is at liberty to revive the suit i.e. Suit No.62 of 2008, titled "Shri B.K. Bhagat v. New Delhi Municipal Council" which was earlier withdrawn by the respondent.
>
> 4. That all contentions of parties are open.

> It is clarified that nothing stated herein should be construed as an expression of the opinion of this Court on the merits of the case."

9.12 Thereafter, the petitioner revived his suit for specific performance, which has since been dismissed. The learned counsel for the petitioner submitted that an appeal against the said decision dismissing the suit has been filed.

9.13 Pursuant to the order dated 30.01.2015, the respondent instituted an appeal against the Estate Officer's order dated 04.02.2013 which was disposed of by the impugned order.

9.14 The respondent has also taken coercive steps to take possession of the said premises in question. The said action is a subject matter of another petition preferred by the petitioner – being W.P.(C) 1623/2015.

10. As indicated above, the disputes between the parties are being agitated on various fronts and a decision in any proceeding would inevitably have a bearing on other proceedings also.

11. Mr Kailash Vasdev, the learned senior counsel appearing for the petitioner submitted that there was a fundamental error in initiating proceedings against the petitioner under the Act. He submitted that the petitioner could not be considered as an unauthorized occupant under the Act as according to the petitioner he was inducted on the said premises for a period of 60 years and has a vested right to continue in occupation of the said premises for the said period.

12. In addition to the above, the learned counsel submitted that:

(a) the respondent had acted arbitrarily in unilaterally determining the licence fee at ₹169/- per Sq ft per month by comparing the said premises to 5 star hotels in the area. He submitted that the respondent had not considered the nature of the said premises and its location. And, the respondent's decision to offer renewal at the exorbitant rate of ₹169 per sq. ft. per month had rendered the contract (license) impossible to perform;

(b) the respondent being State under Article 12 of the Constitution of India was bound to act fairly and honour the terms of the tender in letter as well as in spirit; and

(c) the action of the respondent was contrary to the guidelines framed by the Central Government for use of the proceedings under the Act to evict occupants.

13. The learned counsel for the petitioner referred to the decision of the Supreme Court in ***Syndicate Bank v. Ramachandran Pillai*****: (2011) 15 SCC 398** in support of his contention that any violation or non compliance of the aforesaid guidelines could be agitated before higher authorities. He submitted that in view of the said decision, the petitioner could contest the proceedings initiated by respondent under Section 5 of the Act as being contrary to the aforesaid guidelines, before this Court in these proceedings.

14. The learned counsel for the petitioner also relied upon the decision of the Supreme Court in ***ITC Ltd. v. State of Uttar Pradesh & Ors*****.: (2011) 7 SCC 493** in support of his contention that the sanctity of the contracts entered into by the State must necessarily be protected if the other party

acted bonafide and was blameless. He submitted that the tender for licence to use of the said premises for a period of 60 years (30 years + 30 years) was called and the terms of the licence also provided for a clause for renewing the licence for a period of 30 years. In the circumstances, it was incumbent upon the respondent to honour the said contract. The petitioner relied upon the decision of the Supreme Court in ***Banatwala & Company v. LIC*****: (2011) 13 SCC 446** in support of his contention that fair rent could be fixed under the rent control legislations even in respect of premises that were covered under the Act. He contended that in the given circumstances, it was necessary for the respondent to undertake an exercise to fix fair rental for the said premises and the same could be in accordance with the rent control legislation or otherwise.

15. The learned counsel for the petitioner further referred to the decision of the Supreme Court in ***Yazdani International (P) Ltd. v. Auroglobal Comtrade (P) Ltd*****: (2014) 2 SCC 657** and submitted that even in cases where licencee did not have a right of renewal for licence, the public body could not arbitrarily deny to renew a licence.

16. At the outset, it is relevant to note that although arguments have been advanced on behalf of the petitioner to persuade this Court that the action of respondent in non renewing the licence was arbitrary, unreasonable and contrary to the terms of the contract, the principal controversy in the present petition which relates to the power of the Estate Officer to issue directions for renewal of licence, fixing of future licence fee, withdrawal of suit, etc. remained almost un-debated. However, Mr Vasdev did submit in the passing that the Estate Officer was acting as a Judicial Authority/Quasi

Judicial Authority and, therefore, was bound to issue orders to do substantial justice and to protect the rights of the petitioner.

17. In my view, the aforesaid contention is wholly without merit. The Estate Officer is a statutory authority appointed under Section 3 of the Act. Section 3(b) of the Act clearly indicates that the Central Government may *"define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act."* It is, therefore, apparent that the jurisdiction of the Estate Officer is limited to performing the functions as expressly provided under the Act.

18. Section 4(1) of the Act provides that if the Estate Officer is of the opinion that any persons are unauthorized occupants of any public premises and they should be evicted, Estate Officer is required to issue a notice calling upon the persons to show cause why an order of eviction should not be made. Section 4(2) and 4(3) of the Act provide for the contents of the show cause notice and the manner in which the aforesaid notice is to be served. Section 5 of the Act provides for eviction of unauthorized occupants.

19. Section 5A of the Act provides for the power of the Estate Officer to remove unauthorized construction. Section 5B of the Act empowers the Estate Officer to remove any building or structure or fixture which has been erected or constructed unauthorisedly, after serving the necessary show cause notice. Section 5B of the Act also empowers the Estate Officer to pass an order for demolition of the unauthorized construction. Section 5C of the Act empowers the Estate Officer to pass orders to seal unauthorized

construction. Section 6 of the Act concerns with the power of the Estate Officer to dispose of the property left on the public premises by an unauthorized occupant. Section 7 of the Act empowers the Estate Officer to pass an order for recovery of rent in respect of public premises. In addition, the Estate Officer is also empowered to pass orders assessing the damages on account of use and occupation of the premises and further order recovery thereof.

20. By virtue of Section 8 of the Act, the Estate Officer has the same powers as vested in Civil Court under the Code of Civil Procedure in respect of summoning, and enforcing the attendance of any person and examining him on oath; requiring discovery and production of documents; and any other matter that may be prescribed. By virtue of Section 12 of the Act, the Estate Officer has the power to require any person or persons to furnish information and other particulars of the persons who are believed to be in unauthorized occupation.

21. Apart from the functions and the powers expressly provided under the Act, the Estate Officer would not have any other powers. In the present case, the Estate Officer had passed several directions including for renewal of the licence. These directions were, clearly, outside the scope of functions of the Estate Officer. The proceedings for eviction of the petitioner were initiated under Section 5 of the Act, which reads as under:-

> "5. **Eviction of unauthorised occupants**.—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of

> section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.
>
> (2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary."

22. The express provisions of Section 5 of the Act indicate that the Estate Officer had to satisfy himself whether the petitioner was in unauthorized occupation of the said premises. And, in the event the Estate Officers concluded otherwise the Estate Officer was required to reject the proceedings. However, the Estate Officer had no power to issue directions to the respondent to renew the licence, negotiate licence fee and or direct the petitioner to withdraw its suit for specific performance. In view of the aforesaid, I find no infirmity with the impugned order setting aside the order dated 04.02.2013 passed by the Estate Officer.

23. In view of the limited import of the impugned order, it is not necessary to consider the other contentions in these proceedings. However since extensive contentions have been advanced with regard to the petitioner's right to continue in the said premises, I consider it appropriate

to consider the other contentions advanced on behalf of the petitioner. The substratal controversy between the parties is (a) whether the petitioner was an unauthorized occupant of the said premises after 10.05.2007; and (b) whether the petitioner has an indefeasible right for renewal of the license in question. This controversy has to be answered by considering the nature of petitioner's right to occupy the said premises and the terms of the agreement between the parties.

24. M/s Girdhar Bhagat & Co. – partnership firm, had initially submitted its tender for grant of licence for running a tourist lodge at the said premises. The tenders were opened on 01.09.1976 and the tender submitted by M/s Girdhar Bhagat & Co. was found to be highest. The terms and conditions of the licence expressly provided that the allotment would be on licence basis. Clauses 5 & 30 of the terms and conditions of the licence are relevant and are quoted below:-

> "5. The allotment will be made on licence basis and the licensed premises will be a public premises within the meaning of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or such Acts, as may be enforced from time to time in this behalf.
>
> XXX XXX XXX XXX XXX
>
> 30. The licencee is revocable at the will of the licensor and does not create or vest, any interest of the licencee in the premises and that the licencee shall not remove from the premises the furnishings, fittings & fixtures etc. belonging to the licencee without the prior permission of the licensor in writing and if required the licensor shall have the option, to retain the same without payment of any compensation. In case of licensor deciding not to retain all or any of the fittings and fixture,

> furnishing, the licencee shall remove the same peacefully and restore the space to the original condition at his own cost."

25. Clause 9 of the terms and conditions of licence forming a part of the tender documents indicated that the building was licensed for 30 years from the date of commencement of the licence fee and would be further renewable for a period of 30 years on mutually agreed terms. The said clause is reproduced below:

> "9. The Tourist Lodge Building will be licensed for 30 years from the date of commencement of licence fee and will be renewable for a period of another 30 years on mutually agreed terms."

26. It appears from the recitals of the Licence Deed that Shri Girdhar Gopal, who was one of the constituent partners of M/s Girdhar Bhagat & Co. retired from the partnership business and executed a Relinquishment Deed dated 21.12.1977. Consequently, the petitioner became sole proprietor of the said firm. The petitioner, thereafter, approached the respondent for grant of licence in respect of the said premises in the name of M/s Girdhar Bhagat & Co. with himself as a sole proprietor w.e.f. 21.12.1977. This was accepted by the respondent and a Licence Deed dated 08.05.1987 was executed. The terms of the Licence Deed indicate that the licence to the partnership firm which had tendered for licence of the said premises subsisted during the period 11.05.1977 to 20.12.1977. The said Licence Deed also indicates that the respondent *"agreed to grant the licence from 21.12.1977 to 10.05.2007 in favour of M/s Girdhar Bhagat & Co. under the sole proprietorship of Shri B. K. Bhagat on monthly licence*

fee of ₹33,551/-" to use and occupy the said premises on the terms and conditions as expressly stated in the Licence Deed.

27. Clause 1 of the aforementioned Licence Deed specified the nature of the licence; Clause 3 of the said Licence Deed specified the period of the licence; and Clause 24 of the said Licence Deed specifically provided that the licence was revocable. It is necessary to refer to the said clauses, which are quoted below:-

> "1. That the allotment is made on licence basis and the licenced premises is a public premises within the meaning of the Public Premises (Eviction of unauthorized occupants) Act, 1971 or such other Acts, as may be enforced from time to time in this behalf.
>
> XXX XXX XXX XXX XXX
>
> 3. That the Tourist Lodge Building has been licenced for the period commencing from 21.12.77 and ending on 10.05.2007 and the licence will be renewable for a period of another 30 years on the terms and conditions as may be decided by the licensor.
>
> XXX XXX XXX XXX XXX
>
> 24. That the licence is revocable at the Will of the licensor in the premises and that the licencee shall not remove from the premises the furnishing, fittings and fixtures, etc. belonging to the licencee without the prior permission of the licensor in writing and if required the licensor shall have the option to retain the same without payment of any compensation. In case of licensor deciding not to retain all or any of the furnishings, fittings and fixtures, the licencee shall remove the same peacefully and restore the space of its original condition at his own cost."

28. It is apparent from the plain tenor of the Licence Deed that user of the said premises was permissive and the petitioner did not acquire any vested right in the said premises. The nature of licence has been explained by courts in various decisions. A Co-ordinate Bench of this Court in ***Thomas Cook (India) Limited v. Hotel Imperial and Ors.*****: 127 (2006) DLT 431** following the judgment of the Supreme Court in ***C.M. Beena v. P.N. Ramachandra Rao*****: (2004) 3 SCC 595** held 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 Licencee 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). In *C.M. Beena* v. *P.N. Ramachandra Rao*: (2004) 3 SCC 595, the Supreme Court held:—
>
> > "Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (See *Associated Hotels of India Ltd.* v. *R.N. Kapoor* [AIR 1959 SC 1262])"

29. The Supreme Court in ***Mumbai International Airport (P) Ltd. v. Golden Chariot Airport*****: (2010) 10 SCC 422** observed that:-

> **"39.** The very idea of a licence being irrevocable is a bit of a contradiction in terms. From the clauses of the licence referred

> to above, it is clear that by its terms the licence is revocable. It is well known that a mere licence does not create any estate or interest in the property with which it is concerned. Normally a licence confers legality to an act, which would otherwise be unlawful. A licence can be purely personal, gratuitous or contractual. Whether a contractual licence is revocable or not, would obviously depend on the express terms of the contract. A contractual licence is normally revocable, except in certain circumstances that are expressly provided for in the Easements Act, 1882."

30. In ***Corporation of Calicut v. K Sreenivasan***: **AIR 2002 SC 2051** the Supreme Court explained the right of a licencee to occupy the premises in respect of which the licence is granted, in the following words:

> "16. It is true that a licensee does not acquire any interest in the property by virtue of grant of licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of licence, he continues to exercise that right so long the authority has not expired or has not been determined for any reason whatsoever, meaning thereby so long the period of licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of the licensee is permissive by virtue of the grant of licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise. .... So far as the case of lease of a public building is concerned, upon expiry of the period limited thereby or its determination in accordance with law, the special procedure prescribed under the Act providing speedy remedy for eviction would apply even though some interest in the immovable property is created in favour of the lessee by virtue of creation of lease in his favour. But in a case of licence, no interest in the property is created by virtue of

> the grant, but a person acquires a right to continue his occupation by virtue of the authority granted in his favour under the licence unless the period of licence has expired or the same has been determined or licence has been revoked and/or the licensee is evicted by the grantor."

31. Although the right of a licensee is limited, as indicated above, I am inclined to accept the contention that the terms of the contract between the parties are also required to be honoured. It is well settled that Section 60 of the Indian Easement Act, 1882 is not exhaustive and the parties by a contract may also stipulate a licence to be irrevocable. In ***Ram Sarup Gupta v Bishun Narain Inter College & Ors***: **(1987) 2 SCC 555,** the Supreme Court held as under:-

> "9. ... Section 60 provides that a licence may be revoked by the grantor unless: (a) it is coupled with a transfer of property and such transfer is in force; (b) the licensee, acting upon the licence, has executed a work of permanent character and incurred expenses in the execution. Revocation of licence may be express or implied. Section 62 enumerates circumstances on the existence of which the licence is deemed to be revoked. One of such conditions contemplates that where licence is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the licence shall be deemed to be revoked. Sections 63 and 64 deal with licensee's right on revocation of the licence to have a reasonable time to leave the property and remove the goods which he may have placed on the property and the licensee is further entitled to compensation if the licence was granted for consideration and the licence was terminated without any fault of his own. These provisions indicate that a licence is revocable at the will of the grantor and the revocation may be expressed or implied. Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and

incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, neither of the two clauses as specified under Section 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Haque v. Standard Vacuum Oil Co. [55 CWN 232] the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence (as contemplated by Section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in Dominion of India v. Sohan Lal [AIR 1955 EP 40]. Bombay High Court has also taken the same view in M.F. De Souza v. Childrens Education Uplift Society [AIR 1959 Bom 533]. The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence."

32. In ***Ram Sarup*** *(supra)*, the Supreme Court approved the view expressed by Das J. in ***Dominion of India v. Sohan Lal*****: AIR 1950 EP 40.** The relevant extract from the said judgement is reproduced below**:-**

"12. Be that as it may, the two tests of irrevocability established by the cases and referred to above, or by the Indian Easements Act will, however, give way to the special agreement, if any, of the parties. Thus a license which is *prima facie* irrevocable either because it is coupled with a grant or interest or because the licensee has erected works of a permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that the license nevertheless shall be revocable. See *Liggins* v. *Inge*, (1831) 7 Bing, 682 at pp. 688, 694 which was applied by the Judicial Committee in *Plimmer* v. *Wellington Corporation*, (1884) 9 A. C. 699 at p. 714: (53 J.P.C 104), *Gujarat Ginning and Manufacturing Co. Ltd., Ahmedabad* v. *Moti Lal Hirabhai Spinning & Manufacturing Co. Ltd., Ahemedabad*, A.I.R (23) 1936 P.C 77 at p. 82: (160 I. C. 837) and *Ganga Sahai* v. *Badrul Islam*, A.I.R (29) 1942 ALL. 930: (202 I.C 676). On the same reasoning, I should think, there will be nothing to prevent the parties from agreeing expressly or impliedly that a license, which is *prima facie* revocable being not within either of the two categories of irrevocable license should nonetheless be irrevocable."

13. As regards the remedy, even where the license is revocable the licensee is entitled to a reasonable notice before the license is revoked. If, however, the license is revoked without reasonable notice the remedy of the licensee is by way of damages and not by way of an injunction. *Aldin* v. *Lehimer Clark Muirhead & Co.* (1894) 2 Ch. 437: (63 L.J Ch. 601) and *Wilson* v. *Tavener*, (1901) 1 Ch. 598: (70 L.J Ch. 263), where an interlocutory injunction had been refused. Even if the license is obtained for consideration, yet if it is otherwise revocable and is revoked the remedy of the licensee is damages: *Smart* v. *Jones*, (1864) 83 L. J. C. P. 154: (10 L.T 271), *Kerrison* v. *Smith*, (1897) 2 Q.B 445: (66 L.J.Q.B 762), *Prosonna Coomar Singha* v. *Ram Coomar Ghose*, 16 Cal. 640. The reason is obvious, for to restrain the revocation of a revocable license is to make it (ir)revocable. If, however, the license is irrevocable and its enjoyment is obstructed by the licensor there is authority that the remedy of the licensee is either by way of injunction or in damages (see Peacock on Easement, 3rd Edn., p. 680). As already stated the Court of Equity will give relief by way of specific performance or

> injunction. An irrevocable license for a term implies an undertaking on the part of the licensor not to revoke it during its term and even if the license be not specifically enforceable for any reason, a threatened breach of the license may be prevented by enforcing this implied negative covenant by means of an injunction-a remedy which really gives effect to the irrevocability of the license. (emphasis supplied)"

33. However, it is difficult to accept that licence granted to the petitioner was irrevocable; Clause 24 of the Licence Deed expressly records that the Licence is revocable. Admittedly, the initial term of the licence has elapsed and the respondent has – whether rightly or otherwise - unequivocally declined to renew the licence except in terms of its offer, which has admittedly not been accepted. Section 63 of the Indian Easement Act, 1882 provides for the rights of licencee where the licence has been revoked and reads as under:-

> "63. Licensee's rights on revocation.-Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property."

34. It is clear from the plain reading of the above that the licensee cannot resist eviction if a licence has been revoked and the licencee has a limited right to a reasonable time to leave the property and remove its goods. Thus, after the termination of the licence with effect from 11.05.2007, the petitioner had no right to continue to occupy the said premises. Even if the petitioner considered the termination (or non renewal) of the licence as wrongful, the only remedy available for the petitioner was to seek damages; the petitioner would have no right to continue in occupation of the said premises.

35. In the given circumstances, it is difficult to accept that the Licence Deed vested any right in the petitioner to continue to occupy the said premises after the respondent had declined to renew the same. Clause 24 of the Licence Deed expressly provides that the Licence Deed was revocable. Clause 3 of the Licence Deed, which provides for renewal of the license *"on the terms and conditions as may be decided by the licensor"*, has to be read in that context. This clause has to be read along with other clauses of the Licence deed which clearly indicate that the license was revocable and in the context of the nature of petitioner's right as a licencee; the petitioner acquired no right in the said premises - he was merely permissive user.

36. A plain reading of Clause 3 of the License Deed also indicates that the renewal of the license was at the discretion of the licensor i.e. the respondent. Even if the terms and conditions of the licence, as initially published at the time of inviting tenders, are considered, the same also indicate that further renewal of licence would be on mutually agreed terms. Admittedly, there is no mutual agreement between the parties on the terms and conditions for further renewal. Thus, in my view, the contention that the petitioner had acquired any vested right in the said premises for renewal of the licence is not sustainable.

37. The learned counsel for the petitioner has relied upon the decision of a Co-ordinate Bench of this Court in ***Bal Sahyog v. Union Of India and Anr.***: **107 (2003) DLT 373** in support of his contention that renewal clause in the Licence Deed as read with the tender documents entitled the licencee for renewal of the licence for a further period of 30 years. In my view, the said decision is inapplicable for various reasons. First and foremost, that

was a case pertaining to a lease under the Government Grants Act, 1895. By virtue of Sections 2 and 3 of the Government Grants Act, 1895, the terms of the lease would be given effect to notwithstanding any other law. The present case is not one of lease but of a licence; whereas the lessee acquires interest in the property, the licencee's occupation is only permissive. Secondly, the renewal clause in ***Bal Sahyog*** *(supra)* expressly provided that *"the Lessee shall on the expiry of the said lease period of thirty years, be entitled to a renewal of the lease for a further period of thirty years, or less ..."*. The Clause in the present case does not state that the licencee (the petitioner herein) is entitled for renewal of the licence. On the contrary, Clause 3 of the Licence Deed indicates that *"the licence will be renewable for a period of another 30 years on the terms and conditions as may be decided by the licensor"*.

38. It is contended on behalf of the petitioner that since the tender documents formed a part of the License Deed, the renewal clause – Clause 9 of the Terms and Conditions of Licence would be applicable. In this regard it is relevant to note that the partnership firm M/s Girdhar Bhagat & Co. tendered for the license to use the said premises as a tourist lodge on the Terms and Conditions of License and was subsequently granted license for the period 11.05.1977 to 20.12.1977 on such terms. Clause 47 of the said Terms and Conditions of License (Memorandum of Information) expressly provided that the license would stand terminated on the dissolution of the firm or any partner making a conveyance of his effects or for any change in the constitution of the firm. Thus, in terms of the license, the license stood authomatically revoked with Mr.Gridhar Gopal

relinquishing his interest in the firm M/s Girdhar Bhagat & Co. The License Deed, which was executed subsequently on 08.05.1987, expressly indicated that the license in favour of the partnership firm M/s Girdhar Bhagat & Co. was for the period 11.05.1977 to 20.12.1977 on the Terms and Conditions contained in the tender documents and the license to M/s Girdhar Bhagat & Co. - the sole proprietorship of the petitioner was granted on the terms and conditions as specified under the License Deed. The relevant extract of the License Deed is quoted below:

> "And whereas the licensor after considering the request of Sh. B.K. Bhagat has agree to grant licence in respect firm from 11.05.77 to 20.12.77 on the conditions contained in the tender document and has also agreed to grant the licence from 21.12.77 to 10.05.2007 in favour of M/s Girdhar Bhagat & Co. under the sole proprietorship of Shri B.K. Bhagat on the monthly licence fee of Rs.33,551/- (Rupees thirty five thousand five hundred fifty one only) to use and to occupy the said premises on the following terms and conditions."

39. In view of the above the contention that Clause 9 of the Terms and Conditions of License is applicable is unmeritted. Clause 34 of the License Deed which is relied upon by the petitioner to advance the above contention, stipulates *"that the tender documents furnished by the licensee shall be deemed as a part of the licence deed"*. Plainly, Clause 34 relates to documents furnished by the petitioner. This does not mean that the covenants of the Terms and Conditions of the License as contained in the Memorandum of Informantion issued by the respondent are to be read as express terms of the License Deed; more importantly, the Terms and Conditions of License as contained in the tender documents, cannot override the express terms of the License Deed.

40. At this stage, it is also necessary to refer to Section 2(g) of the Act which reads as under:

> "(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

41. The expression "unauthorised occupation", which is defined under Section 2(f) of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968 in similar language, was considered by the Supreme Court in ***Corporation of Calicut v. K Sreenivasan***: **AIR 2002 SC 2051.** And, the court explained as under:

> "The definition of the expression "unauthorised occupation" contained in Section 2(f) of the Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public building without authority for such occupation. It implies occupation by a person who has entered in occupation of any public building without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public building after the authority (whether by way of lease or any other mode of transfer) under which he was allowed to occupy the building has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority, but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of lease or any other mode of transfer"

> in this part of the definition are very wide in amplitude and would, undoubtedly, cover a case where a person has come into occupation of a public building under an authority granted in his favour by the licence, as a licensee, which has expired or has been determined.".

42. It is apparent from the above that with the termination/revocation of the license, the petitioner's authority to occupy the said premises ceased to exist and the petitioner's occupation of the said premises, thereafter, was unauthorised.

43. It is also relevant to note that the petitioner had filed a suit for specific performance before the Court of the Additional District Judge, *inter alia,* praying as under:-

> "(a) a decree for specific performance of the agreed agreement between the parties on 8th May, 1987.
>
> (b) Pass a decree declaring that the Plaintiff is in the lawful possession of the suit property on the basis of agreement dated 8th May, 1987.
>
> (c) A decree for permanent injunction restraining the Defendants from interfering with the lawful possession of the Plaintiff in the suit premises.
>
> (d) A decree declaring that any demand in excess of contractual licence fee/rent is illegal, void and not enforceable in the facts and circumstances of the present case."

44. The trial court has held that the expression of the parties to agree for renewal does not amount to an agreement and the same was not specifically enforceable. The Trial Court also rejected the petitioner's prayer for injunction and held that *"after expiry of the licence he has no right to*

remain in possession and, therefore, relief of permanent injunction cannot be granted."

45. I am conscious of the fact that an appeal against the judgment of the Additional District Judge has been filed and in the normal circumstances one would have refrained from expressing any view on the issues involved in the suit. However, the petitioner has based most of his contentions entirely on the aforesaid renewal clause and, therefore, I have considered it necessary to express my views on the same; as indicated above, the terms of the Licence Deed have to be read with the nature of the agreement. In my view, Clause 3 of the License Deed or Clause 9 of the Terms and Conditions of Licence (as indicated in tender documents) do not vest any indefensible right with the petitioner for renewal of license or to occupy the said premises for a further period of 30 years from 11.05.2007.

46. The petitioner had further relied upon the guidelines issued by the Central Government in support of his contentions that the respondent was bound to follow the same and not evict the petitioner for commercial motives. The Central Government had issued "Guidelines to Prevent Arbitrary Use of Powers to evict Genuine Tenants from Public Premises under the control of Public Sector Undertakings/Financial Institutions" vide Resolution dated 30.05.2002 (gazetted on 08.06.2002). I am unable to accept that the said guidelines are applicable in the facts of the present case. First and foremost for the reason that the said guidelines relate to tenancies. As indicated above, the petitioner was permitted to use the said premises as a licencee and there was no relationship of a landlord and a tenant. Secondly, the said guidelines are not applicable to affluent tenants and in

regard to commercial or non residential premises. In this regard, the Central Government has issued a clarificatory order dated 23.07.2013. The relevant extract of which reads as under:-

> "Government Resolution dated 30-05-2002 embodies the Guidelines dated 14-1-1992 for observance by the public sector undertakings. However, clarification was issued vide OM No.21011/790 Pol-I IV H.11 dated 7-7-1993 that the guidelines are meant for genuine non-affluent tenants and these are not applicable to the large business houses and commercial entrepreneurs."

47. Thirdly, it is also relevant to note that the aforesaid guidelines are not statutory and, therefore, the Estate Officer could not be expected to implement the same. In ***Syndicate Bank*** (supra), the Supreme Court has observed as under:-

> "7. As the guidelines relied upon in this case were not issued in exercise of any statutory power under the Public Premises Act or any other statute, even if there was violation or non-compliance with the aforesaid guidelines by the appellant, relief to the appellant could not be denied by relying upon the guidelines. To do so would amount to reading the guidelines into the statute, which is impermissible. The only "remedy" of any person complaining of non-compliance with such guidelines, is to bring such violation to the notice of a higher authority. We therefore, hold that the enforcement of any right or exercise of any power by the appellant, under the Public Premises Act cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government."

48. The petitioner has also referred to the aforesaid passage and relied upon the observation of the Supreme Court that the violation of the

guidelines could be brought to the notice of the higher authorities. However, as indicated above, the said guidelines would, in any event, not be applicable in the facts of the present case.

49. Before concluding, it is also necessary to consider the petitioner's contention that the respondent had acted arbitrarily and being a State was enjoined to act reasonably.

50. It is trite law that Article 14 of the Constitution of India strikes at arbitrariness in State action. Thus, even in cases, where a licence may be revocable the same would not mean that a public authority would do so in an arbitrary manner. In ***Yazdani International*** *(supra)*, the Supreme Court had observed as under:-

> "…….Under Section 60, a licence is revocable at the will of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(a) and (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the abovementioned policy.
>
> However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. It is well settled by a catena of decisions of this Court that no public body under our constitutional system is vested with such arbitrary powers, as was pointed out by this Court in *Ramana Dayaram Shetty v. International Airport Authority of India*."

51. According to the petitioner, the rate of ₹169 per sq. ft. per month is arbitrary and unreasonable. It is well established that the quantum of the

licence fee to be charged by the respondent for use of its premises is a matter of commercial perception and courts would normally not interfere in the commercial discretion exercised by the State. According to the petitioner, the respondent had arrived at the said rate based on the fees payable by five star hotels in the vicinity and this was arbitrary. In my view, the respondent is entitled to take a decision with regard to the potential of the said premises and the courts cannot supplant their opinion over that of the executive.

52. In ***K.T. Corporation & Anr v. India Tourism Development Corpn. and Anr.:*** **(2009) 165 DLT 65** a division bench of this court repelled the challenge to the increase in license fee in respect of shops/office spaces in Hotels owned by the ITDC. The Court held as under:-

> "6. The next question is whether ITDC being a State under Article 12 of the Constitution can be compelled and mandated by issue of a Writ direction to extend or renew the license on terms which the court feels are just, fair and reasonable. Another contention of the appellants is that the ITDC has acted in an arbitrary, discriminatory and highhanded manner.
>
> 7. ITDC, respondent herein is a Government Corporation and therefore State under Article 12 of the Constitution of India. However, ITDC as a Corporation is not performing any public functions or duties. It is operating and maintaining hotels as a commercial venture. The object and purpose of ITDC is to earn profit and as such ITDC performs limited social obligations or purpose, keeping in view the nature of its activities. ITDC is a business venture in which commercial considerations and profit motive are primary/main concern and guiding factor. With this objective, ITDC is competent and entitled to frame its own policies in respect of grant of licenses and their renewal.

However, the policy so framed cannot be discriminatory and one which is arbitrary, so as to offend Article 14 of the Constitution of India. Action should not be actuated by bias or malafides. Quantum or the increase as demanded by ITDC cannot be set aside in exercise of power of judicial review unless the same is arbitrary and takes into consideration irrelevant facts. The scope of judicial interference by this Court under Article 226 of the Constitution of India is therefore limited and narrow. Keeping these aspects and principles in mind, we have examined the contentions raised by the appellants with reference to alleged arbitrary exercise of power and discretion by ITDC.

8. Learned Single Judge while examining the aspect of quantum of enhanced license fee has noticed that ITDC had given offers fixing the rent or license fee. The rent/license fee as mentioned by ITDC was based on license fee being paid by the occupants in other five star hotels. ITDC while fixing the rates was also influenced by the offers received by them in new tenders for the vacant shops and office spaces. In some cases said rates were accepted by some of the existing occupants. We do not think that the policy decision of ITDC taken in July, 2006 to insist and ask for market rent/market license fee can be faulted and interfered with on the ground of violation of Article 14. Learned counsel for the petitioner submitted that the ITDC has not taken into consideration certain aspects like location disadvantages, mandatory low profit services in five star hotels etc. We are not concerned with the individual cases or a particular problem. On the other hand, the Court has to examine whether the price or the rate fixed was determined with due consideration and regard to relevant material and whether extraneous matters have been excluded from determination. (Refer, **Sita Ram Sugar Company Ltd versus Union of India, (1990) 3 SCC 223**). Right and desire to get market license fee for shops and offices in a five star hotel is valid and not extraneous consideration. In the present cases, market rates can be a valid criteria for fixing license fee. Further, the appellants always have the right to participate in

> the tenders which will be floated by ITDC and make their offers. This will take care of individual aspects like location disadvantage or low profit services.
>
> 9. The appellants herein are commercial establishments who have set up shops or commercial offices in the premises located in the said three Hotels. The prime aim and objective of these commercial establishments managed and run by the appellant allottees is to earn profit for their personal gain. There is no public function or duty being performed by the appellants or for that matter even by the ITDC. A lower license fee will obviously result in higher profit earning by the appellants. In a way by charging lower license fee, ITDC is subsidizing business costs of the appellants and providing and benefiting the appellants with State largesse. There is no justification and reason for ITDC to do so and in fact ITDC will be guilty of violation of Article 14 by conferring State largesse and giving benefits to the appellants to the exclusion of others. In case, ITDC renews licenses and enters into contracts or renews the licenses at less than the market fee, it will be guilty of administering largesse to selected individuals at the expense of public. There must be adequate and justifiable reasons why State largesse should be granted to a particular person to the exclusion of others. We agree with the findings given by the learned Single Judge that the license fee charged by ITDC can be market driven and they are entitled to charge license fee as per the rates prevailing in the five star hotels. ITDC is not expected and cannot be compelled to continue and renew license agreements so as to subsidize private vendors, whose purpose and motive is to enhance private profits by occupying low cost accommodation."

53. The scope of judicial review of decisions in commercial matters is very limited, unless it is shown that the decision is so arbitrary or irrational that no responsible person could have arrive at such decision, the Courts would not interfere. The Supreme Court in ***Michigan Rubber (India) Ltd.***

v. State of Karnataka**: (2012) 8 SCC 216** had expressed the aforesaid view in the following words:-

> "20. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:
>
> (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'? and
>
> (ii) Whether the public interest is affected?
>
> If the answers to the above questions are in the negative, then there should be no interference under Article 226."

54. In the present case, there is no public interest involved; the dispute is, clearly, a commercial dispute. The respondent is not fettered in any manner to maximise its gains from its property and no interference under Article 226 of the Constitution of India is called for in such matters.

55. In the aforesaid circumstances, I find that the petition is wholly devoid of merit. Accordingly, the petition and pending applications are dismissed. No order as to costs.

VIBHU BAKHRU, J

MAY 19, 2015
RK