THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.05.2015

+ W.P.(C) 6732/2014 & CM No. 15946/2014

M/S SAPTAGIRI RESTAURANT ..... Petitioner

versus

AIRPORTS AUTHORITY OF INDIA ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr J. K. Mittal and Mr Rajveer Singh.

For the Respondent : Ms Anjana Gosain and Mr Pradeep Desodya.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns a notice dated 10.04.2014 (hereafter 'impugned notice') issued by the respondent (hereafter 'AAI') terminating the licenses granted to the petitioner for operation of snack bar counters in the Security Hold Area (East and West Wing) of the New Domestic Terminal at Chennai Airport. By the impugned notice, the petitioner has been called upon to hand over the peaceful and vacant possession of the snack bars being operated by the petitioner under license from AAI.

2. The petitioner contended that its licenses for running snack bar counters at the New Domestic Terminal at Chennai Airport, were for a fixed term expiring on 18.12.2016 and, therefore, could not be revoked or terminated prior to the expiry of the fixed term. The petitioner contended that in terms of the initial agreement, AAI was entitled to terminate the

license by giving 180 days notice. However, the said agreement was novated and, by a letter dated 28.01.2013, AAI stipulated new terms which did not reserve AAI a right to terminate the license prior to its expiry on 18.12.2016.

3. It was contended on behalf of AAI that the license granted to the petitioner was “co-terminus” with the original license executed on 05.07.2007 and since AAI retained the right to terminate the said license by giving 180 day notice, the impugned notice could not be assailed.

4. It was further submitted that even if the pre-mature termination of the license was contrary to the terms of the agreement, by virtue of Section 64 of the Indian Easement Act, 1882 (hereafter the 'Act'), the injunction as prayed for cannot be granted. The learned counsel for AAI has referred to a decision of a Division Bench of this Court in ***Gesture Hotels and Food Pvt. Limited v. The New Delhi Municipal Council***: **210 (2014) DLT 359** in support of its contention.

5. I have reservations as to AAI’s contention that even though a license may be for a definite period, an injunction restraining licensor from evicting the licensee, in breach of the agreement, prior to the expiry of said period, cannot be granted.

6. Section 52 of the Act defines a ‘license’ and reads as under:-

> “52."License" defined. -Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be

unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

7. Section 60 of the Act provides that a license may be revoked by a grantor and reads as under:-

> "60. License when revocable.-A license 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 license, has executed a work of a permanent character and incurred expenses in the execution."

By virtue of section 60 of the Act, a license is by its nature revocable unless the conditions as specified under Section 60 of the Act are met.

8. Section 63 of the Act provides that a licensee is entitled to a reasonable time to leave the property affected thereby and remove the goods. Section 64 of the Act provides for the remedy to a licensee who has been evicted without any fault on his part. Section 63 and 64 of the Act read 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.
>
> 64. Licensee's rights on eviction.-Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor."

9. It is apparent from the plain reading of the provisions of Section 63 of the Act, that a licensee cannot resist eviction if a license is revoked and his right is limited to availing reasonable time to remove his goods form the premises. Obviously, this provision would be applicable only when the license is revocable; if a license is irrevocable, then the question of contemplating the rights of a licensee on its revocation does not arise. It would always be open for a licensee to resist eviction in case of an irrevocable license. The provisions of Section 64 of the Act also cannot be interpreted to mean that a licensee holding an irrevocable license is disentitled to an injunction to prevent a breach of an agreement or a license.

10. In ***M.F. De Souza v. Childrens Education Uplift Society*****: AIR 1959 Bom. 533**, the Bombay High Court had examined the question whether a license could be considered as irrevocable even though it did not fall within any of the Clauses of Section 60 of the Act. In that case, the plaintiff contended that all licenses other than those, which fell within the ambit of Section 60 of the Act, would be revocable. This contention was rejected by the Court and the Court held as under:-

> "It is no doubt true that Section 60 mentions only two classes of cases in which the licence could be regarded as irrevocable. This means that where a case falls in either of these categories the licence is made irrevocable by operation of law, that is the Easements Act. But apart from the Easements Act, there is the law of contract, and if parties enter into a contract and arrive at a solemn agreement to the effect that the licence shall be irrevocable or shall be limited for a particular duration, it follows that the licensor will be bound by his engagement and will not be entitled to terminate the licence or revoke the licence at his sweet will

and pleasure. If authority were necessary for this proposition, I may refer to the following passage in Corpus Juris Secundum, Vol. LIII, pp. 815-16 :

> "As a general rule a mere license, that is, one which is merely a personal privilege not coupled with an interest in the land, may be revoked by the licensor at any time, at his pleasure. This rule generally applies regardless of how long the use has been permitted, and although the intention was to confer a continuing right, and even though the license was created by a deed or other written instrument. The general rule, however, is not without its modifications and exceptions, and does not apply where the license is coupled with or partakes of the character of an easement and the rights under it are affirmatively and definitely fixed and settled, or where it constitutes part of a contract between the parties"

Now, here the consent decree to which I have referred earlier was passed in an appeal which the plaintiff had brought to this Court from the dismissal of its suit for possession of the very room a portion of which is in the defendant's occupation. The plaintiff, which had lost its suit in the first Court, agreed to allow the defendant to be in exclusive possession of one-third portion of that room, and further agreed that her right as a licensee to occupy the room will be irrevocable so long as the Bombay Rent Act remains in force. Now, it is clear that the plaintiff, which had lost earlier in the City Civil Court, wanted to rescue something out of its original claim and therefore it entered into the aforesaid compromise. The consideration for the compromise was apparently the defendant's parting with her right to the use of two-thirds of the room, because as a result of the compromise she became entitled to use only one-third of the room. The plaintiff having thus received consideration for the compromise, cannot in equity and in all fairness be allowed to go back upon it.

> Therefore, I am of opinion that, quite apart form Section 60 of the Easements Act, the Court will have to bear in mind in a suit of this nature whether the licensor is precluded from revoking the licence because of any contractual engagement into which he has entered. There being an engagement of this kind here, I am of the opinion that the plaintiff cannot claim to itself the right of revocation at its free will and pleasure. To hold otherwise and to decree possession in such circumstances would be nothing else than putting the Seal of approval of the Court to a breach of contract. (emphasis supplied)"

11. The aforesaid decision of the Bombay High Court in ***M.F. De Souza*** *(supra)* was affirmed by the Supreme Court in ***Ram Sarup Gupta v. Bishun Narain Inter College & Ors.***: **(1987) 2 SCC 555**. The relevant extract from the said judgment is quoted below:-

> "9. License as defined by Section 52 of the Act means grant of permission, by a person to the other, a right to do or continue to do, in or upon, the immovable property of the grantor, something which would, in the absence of such right, be unlawful. Such right does not amount to an easement or any interest in the property. The rights so conferred is licence. The grant of licence may be express or implied which can be inferred from the conduct of the grantor. 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. InMuhammad 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 : 61 Bom LR 750 : ILR 1959 Bom 1127]. 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."

12. It is seen from the above that the Supreme Court referred to the view taken by Das, J. in ***Dominion of India v. Sohan Lal*****: AIR 1950 East Punjab 40**. In that case, the Railway Authorities had granted license in favour of respondent therein to sell books of other publications and for that purpose erect book stalls. The agreement was for a period of five years which was further renewable for a period of five years. The Division Bench held as under:-

> "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)"

13. It is apparent from the above that where a license has been granted for a fixed duration and the terms of the agreement indicate the license to be irrevocable within the said period, the license may - in the given facts -

be considered as irrevocable notwithstanding that it does not fall within any of the Clauses of Section 60 of the Act. In such cases, the equitable remedy of injunction restraining the licensor from revoking the license or evicting the licensee may be granted.

14. In ***Dominion of India*** (supra), the court further held that :

> "I would be prepared to say that there is "included in that contract a contract not to revoke the license" if the licensee performs all its obligations under the agreement and I would be inclined to hold, if that clause stood alone, that the parties by their irrevocable license and that a threatened revocation thereof should be enforced by an injunction restraining the breach of the implied negative covenant."

15. It is clear from the above that Contract Act is also applicable to the covenants entered into between the licensor and licensee and if a licensee is entitled to the equitable remedy of injunction for preventing the breach of the contract, the provisions of Section 64 of the Act would not justify refusing him of such injunction.

16. The observations made by the Division Bench of this Court in ***Gesture Hotels*** *(supra)* have to be read in the context of the facts of that case where the Division Bench had concluded that *"We, on a reading of the renewal clause aforesaid in the licence are satisfied that the renewal thereof was in the sole discretion of the respondent/defendant. The appellant/plaintiff thus cannot force the respondent/defendant to renew the lease."* Clearly, in view of this conclusion, the claim of the plaintiff/appellant was found to be incapable of specific performance.

17. The provisions of Section 64 of the Act only preclude a right of licensee to seek re-induction or repossession of the premise from which the licensee has been evicted. However, the same does not mean that a licensee is disentitled to any injunction if in given facts it is found that the licensor is attempting to dispossess the licensee in breach of the agreement entered into between the licensor and the licensee.

18. In view of the aforesaid, the principal question to be addressed is whether the license granted to the petitioner was irrevocable?

19. The aforesaid question has to be answered in the context of facts, which are briefly stated as under:

19.1. The petitioner had tendered for operation of a snack bar counter at the Ground Floor, Security Hold Area at Kamraj Domestic Terminal, Chennai Airport. The tenders were opened on 24.11.2006 and by a letter dated 29.11.2006, AAI communicated the decision of the competent authority to award the license to the petitioner on certain terms and conditions stated therein. As per the said terms and conditions, the license was for a period of 10 years with effect from the date of taking over the site.

19.2. Clause 26 of the 'other terms and conditions' expressly empowered AAI to terminate the license without assigning any reason by giving a notice of 180 days. Subsequently, a license agreement was also executed between the petitioner and AAI on 05.07.2007 which also provided that the license could be terminated on giving 180 days notice.

19.3. Subsequently by a letter dated 04.02.2008, the petitioner was permitted to operate an extension counter of the snack bar on the first floor of the security hold area of the Kamraj Domestic Terminal, Chennai Airport. The license for the extension snack bar counter was expressly stated to be *co-terminus* with the license for the existing snack bar counter. The snack bar counter at the first floor of the said terminal was shifted to another location on account of major expansion/ modification work at the Chennai Airport.

19.4. As a new International Terminal was ready for commencement of operations, by a letter dated 06.08.2012, the petitioner requested AAI to shift the location of the snack bar counters at an appropriate location in the newly constructed terminal for the remaining license period. In response to the aforesaid request, by a letter dated 09.08.2012, AAI called the petitioner to hold negotiations without prejudice to their rights under the license agreement. In particular, AAI's letter referred to the clauses of the license agreement which entitled AAI to terminate the license by giving a 180 days prior notice.

19.5. Apparently, certain negotiations were held between the petitioner and AAI and pursuant thereto the petitioner, by a letter dated 14.08.2012, conveyed its acceptance for relocation of the snack bar to the security hold area of the new domestic terminal for the balance license period. The relevant extract of the said letter reads as under:-

> "As discussed during the course of negotiations, we hereby agree to pay the negotiated increased license fee of Rs.32,000/- per sqm. per month as against the approximate existing licence

> fee of Rs.28,000/- per sqm. per month on shifting and commissioning of the Snack Bar Counters in the Security Hold Area of New Domestic Terminal for the balance period of the subject licence which is valid up to 18.12.2016. However, the other terms and conditions of the licence shall remain unchanged."

19.6. By a letter dated 28.01.2013, AAI communicated its in principle decision to shift the two snack bars operated by the petitioner to the New Domestic Terminal, Chennai Airport. The relevant extract of the said letter is quoted below:-

> "The proposal submitted by you has been examined by the Competent Authority and it has been decided in principle to shift the existing license for Operating two nos. of snack bar counters in an area admg. 23 sqm – 2 locations in the Security Hold Area of Kamaraj Domestic Terminal, Chennai Airport to an appropriate location in the Security Hold area of the New Domestic Terminal Building at Chennai Airport for the balance period of license i.e. upto 18.12.2016 on the following terms and conditions:
>
> 1. M/s Sapthagiri Restaurant shall pay the negotiated rate of license fee i.e. Rs.35,200/- per sqm. per month (Rs.32,000 per sqm. per month plus 10% annual compound escalation due w.e.f. 19.12.2012) at the new location which shall be subject to 10% annual compound escalation as per the original terms and conditions of license.
>
> 2. The location for operation of the snack bar counters at the new Domestic terminal shall be identified in consultation with AAI Chennai Airport to ensure that the location identified does not foul with the areas already identified for Food & Beverage outlets under the Master Concessionaire concept.
>
> 3. M/s Sapthagiri Restaurant shall be required to submit the

detailed plans for the proposed snack bar counters at the new domestic terminal building which in any case should not exceed the total sqm. as per the existing contract and also the details / specifications of the snack bar counters which you proposed to fabricate and install at the new terminal or approval of AAI. For your ready reference detailed floor plans indicating the areas approved and identified by AAI CHQ to Food & Beverage concessions at the new domestic terminal are enclosed. In case due to site conditions, minor variations upto 20% of area is inevitable pro rata rate of license fee shall be payable for additional area.

4. M/s. Sapthagiri Restaurant shall submit an undertaking that they shall not seek extension for any further period beyond the period of the original license agreement expiring on 18.12.2016 on the pretext of investments made at the new location and shall submit an unconditional undertaking to the effect.

5. As per AAI CHQ decision, the shifting of the subject license at the new terminal building shall be subject to ensuring that before the commencement of license, all undisputed outstanding dues payable to AAI, Chennai Airport are settled. You are requested to reconcile the accounts with AAI, Chennai Airport and submit No Dues Certificate.

6. The existing Security Deposit available with AAI in respect of the subject license shall be renewed and kept live for the balance period of license at the new terminal building.

In case the above terms and conditions are acceptable to you, you are requested to communicate your acceptance, submit the undertaking complying with Para – 4 above and also come for joint inspection to identify the location for relocation of Snack Bar Counters in the Security Hold Areas at the new international terminal building. Action may also be

> initiated by you to clear all undisputed outstanding dues payable to AAI at Chennai Airport."

19.7. By a letter dated 03.04.2013, AAI communicated his decision to allocate two snack bar counters, one each in the east wing and west wing measuring 5 sq. meters each. The relevant extract of the said letter reads as under:

> "The allotment shall be co terminus with the original license and you will be required to pay the negotiated increased license fee of Rs. 35,200/- per sqm which shall be subject to 10% Annual Compound escalation along with utility service charges and service tax as applicable for the additional 02 Snack Bar Counters also. Additional security deposit over and above the deposit available with AAI shall be payable which shall be communicated to you after fabrication and installation of all the 04 counters at site and carrying out of joint measurement to ascertain the exact area occupied by you.
>
> <u>The other terms and conditions shall be as per letter dated 28.01.2013</u>."
>
> [underlined for emphasis]

20. The expression '*co terminus*' has been defined in Black's Law Dictionary to mean *"coextensive in time or meaning"*. The Merriam-Webster Dictionary defines '*co terminus*' to mean *"coextensive in scope or duration"*. The Oxford English Dictionary defines *'co terminus'* to mean *"coextensive (with) in space, time or meaning"*. In the present case, AAI's letter dated 03.04.2013 had expressly communicated that the allotment would be *co terminus* with the original license. The terms of the original license had clearly specified that the license would be valid for 10 years unless terminated by giving 180 days notice in writing without assigning

any reason or by a shorter notice on account of unsatisfactory performance. Clause 1 of the said license agreement executed on 05.07.2007 reads as under:-

> "1. That the license for the said facility shall be valid for the period of 10 years From 19.12.2006 to 18.12.2016 (sic. 18.12.2015) unless terminated earlier on account of following:
>
> 20.1. By giving 180 days notice in writing from either side without assigning any reason.
>
> 20.2. Terminated by AAI on a **short notice** on account of unsatisfactory performances."

21. Thus, *prima facie*, the term of the license could be terminated by 180 days notice.

22. It is also clear from the nature of the transaction that the license granted to the petitioner was not an irrevocable license; neither of the conditions as specified in Section 60 of the Act are satisfied. Further it is also relevant to consider the nature of right granted by AAI to the petitioner. The overall management of the Airport terminals vests with AAI, and the petitioner was permitted to put up snack counters for the benefit of the passengers. The inherent nature of the license indicates that it could not be the intention of the parties that the same be irrevocable. There is no express term of the contract, which would indicate to the contrary.

23. It is well established that a license by its nature is revocable, unless as indicated under Section 60 of the Act or otherwise contracted. The remedy to a licensee is specified under Sections 63 and 64 of the Act. Thus,

in the event that the license has been terminated unjustifiably and without any fault of the petitioner as contended by the petitioner, the only remedy available to the petitioner would be to seek damages and the petitioner is not entitled to any relief in these proceedings.

24. It is also relevant to note that the relief sought by the petitioner is in the nature of specific performance of the contract. Undisputedly, the license granted to the petitioner is a commercial arrangement between the parties and damages would be an adequate remedy. In ***Noble Resources Ltd. v. State of Orissa*: (2006) 10 SCC 236,** the Supreme Court had held that:

> "Ordinarily, a specific performance of contract would not be enforced by issuing a writ of/or in the nature of mandamus, particularly when keeping in view the provisions of the Specific Relief Act, 1963, damages may be an adequate remedy for breach of contract."

In this view also, the relief as prayed for by the petitioner cannot be granted.

25. It is also apparent that the disputes between the petitioner and the respondent are essentially commercial disputes and there is no element of public law involved. It is also not disputed that the parties had agreed that all disputes in relation to the agreement should be resolved by arbitration. In the given circumstances, I am of the opinion that no interference with the impugned notice is warranted in these proceedings. The petitioner would be at liberty to avail of contractual remedies to claim damages, if otherwise entitled in law.

26. It is clarified that if the petitioner institutes any proceedings for

recovery of damages as indicated above, the same shall be considered uninfluenced by any observations made above.

27. The petition and the application are dismissed. No order as to costs

VIBHU BAKHRU, J

MAY 18, 2015
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