

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 911/2015**

1) Mrs. Asha alias Kavita C. Shetye,
aged 55 years, Indian National,
Daughter of Kashinath Arjun Parsekar,
resident of House No.149,
Khorlim, Ximer, Mapusa,
Bardez, Goa.

2) Shri Chandrashekar Sahadev Shetye,
son of Shri Sahadev Shetye,
aged 61 years, Indian National, resident of
House No.149,
Khorlim, Ximer, Mapusa,
Bardez, Goa.

..... **Petitioners.**

Versus

The Chief Officer,
Mapusa Municipal Council,
Mapusa, Bardez, Goa.

..... **Respondent.**

Mr. D. Pangam, and Mr. P. Sawant, Advocates for the petitioner.

Mr. S. D. Padiyar, and Ms. A. Agarwal, Advocates for the respondent.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 3rd/4th August, 2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. D. Pangam, learned Counsel appearing for the

petitioners and Mr. S. D. Padiyar, learned Counsel appearing for the respondent.

2. The above petition, *inter alia*, prays for a relief to direct the respondent to open the seal of a Kiosk No.94, located at Mapusa Taxi Stand and transfer it in favour of the petitioner No.1.

3. Briefly, the facts of the case are that the mother of the petitioner No.1 Smt. Jayashree Kashinath Parsekar was allotted Kiosk No.94, at Mapusa Taxi Stand. Upon the death of said Smt. Jayashree, on an understanding between the petitioners and the brother/brother-in-law of the petitioners and his wife, the said Kiosk was allotted to the petitioner No.1. It is the case of the petitioners that the said kiosk was thereafter transferred pursuant to an order of the respondent in favour of the petitioner No.1. But, however the brother of the petitioner No.1 filed a complaint to the respondent against transfer of the said kiosk in favour of the petitioner No.1 contending that the transfer effected of the kiosk in favour of the petitioner No.1 is untenable. Accordingly, a show cause notice was issued to the petitioner No.1 with that regard. Upon hearing the petitioner No.1, the transfer order of the Kiosk in favour of the petitioner No.1 was

revoked. The brother of the petitioner No.1, thereafter, filed a petition bearing Writ Petition No. 57/2012 before this Court seeking direction of this Court to evict the petitioner No.1 from the said kiosk. The said writ petition came to be disposed of by an order dated 11th April, 2012. But, however, it appears that by an interim order passed in the said writ petition, the respondent was directed to ensure that no illegal occupant occupies the said kiosk. Accordingly, the respondent placed a lock over the said kiosk which prevented the petitioners from carrying out any business activity therein. The dispute was essentially between the petitioner No.1 and her brother with regard to the said kiosk which they have inherited upon the death of said Smt. Jayashree Parsekar. Ultimately, on 24th November, 2014, a family settlement was arrived at between the petitioners and the said brother along with his wife. Accordingly, on 9th April, 2015, the brother of the petitioner No.1, along with his wife, addressed an application to the respondent giving their no objection to transfer the said kiosk in favour of the petitioner No.1. But, however, despite of such request, as the kiosk was not transferred, nor the seal opened, the petitioners filed the above petition, seeking the aforesaid reliefs. It is further their case that there are some more kiosks similarly situated in the vicinity of the subject-kiosk and the respondents are arbitrarily singling out the

petitioners for some erroneous reasons.

4. The learned Counsel further submits that admittedly, the kiosk was transferred in favour of the petitioner No.1 which came to be thereafter recalled in view of a complaint lodged by the brother of the petitioner No.1, which has now been settled. The learned Counsel, as such, points out that the transfer in favour of the petitioner No.1 should be restored by recalling the earlier order. The learned Counsel further submits that the only relief sought by the petitioners is to desal the kiosk which was ordered in a dispute between the petitioner No.1 and her brother. It is further submitted that the dispute has now been worked out and a family settlement has been arrived at and the kiosk has been allotted to the petitioner No.1 and even a no objection has been placed on record by the brother, along with his wife. It is point out that the kiosk is sealed for the last more than 3 years and according to him, though the petitioner No.1 has deposited and paid to the respondent all the arrears of licence fees, which were duly accepted by the respondent, there is no reason to refuse the transfer of the licence of the kiosk in favour of the petitioner No.1. The learned Counsel has, thereafter, pointed out that even in the orders passed by this Court, the respondent was directed to take action, as at that

relevant time there was no licence issued by the respondent in favour of the petitioners. The learned Counsel further points out that without any justification, the respondents are delaying transfer and desealing of the kiosk.

5. On the other hand, it is the contention of Mr. Padiyar, learned Counsel appearing for the respondent that in the year 1980, the father of the petitioner No.1 Kashinath Parsekar, was permitted to set up a kiosk admeasuring 2.00 x 2.30 metres on the Municipal Land on payment of monthly licence fee of Rs.46/-. It is further contended that such licence was on month-to-month basis and that upon the death of said Kashinath, the licence was transferred in the name of the mother of the petitioner No.1 Smt. Jayashree Kashinath Parsekar. It is further contended that upon the death of the said Jayashree, there was a dispute between the brother and petitioner No.1 with regard to the said Kiosk No.94. It is further pointed out that by orders dated 27/3/2012 and 3/4/2012, passed in the said writ petition, the Kiosk came to be sealed. It is further pointed out that there is no application filed by any person and, as such, according to the respondent, the licence itself has lapsed. The learned Counsel, as such, submits that the question of acceding to the request of the petitioners would not arise. The learned

Counsel further points out that as the licence itself had lapsed, as there was no renewal, the question of renewing such licence at the instance of the petitioner would not arise. The learned Counsel further submits that the fees which have been deposited by the petitioner and collected by the respondent cannot be in terms of law as the licence itself had lapsed, and there was no reason for the petitioner to deposit such arrears of fees with the concerned respondent. The learned Counsel further points out that occupation rights of the father, as well as the mother of the petitioner No.1 were only that of licensee, where no interest was created in favour of the petitioners, and as such, the question of transferring rights in favour of the petitioners would not arise. The learned Counsel further points out that the Municipality shall examine any application filed afresh by the petitioners for allotment of such kiosk of the petitioners as the licence issued had lapsed. The learned Counsel as such points out that the petition be rejected.

6. Upon hearing the learned Counsel appearing for the petitioners and the respondent, we do not propose to consider the rights claimed by the respondents to evict the petitioners or the occupants of the kiosks, in accordance with law, as claimed by Mr. Padiyar, learned

Counsel appearing for the respondent. The contention raised by Mr. Padiyar, learned Counsel appearing for the respondent that there were similarly situated occupants of kiosks in the subject-municipal area where the Municipality proposes to take action with regard to such occupation, in accordance with law, we are not examining the legality or otherwise of such exercise, as we have considered the present petition to a limited extent as to whether the petitioners are entitled to continue with the occupation of the subject-kiosk.

7. The records clearly reveal that in fact, the respondent had transferred the subject kiosk, after the death of the mother of the petitioner No.1, in favour of the petitioners. Only because there was a complaint/objections raised by the brother of the petitioner No.1, such transfer order came to be revoked and the kiosk continues to remain in the name of the mother of the petitioner No.1. The dispute also came up before this Court at the instance of the said brother of the petitioner No.1 which ultimately resulted in the respondent putting up a seal to the subject kiosk as, at the relevant time, the resolution transferring the licence in favour of the petitioners came to be revoked. The petitioners have now produced a family settlement which undisputedly discloses that in terms of the said settlement the petitioners have been

allowed to occupy the said kiosk upon the death of the mother of the petitioner No.1. In such circumstances, the ground on which the original licence came to be revoked would no longer survive.

8. On perusal of the records, it is seen that the seal was placed to the kiosk pursuant to an order passed by this Court which led to the disposal of the writ petition filed by the brother of the petitioner No.1 by an order dated 11th April, 2012. On going through the said order, we find that the learned Counsel appearing for the respondent No.1 had made a statement that the subject-kiosk No.94 had been sealed. It may be noted here that the sealing was carried out pursuant to an interim order passed in the said petition dated 27th March, 2012 wherein the respondent No.1 was called upon to take action in case the petitioner therein was not in a position to obtain requisite authorizations to carry on business in the subject-kiosk. In view of the said action taken by the respondent No.1, in the circumstances stated herein above, the said petition came to be disposed of as withdrawn, but, however, clarifying that disposal of the petition would not come in the way of the parties from availing of appropriate remedy as may be available in law.

9. As the petitioners and the brother of the petitioner No.1 have now sorted out their differences and the petitioners are now duly authorised to carry on the business activities in the subject kiosk upon the death of the mother of the petitioner No.1, we find that the ground which necessitated sealing of the subject-kiosk no longer survives. In the meanwhile, records also reveal that the petitioners have also paid the arrears of licence fees which have duly been accepted by the respondent, though Mr. Padiyar, learned Counsel appearing for the respondent disputes receipt of such amounts. In such circumstances, we find that the respondent is not justified to continue the sealing of the subject kiosk. Hence, we pass the following :

O R D E R

- (I) The writ petition is partly allowed.
- (II) The respondent is directed to open the seal of the subject-kiosk, within one month from today.
- (III) The application filed by the petitioners to transfer the licence in favour of the petitioners shall be re-examined by the respondent in the light of the observations made herein above, after hearing the petitioners in accordance with law.
- (IV) Needless to say, the relief granted in the present petition would not affect the rights of the respondent, if any, to take action with

regard to the subject-kiosk and similar action against other similarly situated kiosks.

(V) Rule is disposed of in the above terms. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.