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

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Judgment delivered on: 02.11.2016

+ W.P.(C) 2194/2016 & CM No. 9414/2016, 29316/2016

DELHI GLIDING CLUB

..... Petitioner

versus

AIRPORTS AUTHORITY OF INDIA

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. K.C. Mittal with Ms. Ruchika Mittal, Advocates.

For the Respondent : Mr. Digvijay Rai, Advocate.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

**CM No. 9415/2016 (Exemption)**

Allowed, subject to all just exceptions.

**W.P.(C) 2194/2016**

1. The petitioner impugns the order dated 15.02.2016 passed by the Airport Appellate Tribunal at Safdarjung Airport in so far as it relates to Appeal No. 16/CP/A-80/2015 rejecting the appeal of the petitioner against the eviction order dated 05.11.2015.

2. It may be noted that the said order also deals with Appeal No. 15/CP/A-80/2015 whereby the appeal of the petitioner, impugning the order of the Eviction Officer under the Airports Authority of India

Act, 1994, ordering recovery of arrears against the petitioner has been allowed and the said order has been set aside. Since that part of the order dated 15.02.2016 is in favour of the petitioner, the petitioner has not impugned the same. Even the respondents have not filed any appeal against the said part of the order so this court is not examining the order in so far as it relates to that appeal.

3. The petitioner – Delhi Gliding Club contends to have been allotted space in the Safdarjung Airport along with the use of a hangar for the purposes of flying activities. It is contended that since the allotment, in or around the year 1950, the petitioner had been carrying out the said activities.

4. In the year 2002, the petitioner was stopped from carrying out any flying activities in Safdarjung Airport. However, the petitioner continued to carry out ground activities.

5. Learned counsel for the respondents submits that all flying activities at Safdarjung Airport were stopped in the year 2002 as the said airport was utilized only for VVIP movement and the flying activities of only certain VVIPs is continuing and apart from that no other flying activity is permitted at Safdarjung Airport. It is contended that after 01.04.2008, even the entry passes to the hangar at Safdarjung Airport were declined to the petitioner and the officials of the petitioner were not allowed to enter the Airport.

6. It is further contended by the counsel for the petitioner that bills

were raised by the respondents for claiming arrears against the petitioner at exorbitant rates. The contention of the petitioner is that the petitioner is liable to pay only Rs. 1 per annum.

7. On 26.05.2015, the Eviction Officer issued a notice to the petitioner of Eviction Case No. 1/2015 and Recovery Case No. 1/2015 for eviction and recovery of arrears of rent respectively. The said notice was duly replied to. However, despite the reply, eviction proceedings were commenced.

8. On 05.11.2015 the Eviction Officer held that the petitioner was in unauthorized occupation of hangar space measuring 825.25 square meters in the operational area of Safdarjung Airport New Delhi and directed the petitioner vacate and hand over the keys of the hangar space. The Eviction Officer also directed payment of a sum of Rs. 3,15,50,530/-.

9. The petitioner being aggrieved by the said orders of the Eviction Officer filed appeals before the Airport Appellate Tribunal. The Airport Appellate Tribunal accepted the appeal of the petitioner in so far as it pertained to the order directing the petitioner to pay the arrears and returned a finding that petitioner was liable to pay only Re. 1/- per annum.

10. The Airport Appellate Tribunal by the impugned order dated 15.02.2016, on the issue of eviction dismissed the appeal and confirmed the order of eviction dated 05.11.2015.

11. Learned counsel for the petitioner assails the order of the Eviction Officer as well as the order of the Airport Appellate Tribunal on the ground that the respondents have failed to show the proof that the petitioner is in unauthorized occupation of the hangar space. It is contended that the respondents have failed to show that there is any termination or cancellation of the allotment to the petitioner. It is further contended that the show cause notice only pertains to the arrears of rent and since the appeal in respect of arrears of rent has been decided in favour of the petitioner, the eviction order also cannot stand.

12. Learned counsel for the petitioner further contends that the stand of the respondents was that the petitioner was initially allotted the space for a period of 5 years and thereafter the said allotment, if any, stood expired by efflux of time. Learned counsel for the petitioner further submits that the petitioner had filed an application under the Right to Information Act with the DGCA seeking a copy of the allotment letter issued to the petitioner with regard to the said hangar, year of allotment and the terms of allotment. It is contended that the DGCA in response has stated that no information relating to allotment of hangar is available.

13. It is further contended that petitioner could not produce the records because the same were destroyed by termites. It is contended that the record were kept in the hangar and the petitioner is not aware as to when the records were destroyed and the petitioner became

aware of the same only when a joint inspection was carried out in the year 2015.

14. It is contended that the respondents have failed to produce any document to show that the initial allotment was only for a period of 5 years or that the same expired by efflux to time and as such the impugned order cannot stand.

15. Learned counsel for the respondents submits that the allotment was made in the year 1950 by the Civil Aviation Department of the Director General Civil Aviation in 1950. By the National Airport Authority of India Act, 1985 and the Airport Authority of India Act, 1994, all the assets and liabilities of the said department were transferred to the present respondents i.e. Airport Authority of India. It is contended that as the transfer took place successively, the entire records were not available.

16. It is further contended that it is for the petitioner to establish the right and capacity under which the petitioner claims to hold the said hangar space. Learned counsel for the respondents admits that the respondents have not filed any appeal impugning the order of the Airport Appellate Tribunal in so far as it pertains to the issue of arrears of rent.

17. Learned counsel for the respondents further points out that by order dated 15.03.2016, this Court had directed the petitioner to place on record the document by virtue of which the possession of the

premises in question was handed over to the petitioner, i.e. lease deed or licence deed. The petitioner was also directed to place on record the copies of any licence or lease, if executed and the receipt of the rent or license fee, if any, paid. Learned counsel further contends that the said order has not been complied with and no such document has been placed on record before this court.

18. By the impugned order, the Airport Appellate Tribunal has noted that the eviction order was passed on 05.11.2015 giving two days' time to the petitioner to hand over possession of the said hangar failing which the Airport Authority was permitted to take possession. It is noted that on 18.11.2015 the physical possession of the said hangar was taken by the Airport Authority of India. The appeals before the Airport Appellate Tribunal were filed on 20.11.2015.

19. The Airport Appellate Tribunal in the impugned order has held as under: -

*" In the present case, we are confronted with a fact situation wherein Appellant claims to have occupied the site in question more than five decades before by an allotment granted in its favour by Civil Aviation Department. It seeks to support its occupation as authorized occupant on a plea that Appellant has failed to produce document containing terms of allotment and onus should be upon AAI to produce such document and to show further that allotment was cancelled or terminated at any point of time. This contention of Appellant is negative by the law laid down in Nusli Neville Wadia case. In the present case, admitted facts are that Appellant was granted hangar space at*

*Safdarjung Airport for flying of gliders but then because of security reasons as per instructions issued by Government of India, the flying activity of the Appellant was stopped in the year 2002. Appellant remained non-functional in its flying activity till eviction proceedings were initiated in the year 2015. Where the predominant activity of the appellant Club was stopped and stood frustrated in the year 2002 then certainly allotment would be deemed to have been determined. Appellant raised contention that it could have carried out some ground training activity but then no such case ever since 2002 was presented or prosecuted with the AAI by presenting any such case that its occupation of premises was on the basis of any subsisting allotment or that terms of initial allotment recognised any such ground training activity within its entitlement and it could have pursued and prosecuted. In such a situation, if Eviction Officer formed an opinion that Appellant became unauthorized occupant of the airport premises or that further on account of being in arrears of huge amount towards charges for the use of the hangar space, to my considered view it was for appellant to effectively show cause that its occupation of the premises was authorized or lawful. Appellant in its reply dated 11.06.2015 (at page-33 of the appeal book) to show cause notice, took a plea that whereas space had been allotted at a fixed amount of Re.1/-; per annum and AAI claiming now a huge amount of Rs.3.00 crore plus as arrears was an illegality, it further took a plea in that reply that DGCA had never withdrawn allotment of hanger. It is a matter of fact that with AAI Act having come in force in the year 1994 in terms of Section-13 of the Act, all properties and assets which belonged to International Airports Authority or National Airports Authority stood vested In AAI. At any point of time, even if Civil Aviation Department, may be now more than five decades before granted a permission in favour of Appellant Club to take up its glider flying activity and allotted a hanger space situated at airport,*

*Safdarjung Airport including the hangar space in question stood vested in AAI In the year 1994 and thus DGCA could not have Initiated any such action of termination of lease or licence of appellant and as such reply submitted to the show cause by Appellant had no basis for claiming occupation of the hangar space as authorised or lawful. Appellant nowhere pleaded in this reply if allotment of hanger space now more than five decades before was irrevocable or by any term and condition of allotment could be described to be an allotment in perpetuity. In these circumstances particularly when flying activity of the Appellant came to complete halt in the year 2002, it was for Appellant to prove and establish its case before the Eviction Officer that its occupation of hanger space was by any authority. Appellant itself filed a document which is available in the other connected appeal NO.15/CP/AAT/2015 (at page-16 of the appeal paper book) which is a letter dated 11.08.2014 written by AAI to Appellant conveying that operation of all commercial as well training flights had been stopped at Safdarjung Airport from the year 2002 and notice had already been served upon Appellant to vacate the area. Second document is also a letter dated 10.11.2014 issued by AAI to Appellant wherein a reference is made to earlier letter dated 28.05.2014 asking appellant to vacate space occupied by it at Safdarjung Airport and dear the dues and further conveyed appellant that its occupation of space was without authority. Appellant had responded to these communications by its letter dated 21.11.2014 (appearing at page-64 of the appeal book) explaining that it was not to be considered as unauthorized occupant and pleaded further that it had been carrying the ground flying training for gliding pilots but had to discontinue it also as AAI did not give permission to enter the hangar. All this material suggests that occupation of the hangar space by Appellant by the time proceedings were initiated by the Eviction Officer was not supported by any*

*document or any other material that Appellant was in authorized occupation of the premises.*

*When Eviction Officer was to examine the matter for eviction of appellant from the site, Eviction Officer could not have been called upon to ask the Respondent to produce documents regarding allotment of the site in Appellant's favour. We can refer to a Supreme Court judgment reported as Mumbai International Airport(P) Ltd. Vs. Golden Chariot Airport & Another 2010 (10) SCC 422 on that point. In the reported case, Respondent allottee Golden Chariot Airport took a plea before Estate Officer that through the period of allotment as mentioned in the document had expired but AAI officials had granted extension by verbal communications and Estate Officer by not summoning and examining those AAI officials on the point committed breach of the Principles of Natural Justice and this plea of Golden Chariot Airport was accepted by the courts below as well by Hon'ble High Court. Hon'ble Supreme Court while arriving a findings and conclusions in favour of Appellant held that Estate Officer while acting and deciding the proceedings committed no illegality and error that in the absence of any written document any oral assurance which purportedly contradicted the written document was not to be considered. Reasoning given by the Estate Officer for not calling the officers of AAI to prove the case of oral extension of licence of the contesting Respondent was sound and did not call for any interference by Court. Hon'ble Supreme Court even further observed that where Estate Officer was to decide a point whether contesting Respondent was an unauthorized occupant of the public premises, that being the sole purpose of inquire, Estate Officer rightly held that inquiry could not be widened by including a plea of discrimination raised by the contesting Respondent.*

*In the present case where Eviction Officer found*

*that flying activity of the Appellate stopped in the year 2002 and AAI had already communicated to Appellant that its occupation of the space was unauthorized then certainly opinion formed by Eviction Officer in the Show Cause was on a valid reasons and material. Appellant instead of supporting its case that it is more than five decades old occupation of the space was on the basis of any document showing its subsisting right, it tried to reply on a plea that respondent should produce document to show that right of the appellant was not subsisting, to my opinion is a stand unwarranted in law.*

*Ld. counsel raised a point that land underneath Safdarjung Airport belonged to L&DO, Ministry of Urban Development, Government of India and thus AAI was incompetent to seek eviction of Appellant. Argument is without any merits when examined in context of provisions of the AAI Act. Eviction of unauthorised occupant contemplated under the Act is only in respect of airport premises. Section 28A defines airport premises. There was no dispute or controversy that premises subject matter in this case was a hanger situated in airport and thus it was airport premises. It hardly matters if another department of the Government of India raised by claim for land.*

*Counsel argued the point that in terms of Section 12A of AAI Act, the lease executed in favour of Appellant for the hangar space could have been cancelled only with the prior approval of Central Government of India. No such interpretation is warranted by Section 12A. Section 12A only contemplates for AAI to lease out airport premises for any or some of its functions described in Section 12 of the Act either in public interest or in the interest of better management of airports. Sub-clause-2 of Section 12A says that no such lease however shall be made without previous approval of the Central Government. In the present case, permission granted to*

*appellant was long before the Act came in force. No such interpretation is warranted that before holding Appellant as unauthorized occupant, any prior approval of the Central Government was required for termination of lease or permission before initiation of eviction proceedings.*

*While the present judgment was being dictated, a letter dated 05.01.2016 issued by DGCA addressed to Shri Vishwa Bandhu Gupta (Hony. Secretary of appellant Club), pursuant to a query sought under the Right to Information Act, 2005 was produced which says that DGCA approves flying club/gliding club for conduct of flying /gliding training after ensuring compliance of regulations laid down by DGCA. It further says that no information related to allotment of hanger was available with DGCA. Any such information provided by DGCA that flying club or gliding club is granted approval for flying or gliding training by ensuring compliance of regulations takes present case nowhere and has no bearing on the question of Appellant being in occupation of the hangar space as authorized or unauthorized occupant.*

*Accordingly, Appellant now being in occupation of hangar space with its prime and predominant activity of flying stopped since 2002 and its failure to produce any document or material to support its case that its occupation of hangar space was on the basis of any subsisting right, Eviction Officer rightly found it to be an unauthorized occupant of hangar space. Present appeal is without merits and eviction order dated 05.11.2015 calling upon appellant to vacate the hangar space situated at Safdarjung Airport suffers no illegality and calls for no interference."*

20. To resolve the controversy, it has to be examined as to what is

the stand of the petitioner. Since the petitioner is seeking to retain possession of the hangar space, the petitioner would have to establish in what capacity and under what right is the petitioner entitled to retain possession thereof.

21. Learned counsel for the petitioner was categorically asked as to in what right or capacity, the petitioner was allotted the said hangar and what were the terms of allotment. Learned counsel for the petitioner could not respond thereto or even contended as to what was the stand of the petitioner i.e. whether the petitioner was a licensee or a lessee. Even perusal of the document and reply filed by the petitioner do not reveal as to what is the specific stand of the petitioner. It is not clear whether the petitioner is claiming rights to the said hangar as a lessee or a licensee. The petitioner has not even been able to contend or show that on what terms or condition the said allotment was made.

22. Even if assuming the document of allotment were destroyed by termites, the petitioner would at least contend as to in what right or capacity he claims the allotment of hangar. Leave alone show, the petitioner has not even been able to contend as to the capacity in which the allotment was made and the terms and conditions thereof. The only answer given is that the respondents have to show that the petitioner is in unauthorised occupation.

23. Apart from a bald reference made to the response of the respondents, that the petitioner was initially allotted the hangar. the

petitioner has not been able to show that the petitioner has any right, title or interest in the hangar space. Since the petitioner is claiming rights to the hangar and claiming to hold on to the possession of the same, it would be for the petitioner to establish the right and capacity to hold on to the hangar. Not only the petitioner has not been able to produce any document, the petitioner has not been able to even make a categorical averment in respect thereof. The entire contention of the petitioner is that the respondents had not been able to discharge onus.

24. The party which claims a right in the affirmative has to establish the same. No party can be required to prove the negative. It is for the petitioner to show cause in what capacity or right the petitioner stakes such a claim.

25. There can be two situations, either the petitioner was allotted the space as a lessee or as a licensee. For the sake of completeness, the case of the petitioner may be examined assuming both situations so as to ascertain, whether the petitioner has any subsisting right.

26. If the petitioner is treated as a 'lessee', the lease deed and its renewals would require registration under the Registration Act, 1908. Even if assuming that there was a lease deed, that would be for a fixed term. The petitioner has not been able to show that there was any term or period mentioned in any document entitling the petitioner to retain possession. There is no contention or averment that the term of any such lease deed, if any, was ever extended or renewed.

27. Assuming the petitioner was allotted the space as a licensee, the licence would be for a limited period. The petitioner is not in a position to aver as to what the period was or whether the same was ever extended or renewed.

28. In either eventuality, the petitioner has not been able to show any subsisting right or entitlement to hold on to the hangar or retain possession thereof.

29. The Eviction Officer has categorically returned a finding that all flying and gliding activities have been stopped since the year 2002. Reference is made to minutes of meeting dated 18.09.2001 wherein it was decided that except official flying which may include some dignitaries no other flying activity should be allowed at Safdarjung Airport. The Eviction officer has held that the Petitioner is non operational since the year 2002 because of instructions of the government. The Evicting Officer has held that the petitioner has not been able to show any document by way of which its possession of the hangar could be termed as legal. There is no existing lease/licence given by the respondents – Airport Authority to the petitioner.

30. I may also note that in the evidence recorded, even the Secretary of the petitioner, in his statement, before the Eviction Officer, does not state as to under what capacity, the said hangar was allotted and as to under what right, the petitioner seeks to continue to hold on to the said hangar.

31. The Airport Appellate Tribunal has noted that the flying activities of the petitioner came to a complete halt in the year 2002. The Tribunal held that the petitioner has not been able to show any right to continue to occupy the said hangar.

32. In my view, there is no infirmity in the findings returned by the Eviction Officer and the Airport Appellate Tribunal and the orders passed by them. The petitioner has not been able to produce any document to show that the petitioner has a continuing right to occupy or possess the said hangar.

33. Even if assuming there was a lease or a licence executed in favour of the petitioner in the year 1950, the term of the same would have been fixed. The petitioner has not been able to show or even aver, that the term of such a lease or licence was ever extended or that the same is subsisting as of date.

34. Even if assuming there was ever any such lease of licence, the same would be deemed to have expired by efflux of time. As the term of the allotment of the petitioner has expired by efflux of time, the petitioner would be in unauthorized occupation of the said hangar space. Since the term of allotment has expired by efflux of time no further notice terminating the term of the lease or licence is required to be issued to the petitioner.<sup>1</sup>

35. It may be however noted that the notice for eviction dated

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<sup>1</sup> *Delhi Development Authority Vs. M/s Anant Raj Agencies Pvt. Ltd 2016 SCC OnLine SC 308*

26.05.2015 categorically states that by the letter dated 26.05.2014 of the Airport Authority of India, the petitioner had been asked to vacate the said premises. The said notice would also amount to a notice claiming possession and impliedly terminating the right, if any. As the petitioner does not have a subsisting right to retain the possession of the said hangar, the petitioner would be in unauthorized occupation thereof. Since the petitioner has not been able to show any subsisting or existing right under which the petitioner can hold on to the possession of the same, the petitioner would be in unauthorized occupation of the said hangar space at Safdarjung Airport and has rightly been directed to be evicted. Consequently, the action of the respondents in physically evicting the petitioner from the hangar space cannot be faulted.

36. In view of the above, I find no merit in the petition. The petition is accordingly dismissed with no order as to cost.

**SANJEEV SACHDEVA, J**

**NOVEMBER 2, 2016**

**‘rs’**