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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5/2012**

Judgment reserved on 23rd May, 2016

Judgment pronounced on 8th July, 2016

RAVINDRA SINGH Petitioner

Through: Mr. Sahil Monga, Adv.

versus

UOI AND ANR Respondents

Through: Ms. Barkha Babbar, Adv.

AND

W.P.(C) 18/2012

H.S.ATRI

..... Petitioner

Through: Mr. Sahil Monga, Adv.

versus

UOI AND ANR Respondents

Through: Ms. Barkha Babbar, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Both the above-noted writ petitions are in the similar facts and are disposed of together.
2. Petitioner-Maj.Ravindra Singh (Retd.) was allotted Shop No. 33, Shopping Complex, Shankar Vihar, Delhi Cant, New Delhi – 110010 (hereinafter referred to as the 'shop in question') for running a cyber café on temporary basis for a period of eleven months, that is, with effect from 20th

April, 2001 to 19th March, 2002. A license deed was executed on 20th April, 2001 between the President of India through Station Commander and the petitioner. The license was renewed from time to time and finally expired on 17th March, 2008. Thereafter, license was not renewed in view of the Standing Operative Procedure for Management and Control of Shopping Complexes at Delhi Cant (for short, '2007 SOP') dated 13th April, 2007, whereby occupation of allotted shops was restricted for a period of five years. Vide notice dated 30th September, 2010 petitioner was given one month time to vacate the shop but he did not do so. Accordingly, a notice dated 20th May 2011, under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as 'the Act'), was issued by the respondent no. 2. In response to the said notice, petitioner, vide reply dated 28th June, 2011, represented that shop in question was due for renewal after 17th March, 2008 and requested for renewal of the license. However license was not renewed. No fresh license deed was executed. Proceedings for eviction under the Act were initiated by the Estate Officer, which culminated in the eviction order dated 20th August, 2011. Aggrieved by the said order, petitioner preferred appeal bearing PPA

20/11, which has been dismissed by the judgment dated 12th December, 2011, impugned in WP(C) No.5/2012.

3. Petitioner-Capt. H.S. Atri (Retd.) was allotted Shop No. 38, Shankar Vihar Shopping Complex, Delhi Cantt. (hereinafter referred to as the 'shop in question') for running a frozen food shop on temporary basis for a period of eleven months, that is, from 19th April, 2001 to 18th March, 2002. A license deed dated 19th April, 2001 was executed between the petitioner and President of India through Station Commander. Subsequently, license was renewed from time to time. License period expired on 26th November, 2006 as license was not renewed thereafter. Vide notice dated 30th September, 2010 respondent was called upon to vacate the shop within one month. However, shop was not vacated by the petitioner, therefore, proceedings under Section 4 of the Act were initiated before the Estate Officer, which culminated in the eviction order dated 20th August, 2011. Petitioner preferred appeal bearing no. PPA 19/11 before the District Judge, South West District, New Delhi against the eviction order, which has been dismissed the judgment dated 12th December, 2011, impugned in WP(C) No.18/2012.

4. It is noted that, with a view to streamline the allotment of the shops in the shopping complexes to the ex-service men and war widows and their family, respondent had been issuing guidelines from time to time known as SOP. One such SOP was issued on 10th August, 2001 and Clause 6 thereof, envisaged that as and when any of the shop fell vacant, the Station Commander at Station Headquarters shall give wide publicity through the DGR in local newspapers, inasmuch as, the allotment to be done on yearly basis. Clause 11 envisaged for priorities in the allotment of shops, inasmuch as, various parameters were laid down for allotment. On meeting such parameters, a person was to be given license for a period of eleven months subject to renewal. Clause 17 of the SOP dated 10th August, 2001 reads as under :-

“Renewal of license deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of license deed by DDA & QMG, Station. HQ Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the license deed for the subsequent year. However, the license deed may be terminated at any time by the Station Commander at his discretion.”

5. Subsequently, 2007 SOP was announced. Till the new SOP became operative licenses were being renewed from time to time in terms of the earlier SOPs. Petitioners' licenses were also renewed from time to time till

coming into force of 2007 SOP. Clause 18 of the new policy, which deals with renewal of license deed, reads as under :-

“Renewal of license deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of license deed by AQMG, Station Head Quarter, Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the license deed for the subsequent year. However, the license deed may be terminated at any time by the Station Commander at his discretion. No extension beyond five years will be given under any circumstance. The same person can apply after a gap of minimum three years of clear break (not running in any Army Colony of NCR).”

(emphasis laid)

6. It is noted that petitioners were allotted shops purely on license basis being ex-service men, in terms of the policies formulated from time to time. License deeds were executed between the petitioners and the Station Commander on behalf of the President of India. As regards petitioner-Maj. Ravindra Singh, license period came to an end on 17th March, 2008; whereas license period in respect of petitioner-Capt. H.S. Atri came to an end on 26th November, 2006. Licenses were not renewed thereafter, inasmuch as, same could not have been renewed in terms of the 2007 SOP. After the license period came to an end petitioners were divested of their right to continue in possession of the shops in question, as a licensee thereof. On expiry of the license period(s) petitioners became unauthorized occupants and

proceedings against them under Section 4 of the Act were rightly initiated, which culminated in the eviction orders passed by the Estate Officer.

7. It may be noted that similarly situated persons preferred writ petitions (civil) bearing nos. 9478/2007, 9525/2007, 9546/2007, 9568/2007, 6447/2008, 6494/2008, 6761/2008, 7366/2009 and 14034/2009, under Article 226 of the Constitution of India thereby challenged the 2007 SOP. These writ petitions were dismissed by a learned Single Judge vide a common judgment dated 12th July, 2010 whereby 2007 SOP was upheld. LPA 526/2010 was preferred which was also dismissed by the Division Bench vide order dated 2nd August, 2010, wherein it was held thus:-

“It is well settled position in law that the licensee has no right unless what has been given to him/her under the license. Initially, licenses were for a period of 11 months. They were renewed from time to time. After the 2007 policy came, their licenses were terminated by applying the Clause 18 of the Policy. Such termination of the licenses, as we perceive, is not erroneous. The appellants have no indefeasible right to continue as they were mere licensee.”

8. Review petition against the order dated 2nd August, 2010 was filed but was dismissed vide order dated 23rd December, 2010. The matter was then taken to Supreme Court by way of Special Leave Petition but the same was also dismissed vide order dated 4th February, 2011.

9. Learned counsel for the petitioners has placed reliance on the letter dated 25th February, 2005 written by the Director (Works), Govt. of India, Ministry of Defence to the Chiefs of Army, Naval and Air Staff thereby intimating them the amendment in para 3 (v) and (vi). As per the learned counsel for the petitioners, after the amendment, Station Commander was not competent to issue 2007 SOP. The amended para 3 (v) and (vi) reads as under :-

“(v) The management of all such complexes will be exercised by the Government through the concerned services who will be fully accountable for the proper maintenance of their accounts and assets as per norms fixed in this regard.

(vi) Guidelines/rules regarding operation, maintenance and allotment of shops, accounts etc. shall be formulated by the Ministry of Defence.”

10. Record reveals that Ministry of Defence notified Defence Shopping Complexes (Maintenance and Administration) Rules, 2006 (for short, ‘the Rules’) which were forwarded to Army, Air and Naval Headquarters. Rule 2 (c) thereof defines “shopping complex” as a composite area comprising shops established on A-1 or analogous defence land under the management of the Army/Navy/Air Force, but would not include regimental shops which were created exclusively for military personnel and their families. In the counter affidavit, respondents have alleged that letter dated 25th February,

2005 deals with 'shopping complexes' created on defence land from non-public funds etc. and have no applicability to the shopping complex at Shankar Vihar. The shop in question was created under the authority of para 3.42 of Scales of Accommodation, 1983. Further that management and control of shopping complex is governed by the SOP.

11. Be that as it may, the Rules provide a period of allotment of three years without any renewal clause. It may be noted that the said rules were also considered by the learned Single Judge in the judgment dated 12th July, 2010(supra) wherein it is held as under :-

“52. Before concluding this portion of the judgment, this Court would like to observe that there are at present at least five documents that govern the licence granted to the allottee of a shop in a shopping complex. First we have the SOA 1983, para 3.42.1 of which describes what a shopping complex is. Then there is the licence deed itself which sets out some of the applicable terms and conditions. Then there are the DSC Rules 2006. There appears to be some inconsistency between the Rules and the conditions of the licence. Then we have the ‘ ‘ ‘Guidelines’ of 4th September 2008, Clause 8 of which in fact states that the DSC rules 2006 will apply to shopping complexes covered by para 3.42.1 of the SOA 1983. Lastly, the SOPs which are issued from time to time. In fact it is the SOP dated 13th April 2007 that has given rise to these set of petitions. For the purposes of grant and renewal of licences there is some inconsistency in these five documents which require to be reconciled by the Respondents. Although the Petitioners have themselves not raised any objection on this score, this Court finds that any inconsistency between the DSC rules 2006 and the SOP is not to the advantage of any of the

Petitioners here as each of them has already overstayed their respective periods of licence by many years.”

(emphasis laid)

12. In the present case also, license of the petitioners expired on 17th March, 2008 and 26th November, 2006 respectively. They have over stayed in their respective shops during the pendency of the litigation for several years. Status of the petitioners in the shops in question was that of a licensee pursuant to the license deeds executed by the Station Commander. After the license period came to an end on 17th March, 2008 and 26th November, 2006 respectively petitioners are divested of their rights to retain possession of the licensed shops. Petitioners do not derive any benefit from the letter dated 25th February, 2005 coupled with the Rules. Petitioners have no indefeasible right to continue since they were mere licensees. I do not find any jurisdictional error in the impugned judgment.

13. For the foregoing reasons, both the writ petitions are dismissed.

A.K. PATHAK, J.

JULY 08, 2016

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