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

+ **W.P.(C) 4731/2018 and CM No. 18168/2018**

OKHLA INDUSTRIAL ESTATE
ASSOCIATION (REGD.)

..... Petitioner

Through: Mr Gaurav Puri, Ms Tanya Chawla
and Mr Aditeya Bali, Advocates.

versus

DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED (DSIIDC)
AND ORS.

..... Respondents

Through: Ms Anusuya Salwan, Renuka Arora,
Deepali Gupta and Ms Nikita Salwan,
Advocates for R-1/DSIIDC.
Mr Gautam Narayan, ASC, Civil,
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 18.07.2018

1. The petitioner is a registered society constituted by members who are in occupation of sheds and factories located in Okhla Industrial Estate, Phase-III, New Delhi. The petitioner has filed the present petition essentially to assail the demolition drive undertaken by respondent no.1 (hereafter 'DSIIDC') for removal of encroachment on public lands in Okhla Industrial Estate, Phase – III.
2. The petitioner states that its members (who are occupiers / owners of various sheds / factories located at Okhla Industrial Estate Phase-III) have occupied strips of lands adjacent of their respective sheds / factories and are

using the same for housing Generator sets, guard room or as a parking area. Thus, there is no dispute that the members of the petitioner association are in occupation of public lands. The learned counsel appearing for the respondents further submits that some of the members have also built permanent structures on such land and are using them as a part of their industrial units.

3. In the aforesaid facts, this Court had called upon the learned counsel for the petitioner to explain as to how its members derive any title or right to occupy strips of public land, which are adjacent to their respective sheds and factories.

4. Mr Puri, learned counsel appearing for the petitioner referred to a letter dated 01.03.2005 addressed by the Secretary cum Commissioner (Industries), Government of NCT of Delhi to the Deputy Commissioner, Municipal Corporation of Delhi, which indicated that the Lt. Governor had sanctioned the use of idle strip of land adjacent to each shed at Okhla Industrial Estate for putting up temporary structures at a fee of ₹10 per sq. meter per month. And, this sanction was communicated to the Municipal Corporation of Delhi by an office order dated 20.03.1998. The said letter also indicates that the aforesaid rates were revised to ₹25 per sq. meter per month for sheds and ₹50 sq. meter per month for plots. MCD was required to collect such charges and render accounts to the Department of Industries.

5. Mr Puri, submits that the aforesaid letter clearly indicates that the members of the petitioner association were in legal occupation of the strips of public land adjacent to their sheds/buildings.

6. In addition to the above, Mr Puri also referred to the minutes of the meeting held at the office of the Minister of Industries, Government of NCT of Delhi on 30.12.1994. The said minutes indicates that the representatives of the Okhla Industrial Estate Association had requested the Minister for regularisation of the *encroachments* and had further demanded that the charges for such encroachment should be ₹5 per sq. meter instead of ₹10 per sq. meter. Apart from the above, Mr Puri could not refer to any document, which would entitle any of its members to occupy the public lands in question. It is apparent from the above that the petitioner has failed to establish any right in respect of public lands adjacent to their respective sheds/factories so as to resist DSIIDC's drive to recover possession of such lands. At best, some of the members of the petitioner association may be licensees in respect of such lands. However, that would not prevent DSIIDC from recovering possession of such lands. It is settled law that a licensee acquires no right, title or interest in the property. In **C.M. Beena and Anr. v. P.N. Ramachandra Rao: (2004) 3 SCC 595**, the Supreme Court held as under:-

“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])”

7. A Coordinate Bench of this Court in ***Thomas Cook (India) Limited v. Hotel Imperial and Ors.: 127 (2006) DLT 431***, *inter alia*, observed 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 Licensee 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)."

(also see: M/s Gesture Hotels and Food Pvt. Limited v. The New Delhi Municipal Council: 210 (2014) DLT 359 and M/s Aresko Restaurant Pvt. Ltd. v. New Delhi Municipal Corporation and Ors: (2015) 219 DLT 350)

In the present case, there is no material to hold that the members of the petitioner continue to be licencees of the property in question. However, even if it was so, the action of DSIIDC in recovering the possession would imply that the licence stands terminated. In any view, they would not have any right to resist eviction from the property in question.

8. The learned counsel appearing for respondents has also drawn the attention of this Court to the brochure for "Scheme of Conversion from lease-hold System into free-hold" for industrial plots and built-up sheds as issued by DSIIDC. Paragraph 10(iv) of the said brochure is relevant and is quoted below:-

"10(iv) Conversion to freehold shall not be permitted in respect of properties involving encroachment on

government/public land. The lessee would have to vacate the encroached land before consideration of the conversion application and shall also be liable to payment of occupation charges for the part period as per normal rules.”

9. It is not disputed that several members of the petitioner association have applied for conversion of their property from leasehold to freehold under the aforesaid scheme. It is also apparent from the record that certain members of the petitioner association had represented against delay in conversion of their properties from leasehold to freehold on account of the time required by them to rebuild their units so as to vacate the public land occupied by them. The said matter was considered in a meeting chaired by the Hon’ble Chief Minister of Delhi on 08.08.2008 whereby representatives of the Okhla Industrial Estate Association were present. The minutes of the said meeting have been placed on record. The same indicates that the association had assured the Hon’ble Chief Minister that they would give an undertaking in the form of an affidavit for the purpose of removal of encroachment on government/public land.

10. It is not disputed that a period of one year was provided to the applicants for re-structuring their factory premises and for removing encroachment of public land. This period was further enhanced to three years by a Circular dated 10.12.2010. Mr Puri readily conceded that those of its members who had applied for conversion of their property from leasehold to freehold would have given an undertaking for vacating the strip of land in question. However, he urged that there were several members who had not applied for such conversion and, therefore, they would not be

obliged to vacate this strip of land adjacent to their factories/sheds. This contention is *ex facie* unmerited. Since the petitioner had failed to establish that any of its members has any right to occupy the public land, the question of permitting any of its members to do so only because they had not given an undertaking to vacate the strips of public land, cannot be accepted.

11. Mr Gautam Narayan, learned counsel appearing for Government of the NCT of Delhi also submitted that the present petition is not maintainable as there are no particulars relating to any individual owner on the basis of which any right can be claimed in his favour. He submitted that if relating to any owner of any factory/shed claims any right over the land from which he/she is sought to be removed, he/she would have to independently established his/her right in respect of the said property.

12. The above contention is merited. The present petition is bereft of any particulars relating to any particular owner. There is no material to indicate as to on which dates licence fee for occupation of land was paid by any such owner. Plainly, if the petitioner claims that its members are licensees in respect of certain land, the persons claiming to be a licensees would have to establish the same by placing specific material on the basis of which such right is claimed.

13. In view of the above, this Court finds no reason to interdict DSIIDC from recovering possession of public lands, which have been encroached upon or otherwise occupied by persons in occupation of factories/sheds at Okhla Industrial Estate, Phase - III. The respondents have also placed on record photographs which indicate that there has been a large scale

encroachment and some of the owners/occupiers of factories/sheds have also raised permanent construction on public lands.

14. The respondents shall take all measures necessary to ensure that public lands in question are rid of such encroachments as swiftly as possible and without exception.

15. The petition is dismissed in the above terms. The pending application also stands disposed of.

VIBHU BAKHRU, J

JULY 18, 2018
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