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

+ **W.P.(C) 6591/2018 & CM Nos. 25144-45/2018**

DELHI FLYING CLUB LTD

..... Petitioner

Through: Mr Umesh Sharma and  
Mr Ajay Kumar, Advocates.  
versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC  
for R-1.  
Mr Digvijay Rai and Mr Kustubh Singh,  
Advocates for AAI with Mr S. Dayal,  
GM(Law), AAI, Mr Raj Kumar Khangwal,  
JGM (Law) and Ms Raama Sharma, AM  
(Comm.), AAI for R-2/AAI.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**05.07.2018**

**VIBHU BAKHRU, J**

1. Delhi Flying Club Limited (hereafter 'DFC') has filed the present petition, *inter alia*, praying as under:-

“Writ, order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction in favour of the petitioner and against the respondents thereby directing the respondent No.2 to constitute the Appellate Tribunal of Airport and hear and decide the appeal as filed by the Delhi Flying Club in March, 2018 against the orders dated 6/1/2017 in Eviction Case No.

2/2015 .

Writ, order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction in favour of the petitioner and against the respondents thereby restraining the respondent No.2 from taking the possession of the club or to create any hindrance in the operation of the Delhi Flying Club till the appeal as filed is decided by the Appellate Tribunal.”

2. It is claimed that the present petition is filed by the newly elected Executive Committee of DFC who are aggrieved by the recent development and the conduct of the erstwhile Management Committee of DFC, which has led to the closure of the DFC. As is apparent from the prayers made in the present petition, the petitioners are seeking to assail the eviction order dated 06.01.2017 passed by the Eviction Officer of Airport Authority of India (hereafter ‘EO’) before Appellate Tribunal of Airports.

3. It is stated that DFC was occupying a total area of 8352.01 sq. meters at the Safdarjung Airport from which it has been evicted.

4. The EO issued a show cause notice dated 20.11.2015 to DFC alleging that an area of measuring 6149.81 sq. meters had been licensed to DFC from 1982 to 1987. After the license had expired, the DFC had not applied for renewal of the license agreement.

5. It is stated that all flying activities at the Safdarjung Airport were stopped with effect from January, 2002 pursuant to the directions issued by the Ministry of Home, Government of India. Thereafter, the Airport Authority of India (AAI) had issued a letter dated 10.11.2015

calling upon the DFC to vacate the premises occupied by it at Safdarjung Airport and handover peaceful possession of the said premises to AAI. The DFC contested the proceedings before the Estate Officer; however, it was unsuccessful and the proceedings culminated in the eviction order dated 06.01.2017.

6. It is relevant to note that prior thereto the DFC had filed a writ petition being W.P. (C) 8183/2015, *inter alia*, impugning the directive dated 17.07.2015 issued by AAI to its officers with respect to license fee for premises occupied at airports. The DFC also impugned a demand dated 05.08.2015 issued by AAI for a sum of Rs. 8,30,31,076/- towards arrears of license fee till 31.08.2015. DFC also challenged the notice dated 26.05.2015 issued under Section 28(G)(4) of the Airport Authority of India Act, 1994 by the EO.

7. Whilst the said petition was pending, the DFC filed yet another writ petition being W.P. (C) 11160/2015 challenging the show cause notice dated 20.11.2015 (which subsequently culminated in the eviction order dated 06.01.2017). DFC also sought an order restraining AAI from evicting DFC pending finalization of policy for Flying Clubs.

8. Both the petitions (W.P. (C) 8183/2015 & W.P. (C) 11160/2015) were heard together and were dismissed by a common judgment dated 07.07.2016 rendered by a Coordinate Bench of this Court. This Court noted that it was not in dispute that the DFC was only a licensee in respect of the land/property in question and the

license granted in favour of the DFC had expired. It was also noted that the license enjoyed by DFC was under AAI. The Court held that as a licensor, AAI was entitled to fix the license fee and was further entitled to terminate the license at any time. In those proceedings, the principal contention advanced on behalf of DFC was that AAI was bound to act in accordance with the letter dated 09.10.2012 issued by the Government of India and, therefore, was obliged to keep the recovery of license fee in abeyance till a policy was framed. The said contention was rejected by this Court and the petitions were dismissed.

9. Aggrieved by the same, DFC preferred appeals before a Division Bench of this Court (LPA No. 446/2016 and LPA No. 447/2016). The said appeals were also dismissed by a Division Bench of this Court by a judgment delivered on 02.02.2018. The Division Bench of this Court held that *“the AAI is clearly the competent authority to determine the amount of rent and to collect any dues, and its decision to pursue recovery of dues is valid”*. However, the Division Bench also permitted DFC to challenge the eviction order before the Appellate Authority or competent forum and further held that the same would be considered in accordance with law.

10. The DFC filed yet another petition (this was a third petition filed by DFC) being W.P. (C) 2127/2018, *inter alia*, praying as under:-

“i) pass an order directing the Respondent No.1 to constitute the Airports Appellate Tribunal within a

reasonable period of time so that the Appeal filed by the Petitioner can be adjudicated upon;

ii) pass an order staying the operation of Eviction Order dated 06.01.2017 passed by the Ld. Eviction Officer till the time the Airports Appellate Tribunal becomes functional.

iii) pass an order directing Respondent No.2 to not take any coercive steps regarding eviction of Petitioner from the premises at Safdarjung Airport till the time the Airports Appellate Tribunal becomes functional.

iv) pass any other order/orders which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case.”

11. It is at once clear that the prayers made in the above petition were similar to the prayers made in the present petition.

12. The DFC filed yet another petition being W.P. (C) 2616/2018 seeking somewhat similar reliefs. This is evident from the prayers made in the said petition, which are set out below:-

“i) pass an order directing the Respondent No.1 to constitute the Airports Appellate Tribunal within a reasonable period of time so that the Appeal filed by the Petitioner can be adjudicated upon:

ii) pass an order staying the operation of the Recovery Order dated 17.01.2017 passed by the Ld. Eviction Officer till the time the Airports Appellate Tribunal becomes functional.

iii) pass an order directing the Respondent No.2 to not take any coercive steps regarding recovery of dues from the Petitioner, till the time the Airports Appellate

Tribunal becomes functional.

iv) pass any other order/orders which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case.”

11. The aforementioned petitions came up for hearing before a Coordinate Bench of this Court on 19.03.2018. On that date, this Court held that the appeals preferred by the petitioner were required to be heard, as the Arbitral Tribunal was not in position. The Court then proceeded to issue various directions including directing the DFC to deposit the license fee and damages as demanded by AAI by its recovery notice dated 17.01.2017. DFC was also directed to file the entire appeal paper book along with all documents with the Registry of this Court.

12. It is apparent from the order dated 19.03.2018 that the Court had decided to consider the appeals preferred by the DFC since an Appellate Tribunal was not functioning. The said order was partially modified by an order dated 04.04.2018. DFC preferred an appeal (LPA No. 203/2018) against the orders dated 19.03.2018 and 04.04.2018 passed by this Court in W.P. (C) 2127/2018 and W.P. (C) 2616/2018). In its appeal the DFC prayed as under:-

“i) set aside the impugned orders dated 19.03.2018 and 04.04.2018 and pass an order directing the Respondent No.1 to constitute the Airports Appellate Tribunal within a reasonable period of time so that the Appeal filed by the Petitioner can be adjudicated upon.

ii) pass an order staying the operation of Eviction

Order dated 06.01.2017 passed by the Ld. Eviction Officer till the time the Airports Appellate Tribunal becomes functional.

iii) pass an order directing the Respondent No.2 to not take any coercive steps regarding eviction of Petitioner from the premises at Safdarjung Airport, till the time the Airports Appellate Tribunal becomes functional.

iv) pass any other order/orders which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case.”

13. The reliefs as sought for were not granted and the Division Bench disposed of the appeal by an order dated 13.04.2018 listing the matter (W.P. (C) 2127/2018 and W.P. (C) 2616/2018) before the Coordinate Bench of this Court on 18.04.2018.

14. W.P. (C) 2127/2018 was disposed of on 23.04.2018. At the hearing held on that date (23.04.2018), DFC had produced a copy of the resolution along with an affidavit sworn by the officiating Secretary of DFC seeking time till 23.06.2018 for evicting the premises. The resolution appended to the affidavit produced before this Court also indicated that DFC desired to withdraw all petitions and statutory appeals filed before Airport Appellate Tribunal against the orders dated 06.01.2017 and 17.01.2017 passed by EO. Mr Rai, the learned counsel who had appeared for AAI on that date had opposed DFC's request for grant of further time. After considering the same, this Court granted DFC time till 26.06.2018 to handover the premises. The Court had indicated that it had permitted DFC to

continue to occupy the premises in order to enable it to honour its commitment to third parties and to generate money for paying salaries.

15. On 23.04.2018, the DFC also withdrew the writ petition bearing No. W.P. (C) 2616/2018 with liberty to press the statutory appeals filed before the Airport Appellate Tribunal.

16. It is stated that, thereafter, DFC has filed yet another writ petition being W.P. (C) 3240/2018, *inter alia*, impugning the demand notice dated 20.03.2018 issued by AAI and further praying that AAI be restrained from taking any coercive steps for recovery of its due till the time the Airport Appellate Authority becomes functional.

17. In the meanwhile, one Captain S.S. Panesar (one of the members of the newly constituted Committee that has preferred the present writ petition) also filed a writ petition being W.P. (C) 5673/2018, *inter alia*, praying as under:-

“ii. writ, order or direction in the nature of Mandamus or any other appropriate it, order or direction in favour of the Petitioner and against the Respondents thereby restraining the Respondents from closing the down the operations of Delhi Flying Club or to take possession of the club in any manner whatsoever.”

The said writ petition was also dismissed as withdrawn by the Division Bench of this Court on 25.05.2018 with liberty to the petitioners to invoke appropriate remedy.

18. Captain S.S. Panesar and others filed yet another petition being W.P. (C) 6107/2018, *inter alia*, praying as under:-

“I. writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction in favour of the Petitioner and against the Respondent thereby directing the Respondent No. 2 to constitute the Appellate Tribunal of Airport to hear and decide the appeal as filed by the Delhi Flying Club in March, 2018 against the orders dated 06.01.2017 in Eviction Case No. 2/2015;

II) writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction in favour of the Petitioner and against the Respondent thereby restraining the Respondent No. 2 from taking the possession of the club or to create any hindrance in the operation of the Delhi Flying Club till the appeal is filed is decided by the Appellate Tribunal;

Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be also passed in favour of the Petitioner.”

19. The said petition was also premised on the basis that the earlier Managing Committee of DFC, which had pursued the matter before this Court had acted beyond their mandate. This is similar to the plea as raised by DFC in this petition. The said petition W.P. (C) 6107/2018 was disposed by a Coordinate Bench of this Court by an order dated 30.05.2018. The relevant extract of which reads as under:-

“It seems that the Delhi Flying Club has decided to take a second shot at seeking extension of its occupation in the subject premises, which, were licensed to them by AAI, by now filing a writ petition via certain members.

According to Mr. Kirti Uppal, the Management Committee, which, was propagating the cause of the Delhi Flying Club in the earlier round before this Court,

acted beyond its mandate.

It is not disputed before me that the Management Committee, which, preferred actions in this Court on behalf of the Delhi Flying Club, comprised of persons who were duly elected. If this position is correct, which it is, the argument advanced by the petitioners that the Management Committee did not have the requisite mandate cannot be accepted. Concededly, the Management Committee was vested with both, de jure and de facto authority to put forth the point of view of the Delhi Flying Club before this Court in the earlier rounds.

To my mind, the members i.e., the petitioners herein, will have to live with the decision taken by those who were duly elected and mandated to take those calls.

The writ petition is, accordingly, dismissed with cost of Rs.7500 to be deposited with Delhi High Court Advocate Welfare Fund.

The advance-on-record for the petitioners will place on record the proof of cost.”

19. It is apparent from the above that the DFC had filed at least more than two petitions seeking relief from this Court on the ground that the Airport Appellate Tribunal was not functional and, therefore, its appeal could not be readily heard. Since, the Airport Appellate Tribunal was not functional, this Court had accepted the plea and passed an order for hearing the appeals. This is evident from the order dated 19.03.2018 passed in W.P. (C ) 2127/2018 and W.P. (C ) 2616/2018 preferred by DFC. As noticed above, W.P. (C) 2127/2018 was disposed of by this Court at the instance of DFC, whereby DFC had sought further time to evict the premises and had further indicated that it desired to withdraw its appeals. DFC had also withdrawn its

W.P. (C ) 2616/2018.

20. After taking the benefit of the order dated 23.04.2018, the DFC has filed the present petition once again seeking to agitate the similar reliefs before this Court. The facts, as noticed above, leave no matter of doubt that the endeavor of DFC is to make repeated attempts to obtain favourable orders of this Court. The present petition is clearly an abuse of the process of Court and such practices of repeatedly preferring petitions for similar reliefs must be discouraged. The contention that the Management Committee that was incharge of the affairs of the DFC had not diligently performed its functions and, therefore, the New Management Committee is entitled to approach this Court to agitate its grievance, is unmerited. Moreover, the said plea has already been rejected by this Court in the petition moved by Capt S.S Panesar (W.P. (C) 6107/2018). It appears that, essentially, the same persons have now filed this petition as part of the new Management Committee of the DFC

21. In view of the above, the present petition is dismissed with costs quantified at ₹50,000/-. DFC shall pay the same to AAI within a period of two weeks from today. All the pending applications are also disposed of.

**VIBHU BAKHRU, J**

**JULY 05, 2018/pkv**