

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

% **Date of decision: 7th September, 2018.**

+ **W.P.(C) 8872/2018 & CM No.34154/2018 (for stay)**

NIRMAL SINGH RANA **Petitioner**

Through: Mr. Amit Sharma, Adv.

Versus

THE ESTATE OFFICER & ANR **Respondents**

Through: Mr. Vikas Mahajan, CGSC with Mr. Aakash Varma, Mr. Deepak Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order [dated 6th August, 2018 in PPA No.31/2018 (CNR No.DLND01-007783-2018) of the Court of the Additional District Judge-02, New Delhi acting as the Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act)] of dismissal of appeal preferred by the petitioner against the order dated 10th July, 2018 of the respondent no.1 Estate Officer, of eviction under Section 5 of the PP Act, of the petitioner by removal of kiosk installed by the petitioner in a space measuring 1.0 sq. mtr. in the courtyard of the Out Patient Department (OPD) Hall of Dr. Ram Manohar Lohia Hospital (Hospital), New Delhi.

2. This petition came up first before this Court on 24th August, 2018 and thereafter taken up on 5th September, 2018 when the counsel for the respondent drew attention to the monetary demand dated 10th May, 2018 made by the Deputy Director (Administration) of the Hospital on the

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petitioner for a sum of Rs.3,32,500/- for the period from 1st March, 2005 till 31st May, 2018. It was thus enquired from the counsel for the petitioner, whether the petitioner had paid the said amount. The counsel for the petitioner stated that though the petitioner had filed receipts of payment made from time to time but he could not tell how much was the total payment and whether payment for the period after 31st May, 2018 had been made. It was however undertaken that if the amount for which receipts are available with the petitioner is less than the amount of Rs.3,32,500/- and/or all the receipts for payment till September, 2018 are not available, the balance payment will be deposited with the Accounts Department of the Hospital by the next date. Accordingly, the hearing was adjourned to today.

3. Today, the counsel for the petitioner states that the receipts in possession of the petitioner are for a sum of Rs.3,35,000/- and the remaining amount due of Rs.62,500/- has been deposited by the petitioner yesterday vide Demand Draft under cover of letter dated 6th September, 2018, copy of which is handed over in the Court and is taken on record.

4. The counsel for the respondents, appearing on advance notice, on enquiry states that he is only aware that some payment was made yesterday but is not aware of the particulars thereof.

5. I may in this regard notice that though the counsel for the respondents had also appeared before this Court on advance notice on 5th September, 2018 but had stated that he was not aware of any facts and had been unable to get any instructions from the respondents. It was verbally informed to the counsel for the respondents that the whole purpose of appearing on advance notice is defeated if the respondents do not properly brief the advocate

appearing on advance notice and owing to the same, the hearing is adjourned and the petition cannot be disposed of on the first day itself.

6. Today, though Mr. Murari Kumar, LDC of the respondents is present but as aforesaid, without even knowing as to whether the payment of the amount claimed has been received or what are the dues, if any.

7. On enquiry, it is informed that Mr. Anil Bhatt, Office Superintendent of the Hospital, is in charge of litigation.

8. The counsel for the petitioner however states that Dr. Goyala, Additional Medical Superintendent of the Hospital is in charge of litigation.

9. Dr. Goyala, Additional Medical Superintendent of the Hospital is requested to ensure that in future, counsels appearing on advance notice are properly briefed, the file of the Hospital relating to the matter is shown to them and that the officials sent to the Court are fully in the know of the facts; else it would appear that the doctors and officials of the Hospital are in connivance with the persons litigating with the Hospital. The counsel for the respondents to personally deliver a copy of this order to Dr. Goyala, Additional Medical Superintendent and apprise him of the matter.

10. The counsel for the petitioner has argued (i) that the Deputy Director (Administration) of the Hospital, vide letter dated 10th May, 2018 at page 75 of the paper book, claimed that the petitioner was allotted the kiosk vide order dated 19th December, 2005 but had not taken any valid extension from the Hospital Authority; (ii) that it was further stated in the said letter, that as per contract, the petitioner was supposed to pay prescribed licence fee but the amount of Rs.3,32,500/- was due as outstanding from the petitioner and the petitioner was directed to deposit the said outstanding dues within seven

working days of the receipt of the letter; (iii) that though it is claimed in the letter dated 10th May, 2018 that the petitioner was allotted the kiosk on 19th December, 2005 but the demand for licence fee in the letter dated 10th May, 2018 is w.e.f. 1st March, 2005; (iv) that the petitioner in fact has been operating his coffee machine from the space aforesaid inside the Hospital since the year 2000; attention in this regard is drawn to page 74 of the paper book being a copy of letter dated 25th November, 2000 of the Northern India Packing Supplier to the Medical Superintendent of the Hospital purportedly bearing the stamp, in acknowledgement of receipt, of the Hospital, wherein it is claimed that the space for coffee machine was allotted to Northern India Packing Supplier in the year 2000; (v) that in the year 2000, there was no policy qua allotment; and, (vi) that the petitioner however admits that the petitioner is a licensee with respect to the space inside the Hospital, from where the coffee machine is being operated.

11. I have enquired from the counsel for the petitioner, whether the petitioner in the present petition has anywhere pleaded that the petitioner is the proprietor of Northern India Packing Supplier.

12. The counsel for the petitioner states that it is not so stated but the signatures as appear on the photocopy of the aforesaid letter of the authorised signatory of Northern India Packing Supplier, are in fact of the petitioner.

13. In the absence of any pleading in the petition in this respect, the possibility of Northern India Packing Supplier, which in the aforesaid letter claimed to be the allottee/licensee of the space for coffee machine, having

sublet, assigned or parted with possession to the petitioner cannot be ruled out.

14. Be that as it may, I have enquired from the counsel for the petitioner, that once the petitioner admits that the petitioner is a licensee of the said space, what is wrong with the impugned order.

15. The counsel for the petitioner states that the order of eviction of the respondent no.1 Estate Officer is bad because it rests on false facts as pointed out above. It is further contended that the procedure prescribed in law has not been followed.

16. On enquiry as to which procedure has not been followed, it is stated that per Section 4 of the PP Act, a notice to show cause of seven days is required to be given; however, at the same time attention is drawn to notice to show cause dated 18th May, 2018 issued by the respondent no.1 Estate Officer to the petitioner, granting time to the petitioner to show cause on or before 31st May, 2018 and it is admitted that the same satisfies the requirement of seven days. It is however argued that while in the letter dated 10th May, 2018 it was claimed that the petitioner was allotted the space on 19th December, 2005, in the show cause notice and in the order it is stated that there were no records of allotment of the said space to the petitioner. It is further argued that no ground for termination of licence was specified in the show cause notice dated 18th May, 2018.

17. I am unable to agree.

18. Notice dated 18th May, 2018 records that (i) that the space aforesaid was allotted long time back, for selling coffee and tea; (ii) that however the letter number and date of allotment was not traceable; (iii) that as per terms

and conditions and of running of kiosk in vogue, the Medical Superintendent of the Hospital has all rights to cancel the allotment in case of violation of any terms and conditions as mentioned in the letter; (iv) that as per the receipts available in the record, the petitioner was required to pay the license fee @ Rs.2,500/- per month by 7th of each month plus electricity and other charges; (v) that the Additional District Judge, Patiala House Courts, in MCA No.62/2015 in Civil Suit No.261, had vide order dated 17th December, 2015, observed that vendors were occupying the premises of Dr. RML Hospital and conducting business activities, without obtaining permission from the Competent Authority and directed an enquiry to be conducted in the matter; (vi) that a Committee was constituted under the Chairmanship of Additional Medical Superintendent to ascertain the legality of the occupancy of Hospital premises by certain vendors for carrying on business therefrom; (vii) that the said Committee gave an opportunity to the petitioner to submit documentary evidence for occupying the space; (viii) that the documents submitted by the petitioner were examined by the Committee and the Committee was of the opinion that the documents were not valid as their effect had ceased and the petitioner was unable to submit any valid document entitling him to occupy the space; and, (ix) that the Committee thus concluded that the petitioner was occupying the space without obtaining any extension from the Hospital Administration.

19. I may state that the same contents as aforesaid are also found in the order of eviction dated 10th July, 2018.

20. It thus cannot be said that the notice dated 18th May, 2018 did not give any ground of eviction.

21. I have even otherwise again asked the counsel for the petitioner that when the petitioner once admits to be a licensee, whether not is liable to vacate once the Hospital as licensor does not want the petitioner to continue. Attention of the counsel for the petitioner in this regard has also been drawn to ***Gesture Hotels & Food Pvt. Ltd. Vs. The New Delhi Municipal Council*** AIR 2014 Del 143 where it has been reiterated that even if licence is for a fixed period even then the claim of the licensee can only be for damages. Here, it is not the case of the petitioner that the licence of the petitioner is for any period longer than that when show cause notice was issued and order of eviction was passed.

22. The last argument of the counsel for the petitioner is, that the Hospital, pursuant to the direction of the Additional District Judge, Patiala House Court aforesaid, has initiated proceedings before Estate Officer against a large number of other persons carrying on business from inside the Hospital and against all of whom orders of eviction have been passed and the appeals preferred by others are still pending before the District Judge.

23. I am unable to understand as to how the same constitutes a ground or a reason for entertaining this petition. If the appeals of others entail the same facts, needless to state that this order will constitute a precedent for decision thereon. However, if the facts in any of the appeals are different, of course the District Judge as Appellate Officer would decide the *lis*.

24. The counsel for the petitioner has fairly stated that he is the counsel for the appellants in other appeals also and will place a copy of this order in all the appeals relating to Dr. RML Hospital in which he is the counsel.

25. No merit is thus found in the petition.

26. The counsel for the petitioner had been interrupting the dictation and was requested to wait. It has now been asked from him as to what he wanted to urge.

27. The counsel for the petitioner has made three submissions: (i) that the licence of the petitioner has not been terminated; (ii) that while the order of eviction states that the licence granted to the petitioner ceased on 19th December, 2005, as per the letter dated 10th May, 2018 the licence was granted on 19th December, 2005; and, (iii) that the deposit made yesterday by the petitioner was without prejudice to his rights and contentions and the petitioner should at least be refunded the said amount.

28. As far as the first of the aforesaid contentions is concerned, though as aforesaid there has been sufficient termination of licence but even if it were to be held that there was no termination of licence, it cannot be lost sight of that the Indian Easements Act, 1882 does not prescribe any format for termination of a licence, as distinct from Transfer of Property Act, 1882 which provides for format of a notice for termination of lease. With respect to Transfer of Property Act also, Supreme Court in *Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728 has held that once a suit for eviction is instituted and has remained pending for 15 days, being the period prescribed for notice of termination of lease, even if prior to the institution of the suit no notice of termination has been served, the institution of the suit itself is termination of licence. The same would apply to the notice to show cause admittedly served on the petitioner on 18th May, 2018.

29. As far as the second of the aforesaid contentions is concerned, it is quite evident from the facts as aforesaid that the petitioner has been the

beneficiary of the laxity of the officials of the Hospital in securing public property and has enjoyed the public property at rates which, according to the petitioner itself, were fixed about 18 years back. If the officials of the Hospital had been diligent, the said rates would have been increased in consonance with the prevalent values. Thus, even if there is any inconsistency in the communications issued by the Hospital from time to time, again owing to none of the officials having personal interest or helping the occupants such as the petitioner, the same does not create any right or entitlement in the petitioner to continue in the premises and this Court cannot, as guardian of public properties, on such mistakes of the officials, allow public properties to be unauthorisedly occupied.

30. With respect to the third contention, suffice it is to state that the payment made is in terms of the undertaking recorded in the order dated 5th September, 2018 in this petition, and the petitioner cannot renege therefrom.

31. The petition thus stands dismissed.

32. It is expected that the respondent no.1 Estate Officer will this time not be lax in executing the order of eviction.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 07, 2018

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