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

% **Date of decision: 10th September, 2018.**

\+ **W.P.(C) 9334/2018**

ARTI RANI .... **Petitioner**

Through: Geeta Luthra, Sr. Adv. with Mr. Prateek, Mr. Kumar Sushobhan & Ms. Neeta Bahl, Adv.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ANR. …... **Respondents**

Through: Ms. Mini Pushkarna, Ms. Swagata Bhuyan & Ms. Shiva Pandey, Advs. for NrDMC.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order [dated 7th August, 2018 in PPA Appeal No.30150/2016 (CNR No.DLCT01-003396-2016) of the Court of District Judge (Headquarters) acting as an Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)] of dismissal of appeal preferred by the petitioner against the order [dated 27th January, 2016 in PPA Case No.1337/2011] of respondent no.2 Estate officer of respondent no.1 North Delhi Municipal Corporation (NrDMC) in exercise of powers under Section 5(1) of the PP Act, of eviction of the petitioner from Hall No.1, MCD Market, Saraswati Marg, Karol Bagh, Delhi.

2. This petition came up first before this Court on 5th September, 2018 when, in the face of the contention of the counsel for the respondent no.1

NrDMC appearing on advance notice that there were outstanding dues of about Rs.7 crores from the petitioner, the senior counsel for the petitioner, under instructions stated that the petitioner, without prejudice to her rights and contentions, will within a day deposit with the respondent no.1 NrDMC an amount of Rs.1 crore. Awaiting the same, the hearing of the petition was adjourned to today.

3. Today, the senior counsel for the petitioner states that the petitioner has deposited the sum of Rs.1 crore with the respondent no.1 NrDMC. The senior counsel for the petitioner has handed over in the Court the deposit receipt dated 6th September, 2018 and which is taken on record.

4. The senior counsel for the petitioner has been heard.

5. It is the case of the petitioner in the petition, that (i) the Municipal Corporation of Delhi, being the predecessor in interest of respondent no.1 NrDMC, issued a public notice dated 26th March, 1997 inviting tenders for allotment of Car-Scooter parking/Shops/Kiosk/Stalls /Dhabas/Office Units, particulars of which were detailed therein, on 'as is where is' basis; (ii) the petitioner applied and was vide letter dated 6th October, 1997 informed of acceptance of her tender for Rs.53,020/- per month as licence fee for Hall X10 I, Municipal Market, Karol Bagh for a period of five years on the terms and conditions contained in the tender; (iii) a Licence Deed dated 6th October, 1997 was executed between the petitioner and the respondent no.1 NrDMC / its predecessor; (iv) MCD Market, Karol Bagh, Delhi was constructed by the respondent no.1 NrDMC in the year 1976 and consist of 65 shops; (v) though the shops in the market were initially allotted on monthly licence fee basis but later on vide Resolution No.982 dated 5th

March, 1979, 99 years leasehold rights were granted to the licensees of the shops and licence of approximately 45 shops were converted into leasehold; (vi) despite aforesaid Notification dated 5th March, 1979, the respondent no.1 NrDMC, in the tender aforesaid, offered the shops on a monthly licence fee basis for a period of 5 years; (vii) the petitioner, prior to the expiry of five years, vide her letter dated 24th April, 2002, applied to the respondent no.1 for conversion of her interest with respect to the aforesaid hall into a lease deed; (viii) the respondent no.1, with *mala fide* intention did not comply with the said request of the petitioner inspite of repeated requests and reminders of the petitioner; (ix) however, on request of petitioner for renewal of the licence for a further period of five years, the licence was so renewed on 10th February, 2003 for a period of five years subject to 100% increase in licence fee and subsequently a Licence Deed dated 10th February, 2003 was executed between the petitioner and the respondent no.1 NrDMC; (x) licensees of other shops in various markets and colonies of respondent no.1 NrDMC were also representing to the respondent no.1 NrDMC for conversion of licences into leasehold and though various officials of the respondent no.1 NrDMC also were in favour of the said proposal, but the respondent no.1 NrDMC did not take any decision; (xi) the petitioner continued to represent to the respondent no.1 NrDMC for such conversion of licence into leasehold; (xii) instead of considering the aforesaid request of the petitioner, the respondent no.1 NrDMC sent cancellation-cum-eviction notice dated 26th February, 2009, of cancellation of allotment of hall aforesaid in favour of the petitioner and calling upon the petitioner to vacate the same; (xiii) the petitioner immediately approached the Commissioner, MCD who ordered the file to be 'kept in abeyance'; (xiv) the matter continued to languish; (xv) all of a sudden, after seven and a half years, on 15th February, 2011, the officials of respondent no.1 NrDMC came to the hall and claimed that the wall in front of the hall / shop of the petitioner was an encroachment and had to be removed; (xvi) the said wall was built by the respondent no.1 NrDMC itself and is in existence prior to allotment of the hall / shop to the petitioner in the year 1995; (xvii) the petitioner filed W.P.(C) No.1498/2011 seeking to restrain the respondent no.1 NrDMC from demolishing / removing the hall and vide order dated 7th March, 2011, stay of removal / demolition of the hall was granted; (xviii) as a counterblast and as an afterthought, the respondent no.1 NrDMC commenced the proceedings under PP Act for eviction of the petitioner (xix) the petitioner replied to the notice of cancellation of allotment and also participated in the proceedings before the respondent no.2 Estate Officer; (xx) the petitioner also filed W.P.(C) No.3146/2015 for protection of her rights; (xxi) the said petition was taken up along with W.P.(C) No.2437/2015 and both the petitions were dismissed vide common order dated 2nd March, 2016 reported as ***Asha Chitkara Vs. North Delhi Municipal Corporation*** (2016) 228 DLT 395; (xxii) Smt. Asha Chitkara aforesaid preferred LPA No.535/2016 which is still pending and during the pendency thereof, Smt. Asha Chitkara has deposited Rs.1 crore with the respondent no.1 NrDMC; (xxiii) the respondent no.2 Estate Officer passed the order dated 14th January, 2016 of eviction of the petitioner from the hall aforesaid and vide order dated 27th January, 2016, computed damages due from the petitioner at Rs.3,64,07,386/-*;* and, (xxiv) the petitioner filed an appeal under Section 9 of the PP Act but which has been dismissed.

6. The respondent no.2 Estate Officer, in the order of eviction, has recorded / found / observed, that (i) the hall aforesaid was allotted to the petitioner for a period of five years extendable to another five years on monthly licence fee basis, subject to enhancement by 100% after five years; (ii) accumulated outstanding licence fee / damages charges recoverable from the petitioner for use of the premises amounting to Rs.1,39,76,645/- with 24% interest were recoverable from the petitioner; (iii) the petitioner did not comply with the cancellation-cum-eviction notice dated 26th February, 2009 and also stopped paying the licence fee; (iv) the petitioner had neither deposited the outstanding licence fee / damages nor handed over physical possession of the hall; (v) the petitioner was enjoying possession without making any payment; (vi) notice dated 12th May, 2011 under Section 4 of the PP Act was issued to the petitioner and the petitioner had been appearing since 30th May, 2011; (vii) the petitioner sought adjournments from time to time stating that she had made representation to the Commissioner, MCD; (viii) the witness of the MCD had proved the case of the MCD and the said witness was cross-examined thoroughly by the petitioner; (ix) the petitioner had chosen not to lead any evidence except for filing certified copies of Resolutions and documents; (x) evidence of the respondent no.1 NrDMC as well as of the petitioner was closed as far back as on 21st January, 2013; (xi) the arguments were heard and opportunity to file written arguments also granted; (xii) the petitioner from time to time claimed that she was entitled to conversion of her licence to lease under policy; however, the application of the petitioner in this regard stood rejected on 8th December, 2014; (xiii) there was no dispute that the aforesaid hall which was public premises was allotted to the petitioner initially for a period of five years on a monthly licence fee

basis; (xiv) the said licence was extended for another period of five years on 100% increase in licence fee, as per Policy; (xv) though the said licence came to end on 11th December, 2007 but, the petitioner continued in possession; and, (xvi) the petitioner was retaining public premises without fulfilling the norms / policies and the requests of the petitioner for conversion of licence to leasehold had already been rejected.

7. Vide ***Asha Chitkara*** supra, the petitions preferred by the petitioner as well as Asha Chitkara challenging the refusal of the respondent no.1 NrDMC to grant leasehold rights with respect to the hall aforesaid and seeking to restrain the respondent no.1 NrDMC from taking any coercive step for eviction of the petitioner and seeking mandamus to grant leasehold rights with respect to the hall aforesaid, were dismissed. It was held (i) that the petitioner had come into possession of the shop upon allotment thereof in favour of the petitioner on licence basis in an open tender process; (ii) that the petitioner at that time did not contend that since respondent no.1 NrDMC had converted the shops granted on licence basis at the time of establishment of the market into leasehold, the tenders invited by the respondent no.1 NrDMC for allotment of remaining shops in the market on licence basis were faulty and respondent no.1 NrDMC could not discriminate between shops in the same market; (iii) the petitioners, at the time of entering into the market, were happy and satisfied to have the shop on licence basis for five years only; (iv) that there may have been a large number of other persons who may not have responded to the notice inviting tender, being not desirous of acquiring shop on licence basis for a period of five years only; (v) that thus the petitioner, in bidding for the said shops, competed only with those who were willing to take the shops on licence basis; (vi) that the petitioner

having come into possession of the shops through open bidding tender process and as per the terms whereof the rights being created in the shops were of a licencee for a period of five years only, could not demand conversion of the licence into leasehold and the respondent no.1 NrDMC could not convert the said licence into leasehold; (vii) that the shop was a public property and had the respondent no.1 NrDMC invited tenders on leasehold basis, the possibility of respondent no.1 NrDMC fetching higher amount than what was tendered by the petitioner could not be ruled out; (viii) that to allow a person who enters into a possession as a licensee to have his licence converted into leasehold would amount to allowing a backdoor entry into the premises, to the detriment of the public interest and public exchequer; (ix) that merely because the respondent no.1 NrDMC was allotting some shops in the market on leasehold basis would not entitle the petitioner, who entered into the shops as a licencee, to have the licence, obtained at concessional rates, converted into leasehold; (x) that the petitioner, without vacating the shop, cannot make such a claim of discrimination and the respondent no.1 NrDMC will have to invite fresh bids on leasehold basis and the petitioner can at best participate in the same; (xi) that the Resolutions of the respondent no.1 NrDMC relied upon by the petitioner did not vest any right in the petitioner as they were of a date prior to the petitioner coming into occupation of the premises; (xii) that the Resolutions No.494 and 495 dated 29th November, 2005, according to the respondent no.1 NrDMC were never operationalized and never came into effect and no benefit thereof had been given to any person whatsoever; and, (xiii) that in fact the Division Bench of this Court in ***Anuradha Sharma Prop. of M/s New Shehnai Banquet & Restaurant Vs. Municipal***

Corporation of Delhi (2010) 173 DLT 400 (DB) had negated the claim on the basis of Resolution No.494.

8. It has thus been straightaway enquired from the senior counsel for the petitioner, whether not the claim of the petitioner for conversion of licence into lease, which is the sole fulcrum of the defence to eviction, has already been negated by this Court and which order has since attained finality.

9. The senior counsel for the petitioner states that though the petitioner did not challenge the judgment dated 2nd March, 2016 in ***Asha Chitkara*** supra but Asha Chitkara, whose petition was also dismissed vide the same judgment, and who is similarly placed as the petitioner, has preferred an appeal to the Division Bench against the aforesaid judgment.

10. The counsel for the respondent No.1 NrDMC appearing on advance notice states that no notice even of the appeal has been issued till date.

11. I am unable to accept the aforesaid contention. Even if the appeal preferred by Asha Chitkara is pending consideration, that will still not affect the judgment of dismissal of writ petition preferred by the petitioner and the same having attained finality vis-à-vis the petitioner, the petitioner cannot take any benefit of the appeal preferred by Asha Chitkara.

12. The senior counsel for the petitioner has then contended that the petitioner also has preferred an appeal against the judgment dated 2nd March, 2016 in ***Asha Chitkara*** supra, but which has not been listed.

13. Again, the same cannot be a ground for entertaining this writ petition.

14. The other arguments raised by the senior counsel for the petitioner are, (i) that the licence of the petitioner stands extended from time to time by

conduct; (ii) that Mr. Mehra, the then Commissioner of the respondent No.1 NrDMC, had in the presence of the petitioner written on the file that the proceedings for eviction be 'kept in abeyance' and the Commissioner of respondent No.1 NrDMC having ordered so, the subsequent proceedings against the petitioner are misconceived; (iii) attention is again sought to be drawn to the policies for conversion into leasehold and which policies have already been considered in ***Asha Chitkara*** supra; (iv) that licences to other shops in the same market have been converted into leasehold; (v) that even the licence of one of the adjoining shops has been renewed/continued but renewal sought by the petitioner has been denied; adjournment is sought to file an affidavit in this regard; (vi) that the petitioner, while impugning the order of eviction and the dismissal of appeal preferred thereagainst in this petition, is entitled to argue again all that was argued in ***Asha Chitkara*** supra earlier filed by the petitioner and which was decided against the petitioner; (vii) that "judicial discipline" will be served only if this petition is considered after the LPA preferred by Asha Chitkara as well as by the petitioner is considered by the Division Bench; (viii) that the petitioner is being discriminated against; (ix) that "basic principles of law" require this Court to take the policy of "lets wait" when Asha Chitkara, "identically situated" as the petitioner, is still in LPA; (x) that the respondent No.1 NrDMC, vide its letter dated 6th January, 2015 to the Assistant General Manager of Axis Bank, sought revalidation of demand drafts deposited by the petitioner with the respondent No.1 NrDMC and did not ask the petitioner to get the demand drafts revalidated; the Assistant General Manager of Axis Bank, without instructions of the petitioner, could not have got the demand drafts revalidated and redeposited the same with the respondent No.1 NrDMC; (xi) that the respondent No.1 NrDMC, vide its Circular No.L&E/NDMC/2013/D-4178 dated 12th June, 2013, has decided to grant ownership rights to certain categories of properties i.e. conversion from license to leasehold, leasehold to freehold in respect of properties transferred to it from Government of India; (xii) that the petitioner is a street vendor and the eviction of the petitioner is barred by the policy on street vendors also; (xiii) that this Court in ***Asha Chitkara*** supra, while dismissing W.P.(C) No.3146/2015 preferred by the petitioner, did not consider any of the said aspects; (xiv) that though the counsel for the respondent No.1 NrDMC during the hearing of ***Asha Chitkara*** supra stated that the Resolution No.494 dated 29th November, 2005 were never operationalized, but no statement on oath in this respect was given; a copy of the letter dated 8th July, 2014 of respondent No.1 NrDMC to the petitioner is handed over in the Court and it is argued that the respondent No.1 NrDMC in the said letter claimed to have "formulated the scheme for extension of license period beyond the maximum of 10 years" and the same means that the Resolution had become operational; (xv) that the respondent No.1 NrDMC is extorting monies from the petitioner; (xvi) that it is not the job of the citizens to keep track of all the policies of the Government and it is the duty of the Government to place all the policies in accordance with which the claim of the petitioner is to be decided; (xvii) that Clause 5.10.5 of the Master Plan for Delhi-2021 also requires *status-quo* to be maintained; copy of my judgment in ***Bishni Devi Vs. Municipal Corporation of Delhi*** 2010 SCC OnLine 2965 is handed over in the Court; and, (xviii) that the hall shop aforesaid has already been sealed on 9th August, 2018 and the petitioner should be permitted to operate therefrom.

15. Per contra, the counsel for the respondent No.1 NrDMC has argued (a) that proceedings under PP Act against Asha Chitkara are pending; (b) that no extension of licence has been given to any shop adjoining to the shop of the petitioner; (c) that the petitioner did not comply with the terms of the Circular dated 22nd July, 2013 and did not deposit the amounts to be deposited, inspite of repeated opportunities; (d) that this Court, in ***Asha Chitkara*** supra dismissing W.P.(C) No.3146/2015 earlier filed by the petitioner, has negatived any right of the petitioner to the premises; (e) that in fact the petitioner has been evicted from the subject shop on 9th August, 2018 and the respondent No.1 NrDMC has not merely sealed the premises; (f) that the licence of the petitioner was never restored in terms of Circular dated 22nd July, 2013; and, (g) that the petition is now infructuous.

16. The senior counsel for the petitioner in rejoinder has (I) handed over in the Court the National Policy for Urban Street Vendors as downloaded from the website of Ministry of Urban Employment and Poverty Alleviation, Government of India; (II) argued that the neighbours of the petitioner whose licence has been renewed are Adarsh Sachdeva and Surender Oberoi; and, (III) handed over in the Court a table showing the payments made/tendered by the petitioner from time to time.

17. I have considered the aforesaid arguments. No merit is found in any of the multifarious contentions of the senior counsel for the petitioner.

18. As far as the arguments of entitlement of the petitioner to have its erstwhile licence right converted into leasehold is concerned, the same has attained finality in ***Asha Chitkara*** supra with the dismissal of W.P.(C) No.3146/2015 preferred by the petitioner and as aforesaid, neither of the

grounds urged entitle this Court to give a go-by to the principle of finality of judgments and to re-hear and re-consider the said claim of the petitioner. Such re-hearing/re-look by the Court, if permitted, would result in the Court, qua the same dispute, taking different decisions from time to time and which will shake the faith of the citizen in the Courts. There can be no extension of licence by conduct and particularly for any fixed time. Mere acceptance of payments made/tendered by the petitioner do not entitle the petitioner to renewal/restoration of the licence term whereof had already expired. Reference if any required may be made to ***Chandu Lal Vs. Municipal Corporation of Delhi*** (1979) 15 DLT 168 (FB) and ***Aresko Restaurant Pvt. Ltd. Vs. New Delhi Municipal Corporation*** (2015) 219 DLT 350. As far as the argument, of Mr. Mehra, the then Commissioner of respondent No.1 NrDMC, ordering the proceedings against the petitioner to be 'kept in abeyance' is concerned, the less said the better. The entire argument, of the then Commissioner, MCD in the presence of the petitioner ordering so, raises suspicion of bias, especially when it is not shown that there was any reason available in law to the then Commissioner, MCD or that he had any authority to so order the proceedings to be 'kept in abeyance'. With respect to the claim of discrimination, reference may be made to the dicta of the Division Bench of this Court in ***Union of India Vs. Hotel Excelsior*** ILR (2013) 1 Del 157 where challenge was made to refusal of the L&DO to convert leasehold rights granted for cinema hall to be converted into freehold. It was held that there was no inherent right in a lessee to have the leasehold rights into freehold and the Government as lessor of the land is fully entitled to lay down the policy as to which leases are entitled to be converted into freehold and which are not. Similarly, the fault if any of the respondent No.1 NrDMC in seeking re-validation of demand drafts from the Bank issuing the same and not from the petitioner at whose instance the demand drafts were issued, does not vest any right or create any right in favour of the petitioner. The argument of the senior counsel for the petitioner to the effect that the petitioner is a street vendor shows the disparate nature thereof. The petitioner, though was allotted a shop on licence basis, is choosing the category of 'street vendors' to retain possession of the said shop. However, when the senior counsel for the petitioner is asked that why does the petitioner not, instead of vending from the shop, vend from the street, to be qualified as street vendor, the same is also not agreeable. A 'street vendor' is defined in Section 2(l) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 as a person engaged in vending of articles, goods, wares, food items etc. or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place. As distinct therefrom, the petitioner is in a shop. The shop which was licensed to the petitioner was situated in a market constructed by the respondent No.1 NrDMC. The invocation of the provisions qua street vendors is clearly misconceived. As far as the plea of the licenses of neighbouring shops having been renewed is concerned, the senior counsel for the petitioner, inspite of asking, has been unable to justify the provisions entailing such renewal. In the absence of any right of renewal, the renewal, even if any granted to a neighbour, would not vest any right in the petitioner. Article 14 of the Constitution of India does not subscribe to negative equality.

19. There is no merit in the petition.

20. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SPETEMBER 10, 2018
'gsr/bs'