

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

*Date of Order: September 27, 2018*

+ CM(M) 1288/2016 & C.M. 46217/2016

M/S KIC FOOD PRODUCTS PRIVATE LIMITED ...Petitioner

Through: Mr. A.S.Chandhiok &  
Mr. J.P.Sengh, Senior Advocates  
with Mr. Atul Shankar Mathur,  
Ms. Priya Singh, Ms. Deepali  
Datta, Mr. Angad, Ms. Mrigna  
Shekhar & Mr.Vivek Mathur,  
Advocates

Versus

DELHI DEVELOPMENT AUTHORITY ....Respondent

Through: Mr. Dhanesh Relan, Standing  
Counsel for DDA

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER**  
**(ORAL)**

1. Petitioner is the Licensee of respondent since the year 1982. It is not in dispute that the said license was renewed/ extended from time to time till 31<sup>st</sup> December, 2010. A Show Cause Notice of 20<sup>th</sup> September, 2016 (*Annexure P-14*) was served upon petitioner to file objections and to produce evidence in support of said objections. A reply thereto, was filed by petitioner in September, 2016. On 23<sup>rd</sup> November, 2016, parties were directed to file the list of witnesses and evidence and issue with respect to cross-examination of witnesses was left open to be considered on the next

date of hearing. In the impugned order of 23<sup>rd</sup> November, 2016 the concerned Estate Officer has relied upon Supreme Court's decision in *New India Assurance Co.Ltd. Vs. Nusli Neville Wadia and another* (2008) 3 SCC 279 to observe that there are two types of cases and the case of petitioner falls in the category where no evidence is required to be led, as the license issued to petitioner in respect of subject property has come to an end by efflux of time. On 23<sup>rd</sup> November, 2016 itself, the concerned Estate Officer of respondent-DDA had framed the following Issues:-

*"Issue -1:-*

*Whether KIC Foods been able to show any cause in pursuance of the notice under Section 4 of the PPA, that KIC Food Products Pvt. Ltd. is in authorized occupation of the premises i.e. shop cum restaurant Complex at Asian Games Village complex? Onus of proof on KIC Food Products Pvt.*

*Issue -2:-*

*Is KIC liable to be evicted from the i.e. shop cum restaurant Complex at Asian Games Village Games Village Complex? Onus of proof of DDA."*

2. On 8<sup>th</sup> December, 2016, the concerned Estate Officer closed the right of petitioner to file evidence, as petitioner had failed to tender its evidence in time. The right to cross-examine witness of other side was also closed by simply observing that there is no requirement of it.

3. The challenge to the impugned orders of 23<sup>rd</sup> November, 2016 and 8<sup>th</sup> December, 2016 by learned senior counsel for petitioner is on the ground that evidence filed by respondent needs to be controverted by

cross-examining its witness and stand of petitioner in reply to the Show Cause Notice has to be put to respondent's witness to show that the license in respect of subject premises was impliedly extended from time to time, as the license fee is being accepted by respondent from time to time.

4. Learned senior counsel for petitioner submits that unless opportunity to cross-examine respondent's witness is granted, petitioner will not be able to rebut respondent's case of exorbitant damages being inflicted on petitioner and the cross-examination of respondent's witness is also essential for proper adjudication of crucial issue i.e. whether it is a case of extension of license or its cessation. It is evident from interim order of 15<sup>th</sup> December, 2016 that with consent of respondent, petitioner was permitted to file its evidence by way of affidavit before the concerned Estate Officer. Petitioner's counsel asserts that it has been so done.

5. On the contrary, the challenge to impugned orders is repelled by learned Standing Counsel for DDA by submitting that proceedings under *The Public Premises (Eviction of Unauthorized Occupants) Act, 1971* are summary proceedings and since the case of petitioner falls in the category (where no evidence is required to be led) therefore, there is no justification for allowing petitioner to cross-examine respondent's witness. It is submitted that documents filed have not been disputed by petitioner and so, there is no occasion to cross-examine the witness on documents filed by the parties. Reliance is placed upon decision of a Coordinate Bench in *Damayanti Verma (deceased) through her L.Rs. Vs. LIC & Anr.* 182 (2011) DLT 771 to submit that once petitioner becomes

an unauthorized occupant, then there is no requirement of leading any evidence and so, cross-examination in summary proceedings is not required to be undertaken.

6. Upon hearing and on perusal of impugned orders, material on record and decisions cited, I find that the first issue framed by the concerned Estate Officer puts the burden of proving this issue upon petitioner and to prove this issue, petitioner needs to controvert the stand taken by respondent in its evidence regarding a decision being taken by Lieutenant Governor in August, 1993 for renewal of license in question for a period of ten years. Whether there was any renewal of license after December, 2010 or not, is a question of fact. Petitioner seeks to confront respondent's witness with some file notings of 14<sup>th</sup> January, 2015 and 12<sup>th</sup> February, 2016 regarding extension of license in question for a period of nine years. Whether these notings have legal sanctity or not and if in face of these notings heavy damages can be imposed upon petitioner or not, are the important facets on which respondent's witness needs to be cross-examined. Whether the license in question was impliedly extended or not, is also a question of fact, which can be established after respondent's witness is cross-examined.

7. In *Damayanti Verma (Supra)*, it has been said that lawful tenant or lessee cannot be treated at par with unlawful occupant or the licensee. There is no dispute with this proposition of law but it needs to be determined as to whether petitioner is unauthorized occupant or not. This determination can take place only after an opportunity of cross-examination is granted to petitioner. The doctrine of fairness requires that respondent's witness is cross-examined by petitioner to determine the lis

between the parties.

8. Supreme Court in *Nusli Neville Wadia (Supra)* had granted right of cross-examination to the parties. No doubt, the proceedings under *The Public Premises (Eviction of Unauthorized Occupants) Act, 1971* are summary proceedings but in the peculiarity of this case, petitioner is granted right to cross-examine respondent's witness and for this purpose, the concerned Estate Officer shall grant one effective opportunity to petitioner to do so.

9. In view of aforesaid, interim orders of 23<sup>rd</sup> November, 2016 and 8<sup>th</sup> December, 2016 are set aside so far as they close petitioner's right to cross-examine respondent's witness. To ensure expeditious conclusion of proceedings, let parties through their counsel appear before the Estate Officer on 9<sup>th</sup> October, 2018 at 11:00 AM, who shall fix a date for cross-examination of respondent's witness within a period of four weeks from 9<sup>th</sup> October, 2018 and ensure that respondent's witness is present for cross-examination on the date so fixed.

10. The concerned Estate Officer be apprised of this order forthwith to ensure its compliance.

11. With aforesaid directions, this petition and application are accordingly disposed of.

A copy of this order be given *dasti* to counsel for the parties.

**(SUNIL GAUR)**  
**JUDGE**

**SEPTEMBER 27, 2018**

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