

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.05.2019

+ **W.P.(C) 7775/2016**

PANCHKUIAN FURNITURE MARKET
ASSOCIATION (REGD.)

..... Petitioner

versus

DELHI METRO RAIL CORPORATION & ANR Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Harish Malhotra, Sr. Advocate with
	: Mr Lovkesh Sawhney, Advocate.
For the Respondents	: Mr Pushkar Sood, Advocate for
	: R-1/DMRC.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is an association of persons who were earlier carrying on their business from the shops located at Panchkuian Road, New Delhi. They were carrying on their business under License/Tehbazari rights granted by the erstwhile Municipal Corporation of Delhi (hereafter 'MCD'). The said market at Panchkuian Road was required to be removed for the development of the Mass Rapid Transport System (MRTS). Accordingly, MCD terminated the licenses/*tehbazari* rights granted to members of the petitioner association.

2. The market at Panchkuian Road was removed and the various

shopkeepers carrying on business from the said market (erstwhile shopkeepers at Panchkuian Road Market and now members of the petitioner association – hereafter referred to as ‘the Shopkeepers’), being project affected persons (PAPs), were rehabilitated in a new shopping complex developed at Bhai Vir Singh Marg. The shops at the said complex were allotted to the members of the petitioner association on a sub-lease for a period of thirty years.

3. The controversy raised in the present petition is two-fold. The first, relates to the term of the lease of the shops allotted to the Shopkeepers. The petitioner contends that the shops at Bhai Vir Singh Marg are required to be sub-leased to the Shopkeepers for a period of ninety-nine years and the said term cannot be restricted only to thirty years. The petitioner contends that respondent no.2 (Union of India) had provided the land to respondent no.1 – Delhi Metro Rail Corporation (DMRC) for rehabilitating the Shopkeepers on a ninety-nine years lease and therefore, DMRC was obliged to utilise the same for the purpose for which the land was leased; that is, to rehabilitate the erstwhile shopkeepers of Panchkuian Road. It is contended that in the given circumstances, DMRC was obliged to sub-lease the shops at Bhai Vir Singh Marg for a period co-terminus with its lease; that is, for a period of ninety-nine years.

4. The second, relates to a clause in the sub-lease granted by DMRC to the Shopkeepers, which proscribes the Shopkeepers from further transferring their interest in the shops in question. The petitioner contends that the sub-lease was required to be in the usual

terms of the leases executed by DDA, which do not proscribe further transfer of leasehold rights.

5. Before proceeding to address the aforesaid controversy, it would be relevant to note that the Shopkeepers were served with notices terminating their licenses / *tehbazari* rights in respect of shops at Panchkuian Road. Aggrieved by the same, the Shopkeepers had challenged the said action of DMRC, by filing a writ petition before this Court being *W.P.(C) NO. 17190-272/2005*. The Coordinate Bench of this Court had passed an order dated 02.06.2006 in the aforesaid proceedings, restraining DMRC and MCD from demolishing the shops at Panchkuian Road without following due procedure of law. The said order was challenged by DMRC and MCD in an appeal filed before the Division Bench of this Court (being *LPA No. 1609 of 2006*). Before the Division Bench, a proposal was made on behalf of DMRC/MCD that the license holders (the Shopkeepers) at Panchkuian Road whose license were terminated, would be rehabilitated at another site by providing an area of approximately 160 sq. feet on a lease for a period of thirty years on a concessional rate. The said offer was recorded in an order dated 22.08.2006 passed in LPA 1653/2006, which is set out below:-

“Without prejudice to the rights and contentions of the parties, Mr. Jaitley has given a proposal that all the licence holders, although their licences were terminated, shall be given a lease for 30 years on concessional rate, which, according to him, comes to Rs. 9.5 lacs approximately for an area of about 160 sq.ft. At the first instance, all the furniture market licensees numbering

about 200 shall be allocated space in the existing building, i.e. 49 shall be allocated on the ground floor and rest on other floors of the building.

However, the plans shall be sanctioned by NDMC and a building shall be constructed adjoining the said building which is already constructed and remaining furniture shops of upper floors shall also be given space on the, ground floor in the proposed building.

Counsel for the respondents pray for some time to seek instructions from their respective clients. Renotify on 29.08.2006 Standing Counsel for respondent-NDMC shall remain present on the date fixed.

Dasti.”

6. Concededly, the aforesaid offer was accepted and the parties arrived at a settlement, whereby it was agreed that the Shopkeepers would be allotted shops at DMRC's Commercial Complex at Bhai Vir Singh Marg. Thereafter, DMRC had constructed the Commercial Complex at Bhai Vir Singh Marg and the Shopkeepers were allotted shops on leasehold basis for a period of thirty years. Admittedly, the lease agreements were entered into between the individual Shopkeepers (members of the petitioner association) and DMRC, sometime in January, 2011. A copy of one such lease agreement has been placed on record. The recital of the lease agreement reads as under:-

“a) As per Hon'ble High Courts directives the affected shop keepers are allotted a shop in DMRC's Bhai Veer Singh Marg Commercial Complex.

- b) DMRC having considered the request of the shopkeepers has agreed to provide a covered space admeasuring 14 Sq. mtr to the shopkeeper for a period of 30 years starting from the date of handing over possession as per the terms and conditions given in this agreement.”

7. The Shopkeepers had entered into the lease agreements respectively, without any protest or reservation. It is also not disputed that the said lease agreement was in conformity with the settlement arrived at before the Division Bench of this Court. Clearly, in this view, it would not be open for the members of the petitioner association to raise any dispute or controversy, considering that they had willingly entered into the lease agreements with DMRC.

8. Mr Malhotra, learned senior counsel appearing for the petitioner had also referred to the rehabilitation policy framed by DMRC, which expressly provided that “*wherever the land is available in the nearby vicinity, the project affected shopkeepers may form the Association and the land would be allotted to the association on 99 years lease to the Association for constructing the shops for its members only.*” He had further pointed out that the policy also provided that the lease would be on the pattern of the lease deed of DDA. On the strength of the aforesaid policy, he contended that the sub-lease in favour of the members of the petitioner ought to be for a period of ninety-nine years and the Shopkeepers must have the option to transfer their leasehold interest, if they so desire.

9. The aforesaid contentions are unmerited. First of all, as noticed above, the sub-lease has been granted to the members of the petitioner in terms of the settlement that was arrived at before the Division Bench of this Court. The offer made by DMRC expressly stipulated that shops would be provided to the Shopkeepers for a lease of thirty years. And, this was accepted by the Shopkeepers without any reservations. Secondly, the petitioner's case does not fall within the scope of the relevant paragraphs referred to by Mr Malhotra. In the present case, shops have been allotted to the Shopkeepers directly. This is not a case where the land has been leased to an association for construction of shops. It is also relevant to note that this option – that is the option of allotting land on leasehold basis to association of PAPs for construction of shops – was available only in cases where land was available in the vicinity. Therefore, this case where shops were allotted directly to the Shopkeepers cannot be equated with the allotment of land in the vicinity of the project to an association of PAPs for further development and rehabilitation of the PAPs.

10. The condition in the lease agreement entered into between DMRC and the Shopkeepers, prohibiting them from transferring their rights in the lease shops, also cannot be assailed. It must be understood that the shops were provided only for the purpose of rehabilitating the Shopkeepers (erstwhile shopkeepers at Panchkuian Road) and not for the purpose of granting them any state largesse that could be monetised by them. Shops have been provided to the Shopkeepers to ensure that they are able to earn their livelihood. In this view, the

condition prohibiting transfer of leasehold interest by the Shopkeepers is in conformity with the purpose for which such shops were allotted. This Court finds no infirmity with the condition proscribing them from transferring their rights.

11. In any view, it is not open for the petitioner to assail the same after its members (Shopkeepers) have willingly accepted the said condition by entering into the lease agreement with DMRC.

12. Insofar as the term of the lease granted by respondent no.2 to DMRC is concerned, the petitioner is not concerned with the same. DMRC has been granted a lease for ninety-nine years for the purpose of rehabilitating the Shopkeepers and plainly, DMRC would have to comply with the said condition, failing which respondent no.2 would be free to take such action as it deems fit. The matter as to whether the premises in question could be used for any other purpose is a matter between respondent no.2 and DMRC. Insofar as the members of the petitioner association are concerned, their rights are strictly governed by the settlement arrived at before the Division Bench of this Court, and in terms of the lease agreement entered into between DMRC and them.

13. In view of the above, the petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

MAY 29, 2019/RK