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

\+ CM(M) 650/2018

NATHIA DEVI ..... Petitioner

Through: Ms. Aastha Dhawan with Mr. Shaini Bhardwaj and Mr. Prateek Solanki, Advocates.
(M): 9711436642
Email: dhawan.aastha.90@gmail.com

versus

NEW DELHI MUNICIPAL COUNCIL & ANR. ..... Respondents

Through: Dr. Sri Harsha Peechara, ASC with Ms. Harshita Gupta, Advocate.
(M): 9717466788
Email: shpeechara@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

<u>J U D G M E N T</u>
04.07.2023

<u>MINI PUSHKARNA, J.</u>

1. The present writ petition has been filed by the petitioner against the order dated 24.05.2018 passed by the ld. District & Sessions Judge, Patiala House Courts, New Delhi in *PPA No. 23/2017*. By way of the said impugned order dated 24.05.2018, the ld. District & Sessions Judge dismissed the appeal filed by the petitioner herein under Section 9 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, (PP Act) by which the petitioner had

challenged the order dated 21.03.2017 and 26.05.2017 passed by the ld. Estate Officer.

2. By order dated 21.03.2017, the ld. Estate Officer had dismissed the application filed on behalf of the petitioner herein under Section 11 of the Code of Civil Procedure, 1908 (CPC), thereby holding that the earlier eviction proceedings did not constitute res-judicata as the same were not decided on merits, but were dismissed as withdrawn on the basis of statement of the parties. Subsequently, by order dated 26.05.2017, the ld. Estate Officer passed eviction order against the petitioner upon an application by the respondent herein under Order XII Rule 6 CPC read with order VIII Rules 3,4 and 5 CPC.

3. The subject matter of the present petition, i.e., Kiosk situated near Gate No.6, Palika Bazar, New Delhi – 110001 was allotted in the name of Sh. Ramesh Kumar vide allotment letter dated 12.03.1983/06.04.1983 at a nominal license fee of Re.1 per month. The said allotment was made for running the trade of flower kiosk or any other non-licensable trade through his guardian Rattan Lal, on account of saving life of an old woman, for which the said Ramesh Kumar received National Bravery Award in 1982 for showing exemplary courage. Subsequently, License Deed dated 12.04.1983 for running the trade of flower kiosk was also executed between Sh. Ramesh Kumar and respondent No.1/New Delhi Municipal Council (NDMC) for a period of 5 years w.e.f. 23.03.1983.

4. Thereafter, a fresh License Deed dated 09.05.1988 was also

executed between the respondents and Sh. Ramesh Kumar w.e.f. 23.03.1988 to 22.03.1993. The said License Deed was further deemed renewed up to 31.03.2005 vide order of the then Director (Estate), NDMC in terms of letter dated 15.12.2005.

5. It is the case of the petitioner that sometime in the year 2004, the said Sh. Ramesh Kumar, who was then doing the trade of sale of cold drinks, etc. from the said kiosk, approached the petitioner with request for partnership as he was unable to manage his business alone. Thus, petitioner entered into a Partnership Deed dated 16.08.2004 with Sh. Ramesh Kumar. The said Partnership Deed was later dissolved on 07.12.2004, as a result of which the petitioner continued with the said business and was in occupation of the said kiosk near Gate No.6, Palika Bazar.

6. A complaint was received by the respondent on 07.04.2006 that the kiosk was being run by some other person and that the said person was selling cold drinks, coffee, etc. and also permitting people to drink alcohol from the site in the evenings, causing disturbance and nuisance to others. In pursuance to the said complaint, inspection was carried out by the NDMC on 05.05.2006. During inspection, the original allottee Ramesh was not found at the kiosk and Sh. Bijender, husband of the petitioner was present and selling edible items like Samosa, Snacks, Cold drinks, Coffee, etc.

7. Respondent issued a Show Cause Notice dated 18.05.2006 to Ramesh asking to show cause as to why his license should not be

cancelled for violation of the terms of the License Deed. Ramesh submitted his reply dated 30.05.2006 stating that he had not sublet the kiosk to anyone and that Sh. Bijender was his uncle, who was looking after the kiosk in his absence.

8. In January 2007, the petitioner submitted a representation dated 11.01.2007 to the NDMC stating that she had entered into a partnership with Sh. Ramesh Kumar vide Partnership Deed dated 16.08.2004, which was subsequently dissolved vide Dissolution Deed dated 07.12.2004. She further represented that Ramesh had relinquished all his rights in the kiosk and that the kiosk was now in her possession. She made a request for transfer/regularisation of kiosk in her name.

9. After considering the admission of Ramesh in his reply dated 30.05.2006 that he was selling other items rather than selling flowers and in view of the complaints received against him for violation of the terms of license, respondent issued a letter dated 21.03.2007 to take over possession of the kiosk in question.

10. Ramesh filed a writ petition, being *W.P.(C) 2323/2007* against the aforesaid Notice dated 21.03.2007 issued by the NDMC. The said writ petition was disposed of by this Court vide order dated 27.09.2007 by recording the statement on behalf of NDMC that it had commenced proceedings under the PP Act for recovery of possession as well as arrears of license fee.

11. Subsequently, vide letter dated 22.11.2007, the Chairman,

NDMC cancelled allotment of the flower kiosk and withdrew the license. Further, Ramesh was asked to vacate the premises in question and also pay arrears of fee and damages. The respondent No.1 also issued a Show Cause Notice dated 23.01.2008 to Ramesh for payment of arreas of Rs.456 for the period till December, 2007. Ramesh paid arrears of license fees on 28.01.2008 till the period ending December, 2007.

12. Thereafter, NDMC filed an application on 01.05.2008 in the court of Estate Officer under Section 5 of the PP Act for eviction of Ramesh or any other person who may be in occupation of the said kiosk. In the said application under Section 5 of the PP Act, the petitioner herein was also made a party since she had approached the NDMC for regularisation of the kiosk in her name vide her application dated 11.01.2007.

13. While the eviction proceedings were pending before the Estate Officer, the petitioner herein wrote to the respondent on 16.05.2013 stating that she may be permitted to pay the outstanding dues of the kiosk at market rate as decided by the NDMC without prejudice to the outcome of the case in the court of the Estate Officer. Vide letter dated 24.06.2013 issued by the respondent, the petitioner herein was called upon to deposit the dues amounting to Rs.9,60,963/- up to June, 2013. The said amount was deposited by the petitioner on 25.06.2013. Subsequently, the said petition filed on behalf of the respondent was dismissed by the Estate Officer vide order dated 05.08.2013 by noting

that payment had been received by the respondent herein against the demand raised against the petitioner.

14. Subsequently, the petitioner vide letters dated 02.02.2014 and 16.04.2014 represented to the respondent that the arrears of license fees had been paid by her at market rate and requested the Chairman, NDMC to regularise the kiosk in her name. Decision was taken by NDMC to regularise the kiosk in favour of the petitioner and License Deed dated 30.04.2015 was executed in favour of the petitioner. Thereafter, petitioner deposited security amount of Rs.98,896/- equivalent of 8 months of current license fees, as directed by letter dated 30.04.2015 issued by NDMC.

15. As per the facts on record, the Ministry of Home Affairs (MHA) vide its OM dated 25.05.2015 constituted a Three Member Committee for inquiry into acts of certain officials of NDMC. The MHA Committee submitted its report on 20.07.2015. The said Committee found that the License Deed dated 30.04.2015 in favour of the petitioner was executed illegally and in violation of the norms followed by the respondent, as the said kiosk was to be transferred by way of auction and not in such a manner, as in the present case. The Committee returned a finding that the kiosk had been regularised in favour of the petitioner in an arbitrary manner.

16. Acting upon the findings of the MHA Report dated 20.07.2015, the entire file was reviewed by the NDMC. Accordingly, respondent issued notice dated 15.12.2016 to the petitioner calling upon her to

show cause why the license of the said kiosk should not be cancelled on account of unauthorised occupation and violation of trade, and also why recovery proceedings should not be initiated against her under Section 5 and 7 of the PP Act. Petitioner replied to the said Show Cause Notice by her letter dated 23.12.2016.

17. Eventually, vide order dated 24.01.2017, the allotment of the said kiosk in favour of the petitioner was cancelled by holding that the petitioner had got the said kiosk regularised by colluding with the officials of the Estate Department of the respondent. It was held that the regularisation was illegal because it was not covered under the general policy of transfer, as it was a license granted at a nominal license fee of Re.1 to a handicapped person who showed exemplary courage and was not a commercial license.

18. The petitioner challenged the said cancellation order passed by the respondent before this Court by filing *W.P.(C) 835/2017*. The said petition was disposed of vide order dated 30.01.2017 with liberty to the petitioner to raise all the pleas in her defence before the Estate Officer in the eventuality of proceedings being initiated by the respondent against her.

19. Subsequently, on 06.02.2017 the respondent initiated proceedings for eviction and recovery of arrears of damages against the petitioner herein under Sections 5 and 7 of the PP Act. The petitioner filed reply thereto on 15.02.2017. On 17.02.2017, petitioner herein filed an application under Section 11 CPC before the Estate

Officer praying for dismissal of petitions of respondent/ NDMC for eviction/recovery of damages pleading that the matter in issue before the Estate Officer was directly and substantially the same as had already been decided by the Estate Officer vide order dated 05.08.2013, which had attained finality, as the same was not challenged by NDMC. The said application was dismissed by the Ld. Estate Officer vide order dated 21.03.2017.

20. Petitioner herein had also filed an application under Order VI Rule 17 CPC before the Estate Officer seeking permission to amend her reply. The petitioner disputed that there were any admissions in her reply, which were sought to be withdrawn. The said application under Order VI Rule 17 CPC was dismissed by the Estate Officer vide order dated 21.04.2017, which was not challenged by the petitioner herein.

21. Against the order of the Estate Officer dated 21.03.2017 dismissing the application of the petitioner herein under Section 11 CPC, petitioner filed writ petition before this Court, WP(C) No. 3263/2017. During the pendency of the said writ petition, NDMC filed an application under Order XII Rule 6 CPC read with Order VIII Rules 3,4 and 5 CPC, praying for passing of order of eviction/recovery of damages on the basis of admissions made by petitioner in her reply before the Estate Officer. The Ld. Estate Officer allowed the said application vide order dated 26.05.2017, thereby directing eviction of the petitioner herein from the kiosk in question.

22. Against the aforesaid orders dated 21.03.2017 and 26.05.2017 passed by the learned Estate Officer, petitioner herein filed an appeal under Section 9 of the PP Act before the ld. District & Sessions Judge, Patiala House Courts, New Delhi. The appeal filed on behalf of the petitioner herein was dismissed by the impugned order dated 24.05.2018 by the ld. District & Sessions Judge, against which the present writ petition has been filed.

23. On behalf of the petitioner, it is submitted that the present proceedings as initiated for eviction and recovery of damages against the petitioner are barred by *res judicata*. The earlier proceedings under Section 5 of the PP Act were initiated against Ramesh Kumar and Nathia Devi, in which order dated 05.08.2013 was passed by the ld. Estate Officer. In the said proceedings, the NDMC itself withdrew all the allegations against the petitioner and stated that no violation of trade was found and license fee at market rate had been recovered. It is submitted that the earlier proceedings and the present proceedings are identical, as both the proceedings were for unauthorised occupation against the same property, whereby similar relief was sought. Even the allegations are pertaining to the alleged violation at that time and it is not the case of the respondent that there is any fresh violation by the petitioner. It is contended that the issue in the present case is directly and substantially the same which has already been decided by the court between the same parties.

24. It is further contended that there was no admission made by the

petitioner in her reply to the proceedings under the PP Act. The Estate Officer acted in undue haste in passing the judgment on admission without appreciating that the provisions of Order XII Rule 6 CPC were not attracted, as the facts were seriously in dispute. It is submitted that the petitioner had made no such admission as claimed by the NDMC. Thus, it is contented that the order for eviction on the basis of so called admission made by the petitioner, was clearly erroneous. However, the ld. District & Sessions Judge in appeal failed to look into the same.

25. It is further contended that there was no violation of Section 7 of PP Act by the petitioner, as NDMC had demanded market rent from the date of partnership, i.e., an amount of Rs.9,60,963/-, which was duly paid by the petitioner. Further, the petitioner has not violated the existing policy of the respondent NDMC or any terms and conditions of License Deed, justifying fresh initiation of Sections 5 and 7 proceedings under the PP Act.

26. It is further submitted that the case of the petitioner is covered by the policy dated 16.04.2015 of the respondent NDMC, which was specially passed by NDMC to regularise the transfer in cases where the licencee entered into partnership with incoming partner, without prior authorisation or permission of NDMC. Thus, the kiosk was regularised in the name of the petitioner under the said one time scheme and a License Deed was executed in favour of the petitioner with due approval of the Chairman, NDMC.

27. The petitioner further denied that there was any connivance of the petitioner with the officials of NDMC. It is submitted that kiosk was regularised by the respondent after following its procedure with the approval of the Chairman, Competent Authority of the NDMC. Thus, it is prayed that the impugned order dated 24.05.2018 passed by the ld. District & Sessions Judge, Patiala House Courts be set aside.

28. On the other hand, on behalf of the respondent it is contended that the regularisation in favour of the petitioner was in blatant violation of the Rules, Regulations, Procedure and Policy of the respondent. It is submitted that the submissions made before the ld. Estate Officer, which led to dismissal of the earlier proceedings, were without the approval of the competent authority. The action of regularisation was done by the respondent in complete contravention of its policy and thus, the said action cannot be used by the petitioner to establish any right over the said kiosk against the respondent.

29. It is submitted that the Ministry of Home Affairs (MHA) conducted a detailed inquiry with respect to allegations against officials of the respondent, including allotment of the kiosk in favour of the petitioner. The allotment in favour of the petitioner was found to be irregular. It is, thus, contended that Show Cause Notice was rightly issued to the petitioner and cancellation order dated 21.01.2017 was passed. It is the case on behalf of the NDMC that respondent has always been an unauthorised occupant of the kiosk in question.

30. It is further submitted that the original License Deed in favour

of Ramesh falls under the 'Reserved Category' and the same cannot be transferred. Not only did the petitioner obtain possession of the kiosk in a manner which was against the policy, the petitioner was further carrying on the trade which was impermissible. It is submitted that the petitioner was operating a beverage business from the kiosk, as is evident from the inspection conducted on 17.08.2017, wherein it was found that the petitioner and her husband were acting as wholesale distributors for entire Connaught Place area for beverages and a consignment worth Rs.1.5 Lakh was recovered from the spot.

31. Thus, it is submitted on behalf of the respondent that the present petition is liable to be dismissed.

32. I have heard ld. Counsels for the parties and have perused the record.

33. The undisputed facts that emerge are that the kiosk in question was initially allotted to Ramesh Kumar for a period of five years @ Re.1 per month as a license fee for the trade of flower or such other non-licensable trade in view of the National Bravery Award given to him in 1982 for showing exemplary courage in saving the life of an old woman. The allotment letter dated 12.03.1983 in favour of the petitioner is reproduced herein below:

> *"NEW DELHI MUNICIPAL COMMITTEE TOWN HALL: NEW DELHI*
>
> *No. 513/Estate/____/P* *Dated: 12.03.1983*
>
> *Shri Ramesh Kumar S/o*

Shri Rattan Lal (Guardian)
H.No. 686, H-II
Jahangirpuri, Delhi.

Subject: Allotment of Kiosk near Palika Bazar, Connaught Place, New Delhi

Dear Sir,

With reference to your application dated nil on the subject mentioned above. I am desired to inform you that kiosk near Palika Bazar is allotted to you on licence basis at a nominal licence fee of Re.1/- plus its 5% i.e. Rs.1.05 per month for running the trade of flower kiosk or such other non-licenceable trade as may be approved by the Administrator.

You are requested to complete the following formalities of allotment within 3 days from the date of receipt of this letter.

1. Deposit a sum of Rs.4.20 as Security equivalent to four months licence fee in the Municipal Treasury.

2. Deposit one month advance lincence fee of Rs.1.00 in the Municipal Treasury.

3. Execute a licence fee in triplicate on non judicial stamp paper of Rs.1.50 as per specimen copy to be supplied by this office.

4. Furnish an affidavit in the proforma on a non-judicial stamp paper worth Rs.3/- to be supplied by this office.

Licence fee in respect of the said kiosk will commence with effect from 23.03.1983.

Yours faithfully,
(R.K. Kapur)
Asstt. Director (Estate)"

34. Thus, it is seen that the allotment to the original licensee was based upon special consideration of him being a National Bravery

Award holder. The subject premises were allotted to the original licensee on gratuitous basis @Re.1 per month, while, as per the case put forward by the NDMC, the existing license fee for three other adjoining flower kiosks in Palika area at that time in 1983 was Rs.110/- per month. Thus, as per the case of the respondent NDMC, allotments made in 'Reserved Category' are not freely transferable. Further, ld. Counsel appearing for NDMC relied upon the policy with respect to 'Reserved category units' which categorically stipulates that no 'Reserved category units' may be transferred to 'General Category'. The policy on transfers as relied upon on behalf of NDMC, as contained in Resolution No.6 dated 18.03.1999 is reproduced as below:

"Resolution No.6 dated 18.03.1999

xxx xxx

3. Policy on transfers

(i) To be freely allowed (except in case of reserved categories).

(ii) On date of entry/deletion of partnership 30% enhancement in licence fee.

After amalgamation with the original amount annual enhancement 7%

(iii) Policy at Annexure, in case of rehabilitation markets as the base rate with annual increase @7%

(iv) Dependent family members to be permitted without any enhancement in licence fee. Other blood relations allowed with 30% enhancement.

(v) Legal heirs only after death without any cost.

(vi) Multiple transfers in cases where the request of the transfer of allotment from the first allottee is not regularised and the subsequent subletting is made, the same should also be regularised by forfeiting the amount of security deposits required to be deposited by sub-lettee at the time of each subletting and the entire amount as payable at each partnership would be payable by the present sub-lettee on its regularisation.

xxx xxx

7. Permissibility in change of trade

(i) No trade in the negative list shall be permitted. Negative list to be notified within a month after approval of the Chairman.

(ii) List where licence is required under may prevail legislation to be permitted only after licence is legally obtained and additionally NDMC's permission is taken on availability of space and safety factor.

(iii) Where Council has decided in public interest that a market or a portion of a market is meant for any specific trade, no change will be allowed.

(iv) Change will be freely permitted amongst the trades, which are not listed in the notified negative list or where licence is not mandatory.

xxx xxx

10. Reserved category units

No reserved category units meant for SC/ST/Handicapped/War Widows/Ex-Servicemen may be transferred to General Category if it changes hands through partnership or any other method, then principles as at para 3(ii), 3(iii) as the case be may apply.

… … …"

35. By relying upon the said policy, it has been contended on behalf

of NDMC that the said kiosk which had been allotted under a special category, cannot be transferred in favour of the petitioner as a 'General Category'. It is further the case on behalf of NDMC that the change of hands through partnership or any other method as applicable to 'Reserved category units', refers to transfer under the 'Reserved Category' itself, as there is a bar to transfer of 'Reserved category units' to 'General Category'.

36. The aforesaid position has been denied on behalf of the petitioner by stating that the policy of the respondent NDMC itself envisages change of hands through partnership or any other method, even in cases of 'Reserved category units'.

37. Petitioner has relied upon circular dated 16.04.2015 of the NDMC, which has been reproduced in the impugned judgment dated 24.05.2018, as below:

> " *CIRCULAR*
> *This to bring to the notice of the Licensees and Occupants of licence markets of NDMC Estate-I Deptt, That subsequent to passage of Council Reso.No.l5(L-04) dt.27.8,2014 it has been decided that the transfer of licence will be governed by the above said resolution and all other previous resolutions stand modified to the following extent;-*
> *a....*
> *b. For pending past cases of transfer-Show cause notices may be issued to both the licensee/occupant and incoming partner on account of violation of Clause No.9 of the Licence Deed if they entered into partnership during the valid term of licence, If they now seek the I permission of the NDMC at this belated stage, such transfer cases may*

be regularized after forfeiting the earlier security deposit by the licensee and subject to enhancement of the existing licence fee by 50% and completion of other required formalities like deposit of fresh security deposit, etc.
c….
d. It is also recommended that the Para 3 in the Estate Policy/guidelines passed vide Reso. No.6 dt. 18.3.1999 and para 14 of Reso. No.9(L-l) dt.30.09.2004 are proposed to be amended as under:
1. Transfers are freely allowed (except in case of reserve category) in the above manner only…."

"

38. The contentions raised on behalf of the petitioner regarding allowing change of hands qua allotments made under reserve category, has to be rejected. Plain reading of the aforesaid Circular dated 16.04.2015 and Resolution No. 6 dated 18.03.1999 make it evident that the policy of the NDMC regarding transfers dealt with the licenses generally granted by NDMC on payment of license fees. Clause (b) of the Circular dated 16.04.2015 itself mentions that transfers may be regularized after forfeiting the earlier security deposit by the licensee and subject to the enhancement of the existing license fee by 50%. Needless to state that in the present case, allotment made to Shri Ramesh Kumar, the original allottee, was a special gesture by the State to honour the bravery award winner. It was a gratuitous allotment at a token license fee of Re.1. It was not a commercial license granted in ordinary course by NDMC for a license fee at market rate or subject to security deposit.

39. The respondent NDMC has made its policy with respect to

transfers under the 'General category units' and the 'Reserved category units'. The respondent NDMC being the author of the said policy, the policy has to be read in the manner as enacted by the NDMC. Supreme Court has held time and again that restraint be exercised in matters of contract involving state instrumentalities. The authority which has authored the contract or tender, is the best judge as to how the documents have to be interpreted. If two interpretations are possible, then the interpretation of the author must be accepted.

40. Further, the Report dated 20.07.2015 submitted by the team as constituted by the Ministry of Home Affairs, Government of India categorically held that the kiosk in question was not covered under the policy of the NDMC as contained in Resolution No.6/99, since the kiosk in question was not licensed at market rates. Thus, it was held that the file for regularisation of the kiosk in question was processed contrary to established laws and procedures.

41. The aforesaid policy of the NDMC stipulates in clear terms that no 'Reserved category units' may be transferred to the 'General category units'. It is the contention on behalf of NDMC that the gratuitous allotment as made in the present case, also constitutes part of 'Reserved category units'. Thus, it is apparent that the regularisation of the kiosk in the name of the petitioner was clearly contrary to the policy of the NDMC itself. It is undisputed that the allotment in the present case was made to the original licensee on gratuitous basis @Re.1 per month based upon special consideration

that the original licensee was a National Bravery Award holder. Thus, the said allotment was certainly not an allotment under General category on market rates. Therefore, since kiosks under the Reserved category could not be converted into General category as per the policy of the NDMC as contained in Resolution No.6 dated 18.03.1999, the regularisation in favour of the petitioner was clearly illegal and against the policy of the NDMC.

42. Reliance by the petitioner upon the policy as detailed in Circular dated 16.04.2015 as issued by the respondent NDMC, also does not in any manner enure to the benefit of the petitioner. The said Circular dated 16.04.2015 reiterates the policy of the NDMC in Resolution No.15 (L-04) dated 27.08.2014. The Circular dated 16.04.2015 as well as Resolution No. 15 dated 27.08.2014 issued by the NDMC categorically stipulate that transfers are freely allowed in the manner as given in the said policy, except in cases of Reserved category. Thus, the very policy as relied upon by the petitioner itself disallows transfer in cases of Reserved category. Therefore, no benefit of the said policy can be derived by the petitioner.

43. Besides, the License Deed which had earlier been executed in favour of the petitioner was cancelled vide order dated 24.01.2017, after following due process of law. The petitioner was found to be running a beverage wholesale distribution business upon inspection of the kiosk on 17.08.2017. The petitioner along with her husband was found to be acting as wholesale distributors for entire Connaught

Place area and beverages consignment worth Rs.1.5 Lakh was recovered from the spot. Moreover, the regularisation in favour of the petitioner was also found to be against the policy of the NDMC, as per detailed discussion herein above. Thus, post the cancellation of the licence, the petitioner is an unauthorised occupant of the kiosk in question.

44. A licencee has no interest over the land or property in question. Licence in the present case is with respect to a kiosk on public land under the jurisdiction and ownership of NDMC. After termination of the licence, the petitioner is merely an encroacher on the public premises. Licence can be revoked at any time, as it does not create any interest in the property to which it relates. Thus, this Court in the case ***Chandu Lal etc. Vs. Municipal Corporation of Delhi, 1977 SCC OnLine Del 130***, held as follows:

> *"**25.** There is a catena of authorities in support of the proposition, that in the case of a license there is something less than a right to enjoy the property in the license; it cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a*

decree of the Court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.

... ...

33. *Shri Saigal, then submitted that the petitioners were in possession of the Kiosk since January, 1974 and being in settled possession, the petitioners were not liable to be evicted except in due course of law and that they were further entitled to defend their possession even against the rightful owner who may try to dispossess them. This submission was sought to be reinforced on the basis of case Puran Singh and others v. The State of Punjab, AIR 1975 S.C. 1674 (12). Reliance then was placed on a Bench decision of East Punjab High Court in State of Patiala and East Punjab States Union v. Mohinder Singh Natha Singh, AIR 1958 EP 325 (13) and Vasudeva Kurup v. Ammini Amma. 1964 KLT 468 (14) wherein it was observed that a person in possession albeit without title, was entitled to remain in possession, even against the lawful owner until evicted in due course of law and that a right course of action in such a case was to bring an appropriate action against the person in possession and secure his eviction in accordance with the provision of law. It was accordingly contended that the Corporation was not entitled to take the law into its hands and throw out the petitioners. There is a fallacy in the submission. The petitioners being licensees with liberty to occupy and use the Kiosk for a period of 11 months in the first instance could not be said to be in legal*

possession, of the premises, the legal possession all along remained with the Corporation. On revocation of the license they ceased to enjoy the liberty to continue to occupy the Kiosk so as to drive the Corporation to evict them in due course of law, nor can be petitioners' possession be said to be "settled possession" as sought to be made out.
… … …"

45. Further, defining the expression 'unauthorised occupation' qua the PP Act, Supreme Court in the case of ***Ashoka Marketing Ltd. and Another Vs Punjab National Bank and Others***, (1990) 4 SCC 406, has held as follows:-

*"**30.** The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and*

> *would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."*

46. Apropos the contention on behalf of the petitioner that the present proceedings are barred by *res judicata*, the said contention is found to be without any justification. Section 11 of CPC has no applicability to the facts of the present case, as the earlier order dated 05.08.2013 passed by the ld. Estate Officer in the earlier proceedings, was not passed on merits. The application of the NDMC under Section 5 of the PP Act was dismissed as infructuous in view of the submissions made on behalf of NDMC that the unauthorised occupant had paid due amount as per the market rates. Thus, it is evident that the Estate Officer had dismissed the application of the NDMC under Section 5 of the PP Act without going into merits of the case to adjudicate upon the issues involved.

47. Even otherwise, the earlier eviction proceedings were initiated against the original allottee pursuant to cancellation of his allotment vide order dated 22.11.2007. The petitioner herein had been made a party in the said proceedings in view of the fact that she had made an application for regularisation of licence in her favour. At that point of time, there was no licence in favour of the petitioner and she had occupied the kiosk on the basis of her partnership deed with the

original licencee. Whereas, the present proceedings are totally distinct, as the same emanate from cancellation of the licence in favour of the petitioner herein vide Cancellation Order dated 24.01.2017. Therefore, the present proceedings are totally distinct and different from the earlier proceedings that were initiated by NDMC on the basis of cancellation letter dated 22.11.2007 issued against the original licencee.

48. In view of the above, it is clear that a fresh cause of action arose in favour of NDMC in view of the cancellation of Licence Deed of the said kiosk in favour of the petitioner herein, on re-examination of the matter pursuant to the findings of the inspection team of the Ministry of Home Affairs.

49. Besides, it is relevant to note that Clause 8 of the Licence Deed dated 12.04.1983 in favour of the original licencee Ramesh Kumar clearly stipulated that he shall not enter into any partnership/part with possession of the said kiosk. It was further specified that in default, the licencee Ramesh Kumar was liable to ejection. Clause 8 of the Licence Deed in favour of the original licencee, Ramesh Kumar, as reproduced in the impugned judgment dated 24.05.2018 passed by the Ld. District & Sessions Judge, reads as follows:

> ***"8.*** *That the licensee shall not permit the allotted premises or any part thereof to be used by any other person for any purpose whatsoever* ***without the previous consent in writing and in default thereof shall be liable for ejectment. The licensee shall not introduce any partner nor the licensee*** *shall transfer the possession of the*

premises or part thereof or otherwise carry on the business in the premises with any other person or assign, transfer, change or otherwise alienate his interest in the premises"

50. Perusal of the aforesaid makes it clear that the original licencee was not entitled to introduce any partner or transfer the possession of the premises. Therefore, the petitioner cannot draw any benefit from the partnership deed with the original licencee on the basis of which possession was taken by the petitioner, when the said partnership deed itself constituted violation of the terms of the licence in favour of the original licencee. Therefore, on this ground also, the petitioner cannot seek any right over the premises in question.

51. In view of the aforesaid, it cannot be held that the allotment in favour of the petitioner was cancelled illegally. At this stage, it would be profitable to refer to Para 8 of the impugned judgment, which reads as under:

> *"8.0 The appellant drew her authority to occupy the said kiosk only pursuant to regularization of the allotment/ execution of License Deed dated 30.04.2015 in her favour. Said allotment was cancelled vide order/ letter dated 24.01.2017. Thus, her authority to occupy the said kiosk stood terminated. It is a settled proposition of law that the onus is upon the occupant to show his authority to occupy the government property (**UOI vs S.M. Agarwal & Ors., 1995(11) AD(Delhi) 293 (Division Bench**). The appellant has failed to demonstrate her authority to occupy the said Kiosk after cancellation of its allotment. In view of the same, I find no infirmity in the findings of the Estate Officer that the appellant became unauthorized occupant of the said kiosk w.e.f. 24.01.2017, the date of*

cancellation."

52. As regards the contention on behalf of the petitioner that there was no admission on her part and that eviction order could not be passed against her on the application of the respondent herein, the same is again found without any merits. The petitioner herein did not dispute the fact that Shri Ramesh Kumar had been allotted the kiosk in question at a nominal license fee of Re.1 per month as award for his bravery. The facts which led to cancellation of the license of the petitioner herein also remain undisputed. The facts and documents on record clearly established the unauthorized occupation of the petitioner. The Estate Officer, being a quasi-judicial authority was not bound by the strict judicial rules of procedure and evidence. The Ld. Estate Officer rightly recorded its satisfaction about the unauthorized occupation of the petitioner on the basis of facts and documents on record.

53. No merit is found in the present writ petition.

54. Accordingly, the present writ petition is dismissed.

(MINI PUSHKARNA)
JUDGE

JULY 04, 2023
au/sc