



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

% **Judgment reserved on : 11 July 2024**
Judgment pronounced on : 21 August 2024

+ **W.P.(C) 1493/2019**

RAVI GUPTA

..... Petitioner

Through: **Mr. Atul Jha and Mr. Sandeep
Kumar Jha, Advs.**

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

..... Respondents

Through: **Mr. Gaurav Dua, Adv. For R-
1/DDA,**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking appropriate writ for quashing and setting aside of the letter No. F1(3)2001/LPC/42 dated 11.02.2019, issued by the Respondent No. 2/Deputy Director (LPC), DDA. Following are the reliefs sought by the petitioner by way of this present writ petition: -

- “(a). quash the letter No. F1(3)2001/LPC/42 dated 11.02.2019 issued by the Respondent No. 2; and/or,
- (b). pass any other further order/orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

FACTUAL BACKGROUND:

2. The petitioner claims that he is a holder of a valid Stamp Vending License and on 13.03.2002 was allotted the Kiosk No. 1 (admeasuring 2.00 mt. x 2.90mt.) on a license basis by the Divisional



Commissioner, GNCTD¹, at INA, Vikas Sadan, New Delhi. The allotment letter dated 13.03.2002, issued by the Divisional Commissioner, GNCTD, to the petitioner contained the following terms and conditions: -

“TERMS & CONDITIONS

Sub.: Allotment of additional space for stamp vending at Vikas Sadan on LICENCE FEE BASIS (2.00 mt. x 2.90 mt.)

1. Licence fee for one month would be Rs.2227/- which shall be payable in advance by 31st March every year.
2. The amount / license fee will be increased by 10% every year.
3. If the above license fee is not deposited in due time, the interest for delay period will be charged as per policy.

In addition to above, allottees are liable to pay property tax etc.”

3. The petitioner contends that by a letter dated 26.03.2002, the office of Divisional Commissioner directed respondent No. 1/DDA² to hand over possession of Kiosk No. 1 to the petitioner. The DDA by way of the letter dated 12.04.2002 advised the petitioner to take the physical possession of the Kiosk No. 1 on behalf of the Divisional Commissioner, GNCTD, Tis Hazari Court, Delhi. It would be apposite to reproduce the relevant portion of the letter dated 12.04.2002: -

“Sub: - Allotment of Shop No. 1 near car parking of Vikas Sadan, New Delhi.

Shop No. 1 near the car parking of Vikas Sadan, New Delhi has been allotted to office of the Divisional Commissioner Govt. of N.C.T. Tis Hazari Delhi for stamp vending. You are therefore advised to take over the physical possession from the XXXX Vikas Sadan, New Delhi on behalf of Divisional Commissioner Govt. of NCT Tis Hazari Court Delhi.”

4. It is borne out from the record that a Writ Petition(C)

¹ The Government of National Capital Territory of Delhi

² Delhi Development Authority



12274/2006 was filed by an N.G.O seeking cancellation of the Kiosk No. 1, which had been allotted to the petitioner. The DDA filed a Counter Affidavit dated 19.09.2007, in response to the aforementioned writ petition. In the Counter Affidavit, it was stated that Kiosk No. 1 had been allotted to the Divisional Commissioner, who subsequently allotted it to the petitioner. Therefore, the DDA has no contractual obligation regarding the Kiosk No. 1. On 12.08.2008, one Mr. Gaurav Gupta filed an RTI³ application seeking information about the business purpose of Kiosk No. 1 allotted to the petitioner. DDA responded that Kiosk No. 1, was allotted on a license fee basis for documentation work and permitted only a licensed stamp vendor. The aforementioned writ petition was dismissed on 14.01.2009, holding that the writ petition was filed due to the business rivalry of Mr. Gaurav Gupta and the petitioner.

5. The petitioner made representations to the Hon'ble Lieutenant Governor of Delhi on 11.08.2016, 02.06.2017 and 15.12.2017, requesting the regularization of Kiosk No. 1 in his favour by converting it to a freehold status. However, the petitioner received no response. On 11.02.2019, the petitioner received a letter from the respondent No. 2/ Deputy Director (LPC⁴), DDA, cancelling the license granted to the petitioner and directing the petitioner to hand over the physical possession of Kiosk No. 1 to the DDA. Aggrieved by the letter dated 11.02.2019, the petitioner filed the present writ petition.

³ Right to Information

⁴ License Property Cell



GROUND FOR THE PETITION:

6. The petitioner asserts that there should be strict adherence to the Rule of Law, emphasizing the necessity for complete transparency in the State actions. The petitioner claims that Respondent No. 2 acted with malice by issuing a notice for the alleged misuse of Kiosk No. 1. Additionally, the petitioner contends that Respondent No. 2 exceeded its authority by issuing the letter dated 11.02.2019, as the Kiosk was allotted by the Divisional Commissioner, GNCTD not the DDA.

7. It is further averred that respondent No. 2 acted unfairly and exceeded its jurisdiction by issuing the impugned letter despite a specific statement in the Counter Affidavit from the Director (CL) clarifying that the DDA has no contractual obligation with the petitioner regarding the allotment of Kiosk No. 1. Additionally, the letter dated 11.02.2019 does not mention the cancellation of the allotment to the Government of NCT of Delhi, nor does it reference any such cancellation order.

8. The petitioner asserts that the license granted to him was perpetual with no term limit or specific duration stipulated. The terms and conditions of the allotment do not restrict the license to stamp vending. The impugned letter, however, explicitly cancels the allotment and claims it was intended only for stamp vending, a limitation not mentioned in the original allotment terms. In response to an RTI query dated 12.08.2008, the DDA clarified that the shop/kiosk at Vikas Sadan was designated for documentation work and for a stamp vendor. The terms of the allotment do not include any clause for termination or cancellation. The GNCTD had requested the



DDA to allot a kiosk for stamp vending to serve the general public. Initially, the petitioner was allotted a shop inside Vikas Sadan, but due to economic infeasibility, he was granted a kiosk outside Vikas Sadan by the GNCTD to facilitate stamp vending for the public. Notably, the terms and conditions did not specify that the kiosk was exclusively for stamp vending. The petitioner asserts that he has always adhered to the allotment terms, using the kiosk solely for its intended purpose.

9. The petitioner, aggrieved by the impugned letter dated 11.02.2019, asserts that the actions of respondents No. 1 & 2 are *malafide*, lacking any legal or equitable basis for cancelling the allotment. The respondents No. 1 & 2's decision to cancel the allotment on the grounds that the petitioner was allegedly using the Kiosk No. 1 for purposes other than stamp vending is illegal, manifestly wrong, and arbitrary. That the DDA permits other kiosks and shops in the area to operate for various purposes, including documentation and typing.

SUBMISSIONS ON BEHALF OF DELHI DEVELOPMENT AUTHORITY/RESPONDENT NO. 1:

10. The learned Counsel for the DDA has contended that the Kiosk No. 1, Vikas Sadan, near the car parking area, was initially allotted to the Divisional Commissioner, GNCTD, on a license fee basis @ Rs. 2,227/- p.m., subject to a 10 % annual increase, as per the letter dated 08.03.2002, specifically for stamp vending. In addition to the license fee, the licensee was liable for applicable to property tax/service tax. The Divisional Commissioner, GNCTD, officially authorized the petitioner, as the licensed stamp vendor, to operate the Kiosk No. 1



exclusively for stamp vending on behalf of GNCTD.

11. It was submitted that the petitioner is not using Kiosk No. 1 in accordance with the terms and conditions of the allotment done by Divisional Commissioner, GNCTD. The Kiosk No. 1 was designated solely for stamp vending, but the petitioner has been using it for documentation and typing work, which commands a higher license fee of approximately Rs.66,000/- to Rs.86,000/- p.m., compared to Rs. 10,224.50/- p.m. for stamp vending kiosks. Additionally, the petitioner has illegally encroached upon the public footpath by placing a table and chair outside Kiosk No. 1 and has violated the terms of allotment by placing a private advertising board of 'Balaji Documentation' on the kiosk. A letter regarding the misuse was sent to the Divisional Commissioner and the petitioner on 5.05.2009 by the Deputy Director-LPC, DDA.

12. The DDA further submits that they have received several complaints regarding the misuse of Kiosk No. 1 by the petitioner. Due to these irregularities, the kiosk's license was cancelled by the Commissioner (LD⁵) on 05.06.2009. However, this cancellation was reversed by the orders of Hon'ble LG⁶, Delhi on 05.08.2009, and the restoration was communicated to the erstwhile allottee i.e., Divisional Commissioner, GNCTD, and the petitioner *vide* office letter dated 17.09.2009. The restoration was subject to the condition that the kiosk would not be used for documentation work in the future. Despite this, the petitioner continues to conduct documentation work along with

⁵ Land Disposal

⁶ Lieutenant Governor



stamp vending, thereby flouting the terms and conditions of the allotment.

13. The DDA contends that the petitioner, *via* letter dated 15.12.2017, requested for the regularization of Kiosk No. 1 in his favour and along with the letter he enclosed a copy of a letter dated 22.07.14 issued by the SDM⁷ (South East), stating that the issue of the allotment is to be settled between petitioner and DDA. However, this letter from the SDM (SE) cannot be considered, as it was not addressed to the DDA. It is pertinent to note that the petitioner's earlier request was examined but rejected by the competent authority due to the lack of a contract between the petitioner, Sh. Ravi Gupta, and the DDA. The kiosk was allotted to the Divisional Commissioner, GNCTD, not the petitioner and the same was communicated to the Hon'ble LG, Delhi.

14. In response to the petitioner's letter dated 01.11.2018, regarding the regularization of Kiosk No. 1 opposite Vikas Sadan, INA, New Delhi, the SDM (HQ)-VI, *via* a letter dated 28.11.2018, directed the petitioner to immediately cease the misuse of the license and comply strictly with its terms and conditions. The letter warned that failure to do so would result in considering a replacement by another stamp vendor. It is submitted that the petitioner pays a nominal license fee of Rs. 10,224.50 per month plus 18% GST, whereas other kiosk licensees at Vikas Sadan pay between Rs. 66,000/- and Rs. 86,000/- per month. It is also noted that manual stamp vending has been replaced by e-stamping, which other stamp vendors use. Additionally,



the petitioner continues to misuse the kiosk for documentation work and has encroached upon the public footpath.

15. Lastly, the DDA submits that Kiosk No. 1 cannot be converted into leasehold property directly in the licensee's name. It can only be allotted through e-auction after cancelling the license, with the applicant/petitioner participating in the e-auction process. In this case, the petitioner is not a DDA allottee; the kiosk was originally allotted to the Divisional Commissioner, GNCTD, on a license fee basis in 2002. The Divisional Commissioner authorized the petitioner to operate only a stamp vending business from the kiosk. No other activity was permitted. Therefore, the DDA, as the competent authority, approved the cancellation of the kiosk's license in accordance with the law.

ANALYSIS AND DECISION:

16. I have given my consideration to the submissions made by the learned counsels for the rival parties at the bar. I have meticulously gone through the entire record of the case.

17. At the outset, the instant writ petition is bereft of any merits. First and foremost, the petitioner has no vested rights to be conferred with license or assigned any leasehold or freehold rights in the subject property *in perpetuity*. Evidently, the site in question belongs to the DDA, the original owner, and was placed at the disposal of the Divisional Commissioner, GNCTD, with the sole objective of providing services to the public by allowing the petitioner to engage in the sale of stamp papers and operate as a stamp vending site on a

⁷ Sub Divisional Magistrate



license basis. Although the allotment letter dated 08.03.2002 and terms and conditions of the license framed by the Divisional Commissioner GNCTD, are applicable, it is undeniable that the site in question belongs to the DDA, and the petitioner's possession is only only permissive in nature.

18. At this juncture, it would be pertinent to refer to the relevant provisions in the Indian Easements Act, 1882, which provide as under:

“52. “License” defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

53. Who may grant license.—A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

54. Grant may be express or implied.—The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.”

19. Further, we need to also consider the following provisions in the Indian Easements Act, 1882:

“60. License when revocable.—A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

61. Revocation express or implied.—The revocation of a license may be express or implied.

Illustrations

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is



revoked.

62. License when deemed revoked.—A license is deemed to be revoked—

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license;

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative;

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can not longer exercise his right;

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license;

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee;

(i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Licensee's rights on revocation.—Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.”

20. In the light of the aforesaid provisions, the Divisional Commissioner, GNCTD created a license in favour of the petitioner by calling upon the DDA to handover the site to him to run a stamp vending site to cater to the interest of the larger public. Indeed, there was no contractual relationship between the petitioner and the DDA in so far as the payment or recovery of licence fee is concerned. However, there is no denying the fact that the DDA is the owner of the site in question or superior lessor. As and when it chooses to re-



possess the site, even the Divisional Commissioner cannot have a say. If the case of the respondent/DDA is believed, the revocation of license can be inferred in terms of Clause (c) (f) and (g).

21. Be that as it may, the origin of the jural relationship between the petitioner and the Divisional Commissioner, GNCTD, at the instance of the DDA, was to serve public interest. However, there was no stipulation in the contract that the permissive possession would be extendable for an indefinite period of time. Now that the issue of generating more revenue for the DDA comes into open, it may be that had it been known that the license was extendable, may be, other parties may have offered more during such extensions. Since the petitioner has enjoyed the fruits of permissive possession given to him for a very long time, he cannot invoke the public law remedies on the revocation of the license by the DDA. In this regard reference can be had to decision of this Court in the case of **Tarsem Kumar Garg v. DDA**⁸, wherein allotment of the shop was done after inviting tenders. The license was envisaged to be for 11 months but then it kept on extended from time to time and on the allotment being cancelled, the revocation of same was challenged. In the said backdrop it was held that *“Article 14 of the Constitution of India protects individuals against arbitrary State action even in the contractual matters undertaken by the State. However, when the State conducts business, it must have necessary freedom to decide and take action in best interest of business”*.



22. There is no gainsaying that the respondent DDA is entitled to put the site in question to a public auction and, thereby seek greater revenue for itself. The petitioner has been granted sufficient time to vacate the site in question pursuant to impugned letter dated 11.02.2019, and there arises no question of affording any further opportunity of hearing to him.

23. In view of the foregoing discussion, the present writ petition is dismissed. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

AUGUST 21, 2024

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⁸ ILR (2006) I Delhi 481