

(2002) 01 DEL CK 0153

In the Delhi High Court

Case No : CW. No"s. 7610-31, 7910-12 and 7914-16 of 2001

Lajya Ram Kapur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 68 DRJ 634

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : P.V. Kapur, Anuradha Dutt, Ekta Kapil and Jeevesh Nagrath, V.P. Singh and Amitabh Chobey, in CW 7910-12/2001 AND cw 7914-16/200, for the Appellant; Sanjay Jain and Karishma for Respondent Nos. 1 and 2 and Hima Kohli, for Respondent No. 3-NDMC, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—These writ petitions have been filed by the licensees of the shops in the Indian Oil Bhawan building situated at Janpath seeking ownership rights on the same basis as granted in other refugee markets and for quashing the letters dated 9.11.2000 and 28.11.2001 increasing the license fee for the occupants.

2. In order to appreciate the controversy in question it is necessary to set out the background in which these petitioners came to occupy the shops in the building. The petitioner or their predecessors in interest were refugees from Pakistan but having migrated to India came to squat in the verandas of Connaught Place to make out a living in those difficult circumstances. In order to provide a source of livelihood and to clear the squatting, such persons were given temporary stalls at road berms of Janpath, Irwin Road and Punchkulan Road by holding a draw of lots. Thus such persons came to be distributed in different areas only by reason of their fate in the draw of lots. In about 1950 stalls were put up at the Janpath road berms and the petitioners were occupants of these shops. There are 26 such petitioners before the court. A fixed license fee was being recovered from

these persons occupying the stalls.

3. It is also relevant to note that in pursuance to the Gadgil assurances Government of India had assured the displaced persons of allotment of sites at concessional rates at no profit-no loss basis. The issue, however, remained pending and while ownership rights were given in some of the refugee markets in Delhi no such rights were given for others and only license fee was charged.

4. It is not disputed that no ownership rights have been given to any of the shops in Janpath and status quo prevails in their case as also in case of certain other refugee markets.

5. In and around 1968 the Indian Oil Corporation building came up at Janpath and the issue of the removal of stalls and shops immediately in front of the said building came up. All the petitioners before this court were occupants of such shops and stalls. A reading of the minutes of meeting dated 21.8.1968 would show that the same was held by the Ministry of Rehabilitation in respect of the implementation of the Gadgil Assurances when representatives of different departments were present. It would be appropriate to quote the relevant paragraph dealing with the shops at Janpath which is as under :-

"Regarding the allotment of shops in the Multi-storeyed building at Janpath, Shri Malhotra's point was that, under the Gadgil Assurance, it was the responsibility of the Government to rehabilitate all the shopkeepers who were now running their business in temporary stalls on the Janpath since the days of partition, in the same area at a "no-profit-no-loss" basis. He wanted to know whether Government had any plans to undertake further phases of construction so that the remaining shopkeepers might also be rehabilitated.

6. It was stated in reply that these shopkeepers had already been rehabilitated in semi-permanent structures by the NDMC, for which they were paying rent to the NDMC. It was therefore not correct to say that under the Gadgil Assurance the Shopkeepers were entitled to further rehabilitation benefits. However, Secretary (WH&UD), stated that Government were contemplating further phases of development in the same area and when these materialised it should be possible to rehabilitate to all the Janpath Shopkeepers in the new buildings that will come up. In view of this Shri Malhotra undertook to speak to the Janpath traders and persuade them to accept the allotment of shops in the multi-storeyed building for the clearance of its frontage, and the remaining shopkeepers would be rehabilitated and new buildings as and when they came in the same area."

7. The reading of the aforesaid paragraph thus makes it clear that it was decided to persuade the traders occupying their shops immediately in front of the multi-storeyed building to clear the frontage and for such shopkeepers to be rehabilitated in the new building. The Directorate of Estates, however, proposed to auction 25 shops on the ground floor of the multi-storeyed building and at that stage a writ petition bearing No. 590/1970 Lajya Ram Kapur and Ors. v. Union of

India and Ors. was filed seeking directions against the respondent to allot the shops in the ground floor of the multi-storeyed building to the petitioners therein as a measure of rehabilitation in view of the fact that the shops of these persons located in the front of the building had to be demolished. In para 30 of the writ petition this averment was made which is as under :-

"30. That the petitioners are immediately and directly affected by the action of the respondents to allot the shops in the new building by inviting public tender because the existing stalls of the petitioners cover the frontage of the building and are Therefore proposed to be demolished first. Therefore, the petitioner were selected by the respondents for allotment of shops in the new building in pursuance of the first phase of shifting of the Janpath Stalls."

8. The writ petition was compromised in pursuance to the statement made by the counsel for the petitioners therein dated 28.5.1970 in terms where of it was agreed that the petitioners would pay a license fee @ Rs. 1.42 per square ft per month in the case of the shop to the allotted in the building and shall vacate the stalls in their occupation at Janpath so that the same could be demolished immediately. It may however, be noticed that this was a settlement arrive at between the parties in pursuance to the statement of the counsel and the matter was disposed of as premature since no action was threatened at that point of time. A letter was thus issued by the Directorate of Estates dated 15.6.1970 to all the petitioners. The requirement set forth in the letter contained in para 3 of the said letter are as under:

"3. You are hereby called upon to specifically and categorically place on record whether or not you are willing to abide by the following terms and conditions in case of Government decides to allot a shop to you in the composite building.

(1) You undertake to pay license fee for the shop to be allotted to you at the composite building at the rate of Rs. 1.42 per sq.ft per month for the room area of the shop calculated on the basis of the carpet area of the shop plus 50% of the area of the loft.

(2) You undertake to vacate the present stall which is in your Occupation and possession at Janpath and deliver up peaceful possession thereof to New Delhi Municipal Committee within 72 hours after possession of the new shop in the composite building.

(3) You undertake not to claim any compensation on any account whatsoever in respect of your existing stall either from the Central Government or the NDMC.

(4) You undertake to furnish an indemnity bond on non-judicial stamp paper of the appropriate value to the effect that you will indemnify and keep harmless the Government against any claim from any person in respect of or relating to the existing stall now occupied by you and in lieu whereof a shop will be allotted to you at the composite building.

(5) You undertake to execute a license deed for the grant of the license of the

new shop to you and abide by the terms and conditions contained in the license deed, a copy whereof is also annexed hereto.

(6) You undertake to furnish an affidavit duly sworn before a first class Magistrate as per proforma enclosed.

(7) The allotment of the new shop to you in the composite building if made would be subject to all the 25 petitioners in the aforesaid writ petition agreeing to abide by the terms and condition set forth above and the writ petition being dismissed."

9. The said letter also enclosed a draft of lease deed and the relevant clause for determination of the present controversy is as under :-

"4. (ii) The Licensee(s) shall immediately pay six months license fee in advance as security deposit. The licensee(s) shall pay every month in the office of the Director of Estate, New Delhi, in advance before the 10th day of the month a license fee of Rs. 479/- for use and occupation of the said premises or at such other rate to be fixed by the Government from time to time which will have retrospective effect also if so specified. In the event of license being revoked or determined the licensee(s) shall pay a proportionate part of the license fee at the rate in force including proportionate charges of electricity and water consumption for the fraction of the current month up to the date of such revocation or determination."

10. It may be noticed that certain representations were made by the petitioners seeking reduction of license fee but they were never accepted by the respondent and the petitioners came to occupy these shops in the year 1970. The first attempt to revise this license fee was made in the year 1986 but on representations on behalf of the petitioners the matter did not proceed further and thus issue was pending till the decision was taken in terms of the impugned letters in the year 2000 seeking revision of the license fee on a particular basis. It may be noticed that on the earlier occasion also when a revision of the license fee was done it was sought to be implemented retrospectively and then the decision was withdrawn. In the present case also the revision is also sought to be done retrospectively from 1985 in terms of the letter dated 9.11.2000. Reminders were thereafter sent in pursuance to the subsequent letters calling upon to pay the said amount. It may be noticed that by reason of the fact that such revision has been done after number of years the arrears towards the increase itself run into lacs of rupees in each case and the rate of revision has been applied at interval of three years.

11. Learned senior counsel for the petitioners fairly state that in view of the fact that no decision has been taken as yet to confer any ownership rights on any of the shops on the berms of Janpath, the petitioners cannot claim a higher right than those persons though they are aggrieved by the fact that while for some refugee markets ownership rights have been given, the same have not been given to the occupants of Janpath. However, this is a matter which the learned

counsel state can be agitated in appropriate proceedings as and when such a decision is taken in respect of the occupants of the shops on the berm of Janpath as the petitioners claimed identical rights to such persons. Needless to say that in case of failure to take such decision also such a right would be available and it will be open to those of the persons who want to choose to against before the appropriate forum. Learned senior counsel for the petitioners thus do not press the petitions in respect of that relief at present and seek liberty to agitate the same at the appropriate stage when such a decision is taken for which liberty is granted.

12. In view of the aforesaid position the limited controversy which arises for consideration in the present case is as to In what manner the petitioners before this court should be treated and whether they are to be treated at par with the occupants of the other shops on the berm of Janpath.

13. Learned senior counsel for the petitioners have contended that keeping in mind the, background set out above in which such persons came to occupy the shops in the IOC building, they cannot be treated in a different manner from those who occupy the shops on the berm of Janpath. In this behalf learned senior counsel have laid emphasis on the minutes of meeting dated 21.8.1968 as also the pleadings in CW 590/1970 to emphasise that the petitioners were compelled to shift from their original occupied shops by reason of the proposed action to demolish that area to have the open clear area in front of the IOC building and accepted the shops in the new building. On the other hand learned counsel for respondents 1 and 2 contend that the petitioners cannot be treated at par with such persons in view of the fact that they consciously accepted the terms of the license to occupy their shops in the IOC building and waived and abandoned their rights in respect of the claim as refugees which arose as a consequence of their occupying the shops earlier at the berm of Janpath.

14. I have considered the rival submissions advanced by learned counsel for the parties,

15. As stated earlier the material aspect to be considered in determination of this controversy is the circumstance under which the petitioners came to occupy the shops in the IOC building. There would have been no occasion for the petitioners to occupy the shops or to be removed from the original place but for the fact that a multi-storeyed building was so built and it was decided to remove the shops in front to clear the frontage. In such a circumstance the petitioners were left with little option but to seek their redressal of their grievance. Admittedly they had not been rehabilitated till that stage. It was in these circumstances that the settlement was arrived at whereby the petitioners handed over the possession of the shops in their occupation at the berm of Janpath and accepted the license of the shops in the building and shifted to the shops in the building. What is also relevant is that in the letter dated 15.6.1970 itself it is specified that the petitioners were asked to vacate the stalls occupied by them and occupy the shops in the building in lieu of the stalls earlier occupied by them. The petitioners

also gave up their rights to claim any compensation and submitted indemnity bonds indemnifying any claims made in respect of the stalls occupied by them earlier "in lieu whereof a shop will be allotted to you at the composite building."

16. I am unable to accept the contentions of learned counsel for the respondents that by such an arrangement arrived at between the parties the petitioners would have waived and abandoned the rights as refugees. I have no manner of doubt that as and when a final decision is taken in respect of other shops on the berm of Janpath, the petitioners would also be treated identically.

17. It is also relevant to note that the plea of learned counsel for the respondents, also flows from the comparatively modern building built and the better conditions and services available to the petitioners in the new building. This, however, is reflected in the higher rates being paid by the petitioners. The petitioners did not pay the same rate or the amount which they were paying in the earlier stalls but were asked to pay @ Rs. 1.42 per sq.ft per month. This considerable differential in the figure itself took care of difference arising from the quality of construction and the services rendered and by charging a different quantum the differential was sought to be equalised. There is no dispute about the payment of this amount of Rs. 1.42 per sq.ft.

18. I have also no manner of doubt that the procedure adopted by the respondents to periodic payments every three years of license fee in normal circumstances would brook no challenge. However, the circumstances for these petitioners are different in view of the fact that though they came to occupy these shops in lieu of the shops earlier occupied by them on the berm of Janpath the only initial differential was of rate and in my view thereafter the occupants of the shops at berm of Janpath and occupants of shops in the IOC building had to be treated at par to the extent that the rate of increase should have been the same. It may be noted that it is not the absolute amount of increase which is being equated but the rate of increase once the price level is equalised by the differential in rate.

19. The records have been produced before me by respondents 1 and 2 which contain a letter of the NDMC setting out the details of the license fee being charged from the shops on the berm of Janpath and the periodic increase effected for the same as also the period of time when they were so revised, Learned counsel for respondents 1 and 2 state that while the occupants of the shops at berm of Janpath are paying the fixed amount the petitioners are being charged at per square fee rate. In my considered view this makes no difference as it is not an absolute amount which is sought to be equated but the rate of increase which is sought to be equated. I am thus of the considered view that in view of the letter of NDMC dated 4.7.2000 available in the records which show that there is periodic increase of license fee a similar rate of increase of license fee be also made applicable to the petitioners and for the same period of time.

20. A writ of mandamus is thus issued quashing the demands raised against the

petitioner with a direction to respondents 1 and 2 to raise their demands against the petitioners taking into consideration the same rate of increase and the period as respondent No. 3 but on the base value as per the amount being charged from the petitioners by respondent Nos. 1 and 2. Credit should be given for the amount already paid by the petitioners in view of the fact that in terms of the interim arrangement amounts have been deposited by the petitioners. Such demands be raised against the petitioners within a maximum period of three months.

21. It is further directed that In case a decision Is taken in respect of other shops on the berm of Janpath to either rehabilitate them or to grant ownership rights to such person on certain terms and conditions, the petitioners should be treated similarly and at par by the respondents.

22. Writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.