

(2013) 11 DEL CK 0174

In the Delhi High Court

Case No : Writ Petition (C) No. 2164 of 2012

Ravi Ranjan Chaudhary

APPELLANT

Vs

Container Corporation of India Ltd. and Another

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, 4

Citation : (2013) 11 DEL CK 0174

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : L.B. Rai, for the Appellant; Sudhir Nandrajog and Mr. Rishi Awasthi, for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner before this Court was allotted Room No. 205-B in the Administrative Building of the respondent - Container

Corporation of India Limited, on license basis, on the terms and conditions contained in Leave and Licence Agreement dated 12.9.2003, for

running a Photostat shop, for a period from 1.9.2003 to 3.8.2004. Under Clause 3 of the said agreement, the licensor could extend the term of

licence for a further period(s) on the terms and conditions to be decided by the licensor in its sole discretion. The aforesaid licence was extended

further and the last Leave and Licence Agreement between the parties was executed on 14.9.2007, which was valid for a period from 1.9.2007 to

31.8.2010. Clause 3 of the said agreement also provided that the licensor could extend the terms of the licence for a further period(s) on the terms

and conditions to be decided by the licensor in its sole discretion. Vide public notice dated 12.7.2011, the licensees were advised by the

respondent to execute new Leave and License Agreement on or before 20.7.2011. Later, the last date for the purpose was extended to

12.8.2011. Vide letter dated 1.2.2012, the respondent informed the petitioner that his agreement was going to expire on 28.2.2012 and sought his

consent for extension with affidavit and clearance of dues mentioned in the said letter. Pending dues, as per the letter dated 1.2.2012 were Rs.

4321.15. However, vide letter dated 1.3.2012, the respondent informed the petitioner that his Leave and Licence Agreement and its

renewal/extension had expired on 31.8.2010 and his occupation thereafter was without any authority and right. The petitioner was accordingly

called upon to vacate and handover possession of the unit in question within fifteen (15) days of the said letter. Another notice dated 1.3.2012 was

issued by the respondent informing all the licensees that the new agreement should be executed on or before 15.3.2012. It was reiterated in the

said notice that the agreement will not be executed with such licensee who had not cleared the dues upto 29.2.2012. Responding to the letter

dated 1.3.2012 sent to him, the petitioner wrote to the respondent on 15.3.2012, giving his consent for extension of agreement and also informing

that he had cleared all the dues upto February-2012.

2. Vide notice dated 20.3.2012, purporting to be issued u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the Estate

Officer of the respondent called upon the petitioner to show cause why an order of eviction be not passed against him. The petitioner appeared

before the Estate Officer on 27.3.2012 and sought fifteen (15) days time to submit a reply. The case of the petitioner is that without holding any

proceedings in terms of the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the respondent took forcible

possession of the room in question from him on 4.4.2012 and illegally locked the said room. Being aggrieved from his dispossession and non-

extension of agreement, the petitioner is before this Court seeking the following reliefs:

(a) To pass an appropriate writ order of direction for directing the respondents to extend the lease deed of the petitioner in view of Public Notice

dated 1.3.2012 and 20.3.2012 for a period of three years as the respondents have extended the lease deed of others occupants/allottee of the

space/rooms and also to restore the allotment/possession of the Unit bearing number 205-B, measuring 5.08 square meters, in Administrative

Block of Inland Container Depot, Tughlakabad, New Delhi-110020 back to the petitioner;

(b) To pass an appropriate writ order or direction thereby directing the respondent no. 2 to allow the petitioner to use the Unit bearing number

205-B, measuring 5.08 square meters, in Administrative Block of Inland Container Depot, Tughlakabad, New Delhi - 110020 which was allotted

to the petitioner;

(c) To pass an appropriate writ order or direction thereby quashing/setting aside the proceedings initiated by the respondents under the provisions

of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 or any orders passed by the alleged Estate Officer in the said proceedings as

the same have been initiated by the respondents without any authority of law.

3. In its counter affidavit, the respondent - Container Corporation of India Limited has stated that after 31.8.2010, the Leave and License granted

to the petitioner was not renewed. It is further stated in the said affidavit that finding utter chaotic and confusing situation at its depots, the

respondent decided to streamline the business of photocopying in its building and two (2) licensees, including the petitioner were requested to

vacate their respective units so that a comprehensive bid/tender could be floated for undertaking photocopying activities in the building. The

respondent accordingly floated tender/bid for operating a business centre and the petitioner also participated in the said process, though he could not

qualify. It is further stated that ultimately a notice was issued to the petitioner and an eviction order was passed by the Estate Officer against him. It

is, however, admitted in the counter affidavit that the requisite notification for appointment of Estate Officer was not issued. It is also stated that the

petitioner was paying license fees amounting to Rs. 2356.05 per month whereas the successful bidder is paying Rs. 49,000/- per month running a

business centre.

4. The Leave and License Agreement dated 14.9.2007, which is the last agreement between the parties, to the extent it is relevant reads as under:

3. The licensor may extend the terms of license for further period(s) on the terms and conditions to be decided by the Licensor in its sole discretion

and the decision of the licensor shall be final and binding.

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23. The Licensor may, at any time and at its discretion call upon the Licensee to vacate the office and give him suitable alternative accommodation

for the purpose of this license. In such cases, the license shall be obliged to vacate the office within a period of 60 days and accept the said accommodation.

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28. That the Licensee shall observe and carry out the directions that may be issued by the licensor from time to time.

29. It is clearly understood by the licensee that no lease of the premises is being granted, that the possession and control of ICD, Tughlakabad,

including the Licensed Premises, shall be that of the Licensor throughout and it is clearly understood that the licensee shall not have any right to

exclusive possession of the licensed premises at any time.

30. That the license can be terminated by the licensor at any time by giving one month's notice without assigning any reason whatsoever and in

such case, the license fee for the unexpired period of the license shall be refunded to the licensee by the licensor.

31. On expiry or on earlier termination of the license the licensor shall grant permission to the licensee to remove its belongings from the licensed

premises within a week thereof.

32. If the licensed premises are required by licensor temporarily for any purpose the licensee shall, upon notice being given by the licensor, quit the

licensed premises with all belongings and the licensor may direct and licensor shall refund the license fee for such period for suspension.

33. In the event of breach of any of the terms and conditions of this license on the part of the licensee, the licensor shall give a notice to the licensee

shall be entitled to revoke the license forthwith with immediate effect and the license will remove its belongings from licensed premises at the risk

and cost of the licensee.

5. It is an admitted case that no leave and license agreement was executed between the parties after expiry of the leave and license agreement

dated 14.9.2007, expired, by efflux of time on 31.8.2010. The petitioner in his

letter received by the respondent on 9.8.2010, which is available at page 58 of the paper book, stated that the extension was going to lapse on 31.8.2010 and sought extension of the contract for another period of three (3) years. There is no communication from the respondent to the petitioner expressly extending the leave and license agreement executed between the parties. Though notices dated 12.7.2011 and 23.7.2011 were issued by the respondent to the licensees to execute new agreements, neither any extension has been expressly granted to the petitioner nor any fresh agreement between the parties has been executed after expiry of the leave and license agreement dated 14.9.2007. Though it is stated in the letter dated 1.2.2012 issued by the respondent that the leave and license agreement was going to expire on 28.2.2012, the fact remains that there is no express extension of the said agreement and the stand taken by the respondent in the notice dated 3.3.2012 (page 109 of the paper book) sent to the petitioner was that the said agreement had expired on 31.8.2010 and thereafter, his possession was unauthorized. The letter dated 1.2.2012 appears to be on a standard format, meant for all the licensees since the name of the petitioner as well as the number of his premises has been written by hand on the said letter and so is the amount of pending dues. But, even if it is accepted that the leave and license agreement granted to the petitioner was extended up to 28.2.2012, as is stated in the letter dated 1.2.2012, his possession after 28.2.2012 was wholly without any authority of law.

6. The question as to whether the licensor has a legal right to evict the licensee, on expiry of the terms of the license, came up for consideration before a Full Bench of this Court in Chandu Lal, Bal Krishan, Madan Mohan, Mohan Lal versus MCD [1978 RLR 278]. In the aforesaid case, the respondent - Corporation auctioned kiosks on license basis for eleven (11) months. The petitioners did not vacate the said kiosks on expiry of the licensed period and filed a civil suit seeking interim injunction against their dispossession. The following view taken by the Full Bench is relevant for the purpose of this writ petition:

20. The various terms of the deed noted above clearly show that the petitioners were given only physical possession but for which permission their occupation would have been unlawful, while the legal possession all along

remained with the Corporation. The term, of the document dated 11th December, 1973, read in the light of the surrounding circumstances reveal that it operated as a license and that no right or interest in the land was created in favor of the petitioners.

24. The petitioners in the instant petitions were given the liberty to occupy the Kiosk for 11 months ""for purposes of trade."" They were forbidden from parting with possession of the Kiosk or allow any other person to occupy the same or to use any part thereof or to enter into partnership with any other person without the written permission of the Commissioner of the Corporation The liberty to occupy the Kiosk was personal to the petitioners alone. Besides, the petitioners were required ""faithfully and diligently"" to ""comply with all the directions, general or special"" that may be given by the Commissioner of the Corporation from time to time. The infringement of any of the terms and conditions of the license was to result in the cancellation of the license. the petitioners having, no claim whatsoever on that account. Further, the license was liable to be cancelled at any time by the Commissioner of the Corporation or other authorised officer without assigning any reason. All these conditions militate against ""lease"", no interest in the premises passed to the petitioners. The Corporation in the circumstances in enforcing its right of re-entry by self help cannot be said to have taken the law into its own hands or that it was in any manner acting without recourse to law in resuming the possession. The underlying assumption in the case of a license is that the owner continues to be in possession and control of the property. In such circumstances the Court cannot throw its protection round the trespasser having no vestige of any right what so ever, and his unlawful act of continuing to occupy the premises, by the issue of a prohibitory order against the lawful owner.

34. The petitioners being licensees legal possession all along remained with the Corporation. That being so, as held by the Supreme Court in *Munshi Ram and Others Vs. Delhi Administration*, , the Corporation had a right to reenter the premises and rein state itself provided it does not use more force than necessary. Such an entry would be received only as a resistance to an intrusion upon possession which had never been lost.

Further, the law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection

authorities, there being degrading to the human the face being of the nothing more spirit than to run away in peril.

7. In Exclusive Motors Private Ltd. Vs. India Tourism Development Corporation , the respondent - ITDC gave possession of an area adjacent to

the out gate of Ashok Hotel to the petitioner for running an office/showroom and a license deed initially for a period of 3(three) years, was

executed. The license was thereafter extended up to 7.4.2008. The license deed contained a renewal clause on enhanced license fee. The

petitioner in that case was also permitted to carry out certain additions and alterations on which substantial expenditure was incurred by him. The

case of the petitioner in that case was that on 10.5.2008, the officials of respondent - ITDC forcibly entered its show room and forcibly

dispossessed the petitioner. It was contended by the petitioner that even a trespasser could be removed only by due process of law. Rejecting the

contention of the petitioner, and relying, inter alia, upon Chandu Lal (supra), this Court, inter alia, held as under:

41. Clauses 14 and 56 of the Licence Deed also make it clear that the licensed premises shall at all times be under the control and supervision of

the licensor, thus it cannot be said that the respondent was in legal occupation after the period of licence came to an end. Under these

circumstances, when admittedly the period of licence had expired and petitioner even thereafter continued to occupy the licensed premises, should

the court interfere and come to the aid and rescue of such a petitioner. The answer is certainly in the negative. Once the period of licence comes to

an end, it is the owner of the premises who would be in lawful possession of the premises. In view of the agreed terms of the licence deed, it

cannot be said that the petitioner was in legal or settled possession thus making the case of the petitioner different to the case of a tenant or a case

where the termination was premature.

44. There is no doubt that the petitioner was in lawful occupation of the premises during the period of licence. The possession however, continued

to remain with the respondent, as per the terms of the licence which is an admitted document. This very document was the basis on which the

petitioner had filed a suit for declaration and injunction and derived the benefit of interim protection. The same very document has to be interpreted

at this juncture as well.

45. Defaulters, such as the petitioner, have already flooded the Courts with frivolous litigations, they cannot be permitted to further block the stream of justice, in this manner. Petitioner had entered into a licence deed with open eyes, knowing fully that the duration was three years, which was renewed for another period of two years at the sole option of the respondent. Learned counsel for the petitioner has not been able to show any right accrued in its favour which would entitle the petitioner to use the premises thereafter. In these circumstances petitioner is not entitled to any relief in these proceedings. Accordingly, petition stands dismissed with no order as to costs.

8. In the case before this Court, in terms of clause 17 of the license deed no employee or guests of the petitioner was entitled to stay in the premises after office hours or the time fixed by the licensor. Under clause 23 of the said agreement, the respondent could in its discretion call upon the petitioner at any time to vacate the premises and give him suitable alternative accommodation. Under clause 28, the petitioner was required to observe and carry out directions issued by the respondent from time to time. Under clause 29, the petitioner expressly agreed that no lease was being granted and possession and control of the licensed premises shall be that of the respondent throughout and he shall have no right to exclusively possession of the licensed premises at any time. Under clause 30, the license could be terminated at any time by giving one month's notice without assigning any reason. Under clause 32, the respondent, if in need of the premises temporarily for any purpose could require the petitioner to quit the licensed premises. All these clauses clearly show that only a license and not a lease was granted to the petitioner. On expiry of the license, the petitioner has no legal right to continue to occupy the licensed premises. Therefore, the respondent was well within its right in removing the petitioner from the licensed premises and sealing the said premises. The petitioner has no legal right either to extension of license or to regain possession of the licensed premises.

9. It was contended by the learned counsel for the petitioner that since the appointment of the Estate Officer of the respondent was not duly notified u/s 3 of the Public Premises (Eviction of Unauthorized Occupants) Act,

1971, he had no right to pass an eviction order. It was also submitted that the procedure prescribed under the said Act, was not followed by the Estate Officer of the respondent before evicting the petitioner.

In my view, considering that the petitioner had no legal right to continue in possession of the licensed premises, the respondent, de hors, the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, was competent to remove him from the said premises and take its physical possession from him. The Court, in exercise of its writ jurisdiction, which is an equitable discretionary relief, cannot allow a trespasser, who does not vacate the licensed premises even on expiry of the license, to regain possession of the premises to which he has no legal right.

Therefore, no relief to the petitioner can be granted. The writ petition is accordingly dismissed. During the course of arguments, it was contended by the learned counsel for the petitioner that the respondent had extended licenses of other persons while evicting the petitioner from the licensed premises, thereby discriminating against him. When this contention was raised, I asked the learned counsel for the petitioner to show, from the writ petition, who such licensees were and how they were similarly situated. However, no pleadings to this effect could be shown by the learned counsel for the petitioner. He was not able to point out from the writ petition, name of such persons and the particulars of their respective premises, in the building of the respondent. Therefore, while dismissing the writ petition, I grant liberty to the petitioner to file a fresh writ petition, based solely on the plea of positive discrimination, if any, in the matter of extension of licenses, provided that the persons whose licenses are alleged to have been extended are similarly situated and full particulars of such persons as well as their respective premises are disclosed in the writ petition.

No orders as to costs.