
(2017) 04 DEL CK 0013

In the Delhi High Court

Case No : LPA 85 of 2017

Satya Prakash Gupta

APPELLANT

Vs

NDMC

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Citation : (2017) 4 ADDelhi 461

Hon'ble Judges : G. Rohini, CJ. and Ms. Sangita Dhingra Sehgal, J.

Bench : Division Bench

Advocate : Mr. S.P. Kalra, Senior Advocate with Mr. Sumit Kumar, Advocate, for the Appellant; Mr. Sanjay Jain, ASG with Mr. Akshay Makhija, Ms. Ruchi Jain, Ms. Rhea Verma and Kartik Rai, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J.—The appeal is preferred against the order dated 07.12.2016 passed by the learned Single Judge in W.P.(C) No. 11540/2016. The unsuccessful petitioners are the appellants before us.

2. Adversely affected by the order of the respondent dated 23.05.2016, the appellants filed a W.P.(C) No. 11540/2016 before the learned Single Judge. The learned Single Judge rendered a final judgment dated 07.12.2016 dismissing the petition and held as under:-

"Given the aforesaid facts and circumstances, this court is of the opinion that the petitioners are not entitled to claim any relief against the respondent/NDMC. If aggrieved, it is for them to seek their remedies against M/s. Prominent Hotels Ltd. that had executed the Sub-Licence Deeds in their favour, as may be permissible in law. But, the present petition as filed, is not maintainable for the relief claimed. Before disposing of the present petition, it has been enquired from learned counsel for the petitioners if the petitioners are desirous of removing their goods/articles, if any, stated to be lying in the shops that have been sealed. However, counsel for the petitioners states that he does not have any

instructions in this regard. In view of the observations made above, the present petition is dismissed in limine, as not maintainable along with the pending application."

3. It is the case of appellants that a license in case of the subject premise was granted in favour of M/s. Prominent Hotels Ltd., by the respondent by executing a license deed dated 16.07.1982 (hereinafter referred to as "the said Deed"), valid for a period of 99 years w.e.f. 04.11.1981. The said Deed permitted M/s. Prominent Hotels Ltd. to create sub-licenses for running car parking, cycle scooter stand and shops in favour of third parties. The appellants had entered into individual sub-license deeds with M/s. Prominent Hotels for taking different shops on sub-license, which they have been occupying for several years.

4. The respondent/NDMC on 23.05.2016, sealed the shops of the Appellants without permitting them to remove their articles. On 16.06.2016, the appellants had submitted a representation to the NDMC, for granting them the status of licensees by directly entering into fresh license agreements but the same was refused by the respondent/NDMC.

5. The learned counsel for the appellants vehemently urged that the appellants swear into the concerned premises as sub-licensees in various shops by the licensee with the full authority, consent and concurrence from the licensor in pursuance of Clause 34 of the license deed 16.07.1984. The respondent was well aware of the fact that Sub-licensees had been created.

6. It was further added by the learned counsel for the appellants that as far as the eviction from the sub-licensed premises is concerned, the appellants are entitled to be treated as per the terms and condition of the license Deed dated 16.07.1984. The learned council submits that there were two courses available for evicting the licensee and sub-licensees viz. either by allusion to Arbitration in terms of Clause 54 of the said License Deed, or dealing eviction of licensee or sub-licensees under Public Premises (Eviction of Unauthorized Occupants) Act. However, none of the re-courses were resorted to or by the licensor under the said deed and instead the sub-licensed premises were sealed which being contrary to the law and the License Deed.

7. On the converse, the learned counsel for the respondent/NDMC placed reliance on Clause 34 of the License Deed dated 16.07.1984 and Clause 4 of the Sub-license Agreement to address that the sub-Licenses executed by the Licensee in favour of the sub-licensees were subject to the terms and conditions of the principle License Deed executed between M/s. Prominent Hotels Ltd. and NDMC.

8. Furthermore, the learned counsel for the respondent contended that the License Deed granted in favour of the M/s. Prominent Hotels Ltd. was terminated several years ago by the respondent in consequent to the violation of the terms and conditions of the License Deed. The challenge laid by M/s. Prominent Hotels Ltd. against the said termination had been rejected right up to the Supreme

Court.

9. The learned counsel vehemently urged that since the respondent had terminated the Licence Deed executed in favour of M/s. Prominent Hotels Ltd., the appellants cannot insist upon the respondent to enter into fresh Licence Agreements directly with them. There is no privity of contract between the appellants and the respondent to claim any relief.

10. We have heard the learned counsel for the parties and perused all the material available on record.

11. Before delving into the merits of the case, it would be pertinent to reproduce the relevant Clauses (Cl. 34 & 54) of the License Deed dated 16.07.1982 executed between M/s. Prominent Hotels Ltd. and NDMC & Clause 4 of Sub-Licence Agreement dated 01/05/1987-

"34. The licencees shall run the Youth Hostel themselves. However, the licencees may allow sub-licencees within the period of licence for running car parking, cycle-scooter stand for parking and shops. The licencees shall be further responsible for the conduct of various sub-licencees and observance of rules and regulations etc. The licencees shall be further responsible to answer that the sub-licencees shall not get any right over and above the rights and privileges of the licencees."54. In the event of any question, dispute or differences arising in regard to these terms and conditions and their interpretation, the same shall be referred to the sole arbitrator of the Lt. Governor of Delhi and the award of the said arbitrator shall be binding on the licencees and licensor. 4. That the sub Licence hereby granted shall always be subject to and consistent with the terms and conditions of the original Licence Deed dated 16.07.1982 executed between Prominent Hotels and NDMC and such other terms and conditions as may further be agreed by and between the said Prominent Hotels and NDMC.

12. On perusal of the Clause 34 of the License Deed , it is clear that the licensee had agreed to accept the licence to use the plot of land for the construction, furnishing, providing facilities and commissioning/Management of youth hostel which it had confessedly strike out to do. In lieu of, dereliction of the terms and conditions of the License Deed, the concern premises in question was converted by the licensee into a hotel. Furthermore, it is clearly mentioned in Clause 34 that Licencees were permitted to sub-licencees only within the period of the license. On reading of Clause 4 of the Sub-licence Agreement executed by M/s. Prominent Hotels Ltd. & the Appellants in this case, it is clear that sub-licencees would be subject to and with the terms and the conditions of the original Licence deed.

13. Another principle of law which is attracted in the present case, is that of "Nemo datquod non habet" (no one can give what he does not have or no one can transfer better title than he himself had). In the present case, as noted above the Respondent had terminated the head licence of by M/s. Prominent Hotels Ltd and by following the above legal maxim the right transferred by M/s.

Prominent Hotels Ltd was also forfeited and subsequently the sub-license was terminated. The basic proposition is set out in a 1925 case, *A. Baldwin & Co Ltd v. Magnetic Car Co. Ltd.* (1925) 42 RPC 454, it was held that a sub-licensee has no greater rights than the head licensee, so that when the head licence terminates, so does the sub-licence. As the consequence of the violation of the terms and conditions of grant by the Licensee the respondent terminated the said license. However the sub-licensee under M/s. Prominent Hotel Ltd, who is the appellant before this court is not sanctioned to claim addition to what has been granted in favour of the licensee.

14. More so, the appellant has contended that where the eviction from the sublicensed premises is concerned; the matter can be referred to Arbitration in terms of Clause 54 of the said License Deed. On the perusal of the clause 54 of the licence deed, it is clear that it is an agreement between the Licensor and the licensee i.e. NDMC & M/s. Prominent Hotels Ltd. respectively; it is a settled law laid down in *Dunlop Tyre Co. v. Selfridge* [1915] AC 847 that "only a person who is a party to a contract can sue on it" the Appellants in this case are not a party to the Licence Agreement & hence no privity of contract lies and therefore cannot claim this right.

15. In view of the above and for the reason of the facts reproduced by the both parties it is clear that the appellants have a right to claim the relief as sought for only from M/s. Prominent Hotels Ltd., if any who had executed the Sub-License Deed and not the respondent/NDMC as there is no privity of contract between the appellants and the respondent herein.

16. We are, therefore, in consonance with the view taken by the learned Single Judge and the appeal is accordingly dismissed as devoid of any merit.