



2025:DHC:1087-DB



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

+ LPA 117/2025, CM APPL. 9633-36/2025

PRINCE GUPTA

.....Appellant

Through: Dr. Amit George, Mr. Ankit
Sinsinwar, Mr. Ravi Kumar, Mr.
Gagan Deep Sharma, Mr.
Purushotham Tiwari & Ms.
Rupam Jha, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.Respondents

Through: None.

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Date of Decision: 17th February, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.: (ORAL)

1. Present letters patent appeal has been preferred under Clause X of the Letters Patent against the order dated 27.08.2024 (*impugned order*) passed by the learned Single Judge in W.P.(C) No.10390/2024 captioned *Prince Gupta vs. New Delhi Municipal Council & Anr.* and the subsequent order dated 10.01.2025 passed in Review Pet. 2/2025 filed in underlying writ petition against the aforementioned order.

2. The underlying writ petition was filed by the appellant/petitioner's challenging the rejection of the appellant/petitioner's representation seeking possession of the kiosk bearing No. 1-A/S, Vayu Bhawan, Rafi Marg, New Delhi by the



respondent-New Delhi Municipal Council ("NDMC"). The underlying writ petition was also dismissed by the learned Single Judge.

3. That, in the first round, against the dismissal of the underlying writ petition, appellant/petitioner had initially preferred an appeal bearing LPA No.888/2024 which was withdrawn simplicitor on 04.09.2024. However, appellant/petitioner moved an application in the aforementioned LPA, seeking liberty to file review of the impugned order, which too was dismissed on 01.10.2024. Against the same, the appellant/petitioner had preferred an SLP being SLP (C) 28316/2024 which was also disposed on 06.12.2024 observing that the appellant/petitioner was not required to seek any permission to file a review application from the Division Bench and he could have directly preferred a review before the learned Single Judge. In pursuance thereto, the appellant/petitioner had moved the review petition in question filed in the underlying writ petition, which culminated into order dated 10.01.2025 which is impugned herein by way of present appeal.

4. Dr. George, learned counsel for the appellant contends that the learned Single Judge both in the original impugned order dated 27.08.2024 as well as the impugned order in review dated 10.01.2025 did not correctly appreciate the purport of sub-clause (iii) of Clause 6 of the Circular dated 16.08.2016 of the "*Policy on licences of NDMC's shops, kiosks, paan tharas and issues related thereto*" (hereinafter referred to as "*Policy*"). By referring to the said sub-clause, he claims that the partnership of the petitioner was entered way back in the year 1998 and seeking transfer under said sub-clause would fall squarely within it. He emphasizes that sub-clause (iii) envisages transfer of pending cases on two counts; one, during the valid term of the license



or; two, even after the expiry of the licence as an exceptional case. He states that in accordance thereto, the appellant had submitted his representations on 11.09.2018, 20.11.2018 & 01.01.2019, which have not been considered or disposed of till date. He states that without disposing of the same, the petitioner has been ousted from the possession of the kiosk in question.

5. Learned counsel emphasizes that having regard to the fact that the father of the appellant had entered into partnership with the original license holder way back in the year 1998 and has continued to operate from the kiosk in question, there is no impediment, legal or otherwise from applying sub-clause (iii) of Clause 6 of the said Policy to transfer the kiosk in question to his name from the name of the original license holder. According to Dr. George, sub-clause (iii) is an enabling provision and the rigours of the same ought to apply on all fours to the case of the appellant. He also emphasizes that the appellant would qualify within the words “*after expiry of the license*” contained in the said Clause. He also forcefully contends that the word “*occupant*” also would imply any person who was in occupation of the kiosk in question under the original licensee. Thus, on the locus and the right of the appellant, he finds anchor in the sub-clause (iii) of Clause 6 of the Policy.

6. On a query by this Court, learned counsel for the appellant states that the appellant is not the legal heir of the original license holder, *albeit*, is the legal heir of the partner of the license holder. However, he tried to justify the same by referring to sub-clause (ii) of Clause 3 and (ii) of Clause 5 of the Policy, which refer to “*Renewal of License*” and “*Transfer of License on legal heir basis*”, respectively.



7. We have heard Dr. George for the appellant and examined the impugned orders passed by the learned Single Judge as also the records of the case.

8. It is not disputed that the appellant is neither the license holder nor the legal heir of such person. It is stated that the predecessor-in-interest of the appellant, i.e., the father had expired on 08.05.2010. It is claimed that consequent thereto, the appellant stepped into the shoes of his predecessor in interest, i.e., the late father of the appellant. While the appellant was in occupation of the kiosk in question, admittedly, the original license holder expired on 08.01.2008. On a query by this Court, as to what rights would flow to any person claiming under a licensee, Dr. George fairly admitted that no such rights would flow except where provided in a covenant of a policy or such similar document. To support the submission, he relied upon sub-clause (ii) of Clause 5 of the Policy. We find this unmerited for the reason that the sub-clause (ii) of Clause 5 relates to transfer of license on legal heir basis. Admittedly, the appellant is not the legal heir of late Ram Sewak Gupta (original licensee). Thus, apparently, the said clause is inapplicable. It is trite that the limited rights accruing to a licensee would extinguish either on a revocation or a cancellation or due to the demise of the licensee. Ordinarily, no right under a license shall stand extended, except in provisions/covenant of a document or a policy formulated in that regard. Thus, we are not persuaded with the submissions made on that count and the same are untenable.

9. On a query as to for how long or for what period of time, the original licensee late Ram Sewak Gupta had a valid license, Dr. George fairly referred to a document at page 252 of the appeal paper book. The



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said document is a letter dated 01.12.2011 cancelling the allotment and withdrawal of license in respect of the kiosk in question addressed to late Ram Sewak Gupta. At this juncture, it would be apposite to extract the said letter *in toto* hereunder keeping in view the significance it would have upon the present appeal. The same reads thus:-

“SPEED POST

*NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI
ESTATE DEPARTMENT-I*

No.D-2227/SO/Estate/2011

Date 01/12/11

*Sh. Ram Sewak
Kiosk No.1/A/S, Vayu Bhawan,
New Delhi*

Sub.: Cancellation of allotment and withdrawal of licence in respect of Kiosk No.A/A/S, Vayu Bhawan, New Delhi.

This is to inform you that Competent Authority, NDMC has cancelled the allotment and withdraw the licence of Kiosk No.1/A/S, Vayu Bhawan, New Delhi vide his order dt. 14.11.2011 due to Trade Violation.

The occupation of the public premises after cancellation of allotment and withdrawal of licence is solely unauthorized and you are liable to be evicted from the Public Premises.

*You are, therefore, directed to stop the use of the premises for any purpose, whatsoever and to **vacate the premises and handover the possession** of the aforesaid premises in a peaceful manner to the Municipal Staff and to allow the Municipal staff to exercise the right of re-entry **within 5 days** from the date of receipt of this letter and pay outstanding dues failing which action for eviction and recovery of the dues shall be initiated under section 5 & 7 of P.P. Act.*

*Also please note that you are also liable to pay **cancellation charges @ 30%** over and above the usual licence fee for your use of unauthorized occupation of the Public Premises besides interest **@12% p.a.** on each defaulted payment.*

*Sd/- (1/12/X1)
DY. DIRECTOR (ESTATE)”*

10. On a query, this Court has been informed that the appellant had never challenged the cancellation of allotment as well as the withdrawal



of the license in respect of the kiosk in question. To the mind of this Court, this submission coupled with the cancellation of allotment letter dated 01.10.2011 having not been challenged ever, became final and binding upon not only the original allottee but also the appellant. This is for the reason that the appellant claims to have been in possession of the kiosk in question by virtue of a purported Partnership Deed executed between the father of the appellant and the original license holder. Thus, the appellant was aware of the cancellation, yet, is attempting to base his claim on the non-existent license. There is no pre-existing right with the appellant to predicate his claim on and thus, the learned Single Judge has rightly observed that the underlying writ petition was not maintainable for lack of entitlement.

11. It is also observed that late Ram Sewak Gupta had expired on 08.01.2008 and appellant's father, late Pradeep Gupta had passed away on 08.05.2010. It is inexplicable and intriguing to note as to how the appellant has been continuing in occupation of the kiosk in question, after the death of the original license holder as also the father, who was the predecessor-in-interest of the appellant *qua* the partnership deed. In fact, upon the death of the aforesaid two persons, there is no question of a legal or a valid partnership deed remaining in existence. On a closer scrutiny of the records, it is revealed that a partnership deed was executed on 03.06.1998 between late Ram Sewak Gupta, the original licensee and late father of the appellant. What is intriguing and curious is that on the very same day, a Dissolution Deed too was executed dissolving the aforesaid partnership. The records also reveal that on the very same date, i.e., 03.06.1998, the original licensee late Ram Sewak Gupta executed documents in the nature of General Power of Attorney,



Will, Special Power of Attorney, Agreement to Sale, Receipt, Affidavit and Undertaking purportedly transferring his rights over the kiosk in question to late Pradeep Kumar Gupta, the father of the appellant. To our mind, the original licensee himself had no right, title or authority over the kiosk in question to have proceeded to transfer such non-existent interest to the late father of the appellant. It is trite that no one can transfer a better title than what he himself possesses. In the present case, late Ram Sewak Gupta was a mere licensee of the respondent, thus no such purported transfer in violation of the terms of licensee could at all have been legally completed. Notwithstanding the aforesaid analysis, this fact itself would take the wind out the sails of the appellant's case. Thus, on this count too, we do not find any reason much less a cogent reason to interfere or interdict the well reasoned judgement of the learned Single Judge.

12. Thus, the claim of the appellant that he is entitled for a transfer on the basis of sub-clause (iii) of Clause 6 of the Policy which confers certain entitlement to a continuing partnership subsisting as on 16.08.2016, is unacceptable, both in law and on facts. The appellant has absolutely no right or authority left with him either to continue in possession of the kiosk in question or seek any benefit under the Policy of 16.08.2016.

13. Apart from the above, we find that the appellant has been unable to show any violation of his constitutional or fundamental rights by the authority in question. In fact, it is intriguing to find as to how the authority has permitted the appellant to continue to be in possession of the kiosk after the death of the original license holder as also the



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predecessor-in-interest, the appellant's father way back in 2008 and 2010, respectively.

14. Be that as it may, the appeal is absolutely bereft of any merit and we are inclined to dismissed the same with cost of Rs.50,000/- (Rupees Fifty Thousand Only) to be paid to Delhi High Court Legal Services Committee within 2 weeks, on account of blatant unauthorized occupation of a public premises and continuing to be so, without any authority of law. The receipt thereof shall be filed by the appellant, within three working days thereafter under a proper index.

15. In that view, the present appeal is accordingly dismissed alongwith the pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 17, 2025/rl