

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

+ W.P.(C) 16501/2006

MS. ANJANA Petitioner
Through Mr.Pushkar Sood, Mr.Anshuman Sood,
advocates.

versus

ESTATE OFFICER, SAFDURJUNG HOSPITAL Respondent
Through Mr. Jatan Singh, Mr.Praneet Pranav,
advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA**

ORDER
11.03.2010

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The petitioner was allotted on license basis, a tea and snack stall at Safdurjung Hospital on 19th September, 2002 for a period of twelve months on license fee of Rs.1000/- p.m.

2. On 20th September, 2003 the said license was extended for a period of six months on monthly license fee of Rs.1600/- p.m.

3. By notice dated 24th February, 2004, the license was terminated and the petitioner was asked to vacate the said stall by 30th April, 2004.

4. As the petitioner did not vacate the stall, proceedings were initiated under the Act before the Estate Officer vide notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as Act, for short).

5. The eviction Order dated 29th September, 2004 was passed by the Estate Officer. Appeal under Section 9 of the Act before the learned Additional District Judge was dismissed by the impugned Order dated 19th October, 2006.

6. The aforesaid facts are not in dispute. It is also not disputed that the license period expired on 31st March, 2004 and that the stall in question is public premises. Unauthorised occupation of public premises is established beyond doubt.

7. Learned counsel for the petitioner has alleged discrimination and in this regard my attention was drawn to fresh allotments made by the respondent hospital to third parties to operate and sell tea and snacks stalls in the years 2007 and 2008. My attention is drawn to five such instances in which fresh license deeds were executed in favour of Naresh Prasad & Co. and Seema Gupta. Learned counsel for the petitioner further submits that aforesaid allotments prove that the stand of the respondent hospital that they had decided to renew the licenses of private parties except that of Bank of Baroda, Hindustan Latex, Luna Scales and HPMC after completion of their contract period in the meeting of the Hospital Management and Technical Committee held on 10th December, 2003 is false and was not followed. It is alleged therefore that the petitioner's license was wrongly not renewed.

8. The respondent hospital have placed on record the minutes dated 10th December, 2003 of the Hospital Management and Technical Committee. It was decided that except in the case of Bank of Baroda, Hindustan Latex, Luna Scales and HPMC, all other establishments would not be granted extension of time or renewal of license after completion of their contract period. It was in these circumstances that the license of the petitioner which expired on 31st March, 2004 was not extended and consequent thereto proceedings before the Estate Officer were initiated as the petitioner did not vacate the stall even after the expiry of the license period. It appears that this policy was effectively implemented till 2007.

9. As per the file notings of the respondent hospital placed on record, in and around September 2007 a proposal was made for allotment of some sites to third parties. While the proposal was pending consideration it was noticed that any allotment to a third person would cause embarrassment to the respondent hospital and

adversely affect pending cases before the High Court and the District Court. However, the said objection was overruled recording that “we are not giving any place but are permitting the third party to put up a vending machine on the ground and fifth floor of the OPD Building as there is demand from hospital staff and patients”.

10. There is obviously contradiction between the policy decision dated 10th December, 2003 and these allotments which have been made subsequently. However, I need not go further into the said aspect for two reasons. Firstly, the respondent themselves have realized their error and mistake and have cancelled the said allotments to third parties. It is stated by the respondent hospital in their affidavit dated 16th February, 2010 that in four cases, cancellation orders have already been issued and in the fifth case, the file was under process for issue of cancellation order. Today during the course of hearing, learned counsel for the respondent hospital has stated at Bar that cancellation order in respect of the fifth stall has also been issued. It is further stated that eviction orders have also been passed by the Estate Officer in the four cases and appeals are pending under Section 9 of the Act. With regard to one case, it is stated that possession of the stall has been taken. Admittedly, the petitioner has remained in possession of the property till today and therefore indirectly the petitioner has enjoyed all benefit and advantage of the wrong and illegal action of the respondent hospital. Secondly, it is well settled that Article 14 has to be interpreted in a positive manner. The petitioner cannot claim that the respondent hospital have acted illegally and contrary to their policy in some other cases and therefore must act illegally in his/her case also so that there is no discrimination. Illegality and wrongly act/inaction in other cases does not confer a legal right on the petitioner to enforce illegality through a court direction.

11. It may be noted that some other parties whose licences were not renewed after policy decision dated 10th December, 2003 had challenged the eviction orders before this Court. The said writ petitions; Writ Petition (Civil) No. 8444/2005 titled *Ajay Kumar vs Union*

of India was dismissed on 19th May, 2006 and Writ Petition (Civil) No. 1797/2007 titled *P.S. Sundaram vs Administrative Officer (Estate)Safdurjung Hospital* was dismissed on 29th January, 2008. The facts of the present case are identical.

12. In view of the aforesaid, I do not find any merit in the present Writ Petition and the same is dismissed. No costs.

MARCH 11, 2010
P/VKR/P

SANJIV KHANNA, J.