

IN THE COURT OF SH. PITAMBER DUTT
PRINCIPAL DISTRICT & SESSIONS JUDGE,
PATIALA HOUSE COURTS, NEW DELHI.

PPA No. 01/2024
CNR No. DLND-01-0001912024

1. Sh. Mukesh Arora
R/o. P-32, Mochi Village, Nanak Pura,
Moti Bagh, New Delhi

2. Smt. Bhawna Abrol
R/o. 46-D, Pandav Nagar,
DDA Flats, New Delhi-110008

.....Appellants

Versus

1. Estate Officer, Sh. R.P. Sati
NDMC, Palika Kendra,
Sansad Marg, New Delhi

2. New Delhi Municipal Council
NDMC, Through its joint Director (Estate-1)
Palika Kendra, Sansad Marg, New Delhi

3. Smt. Meenakshi Arora
Shop No.11, Basurkar Market,
New Delhi
At Present:
R/o. P-32, Mochi Village, Nanak Pura,
New Delhi

.....Respondents

Date of Institution	:	06.01.2024
Arguments heard on	:	06.03.2026
Date of Order	:	17.03.2026

Appearances:-

Sh. Rajesh Kaushik, Ld. Counsel for the appellants.
Sh. Nilesh Sawhney, Ld. Counsel for respondent Nos. 1 & 2.
Sh. Arvind Kumar, Ld. Counsel for respondent No.3.

ORDER

1. Vide this order, I shall decide the appeal filed by the appellants against impugned order dated 08.12.2023 passed by respondent No.1 with regard to Shop No.11, Basrurkar Market, Moti Bagh, New Delhi. The brief facts necessitated in filing the present appeal as narrated by the appellants are given as under.
2. The appellants have submitted that Shop No.11, Basrurkar Market, Moti Bagh, New Delhi belonged to respondent No.2 New Delhi Municipal Council (NDMC). As per Section 2 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, this shop was originally allotted to Sh. Shyam Sunder on 17.03.1966 for running a Pan, Bidis, Cigarettes and Provision Store. After the death of Sh. Shyam Sunder, the license of the shop was transferred in the name of Smt. Ramesh Rani upto the period ending on 13.07.2010. Smt. Ramesh Rani died on 17.05.2010 leaving behind the three legal heirs namely Sh. Mukesh Arora (Son), Ms. Bhawna Abrol (daughter) and Sh. Manmohan Arora (Son).
3. The appellants have further averred that Ms. Bhawna Abrol vide letter dated 20.05.2010 and Sh. Meenakshi Arora vide letter dated 31.03.2010 requested respondent No.2 to stop the possibility of transfer of the said shop to anyone without their consent. It is further averred that Smt. Ramesh Rani before her death had disowned her son Sh. Manmohan Arora from all of her moveable and immoveable properties.
4. The appellants have further averred that they approached respondent No.1 for regularization of allotment of public premises on the legal heir basis to carry out the business. Respondent No.2 considered their request and allotted the shop jointly to the appellants on license basis on a monthly

license fee of Rs.1,689/- per month w.e.f. 17.05.2010 to 31.03.2012, on temporary basis.

5. The appellants have further averred that they did not hand over the possession of the shop to respondent No.3 and instead, they applied for renewal of the license to carry out the said business and the said renewal is still awaited. Respondent No.2 instead of renewal of the said license, filed a case before respondent No.1 for eviction of the said premises.
6. The appellants have averred that respondent No.3 is a trespasser in the said shop after 31.03.2012 and has no legal right in the shop without the permission of the appellants.
7. The appellants have further averred that they filed their reply before Ld. Estate Officer opposing the application filed by respondent No.2. However, the Ld. Estate Officer without considering the reply passed the impugned order dated 08.12.2023 thereby directing the respondents to vacate the premises within 15 days. Feeling aggrieved from the same, the present appeal has been filed.
8. Ld. Counsel for the appellants has contended that respondent No.3 is not the legal heir of Late Smt. Ramesh Rani and was only a trespasser in the said shop, therefore, she has no legal right in the said premises. He further contended that respondent No.1 has failed to consider that appellants moved an application before respondent No.2 for renewal of their license, which is still awaited and therefore respondent No.1 could not pass any order against the appellants during the process of renewal of license. He further contended that the impugned order is not sustainable and prayed that appeal be allowed and respondent No. 2 be directed to hand over the physical possession of the shop to the appellants.

9. Ld. Counsel for the respondent No. 2 has contended that the appellants and respondent No.3 were unauthorized occupants in the shop in question. No license deed was executed in their favour after 31.03.2012, thus they has no right to stay in the shop in question. He further contended that the license deed executed by the department expired by the efflux of time, therefore the occupancy of the shop in question became unauthorized due to which an application was filed before the Ld. Estate Officer and the Ld. Estate Officer has rightly passed the order dated 08.12.2023. He further contended that neither the appellants nor respondent Nos. 3 have any right to occupy the shop in question after the expiry of the term of license deed and there occupation in the shop in question was unauthorized. He prayed that appeal be dismissed.
10. Ld. counsel for respondent No.3 contended that appellants got executed the license deed Ex,PW1/1 by playing fraud with respondent No. 2. He further contended that respondent No.3 was in occupation of the shop in question after the demise of her mother-in-law as her legal heir and paid the license fee. He prayed that the appeal filed by the appellant be dismissed.
11. I have heard Ld. Counsel for the appellants, Ld. Counsels for the respondents, perused the appeal, impugned order as well as the record. Perusal of the above shows that the shop in question was originally allotted on license basis to Sh. Shyam Sunder for running a Pan, Bidis, Cigarettes and Provision Store. After the demise of Sh. Shyam Sunder, license deed regarding the shop in question was executed in the name of Smt. Ramesh Rani upto 13.07.2002.
12. Smt. Ramesh Rani died leaving behind two sons namely Sh. Mukesh Arora and Sh. Manmohan Arora and one daughter namely Smt. Bhawna

Abrol. After the demise of Smt. Ramesh Rani, the license of the said shop in question was allotted to Sh. Mukesh Arora and Smt. Bhawna Abrol on 29.07.2011 w.e.f. 17.05.2010 to 31.03.2012 on monthly rent of Rs.1,689/- per month on temporary basis. After the expiry of the terms of the said license deed Ex.PW1/1 i.e. 31.03.2012, no fresh license deed was executed either in favour of the appellants or respondent No.3.

13. The appellants have claimed that their application for regularization is pending, which has not been decided, therefore respondent No.2 could not have filed any appeal for eviction before deciding their application for renewal of license.
14. The said claim of the appellant is, however, not correct. It is an admitted fact that the appellants themselves have claimed that respondent No.3 is a trespasser after 31.03.2012. No fresh license deed was executed qua the shop in question after 31.03.2012. The appellants have claimed that respondent No.3 has taken over the possession of the shop unauthorizedly from them.
15. The appellants themselves have placed on record a letter dated 10.08.2012 written by them to Chairperson, New Delhi Municipal Council (NDMC). In the said letter, appellants mentioned that Smt. Meenakshi Arora took forcible possession of the aforesaid shop since 21.02.2011 and due to the illegality committed by Smt. Meenakshi Arora, the original licensees are denied to enter at Shop No.11, Basurkar Market, Moti Bagh, New Delhi.
16. Thus, as per the appellants, they were not holding the possession of the shop in question after 21.02.2011, which was subject matter of the license deed Ex.PW1/1.

17. Clause 9 of the license deed cast an obligation upon the allottee not to allow any other person to use the premises which is the subject matter of the license deed. The said Clause reads as under :

“That the licensee shall not permit the allotted premises or any part thereof to be used by any other person for any purpose whatsoever without the previous consent in writing of the licensor and in default thereof shall be liable for ejection. The licensee shall not introduce any partner nor the licensee shall transfer possession of the premises or part thereof or otherwise carry on the business in the premises with any other person or assign, transfer, change or otherwise alienate his interest in the premises”.

18. Clause 12 of the license deed talks about revocation of the license at any time without assigning any reason and in the event of revocation of the license on account of breach of any terms and condition of the license, the licensee shall be bound to quit and vacate the premises within one week of the notice of revocation.
19. A perusal of Clause 9 and 12 of the license deed makes it absolutely clear that the allottee has not to retain the shop in question, once he was divested with the possession of the allotted shop, as same would tantamount violation of Clause 9 of the license deed.
20. Admittedly, respondent No.3 took over the possession of the shop in question from the appellant after the demise of Smt. Ramesh Rani. The occupation of respondent No.3 in the shop in question is thus in violation of Clause 9 of the license deed therefore respondent had issued notice dated 06.09.2012, Ex.PW1/2, vide which appellants and respondent No.3 were directed to hand over the peaceful possession of the shop to New Delhi Municipal Council (NDMC) within seven days of the receipt

otherwise New Delhi Municipal Council (NDMC) will take action for forcible eviction.

21. The appellants and respondent No.3 did not hand over the possession therefore respondent No.1 approached the Ld. Estate Officer by filing an application which was allowed and order dated 08.12.2023 was passed.
22. Ld. Counsel for the appellants contended that their application for renewal of license was pending, therefore, New Delhi Municipal Council (NDMC) could not file an application for seeking eviction petition.
23. The shop in question was allotted to the allottee on licensee basis. The allottee was entitled to retain the possession of the shop in question as per the terms and conditions of the license deed. The allottee of the shop was not having any vested right of renewal of the license after the expiry of the terms of the license, which was within the sole discretion of the department.
24. The said proposition has been laid down by Division Bench of High Court of Delhi in **Gesture Hotels and Food Pvt. Ltd. Vs. The New Delhi Municipal Council**, AIR 2014 Del 143, relevant portion of this judgment reads as under :

“That the reliance by the appellant/plaintiff on the policy/guidelines dated 30.08.2000 of the respondent/defendant is unfounded as the said policy refers to a decision that in case of renewal of shop/kiosk/thada/office unit/restaurant, the licence would be renewed for a period of 10 years on a year to year basis. The said clause of the policy comes into play only in cases where there is a decision to renew the licence and that where renewal is decided to be granted. The renewal has to be for a period of 10 years. The said policy does not stipulate or lay down that in every case irrespective of its facts and

circumstances, renewal has to be granted, where the NDMC decides not to renew, the said policy would have no application. There was thus no obligation on the respondent/defendant to grant renewal, of which specific performance could be sought by the appellant/plaintiff”.

“We, on a reading of the renewal clause aforesaid in the licence are satisfied that the renewal thereof was in the sole discretion of the respondent/defendant. The appellant /plaintiff thus cannot force the respondent/defendant to renew the lease”.

“Para 22 further held that, “However, in view of the above, we do not deem it necessary to go into the aforesaid aspect, as we find the entitlement of the respondent/defendant in the matter of renewal, to be in the absolute discretion of the respondent/defendant whether for right or wrong reasons”.

25. The above observations made by the Division Bench of Hon’ble High Court of Delhi makes it absolutely clear that renewal of a license is the sole discretion of the New Delhi Municipal Council and appellants cannot force respondent No.1 to renew the license.
26. In the instant case, the license granted to the appellants vide license deed dated 29.07.2011 w.e.f. 17.05.2010 to 31.03.2012 expired by efflux of time and after that no further license deed was executed.
27. The appellants were thus liable to hand over the physical possession of the shop in question, after the expiry of term of their license but instead of that, they allowed respondent No.3 to take over the possession during the license period which was in contravention to Clause 9 of license deed.
28. The occupation of the appellants and respondent No.3 in the shop in question was thus ‘unauthorized’ after the expiry of the terms of license

deed.

29. The Ld. Estate Officer has considered the plea taken by appellants and respondent No.3 and has thus rightly observed that after 31.03.2012 on expiry of license, respondent No.3 did not hand over physical possession of the shop as per the terms and conditions and therefore becomes unauthorized occupant. The Ld. Estate Officer has thus rightly passed the order dated 08.12.2023 in consonance with law and I find no legal infirmity in the same.
30. In view of the above facts and circumstances, I am of the view that the Ld. Estate Officer has passed the order dated 08.12.2023 in accordance with law and I find no infirmity in the same. Accordingly, the present appeal filed by the appellants against the order dated 08.12.2023 is dismissed. Record of the Ld. Estate Officer be sent back along with copy of this order. Appeal file be consigned to record room after due compliance.

**Announced in the open Court
Today i.e. on 17.03.2026**

**(PITAMBER DUTT)
Principal District & Sessions Judge,
New Delhi District, Patiala House Courts
New Delhi.**