REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).11360-11361 OF 2017)
(Arising out of SLP (C) NO(S).33396-33397 OF 2011)

CHANDRO DEVI & ETC. … APPELLANT(S)

VERSUS

UNION OF INDIA AND ORS. …RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

CIVIL APPEAL NO. 11360 OF 2017
(Arising out of SLP (C) NO. 33396 OF 2011)

1. Leave granted.

2. This appeal is directed against the judgment dated 25th November, 2011 passed in Review Petition No.694 of 2011, whereby the Division Bench of the Delhi High Court dismissed the review petition and refused to recall the

judgment dated 29th July, 2010 passed in Letters Patent Appeal No.513 of 2010, which was dismissed, upholding the judgment of the learned Single Judge, dated 12th July, 2010.

3. At the outset, it would be pertinent to mention that a number of writ petitions were filed by the petitioners who were either ex-servicemen, who had suffered injuries during war or active service or had retired after rendering full service. Some of the writ petitioners like Chandro Devi (appellant herein) were family members of the deceased army personnel, who had died in war etc..

4. The original writ petitioners were rehabilitated by allocating them shops in those colonies where defence personnel reside. These colonies were being managed by the Station Commander. In Delhi such colonies are located at S.P. Marg, Delhi Cantt., Arjun Vihar, Dhaula Kuan, Shankar Vihar etc. It is not disputed that as per the lease deed(s) entered between the writ petitioners and the Station Commander, the leases were granted to the petitioners only for a period of 11 months, but there was a clause in the lease deed that it could be renewed. On 13th April, 2007 a

policy was introduced, which provided that the lease should not be extended beyond 5 years under any circumstances. However, the persons whose leases were cancelled after 5 years could apply for grant of fresh lease after 3 years. The leases of the leaseholders were cancelled since they had held the shops on lease for more than 5 years.

5. The petitioners challenged non-renewal of their leases and claimed that they were entitled to renewal thereof. The learned Single Judge dismissed the writ petitions. The letter patent appeals filed by the lessees including the appellant herein were dismissed by the Division Bench. Some of the original writ petitioners filed special leave petitions before this Court, which were dismissed. However, the petitioners, who had approached this Court, were granted time to vacate the premises up to 30th November, 2011 on their filing usual undertaking in this regard. Some of the writ petitioners like Chandro Devi, the present appellant, did not approach this Court. After the decision by this Court, one set of review petition(s) was filed by the persons, who had approached this Court and another review petition was filed by Chandro Devi, who had not approached this Court. The

review petitions were time barred but the delay was condoned. These review petitions were dismissed leading to the filing of a number of special leave petitions and one contempt petition.

6. On 17th July, 2017 we had dismissed the Special Leave Petition (Civil) Nos.4078 of 2011 and 3982 of 2012. We had, however, ordered that we would consider the case of Chandro Devi and Surendra Kumar. As far as the case of Surendra Kumar is concerned, i.e. Contempt Petition Nos.508-509 of 2014, the same was disposed of separately vide order dated 4th September, 2017. This leaves only the case of Chandro Devi. She had admittedly not approached this Court in the earlier round of litigation.

7. The main argument raised on behalf of the appellant by Shri Rajeev Dhavan, learned senior counsel appearing for the appellant is that the judgments of both the learned Single Judge as well as the Division Bench are based on a letter dated 4th September, 2008. On the top of this letter the words 'DGL' in capital letters are typed and, according to the appellant, this means 'Draft Government Letter'. It is urged that this letter, which was only a draft letter, was held

out to be the guidelines of the Government and based on this letter the learned Single Judge as well as the Division Bench dismissed the writ petitions. According to the appellant, this was a fraud committed by the Union of India upon the court and since this is a fraud, the whole action based on this fraud is vitiated. There can be no dispute with the proposition that if there is fraud, which leads to passing of a judgment, then fraud vitiates all actions taken consequent to such fraud and this would mean that the judgment would be set aside. However, before setting aside the judgment, we must come to the conclusion that the action was fraudulent. Every wrong action is not a fraudulent action. Assuming that the letter dated 4th September, 2008 was only a draft letter, it does not mean that this letter was fraudulently introduced by the Union of India. In the letter placed before the court the word 'DGL' find mention. It may be true that the counsel for the Union of India did not inform the court that the words 'DGL' stood for 'Draft Government Letter', but, it is equally true that even the counsel for the appellant did not make any efforts to find out what the words 'DGL' stood for. Even the Court did not look into this aspect.

Fraud has to be pleaded and proved. Mere allegations of fraud made for the first time in this Court are not sufficient. We are not, in any manner, approving the action of the Union of India in putting forth this letter before the Court. However, it cannot be said that this improper act is a fraudulent action on the part of the Union of India. The learned Single Judge as well as the Division Bench did place reliance on this letter and since this letter is now said to be a draft government letter only, we may ignore it for the purposes of deciding this case. Even if we were to ignore this letter, the appellant cannot benefit. We may point out that clause 17 of the Standard Operating Procedure (for short 'SOP') dated 10th August, 2001, which even as per the appellant was applicable, reads as follows :

> "17. Renewal of licence deed: Renewal of licence deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of licence deed by DDA & QMG, Station. HQ Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the licence deed for the subsequent year. However, the licence deed may be terminated at any time by the Station Commander at his discretion."

8. It was the case of the appellant that till the policy of 13th April, 2007 was introduced, as a matter of course

renewals were being granted. This policy became effective from 30th April, 2007. Clause 18 of the policy reads as follows:

> "18. Renewal of licence deed: Renewal of licence deed will be done on the recommendation of residential associations, which will be obtained three months in advance from the date of expiry of licence deed by AQMG, Station Head Quarter, Delhi Cantt. If the recommendations are in favour of allottee, then the Station Commander may renew the licence deed for the subsequent year. However, the licence deed may be terminated at any time by the Station Commander at his discretion. No extension beyond five years will be given under any circumstance. The same person can apply after a gap of minimum three years of clear break (not running in any Army Colony of NCR)."

(emphasis supplied)

9. In the meantime, a letter dated 25th February, 2005 was sent by the government of India to the Chief of the Army Staff [Annexure P/28]. Relevant portion of this letter reads as follows:

> "(v) The management of all such complexes will be exercised by the Government through the concerned Services who will be fully accountable for the proper maintenance of their accounts and assets as per norms fixed in this regard.
>
> (vi) Guidelines/Rules regarding operation, maintenance and allotment of shops, accounts etc. shall be formulated by the Ministry of Defence.
>
> 3. All other terms and conditions of Government letter No. 11026/5/2001-D(Lands) dated 04-1-2001 will remain unchanged. The

> amendments as at 2(v) above will be applicable from 01-4-2005 or from the date when the Guidelines/Rules as in 2(vi) above are framed, whichever is later."

10. The main ground taken by the appellant herein is that in view of letter dated 25th February, 2005 the Station Commander had no authority to issue the second SOP for management and control of shopping complexes on 13th April, 2007. In our view, this contention is totally misplaced. No doubt, vide letter dated 25th February, 2005 the Ministry of Defence proposed to take over the management of all shopping complexes and to frame guidelines in this regard, but as per Para 3 of this letter, amendments to clause 2(v) would be applicable from 1st April 2005 or from the date when the guidelines/rules, as envisaged in clause 2(vi) are framed, whichever is later. The Ministry of Defence issued Defence Shopping Complexes (Maintenance and Administration) Rules in the year 2006. It is the case of the appellant herself that these Rules are not applicable to shops constructed on defence lands by public funds. Therefore, as per the appellant, these rules are not applicable to the present case. Vide letter dated 4th September, 2008 the guidelines were circulated. The appellant contends that this

was only a draft government letter and, therefore, these guidelines are also not applicable to them. If that be so, it clearly means that no guidelines have been framed with regard to the shops on defence lands created out of government funds. If no fresh guidelines have been framed then amended clause 2(v) would not come into play. Then SOP of 2001 would be applicable and that can be amended by the Station Commander himself. The SOP of 2007 provides that no shops will be leased out for a period of more than 5 years. It was urged by Mr. R. Balasubramanian, learned counsel appearing for the respondents, that this has been done to ensure that immediately on suffering a loss, ex-servicemen or their family members are rehabilitated for a certain period of time and after they have been rehabilitated and earned for 5 years they can earn their own livelihood without any support from the Army and other persons, who had suffered during this period, can be given this benefit. There is nothing arbitrary in this policy. The learned Single Judge dealt with this issue specifically. He has made reference to clause 17 of the SOP of 2001 and clause 18 of the SOP of 2007 and held as follows:

> "7. In terms of the above Clause 18, the right to get the licences renewed immediately on the expiry of five years has been withdrawn. The allottees are expected to apply again after a minimum break of three years. In terms of the revised policy, the Respondents issued letters to the Petitioners declining renewal of licences. The copies of letters requiring the Petitioners to vacate the shops under their occupation have been enclosed with the petition."

11. Before the learned Single Judge, the appellant had raised her claim on the basis of principle of legitimate expectation and this was rejected by the learned Single Judge in the following terms:

> "47. This Court finds that the Petitioners have not been able to, in the first place, show that there is any specific representation either to any of them or to all of them generally that their licences would stand automatically renewed year after year by the Respondents. The mere fact that as a matter of practice the licences were renewed does not constitute the specific representation by the Respondents to each of them that indeed their licences would be renewed. The renewal, it must be recalled, was only for a year at a time and was in accordance with the prevailing policy and Clause 17. In other words, the only "representation" or "assurance" to each of them was that at the most the licence would be renewed for one more year at the discretion of the Respondent. No challenge was laid to Clause 17 of the SOP dated 10th August, 2001, which left it to the discretion of the respondents to renew the licence at the end of a year. The reasons for the change in the policy as explained by the Respondents appear to this Court to constitute sufficient justification for such change. The scope of judicial review of such policy change is indeed limited. Unless it is shown to be not informed by any reasonable criterion or not being in public interest, the Court cannot and should not interfere. Given the fact that the number of shopping complexes is unlikely to increase, and the waiting list of

> applicants is a growing one, the concern of the Respondents that those exservicemen waiting in the expectation of allotment of a shop should also be accounted for, cannot be said to be an unreasonable one. Both groups of exservicemen, i.e., the present allottees and those awaiting allotment are from the same "catchment". The demand for shops far exceeds the supply. There has to be a balancing of these two sets of "expectations". If the Respondents take a call and decide to change the policy so that the chance of those in the queue waiting for allotment of shops improves, the Court cannot be expected to judicially review such policy. As explained in Madras City Wine Merchant, no question of legitimate expectation would arise if there is a change in policy or the position is altered by a rule or legislation.
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> 48. The Petitioners have not questioned the DSC Rules, 2006 or the Guidelines issued in September, 2008. It appears that each of these Petitioners has been a beneficiary of renewal of licence several times over. Each of them has been granted renewal for more than three years which is the maximum period of licence envisaged under Rule 13 of the DSC Rules. It has been made clear in Clause 8 of the September, 2008 Guidelines that the DSC Rules would apply to the shopping complexes covered by 3.42.1 of SOA 1983. Consequently, even procedurally, none of the Petitioner can harbour a legitimate expectation of being consulted before change in the policy."

12. It is true that in Para 48 of the judgment the learned Single Judge also referred to the Defence Shopping Complexes (Maintenance and Administration) Rules, 2006 and the guidelines issued in 2008, but the Court also found that the change in the SOP in limiting the maximum period

of lease to 5 years was not arbitrary or irrational. We may refer to the following findings of the learned Single Judge:

> "51. This Court is unable to find the decision of the Respondents to restrict the licence period in respect of shops in shopping complexes to five years with the opportunity of again applying after a break of three years to be either discriminatory or arbitrary. Also, any prejudice that may be caused to the Petitioners in whose cases the licences were renewed prior to the change in the policy has been neutralised by the fact that they have continued in possession for nearly three years thereafter (amounting to more than two renewals) under the interim orders of this Court. As regards those Petitioners seeking transfer of the existing licence in their capacity as widows of ex-servicemen, they would be governed by Rule 7 of the DSC Rules 2006 and in any event, they too have continued to be in the premises far beyond the period of licence under the interim orders of this Court."

13. This judgment of the learned Single Judge was upheld by the Division Bench and also by this Court though in a petition filed by some other petitioner. On going through the SOPs of 2001 and 2007, we do not find that the appellant had any vested right to continue in possession even after 5 years. Even, as per the SOP of 2001, the Station Commander was to renew lease from year to year and there was no inherent right to continue as a lessee in perpetuity. These leases have been determined in a non-discriminatory and non-arbitrary manner. We, therefore, find no merit in

this appeal, which is dismissed accordingly. Pending application(s), if any, stand(s) disposed of.

CIVIL APPEAL NO. 11361 OF 2017
(Arising out of SLP (C) NO. 33397 OF 2011)

14. Leave granted.

15. In addition to the reasons given hereinabove, this appeal is also liable to be dismissed and is dismissed, because of the following two additional reasons:

(i) That the appellants in this appeal had earlier filed review petition which was dismissed and, thereafter, they filed second Review Petition No. 717 of 2011, which was rightly dismissed by the Delhi High Court as not maintainable being a second review petition;

(ii) That the appellants had approached this Court and their special leave petition was dismissed by this Court on 04.02.2011. However, the appellants were granted time till 30th November, 2011 to vacate the premises on their furnishing undertaking. They availed of the benefit granted

to them and now they cannot be permitted to raise fresh grounds in this appeal.

16. Pending application(s), if any, stand(s) disposed of.

.....J.
(MADAN B. LOKUR)

.....J.
(DEEPAK GUPTA)

New Delhi
September 8, 2017