

23.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 571/2009

Date of decision: 30th July, 2009

SEEMA GUPTA & ANR Petitioners
Through Mr. Sarbjit Sharma, Mr. Aditya Garg &
Ms. R. Veena, Advocates.

versus

NDMC & ORS Respondents
Through Mr. Ashutosh Lohia, Additional Standing
Counsel with Ms. Priyam Bhatnager, Advocate for
respondent No. 1.
Mr. Anand K. Mishra, Advocate for respondent
No. 2.
Mr. Virender Mehta, Advocate for respondent No.
3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

O R D E R

%

1. Mr. Sanjiv Kumar, respondent No. 3 herein has filed a suit for injunction against Ms. Seema Gupta and Ms. Mamta Gupta, the petitioners herein, New Delhi Municipal Council, respondent No. 1 and Drug Controller, respondent No. 2. Respondent No. 3 had filed an application for interim injunction for restraining the petitioners herein from using temporary allotted shop Nos. 13 and 14 near gate No. 2, Safdarjung Hospital, New Delhi as a chemist shop as the licence trade permitted by respondent No. 1 in the said shops was STD and Photostat. Learned

Commercial Civil Judge has granted interim injunction vide order dated 31st January, 2009 restraining the petitioners from using the shops as a Chemist shop. The said order has been confirmed in the first appeal by learned Additional District Judge vide order dated 8th May, 2009.

2. It is admitted that initially the petitioners herein were allotted two shops in the subway with the stipulation that they shall carry on trade of photostat and STD. The said trades were specified in the tender for which the bids were invited and given by the petitioners along with other parties. The bid amount was relatable to the trade activity permitted and allowed in the shops. It is an admitted position that the petitioners were carrying on trade of Photostat and STD till 2008 and were initially paying licence fee of Rs.12,991/- and Rs.16,943/-. By 2008, the licence fee had been enhanced to Rs.23,000/- and Rs.25,000/- approximately for the same trade. Respondent No. 3, on the other hand, had submitted tender for a chemist shop, which was allotted to him in 1999 on a licence fee of Rs.2,12,159/- plus Rs.10,103/- towards maintenance. Respondent No. 3 also made a deposit of Rs.8,88,224 towards security deposit. There is a substantial difference between the licence fee payable by the petitioners as per their tender bids made 1999-2000, which were accepted, and the licence fee which respondent No. 3 was paying for the chemist shop as per his tender bid. The difference still continues in spite of enhancement of the licence fee in view of clubbing of shops and permission that was earlier

granted by NDMC to the petitioner to carry on general trade. In 2008 the petitioner after enhancement was paying about Rs. 1 lac per month as licence fee.

3. It appears that the petitioner No. 1 in 2002 wanted to change her trade and start a chemist shop. In 2002, the respondent No. 3 herein had filed a suit for injunction against the petitioner No. 1, one Mr. Abhay Kumar, NDMC and the Drug Controller. In the said suit, respondent No. 3 had prayed for injunction restraining petitioner No. 1 herein from permitting change of the trade from Photostat to chemist/drug shop. The respondent No. 3 also made a prayer that the drug controller should not issue a licence for running of a chemist or a drug shop in favour of the petitioner No. 1 herein. Mr. Man Singh, Assistant Director, NDMC made a statement on 7th May, 2003, that NDMC had rejected the request for change of trade and no change in trade would be allowed in future. On the basis of the statement made by the parties, learned Civil Judge was pleased to decree the suit. The operative portion of the judgment reads:-

"..... Further stated by NDMC that so far as clubbing/amalgamation is concerned, as it is already done as per Drug Controller to defendant no. 172, does not arise at all. Therefore, in view of the statement of Asstt. Dir. (Estate) NDMC, another relief to the plaintiff regarding not issuing the license for running the chemist/drug shop is already met with. Therefore, in the circumstances where the first prayer of the plaintiff regarding amalgamation of shops is concerned, it has become infructuous as amalgamation has already been done as per policy of NDMC which is not

illegal. So far as the second prayer of the Plaintiff is concerned, i.e., regarding the change of trade in this regard the statement of Shri Man Singh Asstt. Director (Estate) NDMC is already on record and after the statement nothing is left in the suit, which to be decided through leading any evidence. Even the drug controller has also mentioned clearly that he will not issue licence, the suit of Plaintiff has been satisfied and nothing remains in the suit and court is not at any issue at all. As per order 15 Rule 1 CPC when it appears that the parties are not at issue on any question of law or fact the court may at once pronounce judgment. Therefore, in view of the prayer of the Plaintiff and statement of parties in this regard I am of the opinion that the suit of the Plaintiff has been met with and Defendant No. 4 will not issue any license for running the Chemist or Drugs shop in shop No. 13 and 14 in favour of Defendant No. 1 and 2 as it is not allowed as per NDMC policy. With these observations, both the suits are hereby disposed of. Decree sheet be prepared and file be consigned to record room.”

4. The said decree has not been challenged or questioned by the petitioner No. 1.

5. In 2008, the two petitioners were allotted two temporary shops outside, as their shops in the subway had to be temporarily closed due to metro project. The two petitioners were allotted adjacent shops. They moved an application for clubbing of the said shops, which was allowed by the NDMC by their letter dated 2nd September, 2008. The petitioners were also by the same letter allowed to run the trade of general trade (non licensable items only). By another letter, which was issued after 20 days dated 22nd September, 2008, NDMC on an application of the petitioners

accorded approval to the petitioners to deal with general store with licensable items, subject to the conditions stated in the said letter including enhancement of licence fee by 50% of the revised licence fee after 30% increase towards clubbing. It is stated that after the said enhancement the license fee payable was about Rs. 1 lac. It is the stand of NDMC that chemist trade is not permitted in a shop which has been allotted for general store with or without licensable items. It is stated by the counsel for the respondent-NDMC that as per the current rates licence fee for a chemist shop in the said area is about 3,47,847/- per month plus 5% sanitation charges.

6. The petitioners admit that NDMC has subsequently cancelled permission granted vide letter dated 22nd September, 2008 vide their letter dated 19th March, 2009 with the direction that the two petitioners could revert back to their original tender trade. Letter dated 19th March, 2009 has been challenged by the two petitioners in W.P. (C) No. 1037/2009, which is pending before another bench. The Drug Controller, i.e., the respondent No. 2 herein had initially granted a drug licence to the petitioners. It is the stand of respondent-NDMC that the said licence was granted without obtaining permission and consent from NDMC and NDMC was not aware of the said licence. The Drug Controller subsequently cancelled the licence granted to the petitioners vide their letter dated 8th July, 2009 and the same is subject matter of challenge in W.P. (C) No.

1037/2009.

7. In view of the aforesaid facts including the trade for which the petitioners had originally submitted their tender, the trade for which the NDMC had permitted the premises to be used and the decree dated 1st April, 2004 passed in favour of respondent No. 3 and against the petitioner No. 1 and against the respondent Nos. 1 and 2, I do not find any reason to interfere with the order passed by the learned Commercial Civil Judge, which has been confirmed in the first appeal by the learned Additional District Judge. This is an extraordinary case in which the respondent No. 3 in fact is trying to enforce the decree dated 1st April, 2004.

8. Learned counsel for the petitioners has submitted that he has filed an application for change of trade to a chemist/drug shop. In case the said change in trade is permitted and allowed by the NDMC, the petitioners will be at liberty to approach the trial court for modification of the interim order.

9. The petition is dismissed. There will be no order as to cost.

10. It is clarified that the observations made in this order are for the purpose of disposing of the present petition and will not be binding on the trial court at the time of final decision in the suit on merits.

SANJIV KHANNA, J.

JULY 30, 2009
VKR/P