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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 20, 2009

Date of Order: August 25, 2009

(1) +OMP 433/2009

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25.08.2009

KAMAL KISHORE

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr. Rakesh Kumar Garg, Advocates

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through : Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(2) +OMP 434/2009

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KAMAL KISHORE

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr. Rakesh Kumar Garg, Advocates

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through : Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(3) +OMP 435/2009

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MRS. VEENA VERMA

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr. Rakesh Kumar Garg, Advocates

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(4) +OMP 436/2009

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DR. MUKHERJEE NAGAR RESIDENTS

WELFARE CLUB (REGD.)

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr. Rakesh Kumar Garg, Advocates

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(5) +OMP 437/2009

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SH. BHARAT MAHANA

..... Petitioner

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr. Rakesh Kumar Garg, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through : Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(6) +OMP 443/2009

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RAVINDER KUMAR DUA Petitioner
Through: Mr. J.S. Bhashin and Ms. Rashmi Priya, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through : Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

(7) +OMP 451/2009

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K L ARORA Petitioner
Through: Mr. Rakesh Khanna, Mr. Saurabh Khanna, Advocates

versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through : Mr. H.S. Phoolka, Sr. Adv. with Ms. Minipushkarna and Mr. Kanwar Faisal, advocates

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. These petitions have been filed by the petitioners under Section 9 of the Arbitration & Conciliation Act, 1996 ("the Act", for short) with a prayer that this Court should restrain the respondent or its servants from interfering in peaceful possession, use and enjoyment of each of the community hall under license of petitioners individually and direct the respondent to continue bookings of the halls till the year 2014.

2. Each of the petitioners had entered into a license deed with respondent whereby petitioners were allowed to use one community hall each for the

specific purpose of developing, managing and operating the respective community hall for a period of five years subject to the terms and conditions as mentioned in lease deed. The respondent had reserved a monthly license fee for allowing the petitioners to use the community halls. The license deeds were executed in favour of petitioners in August/September, 2004. The initial period of five years for which the license was granted has either expired or is going to expire shortly. The request of the petitioners to renew the licenses for a further period of five years, has been turned down by respondent and that is the reason the petitioners have approached this Court.

3. It is submitted by the petitioners that clause 1 of the license deed provides that the license was being granted for a period of five years, renewable for another five years, ten years in all, from the date of entering into the license deed for the first time. It is submitted by counsel for petitioners that they have a right to get the license deeds renewed for another term of five years. The license deeds were granted through tender system. The community halls were in shabby condition and the petitioners brought the community halls to a situation that they are now nice looking and could be used by the community. It is submitted that the petitioners had made investments in community halls and the same were now being used for marriages etc, apart from other uses and in case the use of respective community hall by the petitioners was prohibited, the petitioners would suffer irreparable loss. It is submitted that petitioners intend to raise the dispute regarding right of the petitioners to have the license renewed for another terms of five years before the arbitrator in terms of arbitration contract between the parties as contained in the license deed.

4. Learned counsel for respondent submitted that the terms of license deed were clear and leave no ambiguity. The licenses were granted for a period of five years. Though it could have been renewed for another period of five years but the renewal of the license deed was not at the discretion of the petitioners but it was at the discretion of respondent. The licenses were even otherwise terminable during its currency of five years by merely giving a notice of one month in view of clause 35 of the lease deed. He submitted that the petitioners have no right to get the license deed renewed for another period of five years and allowing the petitioners to continue to occupy the community halls shall in fact amount to granting license by the Court which is not permissible under Section 9 of the Act. It is also submitted that Section 9 cannot be used for specific performance of the contract. Even if it is assumed for the sake of arguments that there was an agreement with respondent for another term of five years, this agreement cannot be specifically got enforced under Section 9.

5. In order to grant relief under Section 9, the Court has to ensure that the petitioners have a good prima facie case and the petitioners seek to protect the subject matter of dispute during arbitral proceedings.

6. A perusal of the license deed executed between the parties would show that the very recital of the license deed states that license was being granted for a period of five years on a particular license fees. There is no doubt that in clause 1(a), it is provided that the licensee was being authorized to use the community halls for a period of five years renewable for another terms of five years, ten years in all, from the date of entering into the license deed but is not stated in the license deed that this renewal of the license could be

without the consent of licensor (respondent herein) and could be a unilateral act at the option of licensee (petitioners herein).

7. It is contended by counsel for petitioners that clause 1 of the recitals is to be interpreted in a meaningful manner and if the license was not to be renewed for another term of five years, there was no necessity of clause 1 being there. It is true that clause 1 contains recital that license could be renewed for another term of five years, but no other clause of the license deed provides that this recital was mandatory for the licensor/respondent. Rather clause 35 of license deed provides that the licensor shall have right to terminate the license with one month's prior notice without assigning any reasons therefor. In view of clause 35, and in view of recitals granting the license for a period of five years and a joint reading of other clauses prima facie shows that the licensee was allowed to use the community hall on license basis only for a period of five years. The extension for another five years was at the option of licensor and ten years cannot be treated as a lock-in-period for licensor and it cannot be inferred that a second renewal for five years was mandatory for the licensor. I, therefore, consider that prima facie the licensee/petitioners have no right to continue in the possession of the community halls after expiry of five years license period, neither prima facie there is an obligation on MCD to renew the license for another period of five years. Under these circumstances, I consider that this Court cannot issue an injunction restraining respondent from taking charge of the community halls and not interfering with the enjoyment of the community halls by the licensees. However, in order to see that non renewal of license was not a ploy or a tactic used by MCD officials to give the license to its own persons instead of petitioners, it is ordered that the respondent/ MCD shall not grant licenses

of these community halls for any term to any other persons. In the eventuality of again giving these halls on license, MCD has to give licenses of these community halls to the petitioners only. Thus, MCD is restrained from re-licensing the community halls to any third person after the petitioners' license coming to an end, during pendency of arbitration proceedings.

8. With above directions, these petitions stands disposed of.

August 25, 2009
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SHIV NARAYAN DHINGRA J.