

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

+ **Writ Petition No.11354/2009**

% **Date of Decision: 03.09.2009**

Sh.Sanjeev Kumar & Anr Petitioners
Through Mr.Chirag Jamwal, Advocate

Versus

New Delhi Municipal Committee and Anr. Respondents
Through Mr.Manoj Kr.Singh and Nilava
Banerjee, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has sought quashing of order dated 21st August, 2009 passed by Sh.S.P.Garg, Additional District Judge dismissing the appeal of the petitioner against the order dated 12th November, 2007 passed by the Estate Officer directing the petitioners to vacate the premises and also to pay the damages.

The petitioners had contended that a license was given to Smt.Chandrawati for Pan Thara No.23, South Block, Dalhousie Road, New Delhi on a monthly license fee of Rs.300/-. The license was valid up to 4th February, 1989. The petitioner No.1 had entered into a

partnership with petitioner No.2, however, after the expiry of the license on 4th February, 1989, which was not renewed by the petitioner No.2, had handed over part of the possession to petitioner no.1 without obtaining any permission from respondent/NDMC.

The allegations were also made against the petitioners that they also carried out extensive addition and alternation and started trade of selling items like sweets, pastries, cold drinks, samosa etc by using LPG gas and they also allegedly changed the trade of business. The respondent also received reference from Ministry of Defence that the premises which was on license with petitioner No.2 was a security threat for the Prime Minister and, therefore, possession of the licensed premises whose license had expired on 4th February, 1989 was taken.

The petitioners had filed the civil suits, however, the relief claimed by them for restoration of the possession and injunction was denied by the Civil Court and the appeals filed to the High Court and the Supreme Court were dismissed. The proceedings under the Public Premises Act were also initiated against the petitioners. In the eviction proceedings the petitioners were proceeded ex-parte after considerable time, as the petitioners took considerable time to file the reply/response and on subsequent dates neither the petitioners nor their lawyers appeared before the Estate Officer.

An order under Section 4 was passed upholding the eviction order passed against the petitioner and an order for recovery of outstanding amount of Rs.2,27,246/- was also passed by order dated 12th November, 2007.

In an appeal filed before the District judge, these facts were noticed and the plea of the petitioner that the order of vacation could not be passed against him was rejected and the ex-parte order passed against him on account of petitioners and their lawyers not appearing before the estate officer was also not faulted. The Appellate Court, however, has set aside the order dated 12th November, 2007, of the Estate Officer ordering appellants to pay the damages to the tune of Rs.2,27,246/- on the ground that the Estate Officer ought to have assessed the damages and should not have just calculate the damages and, therefore, the order under Section 7 was set aside.

The learned counsel for the petitioners has challenged the order of eviction passed against the petitioners under Section 4 which has been upheld by the first Appellate Court.

The main ground which is contended by the learned counsel for the petitioners is that they were proceeded ex-parte and the application for setting aside the ex-parte order has not been decided in accordance with law. The fact that the petitioners and their lawyers did not appear

before the Estate Officer on various dates has not been denied. The averments made by the petitioners in their application for setting aside the ex-parte order do not disclose sufficient reason for non appearance of petitioners and their counsel on various dates as contemplated under law for setting aside the ex-parte order. The Appellate Court has considered the same and in the circumstances the order of the Appellate Court dated 21st August, 2009 sustaining the order of eviction passed against the petitioners cannot be faulted. There is no denial of principles of natural justice and in the circumstances petitioners are not entitled for any of the reliefs as prayed in the writ petition.

In the totality of facts and circumstances, no legal infirmities has been made out nor any irregularity in the order of the learned Additional District Judge has been made out or shown. The writ petition is, therefore, without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed. Parties are however, left to bear their own costs.

September 03, 2009
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ANIL KUMAR, J.