

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

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Reserved on: 26th August, 2010

Decided on: 08th October, 2010

1. FAO (OS) 140/2010

Anuradha Sharma

Prop. Of M/s. New Shehnai Banquet and Restaurant

Resident of 233, Vivekanand Puri

Delhi-110007

..... Appellant

Through: Mr. Rajesh Gupta and Mr. Deepak
Arora, Advs.

Versus

Municipal Corporation of Delhi

Through its Commissioner

Town Hall, Chandni Chowk

Delhi-110006

..... Respondent

Through: Mr. Vivek K.Tankha, ASG with
Ms. Maninder Acharya, Mr. Praful
Shadilya, Mr. Rishabh and Mr.
Samar Sodhi, Advs.

AND

2. FAO (OS) 141/2010

Ashima Securities Pvt. Ltd.

Through its Director

220/1-A, Padam Nagar

Delhi-110 007

Now at:

J-107, South Extension, Part-I

New Delhi-110049

....Appellant

Through: Mr. Rajesh Gupta and Mr. Deepak
Arora, Advs.

Versus

Municipal Corporation of Delhi
Through its Commissioner
Town Hall, Chandni Chowk
Delhi-110006

..... Respondent
Through: Mr. Vivek K.Tankha, ASG with
Ms. Maninder Acharya, Mr. Praful
Shadilya, Mr. Rishabh and Mr.
Samar Sodhi, Advs.

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. These Appeals are directed against a common Impugned Order dated 27th January, 2010 whereby the Appellants' Applications under Order XXXIX Rule 1 and 2 were dismissed and that of the Respondent under Order XXXIX Rule 4 CPC were allowed thereby vacating the ex parte status quo order granted in favour of the Appellants.

2. The Appellants were the successful bidders of the tenders invited in the year 2001 by the Respondent for licenses in respect of open air restaurants on the premises granted by the Respondent whereupon the Appellants started restaurants in the name of "Cup-n-Saucer Open Air

Restaurant” and “M/s New Shehnai Banquet Hall & Restaurant” from Minto Road and Asaf Ali Road respectively. The licenses were executed on 8th January, 2002 and 16th October, 2002 valid for five years.

3. The case of the Appellants is that before the expiry of the license period in view of the Resolution No.494 of the Municipal Corporation of Delhi (MCD) permitting the licensed properties of MCD to be converted into lease hold on the basis of market rate of L&DO/DDA or on the basis of rates fixed by the Reserve Price Fixation Committee to be constituted by the Commissioner, MCD, the Appellants applied to the Chairman, MCD for conversion of their license to lease hold on 16th March, 2007.

4. The applications of the Appellants were processed and in terms of the policy the MCD by its letter dated 22nd March, 2007 raised a demand of ₹2,31,30,919/- and ₹4,29,72,791/- respectively from both the Appellants which was duly deposited by them. The MCD also granted no objection for mortgaging the lease hold rights in the property whereby both the Appellants got loans from the Bank. After depositing the requisite amounts and furnishing the Affidavits including filing of an Affidavit binding them to deposit any additional charges as may be raised by the Respondent, the Appellants requested for execution of the lease deed. It is contended that though the MCD was then obliged to execute the formal lease deed in favour of the Appellants, however, the

MCD started delaying the execution of the same on one pretext or the other and transferred the case of the Appellants to Remunerative Projects Cell (R.P. Cell). Constrained by the inaction of the Respondent in not fulfilling its commitment and obligations in terms of its policies and Resolution, the Appellants filed the civil suits seeking a decree of specific performance for execution of a lease deed wherein initially ex parte status quo orders were granted. However, subsequently pursuant to the Respondent's appearing the Applications were dismissed and the status quo orders vacated by the Impugned Order dated 27th January, 2010.

5. Learned counsel for the Appellants contends that as the Commissioner himself had forwarded the Applications to his subordinates there was no requirement of subsequent approval, that is, the matter was not required to be referred back to the Commissioner again. The only exception in the Resolution No. 494 was in respect of people occupying the roads, footpaths etc. or holding tehbazari rights. Thus, the suit properties not falling within the exclusion clause would be part of the general policy of the Corporation. None of the resolution contemplates or provide for any distinction between remunerative or highly remunerative "stand alone" sites and markets. According to them the Respondent having retained the money of the Appellants the doctrine of promissory estoppel would come into play as pursuant to the demand raised by the MCD the Appellants deposited the amounts

and it was also reasonable on the part of the Appellants to assume a legitimate expectation that the Respondent would carry out its part of the obligation as the Appellants had already performed there. Reliance is placed on *Spring Meadows Hospital vs. Harjot Ahluwalia, (1998) 4 SCC 39*, to state that the policy being a beneficial one, it must be construed liberally in favour of the Appellants. Responding to the contention of the Respondent that the contract is not a concluded one in the absence of assent of the Commissioner it is stated that as Section 59 of the Act vests only executive powers with the Commissioner it was not within his domain to overrule the resolution of the Corporation/ Standing Committee and act contrary to the said resolution. It is contended that both the Resolutions i.e. No. 336 dated 26th October, 2005 passed by the Standing Committee and No. 494 dated 21st November, 2005 passed by the Corporation is mooted/proposed by the Commissioner's letter dated 25th October, 2005 and only then the resolution was passed by the Standing Committee. Further the proposal of the Commissioner as contained in the letter dated 25th October, 2005 contains the policy of conversion of all licensed properties to lease hold properties. The demand letters were sent by the Respondent under Section 59 of the Act. Thus this request for conversion is not merely pursuant to a policy decision but also having served with the demand notice and accepted the deposit of the requisite amount of the money, the Respondent cannot refuse to

comply with the terms of the said policy and execute the documents. It is contended that there is no requirement of a bilateral contract as the Appellants have been issued a demand letter in terms of the policy hence the requirement of it being with the assent of the competent person in terms of Section 200 of the Act does not arise. As regards mortgage it is the case of the Appellants that the Resolution No. 894 nowhere contemplates giving mortgage permission for converting a license property into a lease hold property, and thus, there was no need of a tripartite agreement as the property had not been converted into lease hold yet. Learned counsel contends that the learned Single Judge erred in dealing with and deciding the entire lis as if finally, whereas at this stage it was only empowered to see whether a prima facie case was made out or not.

6. It is the case of Respondent that the Resolution No. 494 of the Corporation relied upon by the Appellants does not apply to these “stand” alone properties and applies only to municipal markets/colonies. Thus the Appellants have no entitlement of conversion from license to leasehold to freehold on the basis of the policy. Moreover it is only the Commissioner, MCD who is competent to convert a license into a lease hold property and that too after a Resolution of approval from the Corporation. That in the present case there was no approval of the Commissioner, MCD and thus there is no concluded contract between the parties. Reliance is placed on Sections 200 to 203 of the

Delhi Municipal Corporation Act, 1957 (in short 'the Act') to canvass the proposition that no property of the Corporation can be sold, leased out or otherwise, except by the Commissioner pursuant to the sanction of the Standing Committee or the Corporation as per the value. It is also submitted that there cannot be any conversion of suit properties as the same was based on fraud. Appellants in connivance with some of the subordinate officials of the MCD on the basis of an inapplicable Resolution tried to get the property converted to lease hold and got these documents issued in their favour. An action thereon has already been taken by filing a complaint with the CBI and initiating departmental action against the erring officials. According to the learned counsel these suits are nothing but a desperate attempt to retain possession of the suit property. According to the Respondent on vacation of the status quo orders on 27th January, 2010 they have already taken possession of the suit premises whereas the Appellants contend that their articles are still lying inside the banquet hall cum restaurants. The learned Additional Solicitor General contends that the Appellants have no vested right to demand conversion from license to lease hold either on the basis of an inapplicable Resolution or on the basis of a correspondence exchanged between the Appellants and the MCD officials who are neither competent nor authorized to execute the same. Fraud vitiates all actions. Further the occupation of the suit properties by the Appellants after the expiry of license period was

unauthorized and without any sanction of the Respondent. In view of the ex-parte status quo order passed in the suit the Appellants have continued to be in possession of the suit properties well beyond the authorized period of licenses. Reliance is placed on *Bal Krishan and Anr. v. Bhagwan Das (Dead) By LRs and Ors. (2008) 12 SCC 145*, *B.S.Khurana & Ors. v. MCD & Ors., 87 (2000) DLT 557 (SC)* and *Nirmal Kumar Jain & Ors. v. MCD & Anr., 39 (1989) DLT 517*.

7. We have heard learned counsel for the parties. This is an Appeal against the vacation of ex parte status quo orders on a decision rendered on the Applications under Order XXXIX Rule 1, 2 and 4 CPC. At this stage, we are only required to look into the prima facie case, balance of convenience and irreparable loss that would be caused to the Appellants which cannot be compensated in terms of money and whether all the three exist together. In the absence of any one of them no case for injunction would be made out. We are also governed by the law laid down in *Wander Limited and another vs. Antox India P. Ltd., 1990 supp (1) SCC 727*, that the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not

reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

8. The Resolutions of the Respondent chronologically depict that a private member resolution of the Standing Committee was moved being Resolution No. 856 dated 17th February, 2004 for considering the Resolution of the Corporation as regards the renewal of the lease of all those allottees whose lease period had expired at the existing rates of L&DO/DDA to earn additional revenue for MCD. On that analogy the Standing Committee resolved that all licensed properties of the MCD be converted into leased property on the basis of market rate of L&DO/DDA etc or on the basis of the rates fixed by the reserve price fixation committee to be constituted by the Commissioner MCD. Regarding conversion of the licensed properties into lease hold properties, vide letter dated 25th October, 2005 on behalf of the

Commissioner, MCD it was written to the Municipal Secretary, MCD as under:

“Sub: Preamble for conversion of licensed properties into leasehold properties.

The corporation had passed a Resolution No. 856 proposing conversion of licenced properties into leasehold will bring a huge amount of revenue to the MCD immediately and will also save the MCD from: -

- a) Expenses incurred on deployment of staff to effect recovery of license fee.
- b) Litigation to effect recovery from defaulter licensee.
- c) Embarrassing situation before various authorities for failure of maintenance of these properties. Besides the Corporation shall continue to earn amount of lease rent which shall be calculated on the amount lease.

The issue has been examined and discussed in various meetings and it was decided that the proposed conversion of properties may be considered for lease at L&DO rates and a policy be framed accordingly.

In view of this position, a policy is to be framed covering following issues: -

- a) What will be the land rates to be charged for conversion?
- b) What will be the present cost of construction to be charged for conversion?
- c) Who will be eligible for seeking conversion of the property?
- d) What will be the liabilities of Corporation towards the property after the conversion?
- e) What will be the liabilities of the allottee towards the property after the conversion?

In this regard for assessing the land rates and cost of.....

2. Take into consideration the letter No. L&DO/DN/24 (\$65)2004/78 dated 27.09.2004 from the Public Relation Officer, Ministry of Urban Development wherein the commercial land rates for the purpose of conversion from licence to lease hold. L&DO has not declared any new rates after 31.03.2000. Thereafter, the L&DO has not revised the rates. Therefore, it is suggested that by adding appreciation @ 10% per year in this price, we may reach at the existing land rates.

The CA cum FA had observed that Deptt should identify the properties proposed to be converted into leased properties and indicate the same in the policy with details of terms and conditions of conversion. In this regard, it is suggested that we may consider this proposal for all municipal properties instead of waiting for the response of our policy from only one market. Regarding (C) above, it is proposed that the allottees, who have cleared up to date dues, shall be eligible for seeking conversion of the property allotted to him.

Regarding (d) and (e) above, it is proposed that the property shall be offered for conversion on "as is where is basis" and the Corporation shall have no liabilities to maintain it after conversion into lease hold property. The allottee shall have to deposit the full lease money to get the lease executed. Besides, the allottee shall be liable to pay ground rent @ 2.5% per year and shall be liable to abide by the building bye laws applicable from time to time.

The matter may, therefore, be placed before the Corporation and routed through the Standing Committee, for approval."

9. This letter of the Commissioner MCD dated 25.10.2005 clearly relate to all municipal properties and makes no distinction between markets/colonies and stand alone properties. Vide the Resolution

No.336 of the Standing Committee dated 26.10.2005, this letter of the Commissioner was approved and recommended to the Corporation. The relevant resolution No.336 dated 26.10.2005 of the Standing Committee states:

“Resolved that to be recommended to the Corporation that the proposal of the Commissioner as contained in his letter No.F.33/L&E/1169/C&C dated 25-10-2005, be approved.”

10. Learned counsel for the Respondent heavily relies on the background note of the Resolution No.494 of the Corporation, the relevant portion of which is as under:-

“Ministry of Urban Development & Poverty Alleviation (Directorate of Estates) had conferred ownership rights to 4 Rehabilitation Markets in 1978 out of 35 markets which were under control and management of Directorate of Estates. Subsequently, the Cabinet, in its meeting held on 20-10-1989 decided to confer ownership rights to 10 more markets. Ownership of these markets was offered after charging a percentage ranging between 50% to 80% of the premium for land, at the predetermined commercial rates notified and existing on the date of transfer for the locality/area where the shop is located, plus the present day replacement cost for the shop, minus depreciation. Besides this, they are to be charged annual ground rent @ 2.5% of premium/cost of the land calculated at the existing land rates.

In the year 2000, the Central Cabinet approved the request of free hold rights for 14 Central Govt. Markets on payment of 100% premium of commercial land rates (copy of order of Government of India is enclosed). Present allottees in various markets under the control of MCD fall into following four categories:-

(i) Original allottees.

- (ii) Allottees in whose names the shops have been regularized with the consent of original allottees.
- (iii) Occupants (with or without consent of the original allottees).
- (iv) Occupants who have taken over the property on the basis of hire-purchase/exchange basis /mutual understanding basis with or without prior consent of the MCD. However, in case prior approval of the MCD is not taken requisite/existing transfer fee has to be paid by the applicant.

The terms & conditions proposed to be offered for grant of ownership:-

1. It is proposed to charge 100% land premium of the commercial/residential (whatever the case may be) land rates notified as on the date of actual transfer/conversion.
.....
.....
.....
8. This free hold will enable MCD to recover the value of the land and structure and also enable the occupants to raise loans to invest in the property by way of sale, addition, alteration etc. as per the existing laws.
9. As far as licences for residences is concerned the procedure/rates of grant of free hold rights would be as per Annexure 'E'.
10. As far as licences for commercial/residential cases is concerned the procedure/rates for grant of free hold shall be as per Annexure 'F'.
11. This will not apply on Tehbazari holders/Damage sites and for occupants on public areas like roads, footpath, parks, open ground & such areas where the layout plan is not approved.

FA has seen and approved the proposal.

The proposal is based on the policy adopted by Ministry of Urban Development and Poverty Alleviations

(Directorate of Estates) in the year 2000 which was later approved by the Cabinet (photocopies placed opposite).

The licensed/rented property will be first converted into lease hold and then into free hold. For the purpose of Free Hold of Commercial Properties a separate preamble has also been moved. Licensed/rented properties, which will be converted into lease hold, will be converted into free hold as per policy of conversion from lease hold to free hold.

Proposal:

In the light of the above stated facts and circumstances the proposal for conversion of markets and colonies from License Fee basis to Lease Hold basis and then Free Hold basis of commercial/industrial built up plots and shops from lease hold to free hold may kindly be put up before the Standing Committee/Corporation, MCD for approval.”

11. A perusal of this note shows that it has addressed itself only to certain specified categories of properties i.e. shops existing in the approved markets and was not applicable to remunerative sites or stand alone properties such as banquet halls. However, what was approved by the Corporation in terms of the Resolution No. 494 was the recommendation of the Standing Committee and the proposal of the Commissioner as contained in his letter dated 25th October, 2005 and not the background note. The relevant Resolution No. 494 reads as under: -

“Resolution No. 494-- Resolved that as recommended by the Standing Committee vide its Resolution No. 336 dated 26.10.2005, the proposal of the Commissioner as contained in his letter No. F.33/L&E/1169/C&C dated 25.10.2005 be approved.”

12. Vide resolution No. 894 dated 5th March, 2007 of the Corporation, it was observed that the sub-committee constituted on 18th October, 2006 to look into the matter and submit its report qua the implementation/acceptance of the policy of L&DO and in respect of markets transferred from L&DO and CPWD as well as existing municipal markets could not finalize the matter and the same was thus sent to the Standing Committee for consideration.

13. We find no force in the argument of the learned Additional Solicitor General that the Resolution No.494 related only to markets and colonies and not the “stand alone” remunerative properties in view of our findings recorded above that the Resolution No. 494 approved the letter of the Commissioner dated 25th October, 2005 and the Resolution of the Standing Committee dated 26th October, 2005 being a sequitur to the Resolution No. 856 dated 17th February, 2004 relating to all municipal properties and not the background note prepared for Resolution No. 494. Thus, there is a clear policy decision of the Commissioner, the Standing Committee and the Corporation to convert municipal properties from license fee basis to lease hold and then to free hold. However, we find that the further requirement of an approval of conversion from license fee basis to lease hold and then to free hold for the specific cases of the Appellants has not been met out in the present case.

14. Faced with this situation of no approval from the competent authority i.e. neither a resolution of the Corporation nor an assent from the Commissioner of MCD, learned counsel for the Appellants relies upon the resolution of the Standing Committee of the MCD held on 2nd July 2009 wherein item Nos. 68 and 69 related to conversion from License Fee status to Lease hold status basis and then to free hold basis of New Shehnai Banquet Hall and Restaurant, Asaf Ali Road and Cup-n-Saucer Open Air Restaurant, Minto Bridge, New Delhi respectively wherein it was resolved and recommended to the Corporation that necessary formalities for the said conversion be completed without further delay.

We may note that though the Standing Committee of the MCD approved and resolved in favour of the Appellants however, as is evident from the scheme of the Act, the Standing Committee is not the Competent Authority to approve. We may at this stage refer to Section 200 of the Act:

“200. Disposal of property.-With respect to the disposal of property belonging to the Corporation, the following provisions shall have effect, namely: -

- (a) the Commissioner may, in his discretion, dispose of, by sale or otherwise, any movable property belonging to the Corporation not exceeding in value in each instance one thousand rupees, or such higher amount as the Corporation may prescribe, or let out on hire any movable property or grant a lease of any immovable property belonging to the Corporation, including any right of gathering and

taking fruits and the like, for a period not exceeding one year at a time;

- (b) the Commissioner may, with the sanction of the Standing Committee,-
 - (i) dispose of, by sale or otherwise, any movable property belonging to the Corporation the value of which does not exceed five thousand rupees;
 - (ii) grant a lease (other than a lease in perpetuity) of any immovable property belonging to the Corporation; or
 - (iii) sell or grant a lease in perpetuity of any immovable property belonging to the Corporation the value of which does not exceed fifty thousand rupees or the annual rent of which does not exceed three thousand rupees;
- (c) in cases not covered by clause (a) or clause (b), the Commissioner may, with the sanction of the Corporation, lease, sell, let out on hire or otherwise transfer any property, movable or immovable, belonging to the Corporation;."

Further fact remains that this recommendation of the Standing Committee was not accepted by the Corporation and the Commissioner as these items vide Resolution Nos. 44 and 45 were referred to the Commissioner for report whereon a background note was prepared wherein facts which have been contended hereinabove by the learned counsel for the Respondent were reiterated. As per the said background note, the permission for mortgage of the MCD was illegal and unauthorisedly granted by subordinate officers in collusion with the Appellants. Further, mortgage could be only of properties with

regard to which a lease deed had already been executed with the MCD and there was a set procedure laid down for seeking mortgage permission which included an application from the lessor in a prescribed form and a tripartite agreement to be executed between the Department, the Lessee and the Bank. The background note recommended that the proposal may not be considered as the matter was also pending with the High Court, CBI, Vigilance Department and hence the proposal be rejected. Thus, there was no concluded contract between the Appellants and the competent authority of the Respondent.

15. In *B.S.Khurana's case (supra)* the Hon'ble Supreme Court while considering the scope of Section 200 of the Act, relating to the "Disposal of property" held that a party has no legal right to claim ownership on the basis of Resolution passed by the Corporation as obtaining the sanction of the Commissioner was mandatory and in the absence of such a sanction the said Resolutions were without any power or authority. The relevant portion of the report states:-

"16. The scheme of the aforesaid Sections makes it abundantly clear that the entire executive power for the purpose of carrying out the provisions of the Municipal Corporation Act vests in the Commissioner. His functions and duties are statutorily prescribed. His appointment is also to be made by the Central Government by notification in the Official Gazette. Similarly, the functions of the Standing Committee and other committees are also prescribed. In the light of the aforesaid statutory provisions, we have to consider the scheme of Section 200 which empowers the Commissioner to dispose of the moveable property or

grant lease of any immovable property or to sell the same subject to the conditions provided thereunder. On the condition of obtaining sanction of the Corporation, the power to transfer immovable property, the value of which exceeds fifty thousand rupees vests in the Commissioner. Result is the Commissioner can transfer such immovable property only after obtaining sanction of the Corporation. Obtaining of sanction by the Commissioner is mandatory. The effect of the non-observance of the statutory prescription would vitiate the transfer. This would also mean that the power to dispose of the property would vest in the Commissioner and not in the Corporation. No specific power is conferred upon the Corporation for such transfer. The scheme envisages checks and balances for disposal of immovable property on the power of the Commissioner. In the light of the aforesaid interpretation of Section 200, it is not necessary for us to deal with other contentions raised and dealt with by the High Court. In the facts and circumstances of the case, at no point of time, Municipal Commissioner has decided or agreed to transfer the Municipal quarters in favour of its employees/allottees. There is no legal right to claim ownership on the basis of the resolutions passed by the Corporation as the said resolutions are without any power or authority. Hence, there is no substance in these petitions.”

16. This Court also examined the roles assigned and envisaged for Corporation, the Standing Committee and the Commissioner by the Legislature u/Sec. 200 of the Act in *Nirmal Kumar Jain (supra)* and held:-

“(13) Whereas with regard to acquisition of immovable property decision in respect thereof can be taken by the Corporation alone, under Section 198 of the Act, immovable property can only be disposed of with the concurrence of two entities, one of which must be the Commissioner. While the assent of the Commissioner is not necessary for exercise of power under Section 198 of the Act, Section 200, on the other hand, does not

contemplate immovable property being sold without the concurrence or agreement of the Commissioner. In fact the use of the words in Section 200(c) that “the Commissioner may, with the sanction of the Corporation, lease, sell” give the indication that the initiative or the proposal for the sale of the property should ordinarily arise from the Commissioner. Even if this be not so, Section 200(c) makes it quite clear that sale of immovable property cannot take place without the concurrence of the Commissioner of the Corporation.

(14) The Legislature, in its wisdom, perhaps thought that there should be a greater safeguard provided in the Act with regard to holding or selling of the property belonging to the Corporation, it is, perhaps, for this reason that power to sell the immovable property was not given exclusively either to the Corporation or to the Standing Committee or to the Commissioner. Furthermore, Section 200 does not contemplate a joint decision to sell the immovable property being taken by the Corporation and the Standing Committee. The Commissioner, in regard to the sale of immovable property, cannot be by-passed. Immoveable property can be sold only by the Commissioner either with the consent of the Standing Committee or, under Section 200(c), with the consent of the Corporation.

(32) It may also be noted that under Section 200 of the Act the authority, who is empowered to sell immovable property is the Commissioner after having obtained sanction of the Standing Committee or the Corporation. No representation for the sale of the property had, any time been made by the Commissioner to any of the petitioners. In other words the alleged representation for sale of the immovable property to the petitioner was not made by the proper authority, namely, the Commissioner. The Principles of promissory estoppel can, therefore, not apply in the instant case for this reason as well.”

17. Thus, in present Appeals as the conversion of the licenses to lease hold had neither been approved by the Commissioner nor by the

Corporation as required u/Sec. 200 of the Act, we find no prima facie case in favour of the Appellants. At this stage we are not required to go into the issue as to the circumstances whereby the Appellants were given an offer to deposit the money for conversion of the property from license to lease hold because according to the Respondent this is in connivance with its subordinate officials and an FIR has already been lodged in this regard by the CBI, whereas learned counsel for the Appellants has vehemently contended it to be vindictive, malafide and ill merited as the CBI has already filed a closure report after the investigation. This is an issue to be dealt during the trial of the Suit. At this stage we are also not required to deal with other issues raised as we are of the opinion that though a number of steps have been taken out by the various instrumentalities of the Respondent for conversion of the licenses to leasehold for properties besides the markets and colonies, however, in the absence of a final decision, of the competent authority in relation to Suit properties, the Appellants have not made out a prima facie case in their favour.

18. Accordingly, the Appeals are dismissed. Needless to say that the observation made herein above are only prima facie and will have no bearing on the trial. The learned Additional Solicitor General has fairly stated that as and when the licenses of the suit properties are auctioned, the Appellants will also be entitled to take part in the bid.

We are sure that the Respondent will abide by the same. No order as to costs.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

OCTOBER 08, 2010
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