

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

+ **LPA No. 205/2010**

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Reserved on: 23rd March, 2010

Decided on: 7th April, 2010

ASHIT KUMAR JAIN,
S/O LATE SHRI BIMAL PRASAD JAIN,
SHOP NO. 27, YASWANT PLACE MARKET,
CHANKYAPURI, NEW DELHI.

..... Appellant

Through: Mr. J.P. Sengh, Sr. Advocate with
Mr. Ashwini Sharma, Mr. Amit
Sharma, Advocates.

versus

1. NEW DELHI MUNICIPAL COUNCIL,
(THROUGH ITS CHAIRPERSON),
PALIKA KENDRA,
NEW DELHI.

2. ESTATE OFFICER,
NDMC,
PALIKA KENDRA,
NEW DELHI.

..... Respondents

Through: Mr. Manoj K. Singh and Mr. Nilava
Banerjee, Advocates.

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may
be allowed to see the judgment?

Not necessary

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| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Not necessary |

MUKTA GUPTA, J.

1. The present appeal arises out of the judgment dated 3rd March, 2010 passed in W.P. (C) No. 1239/2010 dismissing the writ petition of the Appellant against the order dated 24th February, 2010 of the District Judge disposing of the appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'PP Act'). Vide order dated 24th February, 2010 the District Judge upheld the order dated 13th May, 2004 passed by the Estate Officer directing the Appellant to vacate the premises, that is, Shop No. 27, Yashwant Place Market, Chanakyapuri, New Delhi, however, remanded the matter back to the Estate Officer to decide the actual license fee/damages to be paid by the Appellant as per law. In the writ petition, the Appellant also sought a mandamus against the Respondent No. 1 to renew the license for the said premises.

2. The abovementioned premises was allotted to one Shri Ranjit Batla under a License Deed dated 25th June, 1976 on a monthly rent of Rs. 1,052/- for a fixed period of five years. The License Deed in terms of Clause (1) was renewable on the terms and conditions to be settled mutually between the

parties. According to the Appellant a partnership was entered into on 20th December, 1976 between the Appellant, his brothers and Shri Ranjit Batla and the same was dissolved on 31st March, 1977. The Appellant duly submitted the relevant documents to the Respondent No. 1 along with an application for regularization of the shop and for execution of the license deed in the name of the Appellant. However, as the same was never decided, the Appellant continued running the business from the premises uninterruptedly. According to him he continued paying the license fee which at present is @ Rs. 2,264/- with effect from January, 2005. According to the Appellant, it is a case where the New Delhi Municipal Council (NDMC) should regularize the license deed in the name of the Appellant and he is not entitled to be vacated from the premises.

3. We have heard learned counsel for the parties and gone through the record. The license deed was in favour of Shri Ranjit Batla and that too for a period of five years, which term expired on 25th June, 1981. It is not disputed that after the efflux of five years, that is, 25th June, 1981 no fresh license deed has been executed in favour of the Appellant. The Appellant had entered into a partnership agreement with the original licensee Shri Ranjit Batla on 20th December, 1976 and the said partnership was dissolved on 31st March, 1977 whereby all rights were given up by Shri Ranjit Batla and the

Appellant was vested with the rights to carry out the business from the said premises. Before the Estate Officer no evidence was led of the business this partnership carried on between 20th December, 1976 and 31st March, 1977. As per Clause (8) of the license deed there was a complete restriction on the licensee to transfer the possession of the premises without the previous consent in writing of Respondent No. 1 and in default thereof was liable for ejectment. Thus, the Appellant acted in clear violation of the License Deed. When the Appellant prayed for regularization of subletting on payment of compounded charges vide letters dated 19th May, 1982, he was informed by Respondent No. 1 to complete certain formalities and that failing the same, proceedings under “PP Act” would be initiated. The Appellant neither fulfilled the formalities nor challenged this order dated 19th May, 1982 of the Respondent No. 1.

4. In the year 1982 a writ petition was filed by the Yashwant Palace Traders Association before the Hon’ble Supreme Court challenging the increase in license fee claimed by NDMC for renewal of license after expiry of initial term of five years. The demand increased by the Respondent No. 1 was @ 75%. Though by an interim order the members of the Association were granted interim protection, subject to payment of license fee with 30% increase, however, the writ petition was dismissed vide order dated 8th July,

1996 with the observation that the Respondent No. 1 would deal with the said matters in accordance with law and in a fair and a just manner, on a representation being made. Pursuant thereto various representations were made and finally the Respondent No. 1 agreed to an increased license fee by 30% every five years instead of 75% upto 2001 and thereafter 10% increase every year. The interest for the period 1983 to 1996, when the petition was pending before the Hon'ble Supreme Court was also waived by the NDMC.

5. It is also contended by the learned counsel that the interest charged by the Respondent No. 1 is fairly high. Despite the high rate of interest the Appellant has made payments in January, February and March this year by separate cheques and thus entire arrears of license fee and damages have been cleared. According to the Respondents, the Appellant was in arrears as on 30th June 1996 and also subsequently as on June, 1999 the Appellant's liability increased to Rs.2,15,930/- and interest of Rs. 4,318/-. Not only this, the Appellant did not even make the payment from July, 1999 to March, 2000 when only an amount to Rs. 5,200/- was paid. Even in June, 2000 a sum of Rs. 2,610/- was paid and similarly in 2001, three payments of Rs. 5,121/-, Rs.3,110/-, and Rs. 10,000/- were made. Thereafter in June, 2004 the Appellant paid Rs. 3 lakhs and Rs. 2265/-. Despite all these payments the Appellant was still to pay Rs. 88,851/- as arrears towards license fee and Rs.

1,777.22 towards interest when the eviction order was passed by the Estate Officer on 13th May, 2004. Subsequently, during the pendency of the appeal before the District Judge, he did not deposit the entire amount and only between 20th August, 2009 till 18th February, 2010 he made payments of Rs. 10 lakhs.

6. Thus it is apparent that despite repeated opportunities the Appellant defaulted in making payments. We are not going into this issue in detail as with regard to the arrears of license fee and damages to be paid by the Appellant, the matter has been remanded back by the District Judge to the Estate Officer. We have observed these facts only to note the contumacious default of the Appellant.

7. The impugned order dated 3rd March, 2010 in WP(C) No. 1239/2010 is unexceptionable. The appeal is dismissed with a cost of Rs. 15,000/- to be deposited in four weeks.

(MUKTA GUPTA)
JUDGE

(MADAN B. LOKUR)
ACTING CHIEF JUSTICE

APRIL 07, 2010
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