

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 26.11.2010
Judgment delivered on: 24.12.2010

W.P.(C) 17385/2005

RASHMI PURI

.....Petitioner

Through: Mr.Rajat Aneja with Ms.Shweta Singh,
Advocates.

Vs.

N.D.M.C. AND ANOTHER

.....Respondents

Through: Mr.Nilava Banerjee, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226 & 227 of the
Constitution of India, the petitioner seeks quashing of the

order dated 3.5.2005 passed by the court of the learned ADJ whereby the appeal of the petitioner under section 9 of the Public Premises (Eviction of unauthorized Occupants) Act, 1971 was dismissed.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner was allotted a shop by the respondent bearing No.55, Shahid Bhagat Singh Place, Gole Market New Delhi @ Rs. 27,773/- per month. A license deed to the said effect was executed on 9.5.1997 and the possession of the said shop was taken by the petitioner on 13.6.1997. That the petitioner defaulted in payment of the licence fee and hence the respondent cancelled the allotment of the said shop vide cancellation order dated 30.3.1999. Consequently eviction proceedings were initiated against the petitioner and the petitioner surrendered the shop on 30.11.1999 and vide order dated 16.10.2001 the learned Estate Officer directed the petitioner to pay arrears @Rs.27,773/- alongwith interest @ 24% w.e.f 30.3.1999 to 8.12.1999. Feeling aggrieved with the above said order, the

petitioner filed an appeal under section 9 Of the Public Premises Act which vide order dated 3.5.2005 was dismissed but the rate of interest was reduced from 24% to 6% p.a . Feeling aggrieved with the order of the learned ADJ, the petitioner has preferred the present petition.

3. Mr.Rajat Aneja, counsel for the petitioner stated that acting on the promises and representations made by the respondent/NDMC through their brochures, the petitioner was fascinated to seek the allotment of the said shop in question. Counsel further submitted that the petitioner was handed over the possession of the said shop in question on 13.06.1997 and she had invested a sum of about Rs.1 lac in renovating the said shop. Counsel further submitted that the petitioner had spelt out various inadequacies in the reply submitted by her before the Estate Officer which were never remedied by the respondent-NDMC. Counsel also submitted that one of the major deviations on the part of the respondent was that they never had demolished the temporary sheds at Gole Market and Baird Lane Market and also did not shift the

said shops to the new market as assured. The contention of counsel was that the petitioner had applied for allotment of the said shop under the bonafide impression that the shop holders from the Baird Lane Market and Gole Market would also be shifted to the new complex and their shifting certainly would have enhanced the business prospects. Inviting attention of this Court to the evidence of PW-2, Shri Sushil Gupta adduced by the respondent before the Estate Officer, counsel submitted that the respondent-NDMC could not fetch lucrative price when adjoining shops were re-tendered for sale and in fact the rate of allotment fell down considerably. Counsel also submitted that these vital aspects were ignored by both the courts below and both the courts below have given sole consideration to the license deed entered into between the parties on 09.05.1997. Counsel further submitted that the respondent has not assessed the damages in terms of Rule 8 of the Public Premises (Eviction of Unauthorized Premises) Rules, 1971. The contention of the counsel for the petitioner was that had the respondent followed the mandate

of the said rule, then certainly the respondent would not have assessed the damages based on the prevailing market rate which was duly established by the petitioner during cross-examination of the respondent's witness PW-2. In support of his arguments, counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in *M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others (1979) 2 SCC 409* with special emphasis on paras 5 & 6. Counsel also submitted that by the doctrine of estoppel, the respondent is estopped to claim damages even at the agreed rate when they themselves had failed to fulfill their obligations as announced by them under their various brochures based on which the petitioner had altered her position to accept their representations and came forward to seek allotment of the said shop. Counsel thus submitted that the petitioner is not liable to pay the said damages as assessed by the respondent-NDMC.

4. Refuting the said submissions of counsel for the petitioner, Mr.Banerjee, counsel for the respondent-NDMC

submitted that the first brochure on which reliance was placed by the petitioner is of the year 1992 i.e. of 20.11.1992 while the tender for allotment of shop in question was of the year 1996 and the tender application was submitted by the petitioner on 09.07.1996. So far the second brochure is concerned, counsel submitted that the same was issued on 31.08.1996 after the bid was placed by the petitioner on 09.07.1996 and, therefore, the second brochure will also have no effect. Counsel placed reliance on Sub Clauses 1 & 4 of Clause 6 of the terms and conditions of the tender to submit that the said shop was allotted to the petitioner on '*as is where is*' basis, therefore, the plea of the petitioner that the representation made by the respondent under the brochures was not strictly adhered to, will not cut any ice. Counsel also submitted that in the said tender, the reserve price itself was Rs.10,000/- for the shop and the offer which the petitioner had given in respect of the said shop was Rs.90.25 per sq. ft. and the area of the shop was 293 sq. ft., therefore, the total offer given by the petitioner in the said bid comes to be

approx. 27, 773/- per month. Counsel also submitted that the petitioner defaulted in paying the monthly license fee right from the very inception, which non-payment resulted in cancellation of the license of the petitioner on 30.03.1999. Counsel further submitted that the petitioner had surrendered the possession of the said shop to the respondent on 08.12.1999 after the proceedings were initiated by the respondent against the petitioner under Sections 5 & 6 of the Public Premises Act. Counsel further submitted that the petitioner had also filed a civil suit to claim damages from the respondent and also to seek protection of her possession but the petitioner did not pursue the said civil suit which resulted in the dismissal of the suit in default. Counsel thus submitted that had the petitioner been aggrieved by the inadequacies or the facilities provided by the respondent or any promise being not fulfilled by the respondent under their brochure, then the petitioner at least should have vacated the said shop immediately and not after a lapse of two years. In support of his arguments, counsel for the respondent placed reliance on

the judgment of the Hon'ble Apex Court in *New Bihar Biri Leaves Co. and Others. Vs. State of Bihar and Ors. AIR 1981 SC 679* and also on the judgment of this Court in *Track Innovations India Pvt. Ltd. Vs. Union of India (UOI) and Ors. MANU/DE/1427/2010* Counsel also submitted that in principle the respondent has taken a decision to waive off the interest part on the over due amount which comes to be Rs.5,58,000/- subject to the petitioner making the payment of the outstanding principal amount which comes to be Rs.3,82,559/- (approx.) on or before 31.12.2010.

5. I have heard learned counsel for the parties and gone through the records.

6. The shop no. 55, Sahid Bhagat Singh Place, Gole Market, New Delhi was allotted by the respondent NDMC in favour of the petitioner after her tender offering the rate of Rs.90.25 per sq. ft. was accepted by the respondent. A license deed was also executed between the parties and the terms of the licence deed primarily governed the relationship between the parties. The petitioner took the possession of the

said shop on 13.6.1997 but her licence was terminated on 30.3.1999 due to non-payment of license fee by the petitioner. The main emphasis of the learned counsel for the petitioner was on the argument that the respondent NDMC failed to keep its promise which it had made through its brochures issued in the year 1992 and in 1996 and due to non-fulfillment of such promises, the respondent NDMC is estopped by the Doctrine of Promissory Estoppel to claim the amount of the licence fee or to claim damages from the petitioner. In the face of the two brochures on which reliance was placed by the counsel for the petitioner; one is of the year 1992 and the other of the year 1996, i.e. one which was issued much prior to the offer of allotment through tenders made by the respondent and the other in the later period after the acceptance of the bid of the petitioner, it is difficult to accept the contention of the counsel for the petitioner that the petitioner had participated in the tenders to bid for the allotment of the said shop based on the brochure which was issued in the year 1992. The petitioner must have

participated in the tenders after fully verifying the fact situation of the market at the site in question and if the petitioner had given the bid without verifying the facts at site then the petitioner cannot shift the blame on the respondent for her own follies. Undoubtedly, the Government or the Municipal Authorities are expected to adhere to their announcements and representations made through their schemes published by them in various newspapers and brochures as such announcements enable the people to come forward to make applications or to participate in the tenders, but in the facts of the present case it cannot be said that the petitioner had altered her position to her prejudice on the representation made by the respondent NDMC in the said brochures. The petitioner had participated in the tenders with open eyes and if the petitioner could not establish her business in the said market then the blame for such failure rests on the petitioner herself and not on the respondent NDMC. The petitioner in her initial correspondence has taken a stand that her shop was

closed due to some financial constraints in addition to her personal problems which emanated due to the sudden death of her father-in-law. The petitioner also took a stand that she also could not establish the business in the said market due to the extreme financial hardship suffered by her because of her furnishing bank guarantee for a heavy amount of Rs.3,17,400 in addition to the security deposit amount. It is only in her reply filed before the Estate Officer that the petitioner raised the dispute of non-fulfillment of the various announcements made by the respondent in their brochures regarding proper implementation of Shahid Bhagat Singh Project. The learned Estate Officer and the Appellate Court have examined these contentions of the learned counsel for the petitioner and I do not find any infirmity or illegality in the reasoning given by both the courts below. The judgment of the Apex court reported in *M/s.Motilal Padampat (supra)* would be of no help to the case of the petitioner as the petitioner cannot be said to have altered her position to her

detriment, acting on some promises or assurances extended by the respondent.

7. As already discussed above, the brochure on which reliance was placed by the petitioner pertains to the year 1992 and the other brochure pertains to the year 1996 and both were not instrumental so far the participation of the petitioner in the tender in question is concerned. It is not the case of the petitioner that due to various inadequacies in the said market the petitioner could not start her business or immediately after having taken over possession of the said shop in question the petitioner had taken up the matter with the respondent that she was not in a position to start her business due to the alleged inadequacies or due to the lack of development of proper infrastructure and also due to non-shifting to the new market. Doctrine of Promissory Estoppel is an equitable principle and to invoke such principle it is for the promisee to first establish that not only the fact that based on certain promises made by the Government it had altered its position but also the fact that it had taken all

possible steps to act on such promise and not contrary to the same by not paying the license fee for such a long period. Therefore, the petitioner cannot take the shelter of the said doctrine to escape from her monetary liability. It cannot be lost sight of the fact that the petitioner had filed a civil suit to claim damages from the respondent on account of the alleged inadequacies in the said market but the said suit was withdrawn by the petitioner herself and this fact would itself establish that the petitioner herself was not serious so far her grievance against the inadequacies in the said market is concerned. Hence, this court does not find any merit in the argument of the counsel for the petitioner that the petitioner is not liable to pay the license fee or the damages due to non-fulfillment of various promises made by the respondent through their said two brochures.

8. Dealing with the next contention of the counsel for the petitioner that the respondent has not assessed the damages in accordance with the principles ingrained in Rule 8 of the Public Premises Rules, 1971, the contention of the

counsel for the petitioner was that the respondent could not have calculated the damages at a rate more than the prevailing market rate which as per the deposition of PW-2 Sushil Gupta was Rs.46.20 per sq. ft. for the similar shop in the said market in 1997. Counsel for the respondent on the other hand took a stand that pursuant to the order passed by the learned Estate Officer, the respondent has not only agreed to charge damages for the relevant period equivalent to the rate of the licence fee but has also further agreed to waive the interest amount of Rs. 5,58,987 in the event of the petitioner paying the entire amount on or before 31st December 2010. It is not in dispute that a similar shop when allotted in the year 1997-98 was given at a lesser rate than the one allotted by the respondent in the year 1995-96, but the moot question is whether the rate of license fee prevalent in the year 1997-98 would determine the rate of damages in the face of an admitted position that the license of the petitioner was cancelled before the license period of five years was yet to expire. The learned Estate Officer has

already not accepted the plea of the respondent to enhance the damages @ 30% over the existing license fee, therefore, I do not find any infirmity in the order passed by the courts below accepting the damages at the same rate as that of the license fee. I also find myself in agreement with the findings of the court below that damages in any case should not be less than the amount of license fee payable by the petitioner, more particularly when the license period was yet to come to an end. The criteria of assessment of damages as laid down in Rule 8 of the Public Premises Rules would have been resorted to for claiming any enhanced amount than the amount of license fee payable by the petitioner and since already both the courts below have not accepted the said raise @ 30% over the amount of the license fee, therefore, no fault can be found with the findings of the courts below assessing the damages at the same rate as that of the license fee rate. In any event of the matter, assessment of damages as envisaged under Rule 8 of the Public Premises Act cannot be assessed lower than the amount of the license fee fixed

between the parties. The said criteria would apply where the raise is being claimed over and above the agreed rate of rent/license fee/damages or in a case where there was no agreement or contract to pay any particular rent or license fee. This court, therefore, does not find any illegality or perversity in the findings of both the courts below awarding the damages from the period w.e.f. 30.3.99 to 8.12.99 at the same rate as that of existing license fee.

9. In the light of the above, there is no merit in the present writ petition and the same is hereby dismissed. However, since during the pendency of the present writ petition, the respondent had agreed to waive the interest amount of Rs.5,58,987/- in the event of the petitioner coming forward to pay the entire arrears of the license fee including the amount of damages on or before 31.12.010, therefore, the said option can still be exercised by the petitioner . If, however, the petitioner does not choose to pay the entire outstanding amount towards the arrears of the license fee and damages on or before 31st December 2010, then the

petitioner would not be entitled to the benefit of the said relaxation by the NDMC with regard to the said waiver of interest.

10. In terms of the above directions, the present petition is dismissed with no order as to costs.

December 24, 2010
dc/mg

KAILASH GAMBHIR, J