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

+ W.P.(C) 18490/2006

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Date of decision: 16th February, 2010

VIJAY KUMAR

..... Petitioner

Through Mr. Arjun Singh Bawa & Mr. Sanjeev
Mahajan, Advocates.

versus

N.D.M.C.

..... Respondent

Through Mr. Arjun Pant, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER

1. The petitioner being the highest tenderer was allotted shop No. 243, Palika Bazar, Connaught Place, New Delhi (hereinafter referred to as the property, for short). The tender of the petitioner was submitted on 17th October, 1981. A licence deed dated 22nd January, 1982 was executed between the petitioner and the respondent-New Delhi Municipal Committee now known as New Delhi Municipal Council (NDMC, for short).

2. Some of the shopkeepers in Palika Bazar had filed writ petitions alleging unfair discrimination and also failure of NDMC to enforce adherence to trade zone restrictions. The said writ petitions were disposed

of vide judgment dated 29th May, 1981 quashing the trading zone restrictions. One of the contentions raised in some of the writ petitions was that the shopkeepers had suffered losses on account of failure of the respondent-NDMC to enforce adherence to trading zone restrictions as they had quoted higher amount in the tender relying upon trading zone restrictions. As noticed above, the tender was submitted by the petitioner on 17th October, 1981, which is after the date of this judgment on 29th May, 1981. It is, therefore, clear that the petitioner was aware when he submitted his tender that some of the shopkeepers were not adhering to the trading zone restrictions. The petitioner cannot, therefore, contend that when he submitted his tender, he was under the impression that NDMC would strictly enforce the trading zone restrictions. The contention of the petitioner that he suffered losses because of the failure of NDMC to adhere to the said trading zone restrictions, therefore, fails and has no merit.

3. The decision of the single Judge of this Court dated 29th May, 1981 was reversed in appeal by Division Bench vide judgment dated 18th March, 1983, titled *Sanjiv Prakash and others versus New Delhi Municipal Committee, New Delhi and Others*, AIR 1983 Delhi 478. The Division Bench held that trade zoning restrictions were applicable but distinction was drawn between shopkeepers of Panchkuian Road and others. It was held that the parties should pay the licence fee amounts agreed upon as per the bids given by them.

4. The decision of the Division Bench was appealed and made subject matter of civil appeals before the Supreme Court of India. These civil appeals and a writ petition were disposed of vide judgment dated 2nd February, 1996. In this order the Supreme Court noticed distinction between shopkeepers of Panchkuian Road, who were accommodated in the said complex after being dislocated and persons, who had submitted

tenders/bids in respect of 177 shops divided into four zones and classified into seven groups for proper identification. It was held that these 177 shops were advertised for allotment through tender. The contention of the shopkeepers who were given allotment through tender that they should not be asked to pay agreed bid amount was rejected and the order of the Division Bench of the High Court in this regard was upheld. It was categorically held that the applicants, whose tenders were accepted on the rates offered by them, were required to pay the bid amount and were not entitled to any reduction. NDMC was also directed to enforce trading zone restrictions but failure to enforce the same it was held was not a ground for the allottees of 177 shops to deny payment of licence fee at the agreed tender rate.

5. The petitioner filed a civil suit for injunction before Civil Judge in 1982 and an injunction order was passed in his favour on 24th June, 1982 requiring the petitioner to pay licence fee at “economy rate”. This civil suit was subsequently dismissed and was made subject matter of Regular First Appeal before the Additional District Judge. This appeal was dismissed vide judgment dated 6th October, 1997. Copy of the said judgment has been produced before me by the counsel for the petitioner. The learned Additional District Judge took notice of the entire history of the litigation and the claim of the petitioner for reduction of licence fee on the basis of the promissory estoppel and failure of NDMC to enforce trading zone restrictions and thus the claim of the petitioner that he had suffered huge losses in their business. It was held that the issue and contentions were squarely covered by the judgment of the Division Bench and the Supreme Court against the petitioner herein. The learned Additional District Judge rejected the contention of the petitioner that only constitutional aspects were examined by the Division Bench and the Supreme Court. The learned

Additional District Judge relied upon Section 16 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on the question of jurisdiction.

6. In addition to the civil suit, learned counsel for the petitioner states that the petitioner herein had filed W.P. (C) No. 1516/1985 before this Court and an interim order dated 24th June, 1985 was passed. The said writ petition, it is stated, was disposed of or dismissed in default on 28th February, 2003.

7. Eviction proceedings were initiated against the petitioner vide notice dated 9th March, 1999. The Estate Officer passed eviction order dated 20th July, 2006 and also held that the petitioner is liable to pay damages on account of arrears of licence fee of Rs.1,50,93,898/- along with interest @ 12% per annum on the principal amount. The Estate Officer also awarded subsequent damages @ Rs.40,126/- per month with interest @ 12% per annum. Order passed by the Estate Officer was made subject matter of appeal before learned Additional District Judge under Section 9 of the Act. The appeal has been dismissed vide impugned order dated 19th October, 2006. The learned Additional District Judge has observed that the petitioner has been in occupation and using the shop in question for over 24 years without making payment of the licence fee in terms of the licence deed dated 22nd January, 1982 and the petitioner had also not bothered to pay the enhanced amount after expiry of the initial licence period. It was noticed that the licence deed was valid for a period of five years and expired on 31st January, 1987 and thereafter it was not renewed. Learned Additional District Judge observed that the Administrator, NDMC had cancelled and withdrawn the licence vide order dated 19th April, 1985 as the petitioner was liable to pay outstanding amount of Rs.7,64,298/- and interest till that date.

8. Learned counsel for the petitioner has submitted that the respondents have failed to act in accordance with the order passed by the Supreme Court in the civil appeal dated 2nd February, 1996 and even today the petitioner has not been submitted and furnished correct statement of account with interest @ 6% per annum. It is accordingly submitted that the petitioner is not an unauthorized occupant and the impugned orders both by the Estate Officer and the learned Additional District Judge cannot be sustained.

9. Learned counsel for the petitioner has heavily relied upon order dated 2nd February, 1996 passed by the Supreme Court. The relevant portion of the said order reads as under:-

“12. It appears that writ petitions were filed as early as in the year 1980 which were allowed by the learned Single Judge on 29-5-1981. The appeal filed on behalf of the NDMC against the said judgment was allowed on 18-3-1983. This Court while granting leave passed orders regarding maintenance of status quo in respect of the trades being carried on by the appellants. Interim directions were given also in respect of payment of licence fee at the reserved rates instead of agreed rates in many appeals. Because of these interim orders passed by the High Court as well as this Court in most of the cases only payment of the licence fee has been made to the NDMC at the reserved rates and not at the agreed rates. After the dismissal of the appeals and the writ petition, the appellants and the writ petitioner are liable to pay the balance amount of arrears which runs into lakhs of rupees in different appeals. As such at the close of the hearing of the appeals an alternative submission, was made on behalf of the appellants that in the event of dismissal of appeals and writ petition, this Court should direct payment of the arrears by reasonable instalments. On behalf of the NDMC

claim was made for interest over such arrears contending that NDMC should not suffer because of the interim orders passed by the High Court as well as by this Court.

13. In view of the legal maxim “*actus curiae neminem gravabit*” which means that an act of court shall prejudice no man, NDMC is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court. This aspect of the matter has been examined by this Court in the case of *Raj Kumar Dey v. Tarapada Dey*¹. Although in the interim orders it has not been stated that in event of dismissal of the appeals and the writ petition, the appellants and the writ petitioner shall be liable to pay interest over the arrears of the licence fee, but that shall not debar this Court from passing any order in respect of payment of reasonable interest over the said amount.

14. Taking all facts and circumstances into consideration including the lapse of more than 12 years since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct:

1. The allottees will pay licence fee at the agreed rate subject to revisions as per the terms of the licence deed.

2. If the agreed rate has not been paid either due to interim order passed by any court or otherwise and payment has been made on the basis of reserved rate, then for the period when the interim order was operative, so far the allottees who have deviated from trade zone shall be liable to pay simple interest over the arrears for that period at the rate of 12 per cent per annum and at the rate of 15 per cent simple interest for the remaining period.

3. Allottees who ha

ve not deviated from the trade zone and have paid at the agreed rate throughout except the period when interim orders of the Court were operative, shall pay the balance amount of the arrears of the agreed rate with simple interest at the rate of 6 per cent.

4. Arrears amounting up to Rs 2.25 lakhs shall be paid in four equal quarterly instalments on or before 31-12-1996. But if the arrears are in excess of Rs 2.25 lakhs and up to Rs 5 lakhs, then they shall be paid in six equal quarterly instalments on or before 30-6-1997. In case, where the arrears are above Rs 5 lakhs, it shall be paid in eight equal quarterly instalments on or before 31-12-1997. The arrears shall be calculated in terms of the above order for the period up to 31-12-1995 by the respondent NDMC against each allottee and notice will be served on such allottees within six weeks from today.

5. From the month of January 1996 the licence fee as revised in terms of the licence deed shall be paid.

6. The allottees who have deviated from the trade zoning restrictions, shall revert back to the trade zone, allotted to them on or before 31-12-1996.

7. No damage shall be paid as claimed on behalf of the respondent NDMC on account of cancellation of licence.

8. All notices of cancellation shall be deemed to have been withdrawn after the directions aforesaid are complied with by the allottees or the allottee concerned. But in the event of failure to comply with any of the aforesaid directions it shall be open to the NDMC to proceed with the cancellation of the licence of allottee concerned.

9. This order shall not cover the dispute in respect of the resolution of the

respondent NDMC dated 12-9-1991 revising licence fee from 10 per cent to 30 per cent on the expiry of the licence and payment of interest over the arrears from 15 per cent to 24 per cent.

10. In respect of the grievance made on behalf of the allottees that sales are being made from the show windows, Mr Ranjit Kumar, appearing for NDMC, pointed out that before the learned Single Judge, NDMC took a clear stand in their affidavit filed that no persons shall be allowed to sell any article through the show window, it shall be used only for display purpose and NDMC shall not implement the Resolution No. 33 dated 15-1-1985 allowing the persons displaying their articles in the show windows to sell the articles.

15. Accordingly the appeals and the writ petition are dismissed subject to the directions given above. In the facts and circumstances of the case, there shall be no orders as to cost.”

10. Learned counsel for the petitioner submits that the petitioner’s case is covered by paragraph 3 of the directions given by the Supreme Court in the order dated 2nd February, 1996. He submits that in the present case the petitioner had an interim order of the Court in his favour and, therefore, he is liable to pay licence fee along with interest @ 6% per annum. He submits that the respondents did not raise any demand in accordance with paragraph 3 of the judgment with interest @ 6% per annum.

11. The aforesaid plea of the petitioner is without merit. As noticed above, the petitioner had submitted his tender bid on 17th October, 1981 after the judgment of the learned single Judge of this Court disbandoning and striking down trade restrictions vide judgment dated 29th May, 1981. He was, therefore, very well aware that trade zone restrictions were not

being adhered to and some of the shopkeepers were violating the same. He submitted his tender with open eyes and had quoted his bid. He was competing with third parties. Thereafter, a licence deed was executed on 22nd January, 1982 at the agreed bid amount.

12. After the judgment of the Supreme Court dated 6th February, 1996, the NDMC had written letter dated 20th January, 1998 informing the petitioner that he was in arrears of Rs.1,01,32,496/- as on 31st December, 1997. In case of any discrepancy, he was asked to contact the Accounts Officer, Estate Department for clarification. By subsequent letter dated 17th June, 1998 the petitioner was informed that the total arrears payable by the petitioner had been reworked and an amount of Rs.64,25,644.86 was payable as per the details given in the said letter, which are:-

“Licence fee upto 31.5.98	Rs.32,87,936.86
Interest @ 12% upto 12/95and	
@ 15% upto 31.5.98	<u>Rs.31,37,708.00</u>
Total dues upto 31.5.98	<u>Rs.64,25,644.86”</u>

13. The petitioner in spite of of this letter and the break up given by the NDMC did not make payment of the principal amount of Rs.32,87,936.86 though there was no dispute or challenge to the same. He kept on insisting and claiming that interest on arrears should be charged at 6% and not at 12% or 15% per annum. In case the petitioner had paid the principal amount, I would have gone into the question of interest and the rate of interest. However, in the present case, the petitioner has not paid the principal amount of the arrears. Counsel for the petitioner has today offered to make payment of the said arrears. The offer is too late and has been made after nearly more than 10 years from the date the letter dated 17th June, 1998 was written. Further, this aspect has also been considered and examined by the learned Additional District Judge in his order dated 6th

October, 1997 while dismissing the first appeal, which was filed by the petitioner. The petitioner thereafter had preferred a second appeal before this Court, which was dismissed on 21st October, 1997, inter alia, holding that no substantial question of law arises. The petitioner did not adhere to the warnings and comply with the orders passed by the learned Additional District Judge on 6th October, 1997. The petitioner is a habitual and cornic defaulter, who does not deserve any indulgence.

14. Learned counsel for the petitioner submitted that the licence of the petitioner was cancelled on account of the fact that the petitioner had put a stand outside the shop and had violated the terms of the licence. In this connection, my attention is drawn to letter dated 15th September, 1983. The contention of the petitioner in this regard is not correct as the cancellation order passed on 6th May, 1985 records, inter alia, that the petitioner was continuously encroaching public passage and violating clause 7 of the lease. It was also stated that the petitioner was in of Rs.7,64,298/- as on 18th April, 1985. After the said termination order, eviction proceedings were initiated under the Act in 1985 but subsequently adjourned sine die by the Estate Officer on 4th September, 1985 in view of the civil suit filed by the petitioner.

15. In view of the aforesaid, I do not find any merit in the present writ petition and the same is dismissed with cost of Rs.25,000/-.

Interim order is vacated.

SANJIV KHANNA, J.

**FEBRUARY 16, 2010
VKR/NA**