

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

Date of decision: 12th November, 2010.

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W.P.(C) No.12136/2009

SMT. MANJU MADAN & ANR.

..... PETITIONERS

Through: Ms. Geetika Panwar, Advocate

Versus

NEW DELHI MUNICIPAL COUNCIL & ORS. RESPONDENTS

Through: Ms. Madhu Tewatia Ms. Sidhi Arora,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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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? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petition seeks quashing of the order dated 29th April, 2009 of the respondent New Delhi Municipal Council (NDMC) intimating to the petitioners that their request for mutation of property No.33, Khan Market, New Delhi in their name will be considered only upon payment of the dues claimed to be due with respect to the property. The petition also seeks a direction to the respondent NDMC to mutate the said property in the name of the petitioners.

2. The case of the petitioners is that the Perpetual Lease of the land underneath the property No.33, Khan Market, New Delhi and the Certificate of Sale of superstructure thereon was first executed in favour of Raja Gian Nath in the year 1957; that upon demise of Raja Gian Nath, the property

devolved upon his grandson Sh. N.N. Madan and Sh. Rohit Madan; Sh. N.N. Madan was the husband of the petitioner No.1 and the father of the petitioner No.2 and Sh. Rohit Madan is the son of petitioner No.1 & brother of petitioner No.2; the Perpetual Lease of the land mutated in the names of Sh. N.N. Madan & Sh. Rohit Madan and Supplementary Lease Deed dated 13th December, 1974 also executed in their favour; that Sh. N.N. Madan expired on 11th April, 2005 and whereupon his share in the property devolved upon the two petitioners and Sh. Rohit Madan aforesaid; that though the respondent NDMC had mutated the property for the purpose of House Tax in favour of the petitioners but has not mutated the perpetual lease hold rights in the land underneath the property in the name of the petitioners. On the contrary, the respondent NDMC vide communication dated 29th April, 2009 impugned in this petition communicated to the petitioners that there are violations of the Perpetual Lease conditions and a sum of approximately ₹35,00,000/- was due therefor. The petitioners were thus informed that their request for mutation / substitution will be considered only upon payment of the said government dues. Contending the said communication to be against the Policy framed by the respondent NDMC itself, the present petition has been filed.

3. Notice of the petition was issued. The respondent NDMC has filed a counter affidavit along with the Policy for substitution of Lease Hold Rights. Para 4 of the said Policy is as under:

“4. PROCEDURE FOR PROCESSING SUBSTITUTION CASES:

All the applications received in the Section will be given computer code and then sent to the dealing assistant by the Section Officer. If the property is to be substituted in favour of all the legal heirs when there is no ‘Will’ or Relinquishment or any other legal documents, the affidavits of the legal heirs and the death certificate shall be checked by the DA. The input proforma will be prepared and case checked by DA as per check

list if the case is in order a letter shall be put-up for obtaining approval of the Director, Special Transfer Cell. If any dues are to be recovered, or some unauthorized construction / misuse exist in the premises, the charges shall be calculated in consultation with Finance Deptt. and the demand letter will be issued simultaneously with the substitution letter. A reference in this regard shall be made in the substitution letter. Where the substitution is to be carried out on the basis of the Will / Relinquishment deed / court order or any other legal documents like probate, letter of administration etc. all such documents shall be referred to the Director, Special Transfer Cell / Law Deptt. for opinion.”

4. Though the counsel for the respondent NDMC has sought to argue that the NDMC can recover the dues only by insisting upon payment as condition for mutation / substitution but the said argument is contrary to the Policy aforesaid of the respondent NDMC. The respondent NDMC upon receipt of a request for substitution is only required to calculate the dues and to issue a demand letter therefor simultaneously with the substitution letter and to make a reference in this regard in the substitution letter. The Policy does not allow the respondent NDMC to insist upon the payment thereof as a condition for substitution as is being done and argued in the present case.

5. The counsel for the petitioner has relied on ***Prof. Ram Prakash Vs. DDA*** MANU/DE/8401/2007. However, in that case DDA had consented to the substitution and it cannot thus be said that the said judgment is a precedent on the controversy raised.

6. The petition therefore succeeds. The respondent NDMC in accordance with its Policy aforesaid is directed to within one month of today substitute the lease hold rights in the land underneath property No. No.33, Khan Market, New Delhi from the name of Sh. N.N. Madan and Sh. Rohit Madan to the name of the petitioners Smt. Manju Madan, Ms. Smriti Madan and Mr. Rohit Madan and to issue a letter confirming the substitution. The

said substitution letter, in accordance with the Policy to also make a reference to the demand letter already issued; however, if a fresh demand letter is to be issued, the reference thereto be made in the substitution letter. The petitioner has also sought execution of a Supplementary Lease Deed as was done at the time of demise of Raja Gian Nath. If the respondent NDMC in accordance with its prevalent Policy is executing the Supplementary Lease Deed in favour of the heirs, the said Supplementary Lease Deed be also executed within four months of today.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

12th November, 2010
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