

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

Date of decision: 21st February, 2011

+ W.P.(C) No.867/2011 & CM No.1833/2011 (for stay).

MOHD UBAID

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Sanjay Pathak & Ms.
Saahila Lamba, Advocates.

Versus

NDMC

..... Respondent

Through: Mr. Manoj K. Singh with Mr.
Nilava Banerjee, 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? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition has been filed seeking mandamus against the respondent NDMC to regularize/transfer Shop No.83, Palika Bazar, New Delhi in the name of the petitioner and to execute license deed with respect thereto in favour of the petitioner in accordance with the Policy of the

respondent NDMC on transfers. As an interim measure, the respondent NDMC was also sought to be restrained from dispossessing the petitioner from the said shop.

2. The writ petition came up first before this Court on 10th February, 2011 when the counsel for the petitioner at the outset informed that the respondent NDMC had, after the filing of this petition and in the morning of 10th February, 2011 only sealed the said shop. The counsel for the respondent NDMC appearing on advance notice that day also contended that the petitioner had concealed from this Court that the respondent NDMC had vide order dated 25th February, 2010 in an earlier writ petition being W.P.(C) No.1199/2010 titled ***Sh. Sanjeev Gupta v. NDMC*** preferred with respect to the same shop, been directed to take over possession of the said shop. It was also contended that the petitioner herein was represented through the same set of Advocates as were representing the said Mr. Sanjeev Gupta in W.P.(C) No.1199/2010.

3. In the circumstances it was deemed appropriate to requisition the file of W.P.(C) No.1199/2010 and the matter was posted to today.

4. The file of W.P.(C) No.1199/2010 has been received and has been perused. The factual matrix is as under.

5. The said shop was allotted by the respondent NDMC to Shri Sanjeev Gupta and a Deed of License had been executed by the respondent NDMC in his favour. NDMC initiated proceedings under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) against the said Shri Sanjeev Gupta with respect to the said shop for the reason of said Shri Sanjeev Gupta having sublet, assigned and/or parted with possession of the shop in contravention of the terms of his license. The said proceedings were contested by the said Shri Sanjeev Gupta as well as the alleged sub-lettee. The Estate Officer vide order dated 24th December, 2008 passed an order of eviction and directed Shri Sanjeev Gupta to within 15 days thereof vacate the shop. The said Shri Sanjeev Gupta preferred an appeal against the said order of the Estate Officer and which was dismissed by the Court of Additional District Judge, Delhi on 18th February, 2010; aggrieved therefrom W.P.(C) No.1199/2010 was preferred by Shri Sanjeev Gupta. The relief of regularizing the allotment of shop in favour of Shri Sanjeev Gupta, the term of license whereof had also

expired was also claimed in the said writ petition. The said writ petition was accompanied with an application for interim relief, in which it was stated that the respondent NDMC after the order of the Additional District Judge had put its locks on the shop in the morning of 23rd February, 2010. Interim relief of directing the respondent NDMC to de-seal the shop and of restoration of possession thereof to Shri Sanjeev Gupta was also claimed.

6. The said earlier writ petition came up before this Court on 25th February, 2010 when while issuing notice thereof the said Shri Sanjeev Gupta was “permitted to use and occupy the shop in question till the next date of hearing”.

7. The earlier writ petition, though by Shri Sanjeev Gupta, was preferred by him through attorney Mr. Abdul Rauf Javed. This Court vide order dated 8th March, 2010 in the earlier writ petition directed Shri Sanjeev Gupta as well as the said Mr. Abdul Rauf Javed to appear personally along with the Income Tax Returns for the Assessment Year 2000-2001 onwards. However the said Shri Sanjeev Gupta did not appear and his Income Tax Returns were also not produced. This Court in order dated 8th July, 2010 in the earlier writ petition observed that the said

conduct *prima facie* showed that Shri Sanjeev Gupta was not himself carrying on the business in the shop. Mr. Abdul Rauf Javed stated that he was himself the licensee of another shop in Palika Bazar, New Delhi and had agreed to become the attorney of Shri Sanjeev Gupta only as a friend and was otherwise not concerned with the affairs of Shri Sanjeev Gupta. This Court accordingly directed NDMC to make inquiries.

8. The order dated 8th September, 2010 in the earlier writ petition records that Shri Sanjeev Gupta appeared before the Court on that date but produced his original PAN card and stated that he had not brought his original Passport. He was directed to produce his original Passport on the next date. However neither did Shri Sanjeev Gupta appear thereafter nor was his original Passport produced and only a photocopy thereof produced on 13th September, 2010. This Court observed that there was a serious dispute about the identity of Shri Sanjeev Gupta. Further investigation was directed by this Court. However the documents which Shri Sanjeev Gupta was directed to produce were not produced. Though this Court on 8th December, 2010 on the basis of the information and the documents disclosed by the respondent NDMC observed that the Court process had

been abused by Shri Sanjeev Gupta but still gave an opportunity to Shri Sanjeev Gupta to explain the same. However no explanation was furnished and on the contrary the counsel earlier appearing for Shri Sanjeev Gupta sought discharge and a new counsel entered appearance. Ultimately, on 3rd February, 2011 without furnishing any response to the documents and information on the basis whereof this Court had observed that the process of the Court appeared to have been abused, the earlier writ petition was sought to be withdrawn. This Court while permitting the same, imposed cost of ₹25,000/- and also directed the respondent NDMC to take possession of the shop forthwith.

9. This petition has been filed pleading that Shri Sanjeev Gupta had on 8th September, 2010 i.e. after 25th February, 2010 vide interim order of which date Shri Sanjeev Gupta was permitted to use and occupy the shop, had for consideration transferred the possession of the shop to the petitioner herein by executing a Partnership Deed and Dissolution Deed in quick succession. It is further claimed that the respondent NDMC has a Policy for transferring and regularizing shops which had been illegally sublet; direction for regularizing the transfer of the shop by Shri Sanjeev

Gupta in favour of the petitioner herein is sought. Though the earlier writ petition and the order dated 25th February, 2010 therein is disclosed but it is pleaded that since Shri Sanjeev Gupta after transfer had lost interest in the writ petition filed by him he had withdrawn the same. Neither were the further orders in the said writ petition whereby this Court had expressed doubts as to the identity of Shri Sanjeev Gupta and as to the abuse of the process of the Court were disclosed nor was it disclosed that this Court while dismissing the writ petition as withdrawn had also directed NDMC to takeover possession of the shop.

10. Not only is it contention of the counsel for the respondent NDMC that the Advocates representing Shri Sanjeev Gupta and the petitioner herein are the same but it is also stated that Shri Abdul Rauf Javed who was pursuing the earlier writ petition as the attorney of Shri Sanjeev Gupta is closely related to the petitioner herein. The senior counsel for the petitioner appearing today has fairly admitted so. From the same also, a case of concealment having been practiced by the petitioner is made out. It is well settled that a party indulging in abuse of the process of the Court and in concealment of facts from this Court is not entitled to invoke the

discretionary remedy under Article 226 of the Constitution of India.

11. The senior counsel for the petitioner has contended that the petitioner herein cannot be accused of concealment, having disclosed the factum of earlier writ petition. I am unable to agree. Partial disclosure or disclosure to the extent that does not hurt the litigant is no excuse. What was required to be informed was that the petition in the name of Shri Sanjeev Gupta was being pursued by a close relative (brother-in-law) of the petitioner and that serious doubts had been cast therein with respect to the very identity of Shri Sanjeev Gupta and of the genuineness of the documents produced in that Court. It was also required to be disclosed that the Court in the earlier writ petition had directed the respondent NDMC to takeover possession. On the contrary an attempt was made to have the said direction in the earlier writ petition nullified by obtaining a contradictory order from a Co-ordinate Bench. The senior counsel for the petitioner of course contends that till the filing of the present petition, the copy of the order dated 3rd February, 2011 in the earlier writ petition had not been obtained. Even if that be so, the order dated 3rd February, 2011 in the earlier writ petition directing the respondent NDMC to takeover possession

was made in the presence of the counsels then appearing and who appeared before this Court also in the present writ petition on 10th February, 2011 and there was no reason for concealing the said fact. Such practices are but to be deprecated and disentitle the petitioner from any hearing.

12. I had on 10th February, 2011 also enquired from the petitioner as to how the petitioner could base his case on transfer of the shop by Shri Sanjeev Gupta when Shri Sanjeev Gupta himself was *custodia legis* i.e. in use of the shop under orders in the earlier writ petition. The said use permitted to him was under the control of the Court and he could not have transferred the possession of the shop to the petitioner herein as claimed.

13. The senior counsel for the petitioner has today argued that there is nothing in the order dated 25th February, 2010 in the earlier writ petition to suggest that Shri Sanjeev Gupta was put into possession of the shop on that date as a receiver or that the shop was in *custodia legis*.

14. Merely because such words have not been used in the order cannot change the position as emerging from the records. An order of eviction had been passed against Shri Sanjeev Gupta and the appeal of Shri Sanjeev Gupta thereagainst been dismissed. The possession of the shop was taken

over by the respondent NDMC thereafter and in execution of the order of eviction. The petitioner Shri Sanjeev Gupta had claimed the interim relief of being put into possession during the pendency of the said earlier petition and which was granted. Such possession could be nothing but under directions of the Court. Thus Shri Sanjeev Gupta had no right whatsoever to transfer the possession of the shop and the petitioner who atleast admits knowledge of the order dated 25th February, 2010 in the earlier writ petition could not have acquired any title from Shri Sanjeev Gupta.

15. The senior counsel for the petitioner has argued that the petitioner cannot be deprived of the right under the Policy of the respondent NDMC regularizing unauthorized transfers. However in the present case the transfer of title claimed by the petitioner is of a date after the right and title if any in favour of Shri Sanjeev Gupta stood extinguished by the eviction order and by execution thereof. There was thus nothing to which the petitioner could have acquired title.

16. The senior counsel for the petitioner has next argued that the petitioner has paid over ₹17.8 lacs as consideration for the said shop and is willing to pay to the respondent NDMC all charges also for transfer and

the respondent NDMC will not suffer any loss if transfer in favour of the petitioner is regularized. The counsel for the respondent NDMC on the contrary has argued that the shop will be put to public auction.

17. In the face of doubt as to the identity of Shri Sanjeev Gupta, the version of the petitioner of having paid ₹17.8 lacs to Shri Sanjeev Gupta cannot be believed. Rather what appears is that the shop had been sublet, assigned or illegally parted with possession of much prior to the initiation of the proceedings under the PP Act against Shri Sanjeev Gupta. However instead of availing of the Policy aforesaid at that stage, the eviction proceedings were contested tooth and nail and on false grounds of the shop having not been sublet, assigned or parted with possession. It appears that it was the petitioner only who was contesting the earlier proceedings also including proceedings before the Estate Officer. Though the senior counsel for the petitioner has urged that Shri Abdul Rauf Javed is different from the petitioner but there is nothing to explain as to why the Power of Attorney in favour of Shri Abdul Rauf Javed was executed when it was the petitioner who had been transferred the shop. Normally such power of attorney are executed as part of transfer and there is no reason for me to

believe that it was not so in the present case also.

18. There is yet another aspect. It is disclosed that an application for transfer was made to the respondent NDMC on 26th October, 2010 i.e. when the earlier writ petition was still pending. Even then it was not disclosed in the earlier writ petition that an application for transfer had been made. When the deceit and falsehood in the earlier writ petition was caught, the same was conveniently withdrawn and this second round commenced.

19. The senior counsel for the petitioner has drawn attention to the paper book where it is pleaded that benefit of the Policy has been given even in cases where license of the shop had been terminated. It is contended that the petitioner is to be treated at par. The shop subject matter of the present petition had however gone much beyond the stage of termination of license; eviction order had been passed, appeal dismissed and possession taken over. The writ petition preferred by Shri Sanjeev Gupta against the order of eviction was withdrawn. The said order of eviction has now attained finality. The petitioner cannot claim any right with respect to a shop from which the person through whom petitioner claims right stood

evicted. The petitioner thus cannot claim parity with those cases.

20. The present petition is found to be a continuation of abuse of the process of the Court noticed in the earlier writ petition and is dismissed. I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 21st, 2011
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