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HIGH COURT OF DELHI : NEW DELHI

Reserved on : February 01, 2012

Pronounced on : March 05, 2012

+ (1)

**W.P.(C) 12954/2009
& CM No.13829/2009**

AJAY KUMAR

..... Petitioner

Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C.

..... Respondent

Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

+ (2)

**W.P.(C) 13949/2009
& CM No.15902/2009**

P D DUGGAL

..... Petitioner

Through: Mr. Rajat Aneja, Advocate
versus

NEW DELHI MUNICIPAL COUNCIL
AND OTHERS

..... Respondents

Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

Reserved on : February 02, 2012

Pronounced on : March 05, 2012

+ (3)

**W.P.(C) No. 8822/2009
& CM No.6114/2009**

VIDYA KESWANI & ANR.

..... Petitioners

Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C.

..... Respondent

Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

- + (4) **W.P.(C) 8823/2009**
& CM No.6116/2009
R.D.SHARMA Petitioner
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates
versus
N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates
- + (5) **W.P.(C) 8824/2009**
& CM No.6118/2009
VIDYA KESWANI & ANR. Petitioners
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates
versus
N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates
- + (6) **W.P.(C) 8829/2009**
& CM No.6125/2009
NAND LAL & ORS. Petitioners
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates
versus
N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates
- + (7) **W.P.(C) 12944/2009**
& CM No.13815/2009
FARIDDUN@ FARID QURESHI Petitioner
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates
versus
N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

- + (8) **W.P.(C) 13186/2009**
& CM No.14341/2009
 GOPAL KRISHNA DHIR Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (9) **W.P.(C) 13187/2009**
& CM No.14343/2009
 SUNIL KUMAR Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (10) **W.P.(C) 13188/2009**
& CM No.14345/2009
 SALAHUDDIN QUERSHI Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (11) **W.P.(C) 13189/2009**
& CM No.14349/2009
 RAJ KUMAR Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates

+ (12) **W.P.(C) 13436/2009**
& CM No.14828/2009

RAJAN BHATIA Petitioner
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

+ (13) **W.P.(C) 13438/2009**
AND
CM No.14830/2009 & CM No.14831/2009

INDERJEET SINGH CHADHA Petitioner
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C. & ANR Respondents
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

+ (14) **W.P.(C) 13440/2009**
& CM No.14833/2009

DEPUTY WARDEN OF FISHERIES,
GUJARAT FISHERIES CENTRAL CO-OP.
ASSOCIATION LTD. Petitioner
Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C. Respondent
Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

- + (15) **W.P.(C) 13441/2009**
& CM No.14835/2009
 G.K. AND CO. Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (16) **W.P.(C) 13578/2009**
& CM No.15202/2009
 DEEPAK VIJ Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (17) **W.P.(C) 13581/2009**
& CM No.15212/2009
 KANCHAN RAJPAL Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. Respondent
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates
- + (18) **W.P.(C) 42/2010**
CM No.91/2010 & CM No.92/2010
 VISHWA LOCHAN MADAN Petitioner
 Through: Mr. V.L. Madan & Ms. K.K. Madan,
 Advocates
 versus
 N.D.M.C. & ANR. Respondents
 Through: Mr. Manoj K. Singh & Mr. Aman Deep
 Singh, Advocates

+ (19)

**W.P.(C) 956/2010
& CM No.1978/2010**

SHAHBUDDIN QUERISHI

..... Petitioner

Through: Mr. V.L. Madan & Ms. K.K. Madan,
Advocates

versus

N.D.M.C.

..... Respondent

Through: Mr. Manoj K. Singh & Mr. Aman Deep
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER
05.03.2012

1. The common thread running in this batch of petitions is the cancellation of the Licenses of the petitioners to run their shops in Gole Market, New Delhi, on the ground of non-renewal of the License and the additional ground in some of these matters is of sub-letting, with exception in case of petitioner- *Shahbudin Qureshi* of Shop No.3, whose eviction is on account of the absence of a valid Trade License. An effort was made by learned counsel for the petitioners to put these bunch matters into seven categories by tabulating as under:-

***‘Classification of Shopkeepers of Gole Market on the
basis of their nature of possession’***

*Table I: Individual original allottee, with
subsisting valid license, whose appeal
has been dismissed.*

*Table II: Original allottees with deemed renewal
accorded by NDMC till 31-03-2005.*

Table III: Shops under possession of sub-letees

Table IV: Individual case of deemed renewal with subletting.

Table V: Individual case of multiple-subletting.

Table VI: Shops under possession of legal heirs/ legatees treated as sub-letting.

Table VII: Shops whose possession has been taken over by NDMC, petitioner seeks restoration of the possession.

2. To facilitate the hearing in these bunch matters, learned counsel for the petitioners have tabulated the factual matrix which is required to be looked into for an effective decision in these matters. The tabulation is as under:-

TABLE - I
Original allottee with subsisting valid license, whose appeal has been dismissed

<i>Shop No.</i>	<i>Particulars</i>	<i>Remarks</i>
3	<i>W.P.(C) No. 956/2010 : The original allottee is in possession of shop. His application for renewal of health license remained pending since 2007 with NDMC and no decision was taken.</i>	
	<u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> <i>Unauthorised coverage of verandah; unauthorized addition/alteration, unauthorized kitchen and no valid health license.</i>	<i>Appeal dismissed on account of absence of valid health license. Other violations not proved.</i>

Shop No.	Particulars	Remarks
2	W.P.(C) No. 13440/2009 : Deputy Warden of Fisheries, Gujarat Fisheries Central Co-op. Association Ltd.	License deemed renewed vide letter dated 23.01.2006.
	<u>Violation Alleged by NDMC</u> : Unauthorized coverage of verandah.	<u>Impugned Order:</u> Violations not proved. However, appeal dismissed because of non renewal of license.
5	W.P.(C) No. 13188/2009, Salahuddin Qureshi.	License deemed renewed vide letter dated 10.02.2006
	<u>Violation Alleged by NDMC</u> : Unauthorized coverage of verandah; unauthorized amalgamation with shop No.4; unauthorized kitchen.	<u>Impugned Order:</u> Violations not proved. However, appeal dismissed because of non renewal of license.
6	W.P.(C) No. 13441/2009, G.K. and Co.	License deemed renewed vide letter dated 10.02.2006
	<u>Violation Alleged by NDMC</u> : Unauthorized coverage of verandah; unauthorized kitchen; absence of health license; unauthorized clubbing with shop no.7.	<u>Impugned Order:</u> Violations not proved. However, appeal dismissed because of non-renewal of license.

Shop No.	Particulars	Remarks
7	W.P.(C) No. 13186/2009, : License deemed renewed Gopal Krishna Dhir <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; unauthorized kitchen; no health license; unauthorized clubbing with shop no.6; puncturing of roof with stairs leading to shop No.21.	vide letter dated 10.02.2006 Violations not proved. However, appeal dismissed because of non-renewal of license.
16	W.P.(C) No. 13578/2009, : License deemed renewed Deepak Vij. <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; non-renewal of license.	vide letter dated 23.01.2006 Violations not proved. However, appeal dismissed because of non-renewal of license.
8	W.P.(C) No. 13581/2009, : Application for Kanchan Rajpal regularization/transfer on subletting basis pending since 20.06.2006 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; unauthorized sub-letting; unauthorized clubbing with shop no.9; Unauthorised kitchen.	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.

Shop No.	Particulars	Remarks
9	W.P.(C) No. 13187/2009 : Application for regularizati on subletting basis pending since 19.07.2006 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; unauthorized sub-letting; unauthorized clubbing with shop no.8; unauthorised kitchen.	Appeal dismissed on account of sub-letting. Other violations not proved.
12	W.P.(C) No. 13189/2009 : Application for regularizati on subletting basis pending since 24.12.1992 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; unauthorized sub-letting; non-renewal of license	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.
17	W.P.(C) No. 42/2010 : Application for regularizati on subletting basis pending since 11.06.2004 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; unauthorized sub-letting; non-renewal of license and change of trade.	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.

Shop No.	Particulars	Remarks
23	W.P.(C) No. 13949/2009 : Application for regularization/transfer on subletting basis pending since 19.07.2006 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; unauthorized sub-letting; non-renewal of license	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.
27	W.P.(C) No. 13436/2009 : Application for regularization/transfer on subletting basis pending since 07.04.1993 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; unauthorized sub-letting; non-renewal of license	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.
11	W.P.(C) No. 13438/2009, : License of original allottee, Inderjeet Singh Chadha <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; unauthorized addition/alteration; unauthorized sub-letting; non-renewal of license	License of original allottee, Mohd. Sharif deemed renewed till 31.03.2005. Thereafter, he sub-let the shop to present occupant. Application for regularization moved on 20.03.2006. No orders passed on the application by NDMC Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.

Shop No.	Particulars	Remarks
18	W.P.(C) No. 12954/2009, : Original allottee, Shri Ajay Kumar	Original allottee, Shri N.C.Keswani died on 1.1.2000. His widow applied for substitution on basis of legal heir on 19.5.2004. Widow sub-let the shop to Sewa Ram. Sewa Ram, in turn, sub-let the shop to present occupant. Application moved for regularization on the basis of multiple subletting on 16.07.2007 processed till 20.12.2007.
	<u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; change of trade; unauthorized sub-letting; non-renewal of license	Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.
13	W.P.(C) No. 12944/2009, : He moved an application on Fariddun Qureshi.	He moved an application on 8.10.2007 for substitution on the basis of legatee of Smt. Ashia Begum's Will dated 19.4.1998.
	<u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of verandah; premises locked; no valid health license; unauthorized sub-letting; non-renewal of license	NDMC dubs them as sub-lettees. Appeal dismissed on account of sub-letting and non-renewal of license. Other violations not proved.

Shop No.	Particulars	Remarks
15	W.P.(C) No. 8824/2009, : Application for regularizaton/transfer on subletting basis pending since 24.12.2004 <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; unauthorized sub-letting; non-renewal of license	Appeal dismissed. Possession has been taken over by NDMC immediately on the date of dismissal of appeal by DJ i.e. 30.3.2009.
19	W.P.(C) No. 8822/2009, : License deemed renewed till 31.03.2005 vide letter dated 10.02.2006. <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> Unauthorised coverage of lobby; non-renewal of license	Appeal dismissed. Possession has been taken over by NDMC immediately on the date of dismissal of appeal by DJ i.e. 30.03.2009
22	W.P.(C) No. 8829/2009 : Nand Lal, Ram Lal, Sunil Nand Lal & Ors.	Nand Lal, Ram Lal, Sunil Khemani and Dharam Dass were joint allottees. Dharam Dass expired on 21.11.99. Application for substitution of basis on legal heirs moved on 24.12.2003. NDMC dubs them as sub-lettees.

Shop No.	Particulars	Remarks
	<u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> <i>Unauthorised coverage of lobby; unauthorized sub-letting; non-renewal of license</i>	<i>Appeal dismissed. Possession has been taken over by NDMC immediately on the date of dismissal of appeal by DJ i.e. 30.03.2009</i>
25	<i>W.P.(C) No. 8823/2009 : License deemed renewed till R.D.Sharma 31.03.2005 vide letter dated 23.01.2006.</i> <u>Violation Alleged by NDMC</u> : <u>Impugned Order:</u> <i>Unauthorised coverage of lobby; non-renewal of license</i>	<i>Appeal dismissed. Possession has been taken over by NDMC immediately on the date of dismissal of appeal by DJ i.e. 30.03.2009</i>

3. It is not in dispute that petitioners were served to *Show Cause Notice* in November, 2007, and were afforded an opportunity to respond to it and the petitioners had responded to it and thereafter, order cancelling the License Deeds in question was passed in December, 2007 and March/April, 2008 and thereafter, proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* were initiated against the petitioners, which culminated in the passing of the eviction order by the Estate Officer, which was challenged by the petitioners by preferring statutory appeal and the dismissal of the petitioners' appeal by the Appellate Authority is impugned in these petitions.

4. Upon hearing learned counsel for the parties in these matters, what emerges is that the grounds urged to assail the impugned order,

upholding the eviction order, are over-lapping, therefore, I am of the considered view that these bunch matters can be conveniently disposed of by this common order.

5. Mr. Rajat Aneja, learned counsel for petitioner- *Mr. P.D. Puggal*, had strenuously urged that the shops in question were let out to the allottees/ licensees about four decades ago and on account of continued commercial activity, the same has resulted into accrual of precious rights in their favour and they could not be evicted by invoking the provisions of *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, as they have become legitimate tenants and so respondent- NDMC ought to have invoked the civil jurisdiction to establish its right to seek their eviction.

6. The principle ground urged is that despite non-renewal of the License Deed, the licensees had continued to run their business from the shops in question in consonance with the terms and conditions of the policy of the respondent- NDMC and they had been regularly paying the license fee to the respondent- NDMC and in reply to the Show Cause Notice, it was explained that the purported grounds of eviction are arbitrary and *mala fide*. It was pointed out that after the purported expiry of License Deed in question by efflux of time, there was no correspondence from the respondent- NDMC to even remotely suggest that there was succession of relationship of licensor and licensee and infact, the respondent- NDMC had granted deemed renewal of the License in some of these cases and the application for regularization / transfer on sub-letting basis was pending with the respondent- NDMC and instead of deciding those applications moved in the year 2006-2007, respondent- NDMC had *malafidely* proceeded to evict the petitioners

from the shops in question while acting contrary to its own *Resolution No.6 of 18th March, 1999* and *Resolution No.14 of 26th August, 2004*. Infact, it was urged by learned counsel for the petitioners that as per provisions of NDMC Act, 1994, if the respondent- NDMC does not communicate the refusal to renew the License, there is a deemed renewal and transfer of the shop in question is to be freely allowed as per the policy of the respondent- NDMC.

7. It is vehemently urged that the aforesaid vital aspect has been completely over-looked by the Estate Officer as well as by the Appellate Authority and therefore, the impugned order as well as the order of the Estate Officer deserve to be quashed. To support of the afore-noted submissions, reliance has been placed upon decisions in '*P.S.Gupta Vs. NDMC*' 70 (1997) DLT 124; '*Sudhir Goel Vs. MCD*' 112 (2004) DLT 249; '*C.M. Beena P. Anr. Vs. P.N. Ramachandra Rao*' (2004) 3 SCC 595.

8. Mr. Madan, learned counsel for the remaining petitioners had proceeded to invoke the principle of legitimate expectation, doctrine of election and had urged that resort by the respondent- NDMC to the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, is not only *mala fide* but is also discriminatory. To apply the doctrine of election, learned counsel relied upon the decisions in '*Purshottam Dass Tandon & Ors. Vs. State of U.P. Lucknow & Ors.*' AIR 1987 Allahabad 56 & '*P.S. Gupta Vs. N.D.M.C.*' 70 (1997) DLT 124 and it was asserted that in spite of purported lapse of the License Deeds in question by afflux of time, the licensor/ respondent- NDMC did not re-enter the shops in question and therefore, the deemed renewal of the License Deeds is in consonance with *Resolution No. 6 of 1999* of the respondent-

NDMC.

9. To urge the ground of legitimate expectation, reliance was placed upon decision in '*P.T.R. Exports (Madras) Pvt. Ltd. & Ors. Vs. Union of India & Ors.*' (1996) 5 SCC 268 and it was contended that *Resolution No. 6 of 1999* of the respondent- NDMC is binding and in terms thereof, petitioners are entitled to regularization of the allotment of the shops in question. Alleging that the respondent- NDMC is adopting double standards, it was pointed out by learned counsel for petitioners that in March, 2009 pertaining to Shop No.7, at Mohan Singh Place, respondent- NDMC had applied *Resolution No. 6 of 1999*, but has not *malafidely* applied the same to the case of petitioners who have been singled out for en-mass eviction from the shops in question in November, 2007, as they had not agreed to shift to an alternate place on account of renovation of the Gole Market area. Thus, it is contended that the exercise of power by the respondent – NDMC resident to initiate the eviction proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, is a colourable exercise of power, which is contrary to the *Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/Financial Institutions*. Thus, it is contended that not only the impugned order but also the eviction order of the Estate Officer deserves to be quashed.

10. Learned counsel for respondent- NDMC to support the impugned order had *contended that the License* granted to the petitioners cannot possibly operate in perpetuity and since the Licenses in question had expired by efflux of time, therefore, there could be no legitimate expectation by the petitioners and the doctrine of election would not

come into play. It was vehemently denied that the eviction of the petitioners was vitiated by any *mala fides* or was discriminatory, as the impugned eviction is a natural consequence of the expiry of License Deeds in question. To urge so, reliance was placed upon decision of the Apex Court in '**Aggarwal and Modi Enterprises (Cinema Project) Vs. New Delhi Municipal Corporation**' (2007) 8 SCC 75. Reliance was also placed upon Apex Court decision in '**Jiwan Dass Vs. Life Insurance Corporation of India & Anr.**' 1994 Supp (3) SCC 694 to contend that the doctrine of livelihood cannot be discriminately extended to the area of commercial operation, and so the Guidelines of the year 2002, relied upon by the petitioners would not apply. Thus, it was urged that the plea of discrimination raised by the petitioners remains unsubstantiated and the provisions of NDMC Act do not provide for deemed regularization/ renewal and on account of non-renewal of License Deeds of the petitioners, passing of the eviction orders is justified in law and on facts as well.

11. Having deliberated upon the submissions advanced by learned counsel for the parties and on perusal of the impugned order as well as material on record and the decisions cited, I proceed to first deal with the case of petitioner – *Shahbuddin Qureshi*, as the eviction of this petitioner who is selling meat from the Shop No. 3 in question, at the round-about of Gole Market, New Delhi, is on account of lapse of Trade/Health License, as noted in the impugned order.

12. Although it is asserted by petitioner - *Shahbuddin Qureshi* that vide application of 21st June, 2007 (Annexure P-6) he had sought renewal of the Trade/Health License, and respondent- NDMC had not taken any decision thereon, but it has not been disclosed by the petitioner as to

upon receiving of *Show Cause Notice*, what steps he had taken to seek his remedy on account of purportedly pending renewal application. Though petitioner's License to run the shop in question was valid, but in the absence of Trade/Health License, petitioner- *Shahbuddin Qureshi* cannot possibly be permitted to sell the meat from the shop in question, as he has failed to disclose as to whether he had possessed a valid Trade/Health License after 31st March, 2007.

13. The relevant Clauses of the License Deed of 9th October, 2002 which have been invoked are Clause – 8 & 12, which are as under:-

“8. That it shall be the responsibility of the licensee to secure necessary License or permission, if any, from the competent authority in order to run the trade in the Shop but in no circumstances the delay in the issue of such License or permission or refusal to issue the same shall exonerate the licensee from paying the License fee for the entire period of the License. In this regard, the licensee, if asked by the Medical Officer of Health, NDMC or any other competent authority to satisfy certain requirements shall provide any or all such requirements at his own cost. In the event of the License for running a particular trade is not granted or is refused for any reasons whatsoever the licensee shall apply for change of trade and shall run only such trade as may be permitted by the licensor and for which License, if any, is granted by the competent /appropriate authority under provisions of rules/law.

12. That allotment of the Shop in favour of the licensee is purely temporary one and the same shall be treated as bare license which is revocable at any time without assigning any reasons and in the event of the revocation of the License on account of breach of any of the terms and conditions of the License, the licensee shall be bound to quit and vacate the premises within one week of the notice of revocation of the License by the licensor and shall not claim any compensation for any resultant injury thereof.”

14. Since afore-noted Clause- 8 of the License Deed of 9th October, 2002 (Annexure P-5), stood violated for want of valid Trade/Health License, therefore, cancellation of the License Deed (Annexure P-5) to run the shop in question by resorting to Clause-12 thereof, is eminently justified.

15. So far as the plea of petitioner- *Shahbuddin Qureshi*, regarding deemed renewal of the License to run the shop in question is concerned, it really does not fall for consideration as this petitioner had a subsisting License to run the shop but because his Trade/ Health License had lapsed therefore, he could not have sold meat from the shop in question w.e.f. 1st April, 2007.

16. The plea of deemed renewal of License stands negated by Sub-Clause 4 of Section 339 of *The New Delhi Municipal Council Act, 1994*, which reads as under:-

“339.

(1) xxx

(2) xxx xxx

(3) xxx xxx xxx

(4) *When any such License or written permission is suspended or revoked, or when the period for which the same was granted has expired, the grantee shall, for all purposes of this Act or any bye-law made thereunder, be deemed to be without a License or written permission until such time as the order suspending or revoking the License or written permission is rescinded or until the License or written permission is renewed.”*

17. The plea of *promissory estoppel* raised by this petitioner, stands rightly negated in the impugned order due to the absence of any Trade/

Health License to run the shop in question. Although it was urged at the hearing by the learned counsel for this petitioner that he had been paying regular license fee to respondent- NDMC and so, *promissory estoppel* instantly became applicable but this plea was not taken before the Appellate Authority and so it cannot be raised for the first time in the writ petition. Therefore, this plea is out-rightly rejected.

18. At the cost of repetition, it required to be highlighted that the reference by learned counsel for this petitioner to the Resolutions of the respondent- NDMC is of no avail, in the absence of a valid and subsisting Trade / Health License. Even the afore-referred Guidelines of the year 2002, relied upon by this petitioner, would be of no avail because this petitioner was unable to obtain renewal of the Trade/ Health License to run the shop in question and thus, selling of meat by this petitioner from the shop in question is impermissible, which warrants the cancellation of the License to run the shop in question as he had not sought change of trade even after receipt of *Show Cause Notice*. Thus, the eviction of this petitioner from the shop in question, is justifiable and the reliance placed by the counsel for this petitioner upon decisions in ***P.S.Gupta vs. NDMC***, 70(1997) DLT 124; ***Sudhir Goel vs. MCD***, 112 (2004) DLT 249; ***C.M.Beena & Anr. vs. P.N.Ramachandra Rao***, (2004) 3 SCC 595; ***Kailash Singh & Sons vs. UOI & Anr.***, 2003 VI AD (Del) 357 is clearly misplaced.

19. Eviction of petitioner- *Sunil Kumar* from Shop No. 9 in question, has been upheld on account of sub-letting, as Clause- 9 of the License Deed had placed absolute restriction upon the original allottee/ licensee to permit the allotted premises or any part thereof, to be used by any other person for any other purpose whatsoever, without the previous

consent in writing of the licensor and in default thereof, the original allottee/ licensee shall be liable for ejectment. Afore-noted Clause -12 of the License Deed empowered respondent- NDMC to revoke the License of the allottee on account of breach of terms and conditions of the License Deed. It stands noted in the impugned order that petitioner- *Sunil Kumar* was not the original allottee and was not even recognized as lawful occupant by respondent- NDMC and in the absence of any legal authority to occupy the premises in question, petitioner- Sunil Kumar had no *locus standi*.

20. Plea of petitioner- *Sunil Kumar* of inaction of respondent to take decision on his application for regularization of sub-letting of the shop in question in his favour, is noted only to be rejected in view of the finding in the impugned order regarding the original allottee never taking permission from respondent- NDMC in writing before entering into a partnership with the petitioner and thereby violating Clause- 9 of the License Deed remains unassailable.

21. Plea of *Resolution No. 6 of 1999* of the respondent- NDMC freely permitting transfer, has to be considered in its proper perspective. If any such transfer is in violation of the terms and conditions of the License Deed, like in the instant case, i.e. for want of prior permission from the respondent- NDMC, then sub-letting cannot be valid one. This aspect has been considered in detail in the impugned order, to which there is no worthwhile challenge from this petitioner. The finding returned against this petitioner in the impugned order, is as under:-

‘32. The device to transfer the property in question from one hand to another without written consent or permission of the NDMC by execution of partnership deed and thereafter

executing dissolution deed after some duration without actually acting upon the same is a gross abuse of public policies. There is nothing on record to show if any of the parties ever carried any partnership business in the premises in question.

33. Moreover, even if the parties had entered into any business in partnership, that did no confer any right in the 'property' in question to the other partner with whom partnership deed was executed. Mere execution of the partnership deed could not confer any legal status upon the other partner regarding the transfer of premises in question.'

22. It goes without saying that if any application for the transfer moved under *Resolution No. 6 of 1999* of the respondent- NDMC is pending, then mere issuance of *Show Cause Notice* on another ground would not render, petitioner's application for transfer of the shop in question in his name redundant. So, this petitioner ought to have pursued his application and having not done so, he has rightly suffered eviction from the shop in question on account of infringement of Clause-9 of the License Deed. In this view of the matter, reliance placed upon decisions in *Purshottam Dass Tandon & Ors., vs. State of U.P. & Ors.*, AIR 1987 Allahabad 56; *P.S.Gupta vs. N.D.M.C.*, 70(1997) DLT 124; *P.T.R.Exports (Madras) Pvt. Ltd. & Ors. vs. Union of India & Ors.*, (1996) 5 SCC 268 is of no avail as the doctrine of election, plea of legitimate expectation would not be applicable to the instant case.

23. To allege discrimination, no foundation has been laid by the petitioners to indicate that in what context *Resolution no.6 of 1999*, respondent- NDMC would apply to shop No. 7 at Mohan Singh Place. Regarding *malafides*, merely because prior to initiation of the eviction proceedings, re-location of the shops in question at Gole Market, New

Delhi was contemplated by the respondent- NDMC, as is evident from a Communication of 23rd August, 2007 (Annexure P-9), it would not give rise to an inference that the initiation of the eviction proceedings is a colourable exercise of power, vitiating the eviction proceedings. Though, learned counsel for petitioner- *Sunil Kumar* relies upon the cross-examination of respondent's witness (Annexure P-13) but upon going through the same, I find that no foundation has been laid by the petitioner to establish that the *Show Cause Notice* to evict the petitioner from the premises in question was *mala fide*. By merely suggesting to respondent's witness that it is *mala fide*, it does not become *mala fide*.

24. It has to be shown as to how it is *mala fide*. Such a view is being taken because vide Annexure P-9 respondent- NDMC had offered twenty seven vacant shops, located in different NDMC markets, which were to be allotted to the petitioners on the basis of draw of lots in lieu of the existing shops and an assurance was given vide this Communication (Annexure P-9) that petitioners would be permitted to continue with their existing trade in the new shops to be allotted to them. It is the petitioners who in their own wisdom had not accepted the said option, which was being given to them as the respondent- NDMC was contemplating renovation of Gole Market. This Court cannot smell any *mala fides* in the Communication (Annexure P-9) offering re-location of the petitioners. Since eviction of this petitioner from the shop in question is found to be justified in view of infringement of Clause-9 of the License Deed, as afore-noted, therefore, petitioner's eviction cannot be faulted on the ground of *mala fide* without laying foundation to establish it.

25. In the case of the remaining petitioners, the principle ground for eviction is non-renewal of the License Deed. It remains undisputed that prior to the cancellation of the License Deed in March/ April, 2008, the petitioners or their predecessor in interest i.e. original allottees were in possession of the shops in question for a period of more than a decade.

26. It needs no reiteration that such like License Deeds cannot operate in perpetuity. The term of the license, as indicated in the License Deeds in question is of specific period of one year. The relevant Clause of *Resolution No. 6 of 1999* of respondent- NDMC dealing with the renewal of the License Deed places an upper limit of ten years upon renewals. This is evident from Clause-4 and Clause-6 of aforesaid Resolution of 1999, which reads as under:-

“4. Renewals

In the case of shops/stalls/kiosks/tharas/office units/ restaurants etc. for the license will be renewed for a period of 10 years on year-to-year basis subject to enhancement in license fee at the uniform rate by 7% per annum.

6. Succession

This is not permitted as it is a license and renewable for 10 years on year-to-year basis and the ownership vests in the NDMC.”

27. The subsequent *Resolution No.14 of 2004* of respondent- NDMC does not modify or dilute renewal Clause No.4 of *Resolution No.6 of 1999* of the respondent- NDMC nor any subsequent Resolution thereto has been referred to, whereby afore-noted renewal Clause has been modified.

28. Finding that the allotment of the shops in question was more than ten years prior to their cancellation, it has to be held that the License

Deeds in question had come to an end by afflux of time, with no further renewals, rendering applications of petitioners for renewal meaningless. Such an eventuality was anticipated as Petitioners themselves avers that Gole Market was conceived in the 1920s as an inward looking market to act as a subsidiary market of Connaught Place and the original allottees were the licensees in the shops in question for last many decades. With the passage of time, need arose for renovation of Gole Market. Redevelopment/renovation of Gole Market round about shopping complex as heritage building necessitated relocating the petitioners, as is evident from Communication of 23rd August, 2007 (Annexure P-9) of the respondent, as already noticed above.

29. In this view of the matter, the plea of petitioners of discrimination being meted out by respondent- NDMC, by drawing reference to other shop keepers of Yashwant Place, New Delhi etc. is of no avail. Respondent- NDMC in its counter affidavit has brought it on record that once project of renovation of Gole Market is complete the same will not be put to commercial use and its proposed use is for building a museum at Gole Market, which will depict development of New Delhi area. Shifting of the shops in question from the Gole Market area is also well justified in view of the traffic congestion around it, as stands highlighted by the traffic police in its Communication of 15th November, 2007 (Annexure R-1) of the counter affidavit, which deserves notice. It reads as under:-

“From traffic point of view, it is imperative that the flow of traffic within the rotary should be uninterrupted, so that there is proper entry from and exit into the feeder roads. There should not be any parking around the roundabout, which is very common at present owing to a lot of commercial activities around the Gole Market area. No

commercial activity should be allowed in the rotary as it leads to a lot of parking on the main carriageway of the roundabout and also generates movement of pedestrians as well as entry of heavy/light commercial vehicles. Thus, it is important that there should not be any movement of pedestrians across the main rotary for the sake of safety of pedestrians and the flow of traffic should be uninterrupted in the rotary.”

30. In the scenario as noted above, plea of the petitioners of legitimate expectation, *mala fides* and invocation of doctrine of election is rendered meaningless and the decisions relied upon by the petitioners become inapplicable to the facts of the instant matters.

31. Having concluded that there could not have been renewal of the License Deeds beyond the period of ten years, petitioners except *Shahabuddin Qureshi and Sunil Kumar* cannot be heard to say that there is any violation of the Guidelines of the year 2002, as the arbitrary use of powers to evict genuine tenants is clearly ruled out in these matters. Rather in all fairness, relocation of the shops in question was offered to the petitioner who had not consented to it but later on during the pendency of these matters, many of the petitioners vide Resolution of 2nd December, 2009, had expressed willingness to accept the alternate site offered by the respondent- NDMC. Be that as it may. This aspect cannot be subject matter of consideration in these matters arising out of proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*.

32. Taking the case of petitioners at its best, even if it is assumed that petitioners had subsisting right of renewal of License Deeds, when their licenses were cancelled, still they had lost it on account of their failure to seek remedy to enforce it. Section 61 of *The Indian Easements Act, 1882*

mandates that License can be determined expressly or impliedly. Terms of License deeds in question specifically provided that License is terminable at any time and licensor is under no obligation to justify the termination of License deeds in question. The ground reality which cannot be lost sight of, is that termination of License deeds in question was otherwise also justified to make way for setting up of museum at this site i.e. for public interest and so private interests have to yield to the public interest. Petitioners cannot plead ignorance about it as they were well aware of their re-location and when they had refused, respondent-NDMC was left with no option except to termination of the licenses in question. If this is not disclosed in the notice under *Public Premises (Eviction of Unauthorized Occupants) Act, 1971*, petitioner suffers no prejudice and impugned eviction cannot be faulted with, on this account.

33. In the preceding paragraphs, it already stands concluded that eviction of petitioners – *Shahabuddin and Sunil Kumar* is justified, so their petitions merit dismissal. Regarding remaining petitioners also, conclusion arrived at in afore-going paragraphs is that termination of their License Deeds was neither vitiated by discrimination nor any arbitrariness or colorable exercise of power under the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971*.

34. In the ultimate, the only conclusion which can be reasonably drawn is that there is no manifest lacuna or palpable error in the impugned order, which is indeed reasoned one i.e. *sound on facts and law*. Consequentially, while upholding the impugned order, I dismiss these petitions with no order as to costs. Consequently, pending applications are disposed of as rendered infructuous.

35. Before parting with this order, in the retrospect, I do find that the

petitioners had been short sighted in not accepting respondent's offer of re-location. Respondent-NDMC is called upon to sympathetically consider petitioners' case for re-location in terms of its Communication of 23rd August, 2007 (Annexure P-9) if vacant shops are available in the different NDMC markets including DMRC shopping complex located close to Dwarka Mor Metro Station, (as per affidavit of 10th December, 2009 of the General Manager of Delhi Metro Rail Corporation Ltd. on record). This is being so said in view of the willingness to accept alternate sites expressed through *Resolution of 2nd December, 2009* by most of the petitioners, as its copy has somehow come on record alongwith Index bearing date of 3rd December, 2009.

36. These petitions are disposed of with liberty to the petitioners to seek re-location from the respondent- NDMC within a period of two weeks and if it is so done, then it is expected that the respondent- NDMC would take decision thereon within a period of four weeks. In the peculiar circumstances of this case, the execution of the impugned eviction order be kept in abeyance by respondent- NDMC till such applications received from the petitioners are dealt with promptitude. In case no applications are received from the petitioners for re-location within two weeks from today, then the respondent- NDMC shall execute the eviction orders forthwith.

(SUNIL GAUR)
JUDGE

March 05, 2012
rs/pkb