

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

Reserved on: 28.10.2013
Pronounced on: 31.10.2013

+ **LPA 423/2010, C.M. NO. 11244/2010 (for stay) & 20999/2012 (for recall of order)**
SMT. NEELAM CHOPRA Appellant

Versus

M/S. ALLIED FRUITS & FLORISTS PVT. LTD. AND ANR.
..... Respondents

+ **LPA 207/2011, C.M. NO.4547/2011 (for stay)**
SMT. NEELAM CHOPRA Appellant

Versus

M/S. ALLIED FRUITS & FLORISTS PVT. LTD. AND ORS.
..... Respondents

Through: Sh. Tanmaya Mehta, Advocate
(17 and 18), for appellant.
Ms. Ravneet Kaur and Ms. Kavika
Agnihotri, Advocates, for NDMC.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT
%

1. These appeals impugn two separate orders of the learned Single

Judge, disposing off W.P.(C) 10557/2009 (order dated 31.05.2010, impugned in LPA 423/2010) and W.P.(C) 403/2008 (order dated 10.01.2011, impugned in LPA 207/2011). In LPA 207/2011, the respondent had sought for a direction to the New Delhi Municipal Council (NDMC) to grant a health license without insisting for a No Objection Certificate from the present appellant (second respondent and referred to hereafter as “Neelam Chopra”). In LPA 423/2010, the impugned order is that the writ petitioner, i.e. Panna Lal had to be granted electricity connection.

2. The essential facts necessary for this common judgment are that Ms. Neelam Chopra is owner of shop no. 58-B, Khan Market (hereafter called “the premises”). The present dispute constitutes part of a series of litigation between Neelam Chopra on the one hand and Panna Lal as well as the concern which he seeks to represent - M/s. Allied Fruits and Florists Pvt. Ltd on the other. Neelam Chopra claims to be owner in possession of premises and traces her title to registered deed dated 19.11.1969. She asserts that Panna Lal and his concern are in unauthorized occupation of premises and have no right to continue in it. Panna Lal had filed Suit, CS(OS)574/2007, seeking permanent injunction against Neelam Chopra from dispossessing him. Neelam Chopra defended that suit and also counter claimed. On the basis of the statements recorded in those proceedings, Panna Lal’s suit was disposed off on 27.05.2008 recording that he would not be dispossessed without authority of, or in accordance with law. The counter claim of Neelam Chopra is, therefore, proceeding and is pending on the file of the Court.

3. Panna Lal – and his concern claimed that he is in lawful possession of the premises. The allegations of Neelam Chopra are denied; he denies that he was ever her employee or that at some stage, he took over unlawful possession. He alleges that Neelam Chopra was creating obstruction in the smooth running of his business and had also filed certain criminal complaints/FIRs.

4. During the pendency of the suit, Panna Lal was constrained to file W.P.(C) 403/2008 along with M/s. Allied Fruits and Florist Pvt. Ltd.. It was asserted in this proceeding that NDMC had asked Panna Lal and M/s/ Allied Fruits and Florist Pvt. Ltd. to produce a No Objection Certificate from the landlord which could not be obtained on account of disputes with Neelam Chopra. In these circumstances, the NDMC rejected Panna Lal's application for Health License. Panna Lal, therefore, alleged – in W.P.(C) 403/2008 that considering the nature and business activities conducted in the premises, i.e. sale of fresh fruits, accessories and branded grocery, there was no requirement of obtaining license under Sections 327/331 of the NDMC Act, 1994. An alternative direction to NDMC to grant license without insisting upon NOC of Neelam Chopra was also sought. The learned Single Judge, in the impugned order, after noticing the background of disputes between the two parties, i.e. Neelam Chopra and Panna Lal and further that the suit for eviction/possession in the form of counter claim was pending, took notice of Section 2(29) of the NDMC Act, which defined "occupier" to be one who is liable to pay to the owner damages for the use and occupation of land or building. The learned Single Judge, therefore, was of the opinion that

it could not be held that NDMC was entitled to look into or consider lawful title or lawful occupation of premises and that in such circumstances, it had to consider the application of Panna Lal – and allowed grant of license without insisting upon production of NOC.

5. In the other writ proceeding in respect of a similar requirement of obtaining an NOC with respect to grant of electricity connection, learned Single Judge, by the impugned order, directed the NDMC to process the application for grant of electricity without insisting upon any NOC from the landlord.

6. It is sought to be urged by the appellant through her counsel that the requirement for an NOC is essential. Learned counsel sought to rely upon the Delhi Electricity Supply Code and Performance Standards Regulation, particularly Regulation 20 and emphasized that the factum of lawful ownership or lawful occupancy of the property has to be shown for an applicant to be entitled to connection. Learned counsel also took the Court through the draft application for connection contained in Annexure-I to the Regulations and highlighted that the class of documents which had to be produced by the applicant to urge that they make it clear that in their absence electricity service providers cannot grant connection. Likewise, it was highlighted that in the other impugned order, the requirement of NOC, in respect of an application for grant of Health License, a direction not to insist upon it could not have been made. Learned counsel submitted that both the impugned orders are, therefore, erroneous in law.

7. Learned counsel argued that Panna Lal has made several false and untenable averments such as his being a tenant of Neelam Chopra

when the record clearly reveals that he was at all relevant times an employee. Characterizing the continued occupation of Panna Lal as unlawful, learned counsel submitted that there is no material to suggest that any arrangement of the kind relied upon by Panna Lal had every materialized.

8. Learned counsel for the respondent Panna Lal argued that the impugned order should not be interfered with. It was submitted that the claim of Neelam Chopra for possession is being considered on merits and the evidence of parties recorded in the pending civil proceedings. In these proceedings, if this Court, exercising appellate jurisdiction over a discretionary order made in writ petition, were to interfere or advert to the rival merits of the substantive dispute, the respondent would be gravely prejudiced.

9. This Court has considered the submissions. There appears to be no dispute that Neelam Chopra is the owner of the premises. At the same time, the respondent, i.e. Panna Lal appears to be asserting that he is in lawful possession of the premises. On the one hand, Neelam Chopra argues that Panna Lal was her employee and that at some stage in use of the property and is continuing in it unlawfully. Panna Lal, on the other hand, states that his occupation was always known to Neelam Chopra and that it is based upon an agreement. In both the impugned orders – made in separate writ proceedings, the learned Single Judges were conscious that disputes as to the legality of Panna Lal's occupation or possession of the property were pending consideration in the civil suit. The impugned orders in both those proceedings were guided predominantly by the facts and the

circumstance that Panna Lal in fact occupies the premises and carries out business in it. In one of the orders, learned Judge took note of the fact that Panna Lal appears to be an “occupier” in terms of Section 2(29) of the NDMC Act. Nevertheless, the guiding consideration in both the orders was that in case exercise of discretion was to be refused, prejudice would be caused and weighed on a balance, direction issued to NDMC not to insist upon NOC would meet the needs of justice.

10. This Court is of the opinion that there is no infirmity or error in the reasoning of the learned Single Judge in both the cases. Concededly, disputes as to the nature of possession –as to its legality, by Panna Lal, of the premises, are pending adjudication. Equally that Panna Lal physically happens to be in possession or occupation of property is not in dispute. In these circumstances, the impugned order directing the respondent and the NDMC not to insist upon the requirement of furnishing of NOC cannot be characterized as erroneous. In both cases, the Court was alive to the fact that the landlord was unwilling to grant such certificate, which, if left undisturbed, would have led to grave prejudice to Panna Lal. This Court is of the opinion that such an approach can be hardly characterized as erroneous. At the same time, this Court clarifies that in the event of Neelam Chopra succeeding in the suit, it is open for her to take such steps as are necessary to secure her interests vis-à-vis two licenses and that the grant of two licenses without NOC shall not be considered as final in such circumstances. The same would be subject to the final decision in the pending suit *inter se* the parties.

11. In view of the above discussion, the Court finds no reason to interfere with the order of the learned Single Judge in the said two writ petitions. LPA 207/2011 and LPA 423/2010 are accordingly dismissed along with pending applications but in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

OCTOBER 31, 2013