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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th November, 2021
+ **RSA 86/2019 & CM APPLs. 19205/2019, 7305/2021**
KHEM CHAND Appellant
Through: Mr. Pradeep Kumar, Advocate
versus
NEW DELHI MUNICIPAL COUNCIL & ANR Respondents
Through: Mr. Yoginder Handoo, Mr. Raghav
Bhalla & Mr. Ashwin Kataria,
Advocates. (M:9999938598)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present second appeal has been filed challenging the judgment dated 20th December, 2018 passed by the Ld. ADJ, Patiala House Courts, New Delhi (*hereinafter* “*Appellate Court*”) in **RCA No.57/2018** titled “**Sh. Khem Chand v. NDMC & Anr.**”. By the impugned judgment, the Appellate Court has dismissed the first appeal preferred by the Appellant herein, against decree dated 26th May, 2018 passed by the Ld. ACCJ/ARC/CCJ, New Delhi District, Patiala House Courts, New Delhi (*hereinafter* “*Trial Court*”) in **Suit No.56/2012** titled “**Sh. Khem Chand v. NDMC and Anr.**”
3. The present case relates to **Thara No. 23-C**, allotted at **Hanuman Mandir Complex, Baba Kharak Singh Marg, New Delhi-110001** (*hereinafter* “*Thara*”) allotted by the Respondent/NDMC to the Appellant/Allottee, Sh. Khem Chand, vide Letter of Allotment dated 26th June, 2003. The Appellant, who is since deceased, is represented by his wife, Smt. Sushila Devi, his two sons and one daughter, who have been impleaded as per the amended memo of parties placed on record.

4. The said allotment of the suit premises was for an initial period of one year, or the period determined as per the policy of the Respondent/NDMC, whichever is earlier. The relevant portion of the Letter of Allotment dated 26th June, 2003 reads as under:

“I am directed to inform you that Chairperson, NDMC, has been pleased to allot you Thara No. 23-C having plinth areas $6 \times 4 = 24$ sq. ft at the rate of Rs. 450/- plus its 5% or say Rs. 473.00 per month or enhanced rates if decided by the Council on licence basis for the period of one year or the period which will be determined as per the policy of the NDMC, whichever is earlier for carrying on the non-licensable trade General goods on the terms and conditions mentioned in the Performa of licence deed which can be obtained from Room No. 5009, Palika Kendra, New Delhi on any working day.”

5. On 30th May, 2012, the Respondent/NDMC issued a Show Cause Notice to the Allottee on the ground that there were several violations committed by the Allottee. The said Show Cause Notice reads as under:

“During the inspection in respect of above said Thara No. 23-c, Hanuman Mandir Complex it has been noticed that you have committed following violation :

- 1. You have changed the trade from sale the flowers to that of Garlands, Cosmetics etc. without getting any permission.*
- 2. You have opened the side wall of your Thara (opposite the platform).*
- 3. You have extended/Encroached your Thara to platform without getting any authentic permission from the authority.*
- 4. You have fixed the steel door at the side wall.*

You are hereby again, directed to remove the unauthorised violation/construction and also show cause why the allotment Thara No.23-c, Hanuman Mandir Complex, New Delhi may not be cancelled and security forfeited on account of above noted violations within 7 days from the date of receipt of this failing which action for eviction will be taken under P.P. Act.”

6. In response to the Show Cause Notice, the Allottee denied that he had committed any violations, vide letter dated 5th June, 2012. However, the allotment was cancelled and the license was withdrawn, vide communication dated 9th November, 2012. The relevant extract of the said communication reads as under:

“Sub.: Cancellation of allotment and withdrawal of licence in respect of

Thara No. 23-C. Hanuman Mandir Complex, New Delhi.

This is to inform you that Competent Authority, NDMC has cancelled the allotment of Thara No. 23-C, Hanuman Mandir Complex, New Delhi vide her order dt. 30.10.2012 due to encroachment/violation in the said thara.

The occupation of the public premises after cancellation of allotment and withdrawal of licence is solely unauthorized and you are liable to be evicted from the Public Premises.

You are, therefore, directed to stop the use of the premises for any purpose, whatsoever and to vacate the premises and handover the possession of the aforesaid premises in a peaceful manner to the Municipal Staff and to allow the Municipal staff to exercise the right of re-entry within 10 days from the date of receipt of this letter and pay outstanding dues failing which action for eviction and recovery of the

dues shall be initiated under section 5 & 7 of P.P. Act.

Also please note that you are also liable to pay cancellation charges @30% over and above the usual licence fee for your use of unauthorized occupation of the Public Premises besides interest @ 12% p.a. on each defaulted payment. ”

7. The above communication dated 9th November, 2012, came to be challenged by way of a civil suit being **Suit No.56/2012** for permanent and mandatory injunction instituted by the Plaintiff/Appellant herein. The reliefs sought in the said civil suit reads as under:

“(i) To pass a Decree of Declaration in favour of the plaintiff and against the defendants thereby declaring the impugned order 30.10.2012 as communicated vide impugned order dated 9.11.2012 issued by the defendant ho. 2 and the impugned action of the defendants in cancelling the allotment of the Thara No.-23-C, Hanuman Mandir Complex, Baba Kharak Singh Marg, New Delhi-110001 of the plaintiff and withdrawing his license in respect of the said thara as illegal, arbitrary, discriminatory, unfair and wholly unjustified;

(ii) To pass a Decree of Permanent Injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their officers, officials and representatives etc. permanently from evicting the plaintiff from the thara no.-23-C, Hanuman Mandir Complex, Baba Kharak Singh Marg, New Delhi-110001 and recovering any damages from him or taking any action in pursuance of the impugned order dated 30.10.2012 passed by the defendants as communicated vide impugned order dated 9.11.2012 issued by defendant no. 2;

(iii) To pass a Decree of Mandatory Injunction in favour of the plaintiff and against the defendants thereby setting aside the impugned order 30.10.2012 passed by the defendants as communicated vide impugned order dt. 9.11.2012 issued by the defendant no. 2;

(iv) To award the costs of this suit;

(v) To pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

8. Evidence was led in the matter. Vide judgment and decree dated 26th May, 2008, the suit instituted by the Plaintiff was dismissed by the Trial Court. The first appeal against the Trial Court's decree dated 26th May, 2008 was also dismissed, vide Appellate Court's judgment dated 20th December, 2018, which has been impugned in the present second appeal.

9. Before this Court, Mr. Pradeep Kumar, Id. Counsel appearing for the Appellant/Plaintiff submits the following:

- (i) Show Cause Notice dated 30th May, 2012 was duly replied to by the Plaintiff, vide Reply dated 5th June, 2012. However, the said reply was not considered by the Respondent/NDMC.
- (ii) The impugned order dated 30th October, 2012, which was the basis of the cancellation of allotment was not communicated. The said order dated 30th October, 2012 finds a mention in the communication dated 9th November, 2012, but no separate order giving the reasoning for cancellation of allotment was produced before the Trial Court.
- (iii) The *Thara* was occupied by the Plaintiff and his family since

2003 and even before. The grounds of cancellation of allotment are completely baseless and frivolous, and thus the suit was liable to be decreed. Reliance is placed upon the photographs on record to show that the encroachments and violations alleged are also baseless and are not tenable.

- (iv) No action was taken under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by the appropriate authority, i.e., the Estate Officer, and hence, the cancellation is liable to be set aside.

10. On the other hand, Mr. Handoo, Id. Counsel appearing for the Respondent/NDMC, submits that the suit premises are public premises, being public land. The allotment was only for a period for one year. Thereafter, as per the policy of the NDMC, the premises are re-allotted through auction. He further submits that the period of one year having lapsed, and there having been violations by the Appellant, the cancellation of allotment in respect of the suit premises was completely justified.

11. Mr. Handoo, Id. Counsel, relies upon the original record produced before the Trial Court to argue that the Reply dated 5th June, 2012 was duly considered by the Respondent Authorities, prior to issuing the cancellation order, as is evident from the note sheet dated 23rd October, 2012 and 30th October, 2012.

12. Parties have been heard. The Court has considered the impugned judgments which have delivered concurrent findings, as also the records. The question that arises in this case is whether the Appellant can claim a perpetual right to continue in possession of the *Thara*, in view of the Letter of Allotment dated 26th June, 2003.

13. A perusal of the Letter of Allotment dated 26th June, 2003 shows that the same was allotted on a licence basis for a period of one year or a period which was to be determined as per the policy of the NDMC, ***whichever is earlier***. Thus, the period of one year is the outer limit for the allotment.

14. The Appellant/Plaintiff has enjoyed the possession of the *Thara*, after the allotment, for a period of approximately 18 years now. There is no policy which has been shown to this Court, by either of the parties which would entitle the Plaintiff to retain the possession of the *Thara* for an extended period.

15. The *Thara* is a commercial space in the Hanuman Mandir Complex at Baba Kharak Singh Marg, New Delhi, and is under the control and supervision of the Respondent/NDMC. The NDMC is entitled to, in accordance with law, allot the same as per its policy, and also fetch the revenue in respect thereof. The question as to whether there are any violations committed by the Plaintiff is one issue. However, even without going into the question of the said violations, the Plaintiff cannot claim an inherent right to continue to occupy the *Thara* indefinitely.

16. Ld. Counsel for the Plaintiff submits that there were violations by other allottees as well, and no action is being taken against them. However, the said question is not to be considered as a question of law in the present second appeal. The suit premises being public premises and the allotment thereof having expired, the prayer in the suit could not have been granted in favour of the Plaintiff. Thus, this Court is of the opinion that there is no substantial question of law that arises in this second appeal.

17. The original records produced before this Court shows that the Plaintiff's father was also in the occupation of the *Thara* since the 1970s, for

which the *Tehbazari* was being paid. It was because of this very reason that the Plaintiff was allotted the *Thara* in 2003. The noting of the Respondent No.2/Director (Estates) dated 18th September, 2002 which awards the *Thara* in favour of the Plaintiff, Sh. Khem Chand, reads as under:

“Thara No. 8 at Hanuman Mandir Complex, Baba Kharak Singh Marg, New Delhi was allotted in the name of Shri Mangal Dass in the year 1976 on a monthly Tehbazari fee of Rs. 60/- per month. Shri Mangal Dass expired on 25.07.93. After his death Shri Khem Chand S/o Late Shri Mangal Dass requested for transfer of allotment of Flower thara no. 57, Hanuman Mandir, New Delhi in his name on legal heir basis as Thara No. 8 was demolished. He stated that his father was running the Flower Thara no. 57, Hanuman Mandir and was paying the monthly Tehbazari to the NDMC. Under the orders of the then Special Officer dated 21.07.94 the said thara @ Rs.84/- p.m. on legal heir basis was transferred, and he was asked to complete the formalities vide this No. 4368/Enf. dated 25.07.94. Shri Khem Chand deposited the difference of Tehbazari fee w.e.f. 1.4.93 to 31.7.94, transfer fee & security respectively. Shri Khem Chand submitted three sets of licence deed duly signed by him without mentioning any thara no.

It is also reported that during redevelopment scheme of Hanuman Mandir Complex, all tharas were demolished and all tharas were reconstructed according to new plan. Now total number of 89 tharas were built as per plan in the year 1994-95 in a systematic manner and it was also decided that open *tehbazari* should not be continued thereafter. To allot 89 thara, a fresh inspection was conducted by the official of Enforcement and Estate Department on 25.04.95 to verify the claims of the squatters for the allotment of above said thara and survey list was

prepared and signed by the official of Estate department and Enforcement department. On the basis of survey report 70 thara has been allotted out of 89, in terms of the orders of the Ld. Special Officer dated 24.02.95 and also decided that no open tehabzari be continued thereafter.

Shri Khem Chand was not found during the survey and his name was not existed in the Survey list mentioned against thara no. 57 (old). No Tehabazari fee after 31.07.95. Shri Khem Chand has been in occupation of thara No. 23-C as he is occupying new thara no. 23/C unauthorizedly. It is out of place to mentioned here that thara no. 23/C has not been allotted to any squatters till date.

Shri Khem Chand has filed the suit in 1996 in the Civil Court for mandatory injunction for directing the NDMC to recover licence fee in respect of said thara after 31.07.94. This suit was dismissed by Civil Judge, vide his judgment dated 26th September 1997 in favour of NDMC. Shri Khem Chand filed an appeal in the Court of ADJ. The next date of hearing fixed i.e. 18.10.2002. However, another application of Shri Naresh Kumar is also pending in the Civil Court.

The matter came in LOK ADALAT held on 21.07.2002 and in compliance of the orders of Lok Adalat, Shri Khem Chand appeared before me on 20.08.2002 at 3.00 p.m. I have gone into the details on record as mentioned above. I also perused the receipt of payment shown to me by Shri Khem Chand for the year 1992, 1993, 1994 and 1995, which shows the payment made in his name for thara no. 57, Hanuman Temple. The department has taken the stand in the court that his father was allotted thara no. 8 at Hanuman Temple only, and the name of Shri Khem Chand does not appear in the list prepared for allotment of new 89 tharas, thus Shri Khem Chand is not entitled for allotment of any thara and has been

occupied by him unauthorisedly.

In view of the above facts, one thing is clear that after the death of his father late Shri Mangal Dass, the allotment of thara was transferred in the name of Shri Khem Chand under the orders of the Special Officer dated 21.07.94 at monthly licence fee as given in above para. This is also true as appears from the case that his name is not there in the list prepared by Enforcement/Estate department. However, the above fact of transfer of thara in the name of Shri Khem Chand can not be over-looked.

I have also heard the contention of Shri Naresh Kumar on 23rd August 2002. The Naresh Kumar has filed a case against Sh. Khem Chand for unauthorized occupant of thara no. 23/C occupied by Shri Khem Chand. After filing the counter by the department this case was decided against Shri Naresh Kumar who has filed the appeal against the order. The contention is that Shri Khem Chand was allotted thara no. 8, whereas Shri Khem Chand is claiming for thara no. 23/C.

During the course of hearing I asked to Shri Naresh Kumar show the receipt issued by Enforcement department against the space occupied by him at Hanuman Temple. He could show the receipt only prior to 1982, could not shown any single receipt of the period thereafter.

In view of the above facts, the contention of the Naresh Kumar devoids merit and does not require any consideration of allotment of thara at Hanuman Temple. It will, therefore, be advisable to consider the request for allotment of thara in the name of Sh. Khem Chand.”

18. In view of the above background of the matter, wherein the Plaintiff and his family have been occupying the *Thara* since 1970s, the Plaintiff is granted one more year to continue occupying the *Thara* to conduct his

business, strictly in terms of the Letter of Allotment. This shall however, not create any right, title or interest in favour of the Plaintiff in respect of the said *Thara*, after the expiry of one year, i.e., after 16th November, 2022. Thus, the Plaintiff shall handover the vacant and peaceful possession of the *Thara* to the Respondent/NDMC, by 16th November, 2022. For the period of one year for which the extension has been granted, the licence fee at the current rate would be liable to be paid by the Plaintiff, along with all the other charges which may be levied by the NDMC.

19. During the period of one year, if there is any auction or any other process by which the allotment of *Tharas* in the said premises takes place, the Plaintiff would be free to seek fresh allotment of the *Thara* in terms of the policy of the Respondent/NDMC.

20. It is made clear that no equities shall be created in favour of the Plaintiff in view of the above directions. The present order is being passed in the peculiar facts and circumstances of this case, where the Plaintiff and his family have been running the *Thara* since the 1970s. Further, during the pendency of the present appeal, the Plaintiff has also passed away, and the widow of the Plaintiff is stated to be running the said *Thara*. Thus, the present order shall not be treated as a precedent.

21. The present second appeal, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 17, 2021

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