



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

% Judgment reserved on: 29th March, 2022
Judgment delivered on: 04th July, 2022

+ **W.P.(C) 2670/2019 & CM APPL. 49815/2019 & CM APPL. 10843/2020**

SMT. SATYA SHARMA

... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Manmeet Arora, Mr. Sarad Kumar, Ms. Pavitra Kaur and Mr. Kartikeya Sharma, Advocates

For the Respondent: Mr. Anil Grover, Standing Counsel with Mr. Yogender Handoo, ASC and Ms. Noopur Singhal and Mr. Mishal Vij, Advocates for NDMC

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner, *inter-alia*, seeks a direction to the respondent to issue a licence in favour of the petitioner for shop bearing No. 157-C, Palika Bazar, New Delhi. Petitioner further seeks quashing of letter dated 15.11.2010 whereby arrears have been demanded from the petitioner with interest.

2. Subject shop bearing No. 157-C, Palika Bazar was originally



allotted on licence basis to M/s Mod Cottage. Said shop was sub-let on partnership basis from time to time. Partners were inducted; partnership firms dissolved and business carried on by the sub-lettees. This, it is alleged, continues till 2002.

3. By resolution dated 05.11.1985, respondent decided to regularize the allotment of shops in Palika Bazar that had been sub-let on partnership basis.

4. On 11.09.1995, the earlier sub-lettees of the subject shop paid the entire amount as demanded by the respondent for the purposes of regularization. This is also so recorded in the office noting qua the said shop.

5. By a policy dated 18.03.1999, it was decided by the NDMC to freely allow transfer of allotments except in cases of reserved category allotments. The policy stipulated that in case of entry/deletion of partnership, 30% enhancement in licence fee shall be charged. The policy further provided that in case of any delayed non-payment, interest would be charged @ 24% per annum from the date of raising of demand by the NDMC.

6. It is alleged by the Petitioner that she entered into a partnership with the sub-lettees (Mr. Pankaj Mehta and Mr. Adarsh Taneja) on 02.09.2002. On ~~102.129~~.2002, Mr. Pankaj Mehta and Mr. Adarsh



Taneja dissolved their partnership with the petitioner and petitioner thereafter continues to run business from the said shop.

7. Mr. Pankaj Mehta and Mr. Adarsh Taneja have also confirmed dissolution of their partnership firm and transfer of the said shop in favour of the present petitioner.

8. It is further alleged that from the year 2002 to 2010 regular invoices were raised by the respondent towards monthly licence fees which were duly paid by the petitioner from time to time. The invoices raised from the year 2002 till 2010 did not demand any amount as the arrears towards the licence fee.

9. As per the petitioner, on 07.02.2007, the Master Plan for Delhi 2021 was notified and the trade restrictions imposed in respect of the shop at Palika Bazar were liberalized.

10. On 28.09.2010, petitioner enquired from the respondent about the status of the regularization of the said shop and also sought transfer of the said shop in her name.

11. By the impugned demand dated 15.11.2010, respondent claimed the amount of Rs. 77,36,808/- as arrears of licence fee for the period 1979 to 2010 and also claimed interest thereon @ 24% for the said period.



12. On 11.05.2011, petitioner protested against the demand on the ground that she had been regular in making payments as per the invoices/bills raised by NDMC and stated that there were no arrears reflected in the invoices raised by the NDMC from time to time.

13. On 17.06.2011, petitioner met the Chairman of the respondent with her representation and claims that a revised statement was issued to the petitioner. Pursuant to the same, on 27.06.2011, petitioner paid the entire alleged arrears for the period 1979 to May 2011 in the sum of Rs. 38,22,399/-. As against the demand of interest of Rs. 45,23,786.59 for the period 1979 to May 2011, petitioner paid a sum of Rs. 2 lakhs.

14. As per the petitioner, on payment of the aforesaid amount, the licence of the said shop was regularized and the enhanced penal monthly licence fee was reduced from Rs. 70,737/- to Rs. 54,413/-. Petitioner thereafter has been regularly making the payment of the licence fee demanded by NDMC from time to time.

15. As per the petitioner, the licence of the said shop stood regularized in favour of Mr. Pankaj Mehta and Mr. Adarsh Taneja, the earlier sub-lettees of the said shop. It is contended that petitioner entered into partnership with Mr. Pankaj Mehta and Mr. Adarsh Taneja on 02.09.2002 and thereafter has been regular in making the payment of the amount as demanded.



16. It is contended that in terms of the policy dated 18.03.1999 transfer of the licence is freely allowed and as such the respondent cannot charge any penal amount from the petitioner except the stipulated 30% enhancement on the last paid monthly licence fee.

17. It is further contended that the demand raised from 1979 is not sustainable for the reason that petitioner came into possession only in the year 2002 and the period prior to the same had already been regularized and entire payment for regularisation of the same had been paid by the earlier sub-lettees to the respondent.

18. Further it is contended that in terms of the policy of the NDMC interest is leviable only in case a demand is raised and not paid by the allottee. Where no demand is raised, there is no question of payment of any interest.

19. Respondent in their affidavit have contended that the petitioner is the fifth sub-lettee. It is contended that there have been several sub-lettees in the past. It is further contended that the respondent were not aware of the factum of sub-letting in favour of the petitioner and as soon as they became aware by letter dated 28.09.2010, a demand was raised on 15.11.2010 in terms of the policy dated 18.03.1999.

20. It is contended that the original allottee had entered into partnership with Mr. Ashwini Sethi and Mr. Joginder Sethi. The



allotment was regularized in the name of Mr. Joginder Sethi, however he failed to clear the dues and entered into another partnership with Smt. Laxmi Devi.

21. Smt. Laxmi Devi failed to clear the dues and accordingly the administrator withdrew the regularization of the allotment. Thereafter Smt. Laxmi Devi entered into partnership with Mr. Pankaj Mehta and Mr. Adarsh Taneja which was also dissolved on 25.05.1995 and Smt. Laxmi Devi retired.

22. Thereafter, it is contended that it is the petitioner who has entered into the partnership with Mr. Pankaj Mehta and Mr. Adarsh Taneja. It is contended that since the regularization amount was never paid, the regularization charges are leviable from the very inception.

23. In rejoinder, it is contended by the petitioner that the averment that Laxmi Devi did not clear the dues is incorrect. Reference is drawn to the office noting dated 17.10.1995 wherein it is recorded that regularization in favour of Smt. Laxmi Devi could be done on payment of Rs. 10,82,969/-. The office noting also records that Smt. Laxmi Devi had cleared all the dues and that the account position was up-to-date.

24. Further, the office noting dated 19.08.1996 records that the then occupants – Mr. Pankaj Mehta and Mr. Adarsh Taneja have also



paid the entire outstanding amount calculated at the sub-letting rate.

25. Reference may be had to the Resolution No. 39-A dated 05.11.1985 whereby policy for regularization of partnership/sub-letting in respect of the tendered shop/show-windows and stalls at Palika Bazar was approved.

26. The decision of the administrator is as under: -

“ADMINISTRATOR'S DECISION

Resolved by the Committee of Officers and decided by the Administrator that the minutes of the Sub-Committee dt. 4.11.85 regarding regularization of partnership/subletting in respect of shops, stalls, show-windows licensed on tender basis in Palika Bazar is approved. This policy will not confer any right on the sublettees to get their units regularized. The question of grant of license in favour of sublettee will be examined on merits in each case.

Allotment of shops in Palika Bazar are under the following categories:-

- 1. No profit No, Loss basis as a rehabilitation measure to the stall holders of Punchkuian Road.*
- 2. To the members of SC & ST at reserve rate.*
- 3. To general public on tender basis.*

Since original allotment, many of the original allottees have either sublet or taken partners which ordinarily warrants cancellations and eviction of their allotment



and there being a large number of such cases Committee is losing higher income which should generally accrue to the NDMC. It has been sorted out with a view that Committee shall regulate the allotment of the unauthorized occupant, the whole matter has been examined in a meeting held on 4th November, 1985 and the following were present:-

- 1. Sh.-A.H. Khan F.A.*
- 2. Shri P.K: Tripathi Secretary*
- 3. Shri R.C. Sharma L.O.*
- 4. Shri L.C. Gautam Dir. (C&T)*
- 5. Shri B.S. Raizala. Dir. (Estate)*

The following decisions were taken;-

- 1. For the present cases falling under category 1 & 2 mentioned above may be left out and the question of their regularization of partnership and subletting will be taken up later.*
- 2. In respect of third category shops/stalls, show-windows allotted as a result of tender maybe regularized to unauthorized occupants (in each case of subletting/partnership) on the following basis:-*
 - a) License fee may be increased by 5% for each year in respect of cases in which the existing licence fee is upto 5,000/- per month.*
 - b) License fee may be increased by 4% for each year in which the existing license fee is from 5,001/- to 10,000/- per month.*



- c) *License fee may be increased pay 3% for each year in which the existing license fee is upto 10,000/- and above per month.*

The increase will be subject to a maximum of 25% in each case of subletting/partnership. The above increase will be excluding usual renewal charges of 10%.

In case of delay in regularization attributable to allottee usual damage charges at 30/40/50% will be levied.”

27. Perusal of the Policy shows that in respect of shops that were allotted to general public on tender basis, the decision was to regularize any unauthorized occupant by enhancement in the licence fee subject to a maximum increase of 25% in the licence fee. There was no other restriction or stipulation for the regularization of the licence qua such shops.

28. NDMC by its letter dated 13.05.1992 issued to Smt. Laxmi Devi, required her to clear the outstanding dues and deposit a security amount.

29. The office noting dated 17.10.1995, inter-alia, records as under:-

“As per the above details the account position of the shop No. 157-C, Palika Bazar is upto date and A.O.



Estate has already given his report that account position is upto date at page 175/ante.

Now the party i.e. Smt. Laxmi Devi has entered into partnership with Shri Pankaj Mehta Smt. Adarsh Taneja on 3.12.94 and the same was dissolved on 25.5.95 after retired from the business as well as from the shop and the allottees have requested for regularization of the allotment of shop in their sole name at page 196/C.

In view of the above if approved we may issue a notice to Smt. Laxmi Devi for confirmation of documents placed at page 188 to 195/C executed with Shri Pankaj Mehta and Smt. Adarsh Taneja as per fair copies of the same are placed below for signature and issue please.”

30. Office noting dated 19.08.1996 records that Mr. Pankaj Mehta and Smt. Adarsh Taneja requested for transfer of allotment in the joint names. Said office noting records as under:

“Now Shri Pankaj Mehta and Smt. Adarsh Taneja have requested for transfer of allotment of shop in their joint names on the basis of the documents of Partnership and dissolution deed on pages 185 to 195/C and have duly been confirmed by Smt. Laxmi Devi vide her letter placed on 204/C. The present occupants have paid all the outstandings calculated at subletting rates including interest and damages as per report of A.O.E on page 126/N at bottom.

In this context, it is pertinent to submit that presently there is violation of trade zone system and a show cause notice dated 22.3.96 on page 207/C stands issued in



compliance to the orders of the Hon'ble Supreme Court of India dated 2.2.96. As per orders of the Supreme Court of India all the shopkeepers of Palika Bazar have to revert to their allotted trade by 31.12.96. In this case too, the sublettees are bound to abide by the orders of the Hon'ble Supreme Court of India. Meanwhile if approved, the case may be allowed to keep pending as it may not be advisable to process the case for transfer of allotment on account of trade zone violation or the date to which the sublettees reverts to the allotted trade zone please."

31. As noticed from the office notings dated 17.10.1995 and 19.08.1996, the entire outstanding calculated at sub-letting rates had been duly cleared. The only issue was with regard to trade zone violation, which also got resolved when on 07.02.2007, the Master Plan for Delhi 2021 was notified and the trade restrictions imposed in respect of the shop at Palika Bazar were liberalized.

32. On 28.10.2010, petitioner requested for regularization of the said licence in her name informing the NDMC of the retirement of Mr. Pankaj Mehta and Mr. Adarsh Taneja. In response thereto by the impugned letter dated 15.11.2010, a demand of Rs. 77,36,808/- was raised on the petitioner.

33. The calculation sheet provided to the petitioner and annexed as Annexure-5 to the petition shows that respondent have sought to levy subletting charges with effect from 28.07.1979 till 2010 and have also



claimed interest on the said amount. The principal amount claimed towards the arrears of licence fee is Rs. 38,22,394.80 and an interest amount of Rs. 45,23,786.59 has been claimed.

34. As noticed herein above, petitioner paid the entire claimed amount of Rs. 38,22,399/- and further paid a sum of Rs. 2 lakhs towards interest under protest.

35. The policy adopted by NDMC by Resolution No. 6 dated 18.03.1999 *inter alia* provides as under: -

“Clause 3 - Policy on transfers

- (i) To be freely allowed (except in case of reserved categories).
- (ii) On date of entry/deletion of partnership 30% enhancement in licence fee. After amalgamation with the original amount annual enhancement 7%.
- (iii) Policy at Annexure, in case of rehabilitation markets as the base rate with annual increase @ 7%.
- (iv) Dependent family members to be permitted without any enhancement in licence fee. Other blood relations allowed with 30% enhancement.
- (v) Legal heirs only after death without any cost.
- (vi) Multiple transfers: in cases where the request of the transfer of allotment from the first allottee is not regularized and the subsequent subletting is



made, the same should also be regularized by forfeiting the amount of security deposits required to be deposited by sub-lettee at the time of each subletting and the entire amount as payable at each partnership would be payable would be payable by the present sub-lettee on its regularization.

Clause 12 – Charging of interest on delayed payment

The interest for delayed non-payment should be charged at the rate of 24% p.a. from the date of raising of the demand by the NDMC.”

36. The Policy by its Clause 3 provides that transfer is freely allowed except in cases of reserved categories. As per the policy on the date of entry/deletion of partnership, there has to be a 30% enhancement in licence fee and thereafter an annual enhancement @ 7%.

37. Further Clause 12 of the policy stipulates that interest for delayed non-payment is to be charged @ 24% p.a. from the date of raising of the demand by the NDMC.

38. In the present case, as is apparent from the office notings, all the charges including the charges payable at subletting rates were cleared by Smt. Laxmi Devi as noticed in office noting dated



17.10.1995 and Mr. Pankaj Mehta and Mr. Adarsh Taneja as noticed in the office noting dated 19.08.1996.

39. Said office noting clearly establish that the entire amount demanded by the respondent including subletting rate upto the sublettees – Mr. Pankaj Mehta and Mr. Adarsh Taneja i.e. the sublettees prior to the present petitioner have been cleared.

40. Repeated bills were raised by the respondent upto the year 2010 without reflecting any amount towards the arrears. This clearly establishes that the amount being paid by the sublettees prior to the petitioner upto the year 2002 was including the enhanced subletting charge. Consequently, respondent cannot claim any amount from the petitioner as alleged arrears of enhanced licence fee for the period 1979 till 2002.

41. As per the respondent NDMC, they were not aware of the subletting in favour of the petitioner and became aware only in the year 2010 when petitioner sought regularization in her favour on 28.09.2010.

42. This is disputed by the petitioner that respondent became aware only on 28.09.2010. It is contended that the earlier allottees – Mr. Pankaj Mehta and Mr. Adarsh Taneja had filed an affidavit with the NDMC dated 10.12.2002 informing them that they had dissolved the



partnership and that the petitioner was running the business.

43. Though, it is disputed by the petitioner that the respondent-NDMC became aware only in the year 2010, however, it is not in dispute that after entering into partnership by the petitioner, monthly licence fee was not increased by 30% as stipulated in the policy.

44. Clearly the monthly licence fee was liable to be enhanced by 30% on the induction of the petitioner into the partnership on 02.09.2002 which was not done. Consequently, petitioner is liable to pay the increased licence fee in terms of the policy by enhancement of the same by 30% and thereafter an annual increment of 7% p.a. calculated w.e.f. 02.09.2002.

45. With regard to the levy of interest on the arrears, it may be noticed that the policy stipulates that the interest is leviable from the date demand is raised and the same remains unpaid. In the instant case, as per the NDMC, they were not aware of the subletting and as such the demand could not be raised.

46. Though, strictly speaking in terms of the policy, interest cannot be levied on the arrears, however, in the instant case, as the respondent-NDMC were not aware of the subletting and admittedly the increased licence fee on account of subletting has not been paid and is payable from 02.09.2002, petitioner is liable to pay the



increased licence fee with effect from 02.09.2002 along with interest @ 24% per annum.

47. The amount Rs. 40,22,399 (Rs. 38,22,399/- plus Rs. 2,00,000/-) paid by the petitioner under protest as also the enhanced licence fee paid upto date is liable to be adjusted from the amount payable to the respondent-NDMC.

48. Keeping in view of the fact that the licence is freely transferable, this petition is disposed of with the following directions:

- i) *Respondent-NDMC shall regularize the licence in favour of the petitioner in respect of Shop No. 157-C, Palika Bazar in accordance with the Resolution No. 6 dated 18.03.1989; and*
- ii) *Respondent-NDMC shall re-compute the licence fee with effect from 02.09.2002, taking the fee demanded as on 02.09.2002 as the base licence. Thereafter the base fee shall be enhanced by applying the policy dated 18.03.1999 i.e. apply an enhancement of 30% (because of subletting to the petitioner) plus an annual increment of 7% on the amalgamated amount upto date; and*
- iii) *The enhanced licence fee calculated from 02.09.2002 shall attract interest @ 24% with effect from the date the respective amounts became due and payable till the date the above referred amount of Rs. 40,22,399/- was paid by the petitioner; and*



- iv) *The sum of Rs. 40,22,399/- plus the enhanced licence fee paid by the petitioner with effect from 2011 till date shall also be adjusted from the amount calculated in terms hereinabove; and*
- v) *In case any amount is due and payable by the petitioner, after the above adjustment, petitioner shall clear the entire arrears within four weeks from today; and*
- vi) *In case any amount is liable to be refunded to the petitioner, respondent shall refund the same to the petitioner within a period of four weeks from today, failing which respondent shall be liable to refund the same with interest @ 24% per annum.*

49. Petition is allowed in the above terms.

50. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

JULY 04, 2022
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