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

% **Date of decision: 17th August, 2015**

+ **W.P.(C) No.956/2014 & CM No.1924/2014 (for stay)**

ABDUL RAUF JAVED & ORS ..... Petitioners

Through: Mr. J.P. Sengh, Sr. Adv. with Mr. Pramod Gupta & Ms. Vanessa Singh, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Through: Mr. Vivek B. Saharya, Adv.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.19997/2014 (of the legal representatives of the deceased Mst. Mubina Begum u/O I R-10 CPC).

1. The senior counsel for the five petitioners states that the petitioners have settled with the applicants.

2. The counsel for the applicants confirms and withdraws the application.

3. The application is dismissed as withdrawn.

W.P.(C) No.956/2014.

4. The petition impugns the note dated 12th December, 2013 on the file of the respondent New Delhi Municipal Council (NDMC), recommending auction of Shop No.135, Palika Bazar, New Delhi. The petition also seeks mandamus to the respondent NDMC to regularize the allotment / licence of the said shop in favour of the petitioner No.1 and after de-sealing the said shop, hand over possession thereof to the petitioner No.1.

5. Notice of the petition was issued and vide order dated 10th February, 2014, the parties were directed to maintain *status quo* with respect to the auction of the shop. The said order was confirmed on 8th December, 2014. The senior counsel for the petitioners and the counsel for the respondent have been heard.

6. The senior counsel for the petitioners has argued that:

(i) The father of the petitioners No.1 to 4 and the father-in-law of the petitioner No.5 viz. Abdul Wahab Javed had been, by way of a rehabilitative measure, granted licence of the aforesaid shop.

(ii) The licence of the said shop was however cancelled on 30th November, 1979 for the reason of non payment of the enhanced demanded Licence Fee.

(iii) The proceedings for eviction were however not initiated / deferred for the reason of a dispute regarding enhancement of Licence Fee pending with respect to a large number of shops in the Palika Bazar as well as in other markets of the respondent NDMC.

(iv) Ultimately, a High Powered Committee was constituted to revisit the enhancement in Licence Fee and as per recommendations of the Committee, the respondent NDMC reduced the enhancement earlier demanded and on account of non payment of which the licence of the predecessor of the petitioners had been cancelled.

(v) Though in pursuance to the said decision dated 12th November, 1999 of the respondent NDMC, an opportunity was given to all the shopkeepers to pay the Licence Fee accordingly and to have their licences regularized even if had been cancelled for non-payment of earlier demand, but since the predecessor of the petitioners had died on 14th January, 1995 and there were disputes amongst the petitioners, the petitioners could not avail of the said opportunity.

(vi) The same resulted in proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) being initiated against the petitioners, and in which an order of eviction and of recovery of damages was passed by the Estate Officer of the respondent NDMC.

(vii) Two sets of appeals by different legal heirs were preferred against the said eviction order to the appellate forum under Section 9 of the PP Act but which appeals were dismissed.

(viii) CM (M) No.762/2009 and W.P.(C) No.11070/2009 were preferred by the two sets of legal representatives in this Court impugning the eviction order and the order of recovery of damages but which were also dismissed vide order dated 7th April, 2010.

(ix) SLP(C) No.11981/2010 and SLP(C) No.23145/2010 were preferred by the two sets of legal representatives to the Supreme Court but which were also dismissed, though after issuance of notice and interim stay but without any speaking order, on 1st May, 2012.

(x) Now the petitioners have settled the disputes amongst themselves and it has been decided that the petitioner No.1 can have the said shop transferred / regularized in his name to the exclusion of the other legal heirs of Abdul Wahab Javed.

(xi) The respondent NDMC was however proceeding to invite fresh bids for the said shop.

(xii) The respondent NDMC was ready at all stages, right upto the Supreme Court, to even then regularize the licence of the shop and not execute the eviction order but the same could not be availed of by the petitioners owing to their not being able to arrive at any consensus.

(xiii) The petitioners having now settled their disputes and owing whereto only they have been deprived of the benefit which has been given to all the others similarly placed as the petitioners and ought not to be so left in the lurch when they have now settled their disputes and which was the only impediment earlier to the grant of the same relief to them.

(xiv) Instances are given of other cases where the respondent NDMC has renewed the licence even after the shops had been sealed and possession thereof been taken.

(xv) The petitioners were dispossessed from the shop in pursuance to the eviction order of 6th June, 2012 and the shop is since then lying sealed.

7. The counsel for the respondent NDMC has drawn attention to Clause 9 of the Resolution No.9 (L-I) dated 30th September, 2004 of the respondent NDMC which is as under:

> "NDMC is not obliged to permit continuation of allotment after the death of the allottee. The license stands cancelled on the death of the allottee. However, Council agreed to give a concession to the legal heirs on humanitarian grounds. If there is dispute in the family, unless they settle the dispute amicably, the license cannot continue and the premises have to be got evicted. In respect of cases pending in the department for transfer on legal heir basis, wherever there are disputes, the legal heirs be given a chance to settle the dispute by 30.11.2004. If dispute is not settled, it may be decided not to allow it to anyone of the legal heirs."

and has argued that the last date for the petitioners to settle their disputes and to make a joint representation was 30th November, 2014 and which has long past gone.

8. The senior counsel for the petitioners controverts the aforesaid contention by drawing attention to the orders dated 1st August, 2006 and 7th December, 2006 of this Court in W.P.(C) No.12004/2006 and contended that in that case also the licence had been determined in 1994 and the shop had been de-sealed, but upon the petitioners therein having been granted new licence upon deposit of all charges, the writ petition was disposed of.

9. The counsel for the respondent NDMC has also contended that the petitioners are very well off, as is evident from a number of properties held by them as is evident from the Family Settlement arrived at and cannot invoke the sympathy factor of the initial allotment in favour of their predecessors being by way of a rehabilitative measure.

10. It is also contended that it is not borne out from the instances given, whether the same are of identical facts as of the present case.

11. I have considered the rival contentions aforesaid and am of the view that the petitioners cannot be granted the relief sought. The only so-called precedent relied upon, of orders dated 1st August, 2006 and 7th December, 2007 in W.P.(C) No.12004/2006 is in fact no precedent. While the order dated 1st August, 2006 is an interim order, the order dated 7th December, 2006 is an order of disposal of the petition in view of the statement of the counsel for the petitioner of the grievance with which the petition was filed having stood redressed. Such orders cannot by any stretch of imagination constitute a precedent. Neither has any question of fact nor a question of law been decided therein. It is also not known as to what were the facts of that case, for it to be said that the respondent NDMC should be directed to treat the petitioners herein at par with the petitioner in that case.

12. Else, what is evident is that pursuant to the cancellation of the license with respect to the said shop granted to the predecessor of the petitioners, proceedings under PP Act for eviction were undertaken and in which an order of eviction of the petitioners was passed. The petitioners have availed of remedies against the said order of eviction of appealing to the appellate forum under the PP Act i.e. the District Judge and upon being unsuccessful therein also invoked the writ / supervisory jurisdiction of this Court and which petitions were also dismissed. The petitioners thereafter approached the Supreme Court and which petition was also dismissed. Not only so, the order of eviction was implemented more than three years back i.e. on 6th June, 2012. Between 6th June, 2012 when the petitioners were ousted from

the shop and till the interim order dated 10th February, 2014 in this petition i.e. for a period of nearly two years, there was no restraint on the respondent NDMC dealing with the said shop and creating rights therein. It is perhaps owing to the lethargy of the respondent NDMC during the said time in not assigning the said shop to any other person, obviously to the detriment of the public revenues, that the petitioners have now filed this petition. Had the respondent NDMC, immediately after recovering possession of the shop, allotted the same to another person, the occasion for this petition would not have arisen.

13. I am unable to decipher any proposition of law whereunder a person, evicted in accordance with law from a property can, after the said order of eviction has attained finality and has been implemented, re-claim possession or rights in the shop and which have already been adjudicated. The senior counsel for the petitioners has also not been able to cite any.

14. Even if it were to be true that the petitioners suffered order of eviction a result of *inter se* disputes of the petitioners, the same would not affect the finality attached in law thereto.

15. The rights if any of the petitioners in the subject shop came to an end on the dismissal by the Supreme Court on 1st May, 2012 of the challenge by the petitioners to the order of eviction therefrom and on the petitioners being dispossessed from the said shop on 6th June, 2012. The subject shop is now a public property and has to be dealt with in accordance with principles applicable to disposal thereof i.e. to be allotted to the person willing to pay the maximum consideration therefor and which consideration to be received by the respondent NDMC is public money to be utilised for the performance

of the other Municipal functions by the respondent NDMC. This Court, in exercise of powers under Article 226, cannot direct the respondent NDMC to, to the detriment of public revenues, allot the said shop to the petitioners or to the petitioner no.1 at rates below the rate which the said shop is likely to fetch in the public auction by which it is now sought to be allotted by the respondent NDMC and which is an appropriate way as held by the Supreme Court also in ***Natural Resources Allocation, In Re: Special Reference No.1 of 2012*** (2012) 10 SCC 1. Any direction of this Court divesting the respondent NDMC of the said shop in favour of the petitioners in any manner save by way of public auction would be violative of the dicta of the Supreme Court. The petitioners, I reiterate, after the order of eviction having attained finality and having been implemented, are left with no rights in the said shop and in pursuance whereto they can be given any preference in allotment of the said shop.

16. There is thus no merit in the petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 17, 2015
'gsr'/pp..

Foot Note: ***Paras 1 to 10 aforesaid were dictated in open Court on 17th August, 2015 when lunch break intervened and the remaining order was intended to be dictated in Chamber. The draft however remained incomplete and has been finalised today on 26th September, 2015.***