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

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Date of Decision: 01.09.2015

+ LPA 489/2015

LATE B K BHAGAT

(THR ITS LR RAKESH BHAGAT)

..... Appellant

Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Rajat Wadhwa, Mr.Amritansh Batheja,
Mr.Kunal Aggarwal, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr.Sanjay Poddar, Sr.Adv. with
Ms.Rachna Golcha, Mr.Govind Kumar, Ms.Pavni
Poddar, Mr.Dheeraj, Mr.Keshav Sharma, Adv.

+ LPA 725/2014 & C.M.No.17898/2014

NEW DELHI MUNICIPAL COUNCIL

..... Appellant

Through: Mr.Sanjay Poddar, Sr.Adv. with
Ms.Rachna Golcha, Mr.Govind Kumar, Ms.Pavni
Poddar, Mr.Dheeraj, Mr.Keshav Sharma, Adv.

Versus

BK BHAGAT

..... Respondent

Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Rajat Wadhwa, Mr.Amritansh Batheja,
Mr.Kunal Aggarwal, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

Ms.G. ROHINI, Chief Justice (Oral)

1. Both these appeals arise out of the order dated 04.02.2013 passed by

the Estate Officer, New Delhi Municipal Council regarding a premises at Janpath Lane, New Delhi belonging to NDMC in respect of which license was granted to B.K. Bhagat for running a hotel by name Hotel Asian International.

2. While LPA No.725 of 2014 has been filed by NDMC aggrieved by the order passed by the learned Single Judge in W.P.(C) No.6859 of 2013 dated 06.05.2014 directing implementation of the order of the Estate Officer dated 04.02.2013, LPA No.489 of 2015 has been filed by the legal representatives of the licensee (B.K. Bhagat) assailing the order dated 19.05.2015 in W.P.(C) No.3417 of 2015 wherein the learned Single Judge upheld the order of the District Judge, Patiala House Courts passed in Appeal No.9/2015 dated 24.03.2015 thereby setting aside the order of the Estate Officer dated 04.02.2013 and remanding the matter for consideration afresh.

3. We have heard the learned counsel appearing for both the parties.

4. The premises in question belongs to NDMC in respect of which NDMC filed an application under Section 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 seeking eviction of the licensee B.K. Bhagat on expiry of the period of license and also seeking recovery of arrears of Rs.3,55,24,594/- allegedly due upto 31.03.2008 together with subsequent damages @ Rs.29,58,176/- per month and interest thereon. The Estate Officer by order dated 04.02.2013 set aside the determination of license with effect from 10.05.2007 as well as the demand of license fees @ of Rs.169 per square feet per month. The Estate Officer further directed the NDMC to consider renewal of license for further period of 30 years with effect from the date of its expiry.

5. On 10.10.2013, B.K. Bhagat filed W.P.(C) No.6859 of 2013 seeking a direction to NDMC to implement the order of Estate Officer dated 04.02.2013 and further to restrain the NDMC from interfering with his possession in respect of the premises in question. The said writ petition was allowed by the learned Single Judge by order dated 06.05.2014 directing NDMC to accept the license fees being tendered by the licensee (B.K. Bhagat) in terms of the order dated 04.02.2013 of the Estate Officer. Aggrieved by the same, NDMC filed LPA No.725 of 2014.

6. This Court passed a detailed order on 03.11.2014 recording the *prima facie* view that the order dated 04.02.2013 was *non est* since the Estate Officer was not authorized/empowered to pass such an order and directing the NDMC to explain *inter alia* as to what steps have been taken by NDMC to challenge the order of the Estate Officer dated 04.02.2013. Thereafter, various directions came to be passed by this Court from time to time and the subsequent developments in the matter were also placed on record.

7. On 20.07.2015, it was brought to our notice that the sole respondent (B.K. Bhagat) died on 25.06.2015 and the appellant/NDMC was granted liberty to take the steps to bring on record the legal representatives of the deceased respondent. Accordingly, appellant/NDMC filed CM Application No.15376 of 2015 under Order XXII Rule 24 of CPC. The said application was allowed on 17.08.2015 and the LRs of the deceased respondent (B.K. Bhagat) have been brought on record.

8. In the meanwhile, Appeal No.9/2015 preferred by NDMC against the order of the Estate Officer dated 04.02.2013 was disposed of by the District Judge, Patiala House Courts by order dated 24.03.2015 setting aside the order of the Estate Officer dated 04.02.2013 and remanding the matter to the

Estate Officer for passing a fresh order. In pursuance thereof, the Estate Officer passed a fresh order dated 24.04.2015 directing the licensee to vacate the premises in question and to pay Rs.60.67 Crores as damages. Challenging the said order, the licensee (B.K. Bhagat) filed an appeal and the same is pending before the learned District Judge, Patiala House Courts.

9. Even before the order dated 24.04.2015 came to be passed by the Estate Officer on remand, the licensee (B.K. Bhagat) filed W.P.(C) No.3417/2015 challenging the order dated 24.03.2015 passed by the learned District Judge in Appeal No.9/2015. The said writ petition was dismissed by the learned Single Judge by order dated 19.05.2015.

10. Since the licensee (B.K. Bhagat) died on 25.06.2015, the legal representatives of B.K. Bhagat filed LPA No.489 of 2015 challenging the order of the learned Single Judge dated 19.05.2015 in W.P.(C) No.3417 of 2015.

11. The said LPA No.489/2015 has also been taken up by us along with LPA No.725/2014.

12. Though the learned Senior Counsels appearing for the parties in both the appeals sought to make elaborate submissions on merits of the case, in the light of the subsequent developments noticed above resulting in setting aside the order of the Estate Officer dated 04.02.2013, which is the basis for both the appeals, and a fresh order was passed by the Estate Officer on 24.04.2015 against which the statutory appeal filed by the licensee (B.K. Bhagat) is pending before the District Judge, we are of the view that nothing survives for adjudication on merits in the present Letters Patent Appeals. We are also of the view that by virtue of the order dated 24.03.2015 passed by the learned District Judge, Patiala House Courts in Appeal No.9/2015

setting aside the order of the Estate Officer dated 04.02.2013, the question of NDMC accepting the license fees in terms of the order of the Estate Officer dated 04.02.2013 does not arise and therefore, the order under appeal in LPA No.489 of 2015 i.e. order dated 06.05.2014 in W.P.(C) 6859/2013 is also liable to be set aside. Accordingly, the said order is hereby set aside and W.P.(C) No.6859/2013 shall stand dismissed.

13. For the aforesaid reasons, both LPA No.489/2015 & LPA No.725/2015 are disposed of recording that the cause in the appeals survives no longer and the appeals have become infructuous.

14. The learned District Judge, Patiala House Courts before whom the appeal against the order of the Estate Officer dated 24.04.2015 is pending is at liberty to proceed further on merits and decide the same in accordance with law.

CHIEF JUSTICE

JAYANT NATH, J

SEPTEMBER 01, 2015/‘anb’