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

+ **CM(M) 240/2015**

NEW DELHI MUNICIPAL CORPORATION Petitioner

Through: **Mr.Vivek B. Sharma, Standing
Counsel for NDMC**

versus

JAGDISH KAPILA & ANR Respondents

Through: **Mr.Ishaan Madaan, Advocate for R-1.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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29.09.2016

CM No.15341/2016

1. By the present application the respondent seeks a direction to release an amount of Rs.8,95,680/- with up-to-date interest which was deposited by the petitioner before this Court.
2. The petitioners have filed the present petition seeking to challenge order dated 11.12.2014 of the trial court.
3. The respondents have filed a suit for declaration, permanent and mandatory injunction regarding shop No. M-24, Palika Bhawan, R.K.Puram, New Delhi. A decree declaration was sought in favour of the respondents to declare the undated notice issued by the petitioner as null and void and a permanent injunction was sought against the respondent restraining them from forcibly taking possession from the plaintiff. A mandatory injunction was also sought to direct the petitioner to transfer the licence in respect of

the shop in favour of the respondents.

4. In the course of proceedings before the trial court on 25.08.2012 the learned counsel appearing for NDMC had submitted that the respondent had been directed to deposit a sum of Rs.1,61,334/- and that the matter has been settled. On 25.09.2012 the trial court directed the respondent to make payment of outstanding dues of Rs.1,83,435/- to NDMC in three equal monthly instalments. On 27.2.2013, the trial court noted the submission of the respondent that he had made the entire payment to NDMC and despite the same, the NDMC had not issued a license to him. On the other hand, NDMC submitted that an FIR has been registered against the respondent for trespassing in the suit property and they need some time for the comments from the concerned department. The trial court further noted that NDMC has received full payment from the respondent and a licence is not yet been issued. Hence, the court directed NDMC to either refund the entire payment of the respondent or issue him a licence deed.

5. On 11.12.2014, the Trial Court noted that NDMC has not complied with the order dated 26.2.2013 and is in defiance of the same. Other than reiterating the submission/directions of the court in order dated 27.2.2013, no further directions were made in the said order. The petitioner still filed the present petition seeking to impugn the said order dated 11.12.2014.

6. On 26.8.2015, petitioner moved an application before this court being CM No.17148/2015 for permission to deposit the entire payment received from the respondent with the Registrar General of this Court. This was to comply with the order of the trial court dated 27.02.2013. The said application was not opposed by the respondent and was, accordingly, allowed. The NDMC has deposited the amount.

7. On 20.01.2016, the petitioner did not press the petition and it was dismissed as withdrawn. Now this application has been filed stating that the amount which was deposited by the petitioner may be allowed to withdraw the same.

8. The plea of the respondent is that petitioner is only trying to wriggle out of the settlement which was arrived at between the parties and recorded in order dated 11.2.2013 and hence has no right to the said money.

9. It may be noted that the trial court vide order dated 28.01.2016 disposed of the suit. The trial court noted that the respondent is in possession of the shop in question. Accordingly, it decreed the suit in favour of the respondent restraining NDMC from taking forcible possession of the shop without following due process of law. Regarding the prayer for a licence, the trial court held that the plaintiff is not the original allottee. The court held that no relief for renewal of the licence deed was given to the respondent.

10. The fact of the matter is that the respondent is in possession of the shop for a considerable time and has admittedly not paid any user charges for the same. In my opinion, undoubtedly, the NDMC has a right to claim user charges/licence fee from the respondent for the period it has occupied the premises. The issue as to whether the charge is actually payable and if so the quantification of the same are issues which have to be gone into in an appropriate forum where the NDMC chooses to file proceedings, if any alternatively, if NDMC chooses to give a licence to the respondent it may do so on certain terms and conditions regarding the past.

11. In the light of the above and in the interest of justice, the amount lying deposited with this court be released to the petitioner alongwith accumulated interest. However, the payments received by the NDMC would be subject to

an adjustment in favour of the respondent against any dues that are payable by the respondent for occupation of the premises or licence charges as applicable or as the case may be.

12. The present application is disposed of.

JAYANT NATH, J.

SEPTEMBER 29, 2016/sv