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

% **Date of decision: 2nd March, 2016**

+ **W.P.(C) 2347/2015**

ASHA CHITKARA

..... Petitioner

Through: Mr. R.K. Saini and Ms. Minal Sehgal,
Adv.

Versus

**NORTH DELHI MUNICIPAL CORPORATION
AND ORS.**

..... Respondents

Through: Mr. Nikhil Rohatgi, Adv.

AND

W.P.(C) 3146/2015

ARTI RANI

..... Petitioner

Through: Mr. Arvind Kumar Sharma, Adv.

Versus

**NORTH DELHI MUNICIPAL CORPORATION
AND ORS.**

..... Respondents

Through: Ms. Mini Pushkarna, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitions (i) impugn the refusal of the respondent North Delhi Municipal Corporation (NrDMC) to grant lease hold rights to the petitioners with respect to the shops No. 2 and 1 respectively in MCD Market, Karol

Bagh, New Delhi licensed to the petitioners; (ii) seek to restrain the respondent NrDMC from taking any coercive action for the eviction/dispossession of the petitioner from the said shops till leasehold rights therein are granted to the petitioners; and, (iii) seek mandamus to the respondent NrDMC to grant leasehold rights with respect to the shops licensed to each of the petitioners.

2. The petitions were entertained though interim relief of stay of proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (PP Act) initiated against the petitioners was refused. Counter affidavits have been filed by the respondent NrDMC and to which a rejoinder has been filed by the petitioners. The counsels for the petitioners were heard and judgment reserved on 13th July, 2015. Thereafter the petitioners moved applications informing that the proceedings initiated against the petitioners under the PP Act had resulted in order of eviction being passed against the petitioners. Vide order dated 21st January, 2016 it was clarified that the order in the eviction proceedings shall be subject to the outcome of these petitions. Subsequently vide order dated 11th February, 2016 on applications of the respondent NrDMC it was clarified that the appeals under Section 9 of the PP Act preferred by the petitioners before the

District Judge are to go on and the order thereunder would be subject to the orders in these petitions.

3. The counsels for the petitioners argued with reference to WP(C) No.2347/2015, stating that the facts of WP(C) No.3146/2015 are similar. As such I also proceed to decide the petitions on the basis on facts of WP(C) No.2347/2015.

4. The petition was filed pleading – (a) that the petitioner was granted licence to the shop in pursuance to a bid made by the petitioner in response to a notice dated 26th March, 1997 inviting tenders; (b) that the said licence was for a period of five years; (c) that the market in which the shop is situated was constructed in the year 1976 by the Municipal Corporation of Delhi (MCD) being the predecessor in interest of the respondent NrDMC; (d) that the market initially comprised of 65 shops all of which were given on licence basis; (e) however the MCD vide Resolution No. 982 dated 5th March, 1979 decided to grant 99 years leasehold rights to the licensees of shops in the said market and accordingly licences of approximately 45 shops in the market were converted into leasehold; (f) that inspite of the said resolution of 1979, the MCD in the year 1997 allotted shop to the petitioner on licence basis; (g) that the licence of the petitioner was renewed for a

further period of five years; (h) that the petitioner vide application dated 1st March, 2007 applied for conversion of the licence into leasehold; (i) MCD vide letter dated 2nd April, 2007 called upon the petitioner to make payment of conversion charges of Rs.30,28,410/- and which was paid by the petitioner on 29th August, 2007; (j) MCD however did not grant leasehold rights compelling the petitioner to upon coming to an end in October, 2007 of the second term of five years of the licence, applied for renewal of the licence; (k) however the licence was not renewed and on the contrary MCD vide letter dated 13th August, 2009 cancelled its earlier letter dated 2nd April, 2007; (l) however the amount of Rs.30,28,541/- received from the petitioner was not refunded and it was merely stated that the same would be adjusted against the outstanding dues of licence fee/overstay; (m) that the MCD vide letter dated 3rd February, 2009 called upon the petitioner to vacate the premises; (n) that the respondent NrDMC is discriminating against the petitioner in not converting the licence of the petitioner into leasehold though the same had been allowed for other shops in the market.

5. Having found the facts to have been elucidated better in the counter affidavit of NrDMC in W.P.(C) No.3146/2015, the defence as set out therein is set forth. It is pleaded (i) that the subject municipal market at Saraswati

Marg, Karol Bagh containing various Shops, Halls, Tharas, Kothries and Office Spaces was inhabited on licence basis through auction process after fixing reserve price, in terms of MCD Resolution No.181 dated 30th October, 1977; (ii) that various licence holders were not regular in payment of licence fees, due to which huge dues accumulated as arrears; (iii) representations were also received from the Association of Allottees for allotment of shops to them on 99 years lease; (iv) MCD Resolution No.982 dated 5th March, 1979 was passed agreeing to grant 99 years leasehold rights to existing licencees of the market on fulfilment of certain conditions; (v) the said Resolution applied only to ‘existing licencees’ as is evident from Commissioner’s letter No.128/C&C dated 5th January, 1979; (vi) the genesis of the said Resolution was to earn more per month by converting licences into leaseholds on the conditions stipulated; (vii) on further demand of licencees of the said market, the conditions were varied vide MCD Resolution No.1137 dated 18th February, 1980; (viii) that vide MCD Resolution No.1317 dated 23rd March, 1987 it was resolved that extension of licences of 5 years at a time, upto total of 10 years should be allowed in respect of canteens, tourist sites, open air restaurants, office units, shops and halls licenced by the MCD; (ix) that since the Resolution No.1317 dated 23rd

March, 1987 provided for allotment only on licence basis, subsequently a decision was taken vide MCD Resolutions No.494 dated 29th November, 2005 and 495 dated 29th November, 2005 to allow conversion from licence to leasehold on certain conditions; (x) that though the said Resolutions dated 29th November, 2005 were with the concurrence of the Commissioner MCD, there were certain amendments by the Standing Committee and fresh proposals were mooted by the Commissioner but which were not finally approved and accepted – no Rules and Regulations in pursuance thereto were formulated; (xi) no consensus having been reached between the Commissioner and the Standing Committee of the MCD, which is the sine qua non for disposal of immovable property of MCD under Section 200-203 of the Delhi Municipal Corporation Act, 1957 (MCD Act), the policy adopted in the Resolution dated 29th November, 2005 was never communicated to the public and never put in public domain and no applications invited thereunder for conversion of licences into leasehold and no conversion carried out thereunder; (xii) that the subsequent MCD Resolution No.894 dated 5th March, 2007 related only to leasehold properties and has no applicability to the subject shops; (xiii) that vide another MCD Resolution No.189 dated 19th July, 2010 it was decided to allow extension of

licence by another 5 year on the terms and conditions contained thereunder and it was specifically stated therein that the policy of 2005 (i.e. vide Resolutions dated 29th November, 2005) is not applicable in cases of auction and that auction will only be for licence basis and there will be no auction for conversion from licence to lease; (xiv) that in terms of decisions taken in Resolution No.189 dated 19th July, 2010 and Resolution No.5 dated 27th May, 2011, a Circular dated 22nd July, 2013 was published and in which non-applicability of Resolutions No.494 and 495 dated 29th November, 2005 and Resolution No.894 dated 5th March, 2007 to properties such as those of the petitioners was retained; (xv) that the subject shop was auctioned for 5 years on licence basis; extension of licence was granted for 5 years; no further extension was done after 11th December, 2007; eviction notice dated 26th February, 2009 was issued also stating that there were dues of Rs.79,85,994/- for the period from September, 2005 till February, 2009 and proceedings under PP Act commenced in the year 2011; (xvi) that though as per existing policy contained in Circular dated 22nd July, 2013, the present occupants of shops, halls, offices, spaces etc. can continue as licencees subject to clearing dues upto date and enhancement of licence fees as provided therein and the petitioner was also given option thereunder and the petitioner initially

purported to avail but subsequently did not comply with terms and conditions thereof and the case of the petitioner was closed; (xvii) that this petition has been filed concealing/misrepresenting facts; and, (xviii) the petitioner has no vested right of conversion to leasehold.

6. Needless to state that the counter affidavit of NrDMC in W.P.(C) No.3146/2015 is supported with copies of all Resolutions/Circular mentioned therein.

7. Neither counsel referred to the rejoinder filed by the petitioner and hence the need to refer thereto is not felt.

8. Though the counsels for the petitioners stated that the facts of WP(C) No.3146/2015 are identical to those of WP(C) No.2347/2015 and the counsel for the petitioner in W.P.(C) No.3146/2015 adopted the arguments of the counsel for the petitioner in W.P.(C) No.2347/2015 but I find that the payment as made by the petitioner in WP(C) No.2347/2015 of Rs.30,28,410/- was not made by the petitioner in WP(C) No.3146/2015. Else the position is identical.

9. The counsels for the petitioners in arguments, besides on the lines of the pleadings aforesaid, argued – (i) that there are in all 65 shops in the

market and of which 50 were already converted into leasehold till the year 2002; (ii) that the respondent NrDMC cannot discriminate between different shops in the same market and cannot at its *ipse dixit* give leasehold rights with respect to some, creating permanency, and deprive others thereof by keeping them as licencees i.e. on temporary basis; (iii) that as is evident from the file noting dated 14th February, 2005 of the MCD, the conversion of five licenced shops including two of the petitioners was for consideration – with respect to the other three, no proceedings under PP Act also had been initiated till date, while the petitioners are being sought to be evicted; (iv) that the petitioner in WP(C) No.2347/2015 having been made to deposit over Rs.30 lacs towards conversion charges and which money is still lying with the MCD, cannot be denied such conversion; (v) that the petitioners under Resolution No.494 dated 29th November, 2005 of the MCD are entitled to conversion; (vi) that the petitioners under MCD Resolution No.856 referred to in the noting dated 14th February, 2005 are entitled to conversion; (vii) that it was the contention of the counsel for the MCD and as recorded in ***Ashima Securities Pvt. Ltd Vs. MCD*** 2010 (115) DRJ 161 that MCD has adopted in totality the L & DO policy pertaining to conversion from licence to leasehold and from leasehold to freehold basis, and that Resolution

No.494 contemplated creation of MCD Price Fixation Committee and as per resolution No.894, the detailed policy of the L & DO is to apply in toto including the rates prescribed therein; (viii) that as late as of 20th February, 2015, MCD has been publishing advertisements offering shops in the same market on leasehold basis and there is no reason to deny conversion to the petitioners.

10. The counsel for the NrDMC in W.P.(C) No.3146/2015 clarified that the facts have not been clearly set out in the counter affidavit filed in W.P.(C) No.2347/2015 and some confusion appears to have crept in therein between properties of the MCD and properties of the Land & Development Office, Government of India (L&DO) since placed at disposal of MCD for management. The counsel for NrDMC in W.P.(C) No.2347/2015 concurred. Else it was argued (i) that the matter is purely contractual and writ petitions are not maintainable; (ii) that the claim in the petitions is barred by time; (iii) that the MCD Resolution No.982 dated 5th March, 1979 was only for the then 'existing licencees' and the petitioners are not covered thereby as they were not 'existing licencees'; (iv) thereafter vide Resolution No.1317 dated 23rd March, 1987 it was decided to make allotments on license basis only; (v) the said Resolution No.1317 dated 23rd March, 1987 was in force at the

time of allotment of the shops in the year 1997 to the petitioners; (vi) that the Resolution 494 dated 29th November, 2005 was merely a proposal and which never fructified; (vii) that the manner of disposal of the property of the MCD is provided in Section 59 r/w Section 200 of the MCD Act; (viii) that though Resolutions no.494 and 495 dated 29th November, 2005 entitling the Commissioner MCD to convert licences into leases were passed but the same were not operationalised by the Commissioner; (ix) that the petitioner in WP(C) No.2347/2015 in collusion with some officials of MCD got the letter dated 2nd April, 2007 issued in her favour but which was withdrawn subsequently; (x) that the prevalent policy with respect to MCD properties is contained in the circular dated 22nd July, 2013 and under which the petitioners are not entitled to the conversion to the leasehold as claimed; (xi) L&DO has a scheme for conversion of licences to leases and conversion of leasehold rights into freehold; (xii) however that policy with respect to the L&DO properties which has been adopted by the MCD vis-a-vis L&DO properties under its management cannot be made applicable to the MCD's own properties; (xiii) that more than Rs.3 crores are due from each of the petitioners; thus, the question of refunding the amount about Rs.30 lacs to the petitioner in WP(C) No.3146/2015 does not arise; (xiv) that the reference

by the counsels for the petitioners to the current mode of disposition of property by MCD is misconceived; (xv) the properties are now being disposed of only through open tender on leasehold basis; (xvi) reliance is placed on – (a) Judgment dated 29th October, 2014 of the Supreme Court in Civil Appeal No.9951/2014 titled **HUDA Vs. Kedar Nath**; (b) Judgment dated 8th March, 2013 of the Division Bench of this Court in LPA 742/2012 titled **Suresh Chand Gupta Vs. MCD**; (c) **Union of India Vs. Charak Pharmaceuticals (India) Ltd.** (2003) 11 SCC 689; (d) **Bharti Cellular Ltd. Vs. UoI** (2010) 10 SCC 174; and (e) **M.P. Mathur Vs. D.T.C.** (2006) 13 SCC 706

11. The counsel for the respondent NrDMC in WP(C) No.2347/2015 drew reference to **Nirmal Kumar Jain Vs. Municipal Corporation of Delhi** 1990 (18) DRJ 30; **Nirmal Kumar Jain Vs. Municipal Corporation of Delhi** 2000 (56) DRJ (Suppl) 29 (DB); **Anuradha Sharma Prop. of M/s New Shehnai Banquet & Restaurant Vs. Municipal Corporation of Delhi** 2010 (119) DRJ 429 (DB).

12. On inquiry the counsel for the respondent NrDMC informed that action has been taken against the officers who in collusion with the petitioner issued the letter dated 2nd April, 2007.

13. The written submissions filed by the counsels have also been considered.

14. Having considered the rival contentions and the material on record, I am of the opinion that the petitioners are not entitled to the reliefs claimed for the reasons hereinafter appearing.

A. The petitioners came into possession of the shops on allotment thereof in favour of petitioners on licence basis in an open tender process. The petitioners at that time did not contend that since MCD had converted the shops granted on licence basis at the time of establishment of the market into leasehold, the tenders invited by the MCD for allotment of remaining shops in the market on licence basis were faulty or that the MCD was discriminating between the shops in the same market by allotting the same on different terms.

B. The petitioners were then happy to enter the market and have a shop therein as a licensee for a period of five years only.

C. There may have been a large number of other persons who may not have responded to the notice inviting tender, being not desirous of acquiring

shop on licence basis for a period of five years only and with no permanency therein. Thus the petitioners, in bidding for the said shops, competed only with those who were willing to take the shops on licence basis and being the highest bidder, were allotted the shops. In my view, the petitioners having come into possession of the shops through open bidding tender process and as per the terms whereof the rights being created in the shops were of a licensee for a period of five years only, may be with a renewal for five years, cannot demand conversion of the licence into leasehold and the MCD cannot convert the said licence into leasehold.

D. It cannot be forgotten that the subject shops are public property, the disposal whereof has to be in public interest and for public purpose and yielding the maximum possible price therefrom. It is well nigh possible that if the MCD in the Notice Inviting Tender for the subject shops had provided that the shops once taken on licence would entitle the licensees to have the same converted to leasehold, the shops may have fetched a much higher price than that paid by the petitioners. To allow a person who enters into possession as a licensee to have his licence converted into a lease would amount to allowing a backdoor entry into the premises, to the detriment of the public interest and public exchequer.

E. If such a procedure is given a stamp of approval by the Court, it would allow vested interest in public authorities to first induct persons of their choice into occupation of public premises at throwaway prices by initially framing the tender conditions so, as to not fetch the best price and to thereafter convert the terms into more favourable for the persons so inducted into public premises at throwaway prices.

F. A licence does not create any interest or right in the property and merely allows the licensee a right to enter and use the property. On the contrary, lease for a period of 99 years, as the petitioners are claiming, is a valuable property right in the property and there is a sea of a difference between the price fetched while offering a licence for 5 years and the price fetched by offering a lease for 99 years.

G. We have to see the claim of the petitioners in the said light. Seen in the said light, the petitioners are clearly disentitled from the relief.

H. Merely because the respondent NrDMC is now again allotting shops in the market on leasehold basis would not entitle the petitioners who entered the shops as a licensee, to conversion of their licences obtained by concessional rates into leasehold.

I. The petitioners, even if desirous of the same premises, have to first vacate the premises and to thereafter when the bids are invited for allotment thereof on leasehold basis, participate in the competition and if successful, then re-enter the premises on leasehold basis.

J. Further seen in this light, the Resolution dated 5th March, 1979 i.e. of a date much prior to the petitioners coming into occupation of the premises, cannot create any right in favour of the petitioners.

K. Supreme Court ***In Re: Natural Resources Allocation*** (2012) 10 SCC 1 though touched upon the extension of doctrine of public trust to property but chose not to expound thereon. However, in the discussion under Article 14 of the Constitution of India while relying on the decision in ***Bennett Coleman Vs. Union of India*** (1972) 2 SCC 788 it was reiterated that the only norm which the Constitution furnishes for distribution of material resources of the community is elastic norm of common good and observed that the achieving goal of common good under Article 39(b) of the Constitution is part of the Directive Principles. It was further held that the manner in which common good is best subserved would depend on the economic and political philosophy of the Government and revenue maximization is not the only way in which the common good can be

subservied. It was further clarified that where “revenue maximization is the object of a policy, being considered qua that the resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable method, though not the only method”.

L. It is not the case of the petitioners that they are entitled to continue in the subject shops for any other consideration. It has thus but to be held that the common good in the matter of disposal of the subject shops by the respondent NrDMC is by revenue maximization and which can be achieved only by auction, especially when Supreme Court has repeatedly held that the method of securing public interest in the matter of disposal of property is to sell by public auction or by inviting tenders.

M. Reference may also be made to *Rashbihari Panda Vs. State of Orissa* (1969) 1 SCC 414 cited with approval by the Supreme Court in the judgment aforesaid, laying down that the scheme of offering to enter into contracts with the old licensees and to renew their terms is open to grave objection since it arbitrarily excludes many persons. It was held that the right to make offers to the persons with whom contracts had been made earlier, shutting out new entrants, is ex facie discriminatory and imposes unreasonable restrictions upon the right of persons other than existing contractors to carry

on business and gives rise to monopoly. It was further held that exclusion of all persons interested in the trade who were not the previous year licensees, is ex facie arbitrary; the scheme adopted by the Government, first of offering to enter into contracts with certain licensees and later inviting tenders from licensees who had in the previous year carried out their contracts satisfactorily, was held to be void on the ground of unreasonably excluding others.

N. Supreme Court in ***Aggarwal and Modi Enterprises Pvt. Ltd. Vs. New Delhi Municipal Council*** (2007) 8 SCC 75, interpreting Section 141 (2) of the New Delhi Municipal Council Act 1994 held that the mandate thereof is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. It was further held that NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property and that public auction not only ensures fair price and maximum return, it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. It was also held that disposal of public property partakes the

character of trust and it should be for public purpose and in public interest. Pertinently, the claim in that case of the existing licensee to develop the property or a preferential treatment was negated.

O. I see no reason why the principle enunciated in the judgment aforesaid should not apply to respondent NrDMC. Section 200(d) of the MCD Act governing respondent NrDMC also provides that the consideration for which the immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.

P. It is also a settled principle of law (See ***Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation*** (2000) 5 SCC 287) that if a term of the tender is deleted after the players entered into the arena, it is like changing the rules of the game after it had begun and therefore, if the Government or the Municipal Corporation was free to alter the conditions, fresh process of tender is the only alternative permissible.

Q. Applying the said principle here, if it were to be held that after inviting tenders for occupation of shops as a licensee, the licence can be converted into leasehold, it would amount to changing the rules of the game after it had begun.

R. Supreme Court, as far back as in *Ramana Dayaram Shetty Vs. International Airport Authority of India* (1979) 3 SCC 489 negated the contention that those who had not participated in the tender process cannot challenge the same. It was held that they are entitled to challenge on the ground that if it were known that non-fulfilment of condition of eligibility would be no bar to consideration, they would also be entitled to apply and would have applied

S. Similarly here, if it was known that licence can be converted into leasehold, others could have participated in the tender process through which the petitioners initially came into possession of the premises.

T. The petitioners have not been able to controvert the chronology of resolutions of MCD as set out in the counter affidavit filed in WP(C) No.3146/2015 and as detailed by me hereinabove. The petitioners cannot derive any benefit of the lacunas if any in the counter affidavit filed in WP(C) No.2347/2015 especially when the two petitions are being considered together. The petitioners on the basis of the MCD Resolution of 23rd March, 1987 i.e. of a date prior to their occupation of the premises cannot claim any right. The only right which the petitioners could have claimed and claim was under the MCD resolutions No. 494 and 495 dated 29th November, 2005

but which resolutions according to the NrDMC were never operationalized and did not come into effect. It is not the case of the petitioner that the benefit thereof was/has been given to any other person. In the light of the position of law as discussed by me hereinabove, the said resolutions were in any case contrary to law and discriminatory and arbitrary and cannot be enforced. The only other Resolution on which the counsels for the petitioners can possibly rely and rely is the Resolution No.856 referred to in the note dated 14th February, 2005. However I need not go further into the said aspect as the reference by the counsel for NrDMC in WP(C) No.2347/2015 on **Anuradha Sharma** supra is apposite in this context. The Division Bench of this Court therein was also concerned with a claim for conversion of a licence granted by the MCD in respect of an open air restaurant into leasehold. Reference therein was also placed on the Resolution No.856 (dated 17th February, 2004) and on Resolution No.494 (dated 29th November, 2005) but the claim was negated relying *inter alia* upon **Nirmal Kumar Jain** supra. It would thus be seen that the question is no longer *res integra*. Else, the controversy is also squarely covered by **M.P. Mathur** supra relied upon by the counsel for NrDMC in WP(C) No.3146/2015.

U. It also follows from the judgments cited by the counsels for the respondent NrDMC and referred to in the preceding paragraph that the question of any estoppel by acceptance of the sum of about Rs.30 lacs from the petitioner in WP(C) No.2347/2015 does not arise. The demand for the said amount vide letter dated 2nd April, 2007 was clearly unauthorised and had no sanction of the authority of the respondent NrDMC/MCD empowered to dispose of immovable property and cannot create any rights in favour of the petitioner.

V. Similarly, the arguments of the counsel for MCD noted in *Ashima Securities Pvt. Ltd* cannot create any rights in favour of the petitioners.

W. Reference may lastly be made to the *Union of India Vs. Hotel Excelsior Ltd* MANU/DE/4222/2010 where a Division Bench of this Court speaking through the undersigned was concerned with a claim for conversion of leasehold rights granted by the L&DO into freehold. It was held that a lessee has no right to claim conversion of the leasehold into freehold or to compel the lessor to so grant conversion. Finding the policy floated by the L&DO for such conversion to be not providing for conversion of the properties qua which the conversion was claimed, the claim was denied. The contention for discrimination was also negated observing that the

properties for which conversion had been allowed constituted a different class. It was also observed that such policies/claims are enunciated in the exercise of executive function and it is upto the appellant L&DO as lessor of the land to grant or not to grant freehold conversion and once it is found that the L&DO had not discriminated arbitrarily, the question of the Court interfering in policy matters did not arise. The said observations of the Division Bench are also apt to the present controversy.

15. We are also pained to see that the petitioners, inspite of having admittedly only rights as a licensee, have overstayed in the premises for long, naturally to the detriment of the public interest.

16. There is thus no merit in the petitions which are dismissed with costs of Rs.20,000/- payable by each of the petitioners to the respondent NrDMC on the next date in the appeal preferred by the petitioners against the order of their eviction and pending before the District Judge.

MARCH 2nd, 2016
M..

RAJIV SAHAI ENDLAW, J