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

+ **W.P.(C) 11540/2016 and CM APPL. 45436/2016**

SATYA PRAKASH GUPTA & ORS Petitioners

Through: Mr. Shahid Ali, Advocate with
Mr. Anwar Khalil, Advocate

versus

NEW DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Akshay
Makhija, CGSC, Ms. Rhea Verma, Ms. Mahima
Bahl, Ms. Shivi Sanyam, Ms. Divya Kapur and
Mr. Sumant Bhushan, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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07.12.2016

1. The present petition has been filed by the petitioners praying *inter alia* for quashing/setting aside a sealing order dated 16.05.2016, whereunder the respondent/NDMC has sealed their shops situated in a premises commonly known as Connaught Hotel situated on Shaheed Bhagat Singh Marg, New Delhi, and for directions to the NDMC to enter into fresh Licence Agreements with them.

2. Mr. Ali, learned counsel for the petitioners submits that the respondent/NDMC had granted a license in respect of the subject premises in favour of M/s Prominent Hotels Ltd. by virtue of a License Deed dated 16.07.1982, which was valid for a period of 99 years reckoned from 04.11.1981. Under the said Licence Deed, M/s Prominent Hotels Ltd. was

permitted to create sub-licenses for running car parking, cycle-scooter stand and shops in favour of third parties. The petitioners had entered into individual Sub- Licence Deeds with M/s Prominent Hotels for taking different shops on sub-license, which they have been occupying for several years. The said sub-licenses were renewed by M/s Prominent Hotels from time to time, till the respondent/NDMC sealed them on passing the impugned order dated 16.5.2016.

3. The shops of the petitioners were sealed by the respondent/NDMC on 23.05.2016 allegedly, without permitting them to remove their articles. On 16.06.2016, the petitioners had submitted a Memorandum to the NDMC for granting them the status of licencees by directly entering into fresh license agreements with them. However, the respondent/NDMC has refused to consider the said representation. Hence, the present petition.

4. It has been enquired from learned counsel for the petitioners as to how would the present petition lie against the respondent/NDMC when admittedly, in each case, independent Sub-license Agreements were executed by the petitioners with M/s Prominent Hotels Ltd. wherein NDMC was not even a party and therefore their grievance, if any, would lie against M/s Prominent Hotels Ltd. and not NDMC.

5. Counsel for the petitioners pegs his case on Clause 34 of the License Deed dated 16.07.1982, executed between the respondent/NDMC (Licensor) and M/s Prominent Hotels Ltd. (Licensee) to argue that the Licensee was allowed to run the hotel during the period of the license and it was also entitled to grant sub-licenses in respect of car parking, cycle-scooter stand and shops and it was on the strength of the said permission that Sub-licenses Deeds were executed in favour of the petitioners. He submits that the

Licence Deed granted by the respondent/NDMC was valid for a period of 99 years reckoned from 04.11.1981 and by passing the peremptory sealing order, the petitioners have been illegally ousted by the respondent/NDMC and not by the Licensee.

6. Per contra, Mr. Sanjay Jain, learned ASG appearing for the respondent/NDMC also places reliance on Clause 34 of the Licence Deed dated 16.7.1982 and refers to Clause 4 of the Sub-License Agreement enclosed with the petition as Annexures P-1 and P-2 to canvass that the sub-licenses executed by the Licensee in favour of the Sub-Licencees like the petitioners herein, were subject to the terms and conditions of the Principal License Deed executed between M/s Prominent Hotels Ltd. and the NDMC. He submits that in the present case, it was M/s Prominent Hotels Ltd. that had violated the terms and conditions of the License Deed granted in its favour due to which the same was terminated by the respondent/NDMC several years ago. However, the Licencee failed to vacate the premises and instead, assailed the termination order in court. It is an admitted position that the challenge laid by M/s Prominent Hotels Ltd. to the said termination order has been rejected right upto the Supreme Court. It is thus stated on behalf of the respondent/NDMC that there is no privity of contract between the petitioners and the respondent/NDMC for them to claim any relief against it.

7. As the entire dispute hinges on the terms of the Licence Deed and the Sub-Licence Deed, it is considered necessary to examine Clause 34 of the License Deed dated 16.07.1982 executed between M/s Prominent Hotel and NDMC, which is as follows:-

“34. The licencees shall run the Youth Hostel themselves.

However, the licencees may allow sub-licencees within the period of licence for running car parking, cycle-scooter stand for parking and shops. The licencees shall be further responsible for the conduct of various sub-licencees and observance of rules and regulations etc. The licencees shall be further responsible to answer that the sub-licencees shall not get any right over and above the rights and privileges of the licencees.”

8. Clause 4 of the Sub-License Agreement dated 01.05.1987 executed between M/s Prominent Hotel and the Licencee of the shop is reproduced herein below for ready reference:-

“4. That the sub Licence hereby granted shall always be subject to and consistent with the terms and conditions of the original Licence Deed dated 16.07.1982 executed between Prominent Hotels and NDMC and such other terms and conditions as may further be agreed by and between the said Prominent Hotels and NDMC.”

9. Clause 34 of the License Deed makes it clear that the subject premises was given to M/s Prominent Hotels Ltd. to run a Youth Hostel, which it had admittedly failed to do. Instead, in breach of the terms and conditions of the License Deed, the premises in question was converted by the Licencee into a hotel. Further, the captioned clause permitted the Licensee to grant sub-licenses only within the period of the license. The License Deed itself having been terminated by the respondent/NDMC on account of the Licensee violating the terms and conditions of grant, the petitioners before this Court, who were sub-licensees under M/s Prominent Hotels Ltd., cannot claim a better title than that which was granted in favour of the latter.

10. The aforesaid position clearly emerges on a reading of the last sentence of Clause 34 of the License Deed. In any event, Clause 4 of the

Sub-License Agreements executed by M/s Prominent Hotels Ltd. in favour of the petitioners makes it perfectly clear that the sub-licenses would be subject to and consistent with the terms and conditions of the original License Deed. The petitioners were conscious of the terms and conditions of the Sub-License Deeds executed in their favour and having executed the same with eyes wide open, they cannot be heard to state now that they have a better right on the shops, superior to that of the Licensee. Since the primary Licensor, i.e., the respondent/NDMC had determined the Licence Deed executed in favour of M/s Prominent Hotel, the petitioners cannot insist that they have a right in law to step into the shoes of the Licensee and call upon the respondent/NDMC to enter into fresh Licence Agreements directly with them.

11. In any event, the respondent/NDMC being a public authority, is under a statutory mandate under Section 141(2) of the NDMC Act to put a public property to auction or invite tenders for open participation so as to ensure transparency and to get the best possible price. Private negotiations of the nature proposed by the petitioners herein are to be meticulously avoided as it is treated as a breeding ground of bias and discrimination and is also against public interest [Refer: State of U.P. vs. Shiv Charan Sharma & Ors. **AIR 1981 SC 1722**, Ram and Shyam Company vs. State of Haryana & Ors. **AIR 1985 SC 1147**, Shri Sachidanand Pandey & Anr. vs. State of West Bengal & Ors. **(1987) 2 SCR 223**, Mahesh Chandra vs. Regional Manager, U.P. Financial Corp. & Ors. **(1992) 1 SCR 616**, New India Public School and Others vs. HUDA & Ors. **AIR 1996 SC 3458** and Aggarwal and Modi Enterprises Pvt. Ltd. & Anr. vs. New Delhi Municipal Council **AIR 2007 SC 3131**].

12. Given the aforesaid facts and circumstances, this court is of the opinion that the petitioners are not entitled to claim any relief against the respondent/NDMC. If aggrieved, it is for them to seek their remedies against M/s Prominent Hotels Ltd. that had executed the Sub-Licence Deeds in their favour, as may be permissible in law. But, the present petition as filed, is not maintainable for the relief claimed.

13. Before disposing of the present petition, it has been enquired from learned counsel for the petitioners if the petitioners are desirous of removing their goods/articles, if any, stated to be lying in the shops that have been sealed. However, counsel for the petitioners states that he does not have any instructions in this regard.

14. In view of the observations made above, the present petition is dismissed in *limine*, as not maintainable alongwith the pending application.

DECEMBER 07, 2016
rkb/mk/ap

HIMA KOHLI, J