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

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

+ **W.P.(C) No.11060/2015 & CM No.28621/2015 (for stay).**

MOHD. HAROON **..... Petitioner**

Through: Mr. Ritesh Kr. Chaudhary, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL **..... Respondent**

Through: Mr. Vivek B. Sahrya, ASC with Mr. Mananjay Mishra, Adv.

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

1. The petition impugns the refusal dated 28th July, 2015 of the respondent New Delhi Municipal Council (NDMC) to allow the petitioner use of Show Window no.3 in Regal Subway near Palika Bazar and seeks a mandamus to the respondent NDMC to return to the petitioner the said Show Window.

2. Notice of the petition was issued and though the respondent NDMC availed of time to file counter affidavit but no counter affidavit has been filed till now.

3. Be that as it may being of the *prima facie* view that the petition is misconceived and the petitioner is not entitled to the relief, the counsel for the petitioner has been heard.

4. The counsel for the petitioner, on the right of the petitioner to the said Show Window being enquired, states that the petitioner was granted a Licence with respect thereto vide Deed of Licence dated 21st December,

1989 and on further enquiry as to what was the term of the licence states that the same was for a period of five years renewable on the same terms and conditions on increase in licence fee by 10%. On further enquiry whether the licence was renewed after the period of five years thereof was over in December, 1994, the counsel states that though there was no renewal of licence but the respondent NDMC in the year 2004 had raised a monetary demand on the petitioner and which was disputed by the petitioner and the respondent NDMC in the year 2004 sealed the said Show Window; the petitioner filed W.P.(C) No.2978/2008 in this Court and which was disposed of vide order dated 23rd July, 2008 recording the stand of the respondents to waive off the entire amount of interest for the break up period and by stipulating that upon the petitioner paying the demanded amount, the respondents would deliver back the Show Window to the petitioner. It is stated that the respondent NDMC in pursuance thereto on 5th September, 2008 delivered back the Show Window to the petitioner.

5. The genesis of the present dispute is the repair/renovation work of the subway undertaken for Common Wealth Games in the year 2010 and for which the said Show Window was again taken back by the respondent NDMC from the petitioner.

6. The counsel for the petitioner has argued that the respondent NDMC at the time of taking back the Show Window had 'promised' to the petitioner to return the same and the petitioner changed his position on the basis of the said promise by continuing to pay licence fee even after possession had been taken from him. It is further contended that though

the work of the subway was to be completed in August, 2010 itself but went on endlessly and was completed only in the year 2013 but thereafter also the Show Window was not returned to the petitioner.

7. The petitioner filed W.P.(C) No.1217/2015 in this Court and which was disposed of vide order dated 9th February, 2015 with a direction to the respondent NDMC to dispose of the representation of the petitioner and in pursuance whereto vide communication dated 28th July, 2015 the representation of the petitioner for return of the Show Window has been refused on the grounds that there is no such Show Window in the renovated subway and that no promise for return thereof was made.

8. The counsel for the petitioner invokes the law relating to promissory estoppel and has in Court handed over extracts of Spencer Bower "The Law Relating to Promissory Estoppel by Representation", ***Mahabir Auto Stores Vs. Indian Oil Corporation*** (1993) 3 SCC 752 and ***State of Madhya Pradesh Vs. Orient Paper Mills Ltd.*** (1990) 1 SCC 176.

9. I have however enquired from the counsel for the petitioner as to how the principle of promissory estoppel is applicable to the present facts. Supreme Court in ***State of Himachal Pradesh Vs. Ganesh Wood Products*** (1995) 6 SCC 363 held that the doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise/representation made by promisor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. It was further held that the doctrine of promissory estoppel cannot however be put on a higher pedestal than the written contract between the parties and a

representation made or undertaking given in a formal contract is as good as, if not better than, a mere representation. It was yet further held that where there is a contract between the parties containing certain terms but the government resiled from the contract and terminated the same, the promisee will then have to file a suit for specific performance of the contract in which case the Court will decide, having regard to the facts and circumstances of the case and the provisions of the Specific Relief Act, whether the plaintiff should be granted specific performance of the contract or only a decree for damages for breach of the contract.

10. The present is a case where the rights which the petitioner is claiming / asserting are governed by Licence Deed and once there is a contract in writing the relationship of the parties is to be governed thereby and the question of promissory estoppel does not arise. The said Licence Deed was admittedly for a period of five years only and which is long back over and was otherwise also as per Clause 25 thereof revocable at any time and did not vest a right even for a period of five years in favour of petitioner. Applying the principles of Specific Relief Act, 1963, the licence is not renewable / enforceable. A Division Bench of this Court recently in the ***Pradeshiya Industrial & Investment Corporation of U.P. Ltd. Vs. M/s Pacquik Industries Ltd.*** 2016 SCC Online 531 reiterated that the doctrine of promissory estoppel being an equitable doctrine must yield when the equity so requires and the government should not be held bound by a promise not enforceable in law. Reference may also be made to the judgment of this Court in ***Kaveri Infrastructure P. Ltd. Vs. N.D.M.C.*** ILR (2007) I Delhi 1080 holding that for promissory estoppel, the petitioner

has to demonstrate that there was a definite representation by the State agency which led the petitioner to alter his position by acting on such representation and suffer detriment; the principles of promissory estoppel were held not applicable merely from the unilateral act of the petitioner without any representation on the part of the respondent.

11. The actions of the respondent NDMC, to which attention is invited by the counsel for the petitioner, can at the most show that the respondent NDMC, notwithstanding the deed of licence having expired and not been renewed, consented to the petitioner continuing as a licencee but cannot confer in the petitioner any rights in excess of that mentioned in the deed of licence.

12. Thus the sole ground urged of promissory estoppel has no applicability to the facts of the case.

13. In this view of the matter, the judgments cited by the counsel for the petitioner are of no relevance.

14. Else the petitioner has not disclosed any right to the said Show Window. The counsel for the petitioner at this stage states that the Licence Deed did not envisage the petitioner handing over the Show Window to the respondent NDMC for the purposes of repair of the subway and the very fact that the petitioner returned it shows the *bona fides* of the petitioner and the petitioner is thus entitled to the relief.

15. The counsel for the respondent NDMC in this regard has drawn attention to Clause 23 of the Licence Deed reserving the right of respondent NDMC to carry out changes in subway.

16. Even otherwise, even if the petitioner though not required to has once handed over the said Show Window, unless the petitioner discloses any right with respect to the Show Window no order as claimed can be granted.

17. Similarly the fact that the petitioner continued depositing the licence fee till August, 2010 would be of no avail and same would at best entitle the petitioner to refund of the amount so paid. It was a unilateral act of the petitioner and does not constitute a representation of the respondent NDMC.

18. The counsel for the respondent NDMC states that the petitioner is also in arrears of over a sum of Rs.5 lacs.

19. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MAY 02, 2016
'pp/gsr'..