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

+ CM(M) 201/2015 with CMs No. 7209/2017 (u/S 151 CPC) & 4450/2015 (for stay)

OM PARKASH (DECEASED) THROUGH LRS Petitioner

Through: Mr. S.D.Ansari with Mr. I.Ahmed,
Advocates

Versus

NORTH DELHI MUNICIPAL CORPORATION..... Respondent

Through: Ms. Puja Kalra, Advocate
Mr. Tarun Sharma, Advocate for
Intervenor

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.11.2017

1. This petition under Article 227 of the Constitution of India was filed impugning the order dated 13th February, 2015 of dismissal of MCA No. 2/2015 of the Court of Additional District Judge-5 (Central), Tis Hazari Courts, Delhi.

2. The aforesaid appeal was preferred by the appellant impugning the order dated 23rd January, 2015 of the Court of Additional Senior Civil Judge (Central) in CS No. 482/2014 titled Om Parkash Vs. North Delhi Municipal Corporation, dismissing the application of the petitioner/plaintiff under Order XXXIX Rule 1 & 2 of the CPC.

3. This petition was entertained and notice thereof ordered to be issued. Vide subsequent order dated 12th August, 2015 which has continued to be in
CM(M) 201/2015

force, the respondent was restrained from taking any coercive steps against the petitioner pursuant to the order dated 16th March, 2015 (SIC for 13th February, 2015).

4. The petition has remained pending since then.

5. Counsel for the petitioner, counsel for the sole respondent/Nr.DMC and the counsel for Ms. Sunita Khanna, who has filed CM No. 7209/2017 for intervening in this petition have been heard.

6. The position which emerges after hearing the counsels is:-

i) that the petitioner is operating a Dhaba from property No. 8387, Roshanara Road, Delhi;

ii) the petitioner applied for renewal of a street licence for the year 2014-15 to carry on the business of operating Dhaba from the said premises and which application was rejected vide order dated 12th November, 2014 of the respondent/Nr.DMC inter-alia for the reason of the petitioner having not filed the documents which were sought from him;

iii) the suit from which this petition arises was filed by the petitioner impugning the order dated 12th November, 2014;

iv) the suit was accompanied with an application under Order XXXIX Rule 1 & 2 of the CPC and which application was dismissed by the Court of the Civil Judge before which the suit was pending;

v) the petitioner/plaintiff preferred an appeal under Order 43 Rule 1(r) of CPC and which appeal has been dismissed vide order impugned in this petition.

7. Thus, the effect of the interim order in the petition is that the petitioner continues to operate the Dhaba aforesaid and the respondent/Nr.DMC has been restrained from taking any action against the petitioner.

8. The petitioner claims to be in occupation of property No.8387 aforesaid as a tenant.

9. The intervenor Ms. Sunita Khanna claims to be the owner of the said property and does not admit the petitioner to be a tenant under her in property No. 8387. It is the case of the intervenor Ms. Sunita Khanna that the petitioner is an unauthorised occupant of the property and Ms. Sunita Khanna has instituted a suit for recovery of possession against the petitioner.

10. The petitioner does not admit Ms. Sunita Khanna to be the landlord and claims to be a tenant in property No.8387 under some other persons.

11. The counsel for the respondent/Nr.DMC has drawn attention to the order dated 12th February, 2016 in this petition whereby the submission of the counsel for the petitioner that he will supply all the relevant documents sought by the Nr.DMC was recorded and the respondent/Nr.DMC was directed to pass a fresh speaking order on the application of the petitioner for licence. The Counsel for the respondent/Nr.DMC has next drawn attention to page 218 of the paper book being a copy of the speaking order dated 24th May, 2016 passed by the Deputy Health Officer of the respondent/Nr.DMC in pursuance to the said order. The contention of the counsel for the respondent/Nr.DMC is that with the order dated 12th February, 2016 and the speaking order dated 24th May, 2016, the cause of action with which the suit,

from which this petition arises, was filed has disappeared and the remedy, if any, of the petitioner was to take fresh proceedings challenging the speaking order dated 24th May, 2016.

12. I have considered the aforesaid contention.

13. The order dated 12th February, 2016 in this petition does not provide that on passing of the speaking order, the petitioner would be required to take fresh proceedings. It cannot also be lost sight of that this petition though under Article 227 of the Constitution of India is emanating from a suit and which is still pending. The issue for consideration in this petition is the propriety of the orders of the Court below of denying interim relief during the pendency of the suit sought by the petitioner/plaintiff. Merely because a fresh speaking order has been passed would not make this petition infructuous and as long as the suit and to continuation whereof no objection has been raised after the speaking order, is pending, this petition will have to be decided. Moreover, now that the petition has been pending for considerable time, it is deemed appropriate to decide the lis in this petition only and not relegate the parties to a fresh proceedings.

14. Counsel for the petitioner has referred to **Anil Kumar Gupta Vs. Municipal Corporation of Delhi** 2010 SCC OnLine Del 3329 inter-alia holding that as long as the person is not dispossessed in accordance with law from the premises, the non-availability of a rent receipt with the said person cannot be a ground for denial of licence by the Municipal Corporation of Delhi.

15. In the present case also, while the petitioner claims to be a tenant in the property with respect to which licence was sought, the stand of the

CM(M) 201/2015

intervenor Sunita Khanna is that the petitioner is an unauthorised occupant. The said question is to be decided in the suit for recovery of a possession which is claimed to have been filed by the intervenor Ms. Sunita Khanna against the petitioner. Till the decree for possession if any passed in the said suit is executed and till the petitioner is in possession of the premises, the petitioner, for the reason of the owner of the property not issuing the rent receipts to the petitioner, cannot be prevented from beneficial use and enjoyment of the premises permitted by law by obtaining the licence therefor. Following the aforesaid dicta, it is held that the petitioner cannot be denied licence for the reason of not producing the proof of being in lawful possession of the premises.

16. The second contention of the counsel for the respondent/Nr.DMC is that the petitioner has been denied licence in the speaking order also for the reason of though operating Dhaba from properties no. 8387, 8395 and 8396, by amalgamating the same, not producing any documents of lawful possession of properties No. 8395 and 8396 at Roshanara Road, Delhi.

17. Counsel for the intervenor Ms. Sunita Khanna on enquiry states that the said Ms. Sunita Khanna is also the owner of property No. 8395 and 8396.

18. On further enquiry, it is stated that the petitioner is in possession of properties No. 8395 & 8396 as well and the suit for possession stated to have been filed is with respect to all the three properties. Counsel for the intervenor Ms. Sunita Khanna has in this regard handed over in the Court a copy of the proceedings in CS No.496/2013 of the Court of Sh. Jitendra

Kumar Mishra, Additional District Judge, Delhi recording the statement of Sh. Chetan Prakash, S/o Tej Ram inter-alia to the effect that the said Chetan Prakash was running a Dhaba in property No. 8387, 8395 as well as 8396. It is stated that the petitioner Om Parkash has since died and Chetan Prakash is the Special Power of Attorney holder of the legal representatives (who have already been substituted in this petition) of the said Om Prakash.

19. Counsel for the petitioner, however, on enquiry states that the legal representatives of Om Parkash are not in possession of properties No. 8395 & 8396, Roshnara Road, Delhi and the Health Trade Licence for Dhaba was not sought for properties No. 8395 and 8396 and was sought only for property No. 8387. It is yet further stated that the petitioner even now is seeking the licence only for 8387 and not for 8395 & 8396.

20. Counsel for the respondent/Nr.DMC on enquiry states that the licence has to be obtained annually.

21. Counsel for the petitioner states that the petitioner had a licence till 2013-2014 and the relief claimed in the suit from which this petition arises is for the years 2014-15 as well as for subsequent years.

22. Counsel for the respondent/Nr.DMC states that licence have to be got renewed by annually applying therefor.

23. In this view of the matter, this petition as well as the suit from which this petition arises are disposed of with the following directions:-

- i) Till the time the petitioner is not dispossessed in accordance with law from property No. 8387, Roshanara Road, Delhi, the petitioner is not to be denied trade licence for carrying on/operating a Dhaba therefrom on the ground of non-production of documents of lawful

possession of the said property No. 8387;

ii) However, it will be open to the respondent/Nr.DMC, if the petitioner has not satisfied any of the other requirements for grant/renewal of licence, take appropriate action therefor;

iii) The respondent/Nr.DMC is however, entitled to take whatsoever action as may be required in law to prevent the Dhaba from operating from property No. 8395 & 8396, Roshanara Road, Delhi;

iv) The aforesaid would not prevent the petitioner from, in accordance with law, applying for a renewal of the licence annually and an application shall be considered in accordance with law and if the petitioner does not so apply for renewal, the respondent/Nr.DMC would again be entitled to take appropriate action.

24. A copy of this order be furnished to the suit court for disposal of the suit in terms hereof.

25. The petitioner shall be required to apply for renewal in terms of this order at the time next prescribed under the law.

26. The next renewal of the licence shall be considered as and when next due in accordance with law.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 02, 2017

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