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

+ RFA 678/2010

INDERJIT SINGH Appellant

Through Mr.Sunklan Porwal and Ms.Ginny
Gawri, Advs.

versus

NDMC & ORS Respondent

Through Mr.Vivek B.Saharya, Addl. Standing
Counsel for NDMC/R-1 with
Mr.Layak Ram, Junior Assistant.
Mr.Harpreet Singh and Mr.Rajesh
Gupta, Advs. for R-3.

AND

+ RFA 800/2010

VIJAY KUMAR Appellant

Through Mr.Harpreet Singh and Mr.Rajesh
Gupta, Advs.

versus

INDERJIT SINGH & ORS Respondent

Through Mr.Sunklan Porwal and Ms.Ginny
Gawri, Advs. for R-1.
Mr.Vivek B.Saharya, Addl. Standing
Counsel for NDMC/R-2 with
Mr.Layak Ram, Junior Assistant.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI (ORAL)

ORDER

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24.08.2017

1. Both the instant appeals are decided by this common order inasmuch as the judgment impugned is common and the parties are also common to the suit filed before the Court below.
2. Both the appeals have been filed being aggrieved by the impugned judgment and decree dated 26.07.2010 passed in Civil Suit No.363 of 2009 vide which the suit filed by the appellant-Inderjit Singh was dismissed.
3. Facts in brief are that a suit was filed by the appellant-Inderjit Singh for declaration, perpetual injunction and mandatory injunction. It was contended in the plaint that NDMC is the owner of Palika Bazar complex and allotted one shop no.232, Palika Bazar, Connaught Place, New Delhi to one Ms.Shagufta Ali on 18.05.1979. After sometime, the said shop was transferred by Ms.Shagufta Ali to respondent no.2- Sh.Attar Singh Wadhwa. Respondent no.2 approached the plaintiff/appellant- Inderjit Singh and offered him to be the partner of his firm. On 23.10.1998, they became the partners of M/s Fashion Corner being run in the suit premises. The said partnership was dissolved vide deed dated 08.03.2000. Documents were submitted to the office of NDMC requesting the transfer of rights of the suit property in favour of the plaintiff/appellant-Inderjit Singh. Thereafter, respondent no.2-Attar Singh Wadhwa started demanding more money from the plaintiff and wrote letters dated 01.11.2002 and 04.12.2002 to the NDMC. On 18.02.2003, another letter was written by the respondent no.2 to the NDMC confirming about his execution of documents in favour of the plaintiff/appellant.

The plaintiff/appellant had an apprehension that the officials of NDMC were planning to transfer the suit property in favour of some other person. After the filing of the suit, the respondent no.2-Attar Singh Wadhwa had alleged that he had entered into a partnership with respondent no.3-Vijay Kumar on 24.06.2003 and dissolved the same on 21.08.2003. It was claimed that the respondent no.3 had no right, title or interest in the suit shop. In the first week of May 2004, the officials of NDMC informed the plaintiff/appellant-Inderjit Singh that his request for transfer of the suit shop was declined.

4. The respondent no.1-NDMC contended in its written statement that the suit was hit by Section 385 of the New Delhi Municipal Council Act. It was further contended that the claim of the plaintiff/appellant-Inderjit Singh to transfer the suit shop in his name was rejected vide letters dated 13.08.2001 and 05.10.2001. Thereafter, the respondent no.2-Attar Singh Wadhwa had applied for grant of permission to induct respondent no.3-Vijay Kumar as a partner and on inspection, it was found that there was a privity of contract between respondent no.2 and 3.

5. The respondent no.2-Attar Singh Wadhwa contended in his written statement that earlier the representation of the plaintiff/appellant-Inderjit Singh for transferring the suit shop in his name had been rejected by the NDMC on 13.08.2001. After the revocation of licence in favour of respondent no.2, he entered into a partnership with respondent no.3 vide deed dated 24.06.2003. The said partnership was dissolved vide deed dated 21.08.2003 and thereafter the respondent no.3 is continuing with the business in the suit shop.

6. Respondent no.3-Vijay Kumar in his written statement had contended that he was a bona fide transferee of the suit shop on valuable consideration. It was contended that the suit was not maintainable in view of Section 53(a) of the Transfer of Property Act.

7. On the basis of the pleadings of the parties, following issues were framed by the Court below :

(1)Whether the present suit is barred against defendant no.1 by Section 385 of the New Delhi Municipal Council Act, 1994?

(2)Whether the suit has not been properly valued for the purpose of court fee and jurisdiction, if so its effect?

(3)Whether the plaintiff is entitled for relief of declaration as claimed by him?

(4)Whether the plaintiff is entitled for relief of mandatory injunction as claimed by him?

(5)Relief.

Thereafter, following additional issues were framed :

(1)Whether the documents executed between defendant no.2 and 3 are liable to be set aside?

(2)Whether there is collusion between plaintiff and defendant no.2?

(3)Whether the defendant no.3 is protected by virtue of provision of Section 53(a) of the Transfer of Property Act?

(4)Relief.

8. The Court below vide impugned judgment dated 26.07.2010

dismissed the suit. Issue No.1 was decided against the defendant. Issue no.2 was decided in favour of the plaintiff. Additional issue no.1 was decided against the plaintiff. Additional issue no.2 and 3 were decided against the defendant no.3. Main issue nos.3 and 4 were decided by the Court below observing that the act of NDMC declining the request of the plaintiff/appellant-Inderjit Singh and accepting the claim of respondent no.3-Vijay Kumar was not fair, just and reasonable and transfer of suit shop in favour of respondent no.3-Vijay Kumar was set aside. While dismissing the suit, the trial court gave the parties the liberty to approach NDMC afresh and NDMC was directed to decide their claim afresh. NDMC was further directed to formulate a clear policy to allow the introduction of a partner or regularize shops in Palika Bazar.

9. Feeling aggrieved by the dismissal of the suit and setting aside the claim of the respondent no.3 for transfer of suit shop in his favour, instant appeals have been preferred.

10. Argument advanced by the counsel for the appellant-Inderjit Singh is that the case of the plaintiff/appellant was duly covered by the policy of NDMC vide Resolution No.6 dated 18.03.1999 which provides for transfer of shop in favour of other persons/partners. It was further argued that the right and title over the suit shop was duly transferred by the respondent no.2 in favour of the plaintiff/appellant vide dissolution deed dated 08.03.2002. The claim of the plaintiff/appellant was wrongly rejected by the NDMC inasmuch as earlier on the same basis the transfer of the said shop was allowed from Ms.Shagufta Ali in favour of respondent no.2. The plaintiff/appellant

further claimed that the NDMC acted in an arbitrary manner while admitting the claim of the respondent no.3-Vijay Kumar on the suit shop on the same basis.

11. Argument advanced by the counsel for NDMC is that the decision in rejecting the claim of the plaintiff/appellant-Inderjit Singh and accepting the claim of respondent no.3-Vijay Kumar was rightly taken by NDMC, but after coming to the decision of the trial court vide impugned judgment, a fresh policy has been adopted for transfer of shops in the NDMC Area in the year 2016.

12. Argument advanced by the counsel for the appellant/respondent no.3-Vijay Kumar is that he was the bona fide licensee of the shop in question. He entered into a partnership with respondent no.2-Attar Singh Wadhwa and the said partnership was thereafter dissolved. After the dissolution of the partnership, the shop in question was rightly transferred in his name by the NDMC but the Trial Court has erroneously set aside the said transfer in his favour.

13. I have heard the arguments advanced by the counsel for the parties and have gone through the evidence and documents placed on record.

14. From the facts and evidence produced on record, it is an admitted fact that the plaintiff/appellant-Inderjit Singh had applied to the NDMC for transfer of suit shop in his favour through an application vide Ex.PW1/7. The said application was based on a No Objection Certificate Ex.PW1/6 given by the respondent no.2, dissolution deed dated 08.03.2000 and an affidavit of respondent no.2. He also proved on record copies of telephone bills as Ex.PW1/9

and Ex.PW1/10. He had also provided the electricity bills as Ex.PW1/11 (collectively), statement of account of partnership firm as Ex.PW1/13. On 18.02.2003, respondent no.2 wrote a letter to NDMC confirming execution of documents by him i.e. partnership deed, dissolution deed and no objection certificate.

15. It has also come on record that earlier too, the plaintiff/appellant-Inderjit Singh had applied for transfer of suit shop and the same was dismissed by NDMC vide letters dated 13.08.2001 and 05.10.2001. The said orders have never been challenged by the plaintiff/appellant and the same have attained finality.

16. It is further apparent from the record that a partnership was entered into between respondent no.2-Attar Singh Wadhwa and respondent no.3-Vijay Kumar vide deed dated 24.06.2003 which was registered on 14.07.2003 in the office of Sub Registrar. The said partnership firm was dissolved vide deed dated 21.08.2003 and by way of this deed, the respondent no.2 transferred all his right in respect of the suit shop in favour of respondent no.3. It is an admitted fact that the suit shop has been regularized by NDMC in favour of respondent no.3.

17. It is matter of record that the suit shop was earlier given to one Ms.Shagufta Ali on 17.05.1979 and thereafter it was transferred in favour of respondent no.2-Attar Singh Wadhwa. The respondent no.2 was the licensee of the suit shop and he had no right to transfer the rights of the same to anyone without the consent of NDMC. It has come on record that the earlier application for transfer of the suit shop in favour of the plaintiff/appellant-Inderjit Singh was rejected by

NDMC vide letters dated 13.08.2001 and 5.10.2001. The present dispute arose when his application for regularisation or transfer of suit shop in his favour was declined by NDMC which he had applied on the basis of dissolution of partnership, NOC and affidavit executed by respondent no.2-Attar Singh Wadhwa. Another important aspect of the matter is that the officials of NDMC allowed the transfer of suit shop in the name of respondent no.3-Vijay Kumar on the basis of dissolution deed of partnership firm and the NOC. In doing so, the officials of NDMC have not acted in a fair and just manner. The NDMC must have a clear cut policy in regularisation or transfer of any premises to any person and there should not be any ambiguity or arbitrariness in the same.

18. In view of the above discussion, this Court is of the considered opinion that the Court below has rightly held that the public authority being NDMC in the instant case must not abuse its power but act in good faith and with utmost reasonability. The observation of the Court below that the act of NDMC in declining the request of the plaintiff/ appellant-Inderjit Singh and accepting the claim of the respondent no.3-Vijay Kumar is not fair, just or reasonable, does not suffer from any illegality or infirmity and there is nothing wrong in setting aside of the transfer of suit shop in favour of respondent no.3.

19. Consequently, as discussed above, there is no merit in the instant appeals. Both the appeals are dismissed accordingly.

20. During the course of evidence, recommendations of the Sub-Committee set up under Section 9 of the NDMC Act, 1994 constituted vide resolution dated 15.12.2016 has been placed on

record. The parties concerned are at a liberty to approach the concerned authority.

21. No order as to costs.

P.S.TEJI, J

AUGUST 24, 2017
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