$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of judgment : 13.02.2017*
+ W.P.(C) 5546/2015
KAMLA MARKET TRANSPORTERS ASSOCIATION
..... Petitioner
Through Mr. Sachin Chopra, Mr. Shubmit Hans and Ms. Aastha, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION (NDMC NORTH) & ORS
..... Respondents
Through Ms. Mini Pushkarna, standing counsel with Ms. Anushruti, Ms. Vasundhara Nayyar and Ms. Namrata Mukin, Advs for R-1.
Mr. Arun Bhardwaj, Adv for R-2.
Mr. Gurmehar S. Sistani, Adv for R-3.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner is the Kamla Market Transporters Association. The petition has been filed through the President of the Association.

2 Kamla Market had been conceived in the year 1951 as a commercial market to rehabilitate and provide means of sustenance to the displaced persons/migrants/refugees. In 1979, the Ministry of Rehabilitation and Urban Development transferred the administrative rights along with complete control of the said market to the Land and Development Office,

Directorate of Estates and Central Public Works Department. In consonance with the decision of the Cabinet of the year 1978, leasehold rights were to be granted in favour of licensees occupying shops at Kamla Market. The petitioner association was a part of this program. Lease deeds in the year 1980 to 1990 were executed in favour of different members of the petitioner association by the Land and Development Office/respondent No. 2. In the year 1992, conversion program of leasehold to freehold was launched in Delhi. Fee was to be charged as per the size of the plot and the notified rates of the land which had been promulgated by the L & DO. Submission is that on 22.05.2001, a decision was taken by the Ministry of Urban Development that the land rates applicable to Lajpat Rai Market would apply to Kamla Market as well.

3 Attention has been drawn to the said letter dated 22.05.2001 addressed by the L & DO to the Director of Estate, Ministry of Urban Development wherein it was recorded that the license fee as also the ground rent applicable to land rates of North Zone and Lajpat Rai Market would apply to Kamla Market. Apart from the averments in the petition, learned counsel for the petitioner has placed heavy reliance upon this communication to substantiate his submission that the land rates applicable to Lajpat Rai Market would be

applicable to Kamla Market. To substantiate the same submission, attention has been drawn to a subsequent document dated 13.03.2007 which is another letter written by Public Relation Officers of the L & DO to the President to the Kamla Market Welfare Association wheein this decision was reiterated.

4 Learned counsel for the petitioner has also drawn attention of this Court to the Gazette Notification dated 24.03.2006 of the Government of India, Ministry of Urban Development transferring some market complexes falling under their jurisdiction i.e. from the Land and Development Office on as is where is basis to the Corporation i.e. MCD. Kamla Market also stood transferred. Learned counsel for the petitioner submits that paragraph 3 of this Notification clearly states that upon this transfer, the New Delhi Municipal Council would follow the guidelines and procedure followed by the L & DO Office and the Director of Estates in all matters including matter of conversion from leasehold into freehold; the local bodies i.e. Municipal Corporation of Delhi as also the New Delhi Municipal Council being bound by this part of the Notification, the rates now sought to be charged by respondent No. 1/North Delhi Municipal Corporation were not only exorbitant are also not in terms of this Notification. This part of the argument has been addressed by the learned counsel for the petitioner to

substantiate his submission that the brochure No. 13 which has been circulated by respondent No. 1 where the land rates for conversion from leasehold to freehold have been notified are not as per this Notification and also do not follow the rates which are applicable to Lajpat Rai Market which was the earlier decision of both respondent No. 1 and respondent No. 2 in view of their communication dated 22.05.2001 as also the communication dated 13.03.2007; submission being that these communications were both before and after the gazette notification of 24.03.2006 and both these communications, at the cost of repetition, have reiterated that the rates applicable to Lajpat Rai Market for calculating license fee and ground rent as also the conversion charges would be applicable to Kamla Market as well.

5 The petition of the petitioner association is in fact premised on this brochure of the year 2013 circulated by respondent No. 1 wherein a scheme of conversion has been promulgated by respondent No. 1; submission is that in this scheme, the Kamla Market has been categorized as category 'D' wherein the Lajpat Rai Market falls in category 'E'. The petitioner association should also fall in category 'E'; the rates which are applicable to Lajpat Rai Market should be applicable to Kamla Market as well. Additional submission being that the circular No.D/338/SO (STC) dated 14.07.2014 and

the rates mentioned therein for conversion from leasehold to freehold is clearly contrary to the aforenoted stand of both respondents No. 1 & 2. The rates notified by the NCT of Delhi on 22.09.2014 vide Notification No. 5943 cannot be made applicable for the purpose of conversion as the whole purpose of that Notification was only to get the revised stump duty for the purpose of registration of instruments relating to land and immoveable property in Delhi.

6 Learned counsel for the petitioner further submits that the rates followed by respondent No.3/New Delhi Municipal Council are in fact the correct rates; both the Corporation i.e. respondent No. 1 and respondent No.3 being sister concerns, the rates applied by respondent No.3 should also be applied by respondent No. 1; respondent No. 1 charging higher rates has led to a discrimination qua the petitioner. It is pointed out that respondent No.3 had also issued a brochure on the same date as that issued by respondent No. 1 i.e. brochure of the year 2013 which contained the same guidelines but on legal advice, it had withdrawn the said brochure; this was primarily for the reason that respondent No.3 was of the view that the Notification dated 24.03.2006 had cast a mandate upon respondent No.3 to follow the rates which had been promulgated by the L & DO and it had no independent

authority to lay down any separate rates. Contention being that respondent No. 1 should also follow the same procedure.

7 It is further pointed out that these circle rates now sought to be applied by respondent No. 1 are applicable to plots of market association whereas the shops of the petitioner are at one level and there is no other construction over their single storey structure and the rates mentioned in table 1.3 of the Notification No. 5943 (dated 22.09.2014) cannot be made applicable.

8 The prayer made in the petition seeks a quashing of the brochure of the year 2013 as also to apply the rates which had been promulgated by respondent No. 2; third prayer being that the rates applicable to Lajpat Rai Market should be applicable to Kamla Market as well.

9 The stand of respondent No. 1/North Delhi Municipal Corporation is evident from their counter affidavit. Submission is that the Notification of 24.03.2006 is a matter of record; this Notification has to be interpreted in the manner that the markets in question were transferred to the MCD by the L & DO on an as is where basis and the MCD has full independent authority to exercise all statutory powers including imposition of conversion charges. The contention of the petitioner that this transfer by the L & DO to the MCD was only an administrative control is incorrect. Respondent No. 1 has now

become the owner in terms of the definition of 'ownership' as given in Section 2 (37) of the Delhi Municipal Act, 1975 (DMC Act). Reliance has been placed on a letter dated 16.01.2012; this letter has been highlighted by the Department to substantiate the submission that they have complete and independent control over the aforenoted market which had been transferred by the L & DO to them in terms of the gazette notification dated 24.03.2006. The scheme of conversion from licensee to leasehold and leasehold to freehold has been detailed in the brochure of 2013 (which is now the subject matter of challenge); one time charge for conversion of leasehold to freehold have been annexed; circle rates in terms of resolution No. 554 dated 24.12.2007 have been adopted for calculating these rates. The circle rates which were earlier of the year 2007 (relied upon by the petitioner himself) were subsequently enhanced by a subsequent Notification dated 22.09.2014 issued by the Government of NCT of Delhi which was in consonance with the (Delhi Stamp Prevention of Undervaluation of Instruments) Rules, 2007. The Government is fully empowered to lay down the circle rates for all types of immoveable properties. The categorization of colonies for the purpose of fixing minimum circle rates has been adopted by the Government. The Municipal Valuation Committee (MVC) (under Section 116 of the DMC

Act) had submitted its report for the purpose of valuation of property tax under the Unit Area Method. This has been upheld by the Courts. It was on the basis of the report of the MVC that the classification of the acquired land and building was effected. The MVC has categorized the Kamla Market under category 'D' and Lajpat Rai Market in category 'E'; this categorization by the MVC on the basis and strength of their report cannot be challenged and reliance on the letters dated 22.05.2001 and 13.03.2007 (inter-se communications between respondents No. 1 & 2) have no bearing as this categorization has taken place in terms of the expert committee report which is the MVC. The contention of the petitioner that the rates applicable to the petitioner should not be those of a plot is also a misplaced and erroneous submission. It is pointed out that as per the standard plan of Kamla Market, the whole market is single storey; there is no question of floors over and above the ground floor; illegal deviations have been demolished. All shops in Kamla Market are single storeyed except 13 structures where a flat exists on the first floor. There are total 271 shops in Kamla Market out of which 22 have become freehold. 45 shops are on license fee basis but 155 shops are on leasehold basis; the present petition does not disclose the number of persons who have filed this petition and who the members of this association. Respondents No. 1 & 3 are two different organizations having two separate entities and the contention of the petitioner that the rates for conversion as adopted by respondent No.3 should be made applicable by respondent No. 1 is a misplaced submission. On all counts, this petition deserves to be dismissed.

10 The stand of respondent No. 2/L & DO is that the Gazette Notification dated 24.03.2006, it had transferred all these markets including the Kamla Market to respondent No. 1; it has no authority or say left in the matter.

11 Respondent No.3/New Delhi Municipal Council submits that it has been arrayed as a party only to evidence the submission of the petitioner that the rates adopted by respondent No.3 are distinct from the rates of respondent No. 1 and similar brochure of the year 2013 had been withdrawn by respondent No. 1. Respondent No.3 has also chosen not to file any counter affidavit.

12 Arguments have been heard.

13 This Court notes that the petitioner has filed this petition through its Association but the number of persons who form a part of this Association are not clear. Even on a query, put to the learned counsel for the petitioner

on this score, he had no answer. The petition is not clear as to whether the petitioner association wants a conversion from their status of a licensee to a leasehold or to a leasehold to freehold. Again a query has been put to the learned counsel for the petitioner on this score to which again he has no answer. The averments in the petition do not disclose any such status. This would be relevant in view of the submission of respondent No. 1 that brochure No. 13 (annexed along with the counter affidavit of respondent No. 1) has detailed separate charges to be paid if conversion is from licenser to leasehold; distinct charges are to be paid, if conversion is from leasehold to freehold. The eligibility criteria for an application to be made has also been detailed in the said brochure. Para II (page 358 of the paper book) has been highlighted. Contention of the respondent is that the respondent is unaware as to whether the petitioner association is a rightful allottee or whether he has come into possession by virtue of a partnership deed/dissolution deed. The rates would be different for the said different allottees according to their categorization. Attention has also been drawn to page 359 of the paper book where formal calculation for a one time conversion fee from leasehold to freehold has been given. Submission is that the petitioner falls in category

'D'. The rates prescribed in next column @ Rs.1,30,800/- per square meter would be applicable to that category.

14 This Court notes these submissions and also notes that till date, the admitted position is that the petitioner association and none of its members have made any application before the Department for conversion of their status. Apart from the fact that the petitioner association is unclear as to whether they want conversion from licensee to leasehold or leasehold to freehold; this Court also notes with pain that this brochure had been notified in the year 2013 but the petitioner Association had come to the Court two years later i.e. in 2015 and that too without any prior application having been made to the Department pursuant to which any supposed demand could have been raised upon them. Their whole case is bordered upon this brochure apprehending some exorbitant or arbitrary rate for conversion which in the absence of any such application having been made this Court is of the view that this is a premature submission.

15 The status of each member of petitioner association is unknown. This Court also notes that out of 271 shops at Kamla Market, 22 shops have already converted their status to freehold and balance remain. The entire balance is not the petitioner association. This has been admitted by the

learned counsel for the petitioner association. In these circumstances, it would be advisable for the petitioner to first approach the Department seeking a conversion of their status; whether from a licensee to a leasehold or a leasehold to a freehold and after a demand is raised upon them, which according to them has also already pressed by them to be illegal and arbitrary, only then a cause of action could arise in their favour. This petition is clearly premature bordered only on apprehensions and presumptions.

16 This Court also notes that the submission of the petitioner that the stand adopted by respondent No.3 in withdrawing the brochure of 2013 should be a mandate upon respondent No. 1 is also a misplaced submission. Admittedly respondents No. 1 & 3 are two independent and separate entities. These are policy decisions which have been taken by respondent No.1 and respondent No. 3 separately. A policy decision of one Department cannot bind the policy of another Department. Thus, the submission of the petitioner that the conversion rates proposed to be followed by respondent No.3 should be followed by respondent No. 1 is a mis-placed submission. It is rejected.

17 The submission of the petitioner that the rates applicable to Lajpat Rai Market should be applied to Kamla Market is also a mis-placed submission

as Lajpat Rai Market falls in category 'E' and Kamla Market falls in category 'D'. This is clear from the report of the MVC which is a statutory body constituted under Section 116 of the DMC Act and it was on their report that the categorization of these colonies had taken place. The report of the MVC has not been challenged before this Court. This Court thus cannot uphold the submission of the petitioner that Lajpat Rai Market and Kamla Market should be treated on an equal footing. This submission is also rejected.

18 The last submission of the petitioner that the conversion charges for Kamla Market cannot be according to plot size but has to be keeping in the mind the fact that they are only ground floor shops is again a mis-placed submission. Relevant would it be to note the stand of respondent No. 1 on this score. Respondent No. 1 has categorically stated that the entire Kamla Market, as per a standard plan, has a ground floor coverage and only 13 shops have a first floor flat. Needless to state that the Department would charge the rates which would be applicable to a one level structure.

19 This Court need not delve into this and any observations made by this Court in this judgment would not come to the benefit of the petitioner as the petitioner association even before making any application for other

conversion charges has approached the Court assuming that some charges which would be exorbitant would be levied upon them which is not borne out from the stand of the Corporation. At the cost of repetition, no application for conversion of their status from licensee to leasehold or leasehold to freehold having been made before the Department, how the petitioner association can presume that the charges over and above the rightful charge would be levied upon them is unclear and unanswered. This petition is nothing but an abuse of the process of the Court.

20 This petition has remained pending before this Court since the last one and half years; precious time of the Court has been spent. Dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

FEBRUARY 13, 2017
A