

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

% Date of decision: 11th December, 2018

+ LPA 535/2016 & CM. No. 35819/2016

ASHA CHITKARA

..... Appellant

Through: Mr. R.K. Saini, Ms. Sonia Sharma,
Mr. Rishi Khanna, Ms. Neha Chugh,
Advs.

versus

NORTH DELHI MUNICIPAL COPRORATION
& ORS.

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel
with Ms. Swagata Bhuyan, Ms. Shiva
Pandey and Ms. Neha Goel, Advs. for
NDMC.
Mr. Shailen Bhatia, Ms. Ekta Nayar
Saini, Ms. Neelam Pathak and
Ms. Vidushi Chandna, Advs.

AND

+ LPA 499/2018 & CM. Nos. 35389/2018 and 35390/2018

ARTI RANI

..... Appellant

Through: Mr. Viraj R. Datar, Adv. with
Mr. Rajeev Sirohi & Mr. Chetan
Lokur, Advs.

versus

NORTH D M C & ORS

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel
with Ms. Swagata Bhuyan, Ms. Shiva
Pandey and Ms. Neha Goel, Advs. for
NDMC.

AND

+ LPA 612/2018 & CM. Nos. 44802/2018, 44803/2018, 44804/2018,
44805/2018 and 48777/2018

ARTI RANI

..... Appellant

Through: Mr. Viraj R. Datar, Adv. with
Mr. Rajeev Sirohi & Mr. Chetan
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versus

NDMC & ANR

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel
with Ms. Swagata Bhuyan, Ms. Shiva
Pandey and Ms. Neha Goel, Advs. for
NDMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM. No. 44802/2018 in LPA 612/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**CM. No. 44805/2018 (for condonation of 15 days delay in filing
the appeal) in LPA 612/2018**

CM. No. 35390/2018 in LPA 499/2018

For the reasons stated in the applications, the delay is
condoned. Applications stand disposed of.

LPA 535/2016 & LPA 499/2018

1. These two appeals arises from the order dated March 02,
2016 whereby the learned Single Judge decided two writ petitions
being W.P.(C) No. 2347/2015 filed by Asha Chitkara and W.P.(C)

No. 3146/2015 filed by Arti Rani impugning the refusal of the North Delhi Municipal Corporation to grant leasehold rights to them in respect of shop Nos. 2 and 1 respectively in MCD Market, Karol Bagh, New Delhi licensed to them and further seeking a restraint against the North Delhi Municipal Corporation from taking any coercive action for the eviction/dispossession of the appellants from the said shops till leasehold rights therein are granted to them and with the further relief of mandamus to the North DMC to grant leasehold rights with respect to the shops licensed to each of them.

2. Suffice it to state, the learned Single Judge has noted the facts from W.P.(C) No. 2347/2015, as the facts in both the writ petitions are similar. The facts as noted by the learned Single Judge are – (a) that the appellant was granted licence to the shop in pursuance to a bid made by her in response to a notice dated March 26, 1997 inviting tenders; (b) that the said licence was for a period of five years; (c) that the market in which the shop is situated was constructed in the year 1976 by the Municipal Corporation of Delhi (MCD) being the predecessor in interest of the respondent NrDMC; (d) that the market initially comprised of 65 shops all of which were given on licence basis; (e) however the MCD vide Resolution No. 982 dated March 05, 1979 decided to grant 99 years leasehold rights

to the licensees of shops in the said market and accordingly licences of approximately 45 shops in the market were converted into leasehold; (f) that inspite of the said resolution of 1979, the MCD in the year 1997 allotted shop to the appellant on licence basis; (g) that the licence of the appellant was renewed for a further period of five years; (h) that the appellant vide application dated March 01, 2007 applied for conversion of the licence into leasehold; (i) MCD vide letter dated April 02, 2007 called upon the appellant to make payment of conversion charges of ₹30,28,410/- and which was paid by the appellant on August 29, 2007; (j) MCD however did not grant leasehold rights compelling the appellant to upon coming to an end in October, 2007 of the second term of five years of the licence, applied for renewal of the licence; (k) however the licence was not renewed and on the contrary MCD vide letter dated August 13, 2009 cancelled its earlier letter dated April 02, 2007; (l) however the amount of ₹30,28,541/- received from the appellant was not refunded and it was merely stated that the same would be adjusted against the outstanding dues of licence fee/overstay; (m) that the MCD vide letter dated February 03, 2009 called upon the appellant to vacate the premises; (n) that the respondent North DMC

is discriminating against the appellant in not converting the licence of the appellant into leasehold though the same had been allowed for other shops in the market.

3. Insofar as the counter affidavit filed by North DMC is concerned, the learned Single Judge has taken out the defence as set out in W.P.(C) No. 3146/2015. The facts as pleaded by the North DMC are, (i) that the subject municipal market at Saraswati Marg, Karol Bagh containing various Shops, Halls, Tharas, Kothries and Office Spaces was inhabited on licence basis through auction process after fixing reserve price, in terms of MCD Resolution No.181 dated October 30, 1977; (ii) that various licence holders were not regular in payment of licence fees, due to which huge dues accumulated as arrears; (iii) representations were also received from the Association of Allottees for allotment of shops to them on 99 years lease; (iv) MCD Resolution No.982 dated March 05, 1979 was passed agreeing to grant 99 years leasehold rights to existing licencees of the market on fulfilment of certain conditions; (v) the said Resolution applied only to “existing licencees” as is evident from Commissioner’s letter No.128/C&C dated January 05, 1979; (vi) the genesis of the said Resolution was to earn more per month

by converting licences into leaseholds on the conditions stipulated;

(vii) on further demand of licencees of the said market, the conditions were varied vide MCD Resolution No.1137 dated February 18, 1980; (viii) that vide MCD Resolution No.1317 dated March 23, 1987 it was resolved that extension of licences of 5 years at a time, upto total of 10 years should be allowed in respect of canteens, tourist sites, open air restaurants, office units, shops and halls licenced by the MCD; (ix) that since the Resolution No.1317 dated March 23, 1987 provided for allotment only on licence basis, subsequently a decision was taken vide MCD Resolutions No.494 dated November 29, 2005 and 495 dated November 29, 2005 to allow conversion from licence to leasehold on certain conditions;

(x) that though the said Resolutions dated November 29, 2005 were with the concurrence of the Commissioner MCD, there were certain amendments by the Standing Committee and fresh proposals were mooted by the Commissioner but which were not finally approved and accepted – no Rules and Regulations in pursuance thereto were formulated; (xi) no consensus having been reached between the Commissioner and the Standing Committee of the MCD, which is the *sine qua non* for disposal of immovable property of MCD under Section 200-203 of the Delhi Municipal Corporation Act, 1957

(MCD Act), the policy adopted in the Resolution dated November 29, 2005 was never communicated to the public and never put in public domain and no applications invited thereunder for conversion of licences into leasehold and no conversion carried out thereunder; (xii) that the subsequent MCD Resolution No.894 dated March 05, 2007 related only to leasehold properties and has no applicability to the subject shops; (xiii) that vide another MCD Resolution No.189 dated July 19, 2010 it was decided to allow extension of licence by another 5 year on the terms and conditions contained thereunder and it was specifically stated therein that the policy of 2005 (i.e. vide Resolutions dated November 29, 2005) is not applicable in cases of auction and that auction will only be for licence basis and there will be no auction for conversion from licence to lease; (xiv) that in terms of decisions taken in Resolution No.189 dated July 19, 2010 and Resolution No.5 dated May 27, 2011, a Circular dated July 22, 2013 was published and in which nonapplicability of Resolutions No.494 and 495 dated November 29, 2005 and Resolution No.894 dated March 05, 2007 to properties such as those of the appellants was retained; (xv) that the subject shop was auctioned for 5 years on licence basis; extension of licence was granted for 5 years; no further extension was done after December 11, 2007; eviction notice

dated February 26, 2009 was issued also stating that there were dues of ₹79,85,994/- for the period from September, 2005 till February, 2009 and proceedings under PP Act commenced in the year 2011; (xvi) that though as per existing policy contained in Circular dated July 22, 2013, the present occupants of shops, halls, offices, spaces etc. can continue as licencees subject to clearing dues upto date and enhancement of licence fees as provided therein and the appellant was also given option thereunder and the appellant initially purported to avail but subsequently did not comply with terms and conditions thereof and the case of the appellant was closed; (xvii) that this petition has been filed concealing/misrepresenting facts; and, (xviii) the appellant has no vested right of conversion to leasehold.

4. The arguments of the counsel for the appellants before the learned Single Judge were (i) that there are in all 65 shops in the market and of which 50 were already converted into leasehold till the year 2002; (ii) that the respondent NrDMC cannot discriminate between different shops in the same market and cannot at its ipse dixit give leasehold rights with respect to some, creating permanency, and deprive others thereof by keeping them as

licencees i.e. on temporary basis; (iii) that as is evident from the file noting dated February 14, 2005 of the MCD, the conversion of five licenced shops including two of the petitioners was for consideration – with respect to the other three, no proceedings under PP Act also had been initiated till date, while the petitioners are being sought to be evicted; (iv) that the petitioner in WP(C) No.2347/2015 having been made to deposit over ₹30 lacs towards conversion charges and which money is still lying with the MCD, cannot be denied such conversion; (v) that the petitioners under Resolution No.494 dated November 29, 2005 of the MCD are entitled to conversion; (vi) that the petitioners under MCD Resolution No.856 referred to in the noting dated February 14, 2005 are entitled to conversion; (vii) that it was the contention of the counsel for the MCD and as recorded in ***Ashima Securities Pvt. Ltd Vs. MCD 2010 (115) DRJ 161*** that MCD has adopted in totality the L&DO policy pertaining to conversion from licence to leasehold and from leasehold to freehold basis, and that Resolution No.494 contemplated creation of MCD Price Fixation Committee and as per resolution No.894, the detailed policy of the L & DO is to apply in toto including the rates prescribed therein; (viii) that as late as of

February 20, 2015, MCD has been publishing advertisements offering shops in the same market on leasehold basis and there is no reason to deny conversion to the appellants.

5. It was also argued on behalf of the North DMC (i) that the matter is purely contractual and writ petitions are not maintainable; (ii) that the claim in the petitions is barred by time; (iii) that the MCD Resolution No.982 dated March 05, 1979 was only for the then “existing licencees” and the appellants are not covered thereby as they were not “existing licencees”; (iv) thereafter vide Resolution No.1317 dated March 23, 1987 it was decided to make allotments on license basis only; (v) the said Resolution No.1317 dated March 23, 1987 was in force at the time of allotment of the shops in the year 1997 to the appellants; (vi) that the Resolution 494 dated November 29, 2005 was merely a proposal and which never fructified; (vii) that the manner of disposal of the property of the MCD is provided in Section 59 r/w Section 200 of the MCD Act; (viii) that though Resolutions no.494 and 495 dated November 29, 2005 entitling the Commissioner MCD to convert licences into leases were passed but the same were not operationalised by the Commissioner; (ix) that the appellant in WP(C) No.2347/2015 in collusion with some officials of MCD got the letter dated April 02,

2007 issued in her favour but which was withdrawn subsequently;

(x) that the prevalent policy with respect to MCD properties is contained in the circular dated July 22, 2013 and under which the appellants are not entitled to the conversion to the leasehold as claimed; (xi) L&DO has a scheme for conversion of licences to leases and conversion of leasehold rights into freehold; (xii) however that policy with respect to the L&DO properties which has been adopted by the MCD vis-a-vis L&DO properties under its management cannot be made applicable to the MCD's own properties; (xiii) that more than ₹3 crores are due from each of the appellants; thus, the question of refunding the amount about ₹30 lacs to the petitioner in WP(C) No.3146/2015 does not arise; (xiv) that the reference by the counsels for the appellants to the current mode of disposition of property by MCD is misconceived; (xv) the properties are now being disposed of only through open tender on leasehold basis; (xvi) reliance is placed on – (a) Judgment dated October 29, 2014 of the Supreme Court in ***Civil Appeal No.9951/2014 titled HUDA Vs. Kedar Nath***; (b) Judgment dated March 08, 2013 of the Division Bench of this Court in ***LPA 742/2012 titled Suresh Chand Gupta Vs. MCD***; (c) ***Union of India***

Vs. Charak Pharmaceuticals (India) Ltd. (2003) 11 SCC 689; (d) Bharti Cellular Ltd. Vs. UoI (2010) 10 SCC 174; and (e) M.P. Mathur Vs. D.T.C. (2006) 13 SCC 706.

6. During the course of the submissions it was represented by the North DMC that action has been taken against the Officers who in collusion with the appellant issued the letter dated April 02, 2007.

7. The learned Single Judge has rejected the writ petitions on a finding that the appellants are not entitled to the relief in terms of his findings in para 14 of the impugned order. In gist, the findings are:-

“A. The petitioners came into possession of the shops on allotment thereof in favour of petitioners on licence basis in an open tender process. The petitioners at that time did not contend that since MCD had converted the shops granted on licence basis at the time of establishment of the market into leasehold, the tenders invited by the MCD for allotment of remaining shops in the market on licence basis were faulty or that the MCD was discriminating between the shops in the same market by allotting the same on different terms.

B. The petitioners were then happy to enter the market and have a shop therein as a licensee for a period of five years only.

C. There may have been a large number of other persons who may not have responded to the notice inviting tender, being not desirous of acquiring shop on licence basis for a period of five years only and with no permanency therein. Thus the petitioners, in bidding for the said shops, competed only with those who were willing to take the shops on licence basis and being the highest bidder, were allotted the shops. In my view, the petitioners having come into possession of the shops through open bidding tender process and as per the terms whereof the rights being created in the shops were of a licensee for a period of five years only, may be with a renewal for five years, cannot demand conversion of the licence into leasehold and the MCD cannot convert the said licence into leasehold.

D. It cannot be forgotten that the subject shops are public property, the disposal whereof has to be in public interest and for public purpose and yielding the maximum possible price therefrom. It is well nigh possible that if the MCD in the Notice Inviting Tender for the subject shops had provided that the shops once taken on licence would entitle the licensees to have the same converted to leasehold, the shops may have fetched a much higher price than that paid by the petitioners. To allow a person who enters into possession as a licensee to have his licence converted into a lease would amount to allowing

a backdoor entry into the premises, to the detriment of the public interest and public exchequer.

E. If such a procedure is given a stamp of approval by the Court, it would allow vested interest in public authorities to first induct persons of their choice into occupation of public premises at throwaway prices by initially framing the tender conditions so, as to not fetch the best price and to thereafter convert the terms into more favourable for the persons so inducted into public premises at throwaway prices.

F. A licence does not create any interest or right in the property and merely allows the licensee a right to enter and use the property. On the contrary, lease for a period of 99 years, as the petitioners are claiming, is a valuable property right in the property and there is a sea of a difference between the price fetched while offering a licence for 5 years and the price fetched by offering a lease for 99 years.

G. We have to see the claim of the petitioners in the said light. Seen in the said light, the petitioners are clearly disentitled from the relief.

H. Merely because the respondent NrDMC is now again allotting shops in the market on leasehold basis would not entitle the petitioners who entered the shops as a licensee, to conversion of their licences obtained by concessional rates into leasehold.

I. The petitioners, even if desirous of the same premises, have to first vacate the premises and to thereafter when the bids are invited for allotment thereof on leasehold basis, participate in the competition and if successful, then re-enter the premises on leasehold basis.

J. Further seen in this light, the Resolution dated 5th March, 1979 i.e. of a date much prior to the petitioners coming into occupation of the premises, cannot create any right in favour of the petitioners.

K. Supreme Court In Re: Natural Resources Allocation (2012) 10 SCC 1 though touched upon the extension of doctrine of public trust to property but chose not to expound thereon. However, in the discussion under Article 14 of the Constitution of India while relying on the decision in Bennett Coleman Vs. Union of India (1972) 2 SCC 788 it was reiterated that the only norm which the Constitution furnishes for distribution of material resources of the community is elastic norm of common good and observed that the achieving goal of common good under Article 39(b) of the Constitution is part of the Directive Principles. It was further held that the manner in which common good is best subserved would depend on the economic and political philosophy of the Government and revenue maximization is not the only way in which the common good can be subserved. It was further clarified that where “revenue maximization is the

object of a policy, being considered qua that the resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable method, though not the only method”.

L. It is not the case of the petitioners that they are entitled to continue in the subject shops for any other consideration. It has thus to be held that the common good in the matter of disposal of the subject shops by the respondent NrDMC is by revenue maximization and which can be achieved only by auction, especially when Supreme Court has repeatedly held that the method of securing public interest in the matter of disposal of property is to sell by public auction or by inviting tenders.

M. Reference may also be made to Rashbihari Panda Vs. State of Orissa (1969) 1 SCC 414 cited with approval by the Supreme Court in the judgment aforesaid, laying down that the scheme of offering to enter into contracts with the old licensees and to renew their terms is open to grave objection since it arbitrarily excludes many persons. It was held that the right to make offers to the persons with whom contracts had been made earlier, shutting out new entrants, is ex facie discriminatory and imposes unreasonable restrictions upon the right of persons other than existing contractors to carry on business and gives rise to monopoly. It was further held

that exclusion of all persons interested in the trade who were not the previous year licensees, is ex facie arbitrary; the scheme adopted by the Government, first of offering to enter into contracts with certain licensees and later inviting tenders from licensees who had in the previous year carried out their contracts satisfactorily, was held to be void on the ground of unreasonably excluding others.

N. Supreme Court in Aggarwal and Modi Enterprises Pvt. Ltd. Vs. New Delhi Municipal Council (2007) 8 SCC 75, interpreting Section 141 (2) of the New Delhi Municipal Council Act 1994 held that the mandate thereof is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. It was further held that NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property and that public auction not only ensures fair price and maximum return, it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. It was also held that disposal of public property partakes the character of trust and it should be for public purpose and in public interest. Pertinently, the claim in that case of the existing licensee to develop the property or a preferential treatment was negated.

O. I see no reason why the principle enunciated in the judgment aforesaid should not apply to respondent NrDMC. Section 200(d) of the MCD Act governing respondent NrDMC also provides that the consideration for which the immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.

P. It is also a settled principle of law (See Monarch Infrastructure (P) Ltd.Vs.Commissioner, Ulhasnagar Municipal Corporation (2000) 5 SCC 287) that if a term of the tender is deleted after the players entered into the arena, it is like changing the rules of the game after it had began and therefore, if the Government or the Municipal Corporation was free to alter the conditions, fresh process of tender is the only alternative permissible.

Q. Applying the said principle here, if it were to be held that after inviting tenders for occupation of shops as a licensee, the licence can be converted into leasehold, it would amount to changing the rules of the game after it had begun.

R. Supreme Court, as far back as in Ramana Dayaram Shetty Vs. International Airport Authority of India (1979) 3 SCC 489 negated the contention that those who had not participated in the tender process cannot challenge the same. It was held that they are entitled to challenge

on the ground that if it were known that non-fulfilment of condition of eligibility would be no bar to consideration, they would also be entitled to apply and would have applied

S. Similarly here, if it was known that licence can be converted into leasehold, others could have participated in the tender process through which the petitioners initially came into possession of the premises.

T. The petitioners have not been able to controvert the chronology of resolutions of MCD as set out in the counter affidavit filed in WP(C) No.3146/2015 and as detailed by me hereinabove. The petitioners cannot derive any benefit of the lacunas if any in the counter affidavit filed in WP(C) No.2347/2015 especially when the two petitions are being considered together. The petitioners on the basis of the MCD Resolution of 23rd March, 1987 i.e. of a date prior to their occupation of the premises cannot claim any right. The only right which the petitioners could have claimed and claim was under the MCD resolutions No. 494 and 495 dated 29th November, 2005 WP(C) No.2347/2015 & 3146/2015 Page 21 of 23 but which resolutions according to the NrDMC were never operationalized and did not come into effect. It is not the case of the petitioner that the benefit thereof was/has been given to any other person. In the light of the position of law as discussed by me hereinabove, the said

resolutions were in any case contrary to law and discriminatory and arbitrary and cannot be enforced. The only other Resolution on which the counsels for the petitioners can possibly rely and rely is the Resolution No.856 referred to in the note dated 14th February, 2005. However I need not go further into the said aspect as the reference by the counsel for NrDMC in WP(C) No.2347/2015 on Anuradha Sharma supra is apposite in this context. The Division Bench of this Court therein was also concerned with a claim for conversion of a licence granted by the MCD in respect of an open air restaurant into leasehold. Reference therein was also placed on the Resolution No.856 (dated 17th February, 2004) and on Resolution No.494 (dated 29th November, 2005) but the claim was negated relying inter alia upon Nirmal Kumar Jain supra. It would thus be seen that the question is no longer res integra. Else, the controversy is also squarely covered by M.P. Mathur supra relied upon by the counsel for NrDMC in WP(C) No.3146/2015.

U. It also follows from the judgments cited by the counsels for the respondent NrDMC and referred to in the preceding paragraph that the question of any estoppel by acceptance of the sum of about Rs.30 lacs from the petitioner in WP(C) No.2347/2015 does not arise. The demand for the said amount vide letter dated 2nd April, 2007 was clearly unauthorised and had no sanction of the authority of the respondent NrDMC/MCD empowered to

dispose of immovable property and cannot create any rights in favour of the petitioner.

V. Similarly, the arguments of the counsel for MCD noted in Ashima Securities Pvt. Ltd cannot create any rights in favour of the petitioners.

W. Reference may lastly be made to the Union of India Vs. Hotel Excelsior Ltd MANU/DE/4222/2010 where a Division Bench of this Court speaking through the undersigned was concerned with a claim for conversion of leasehold rights granted by the L&DO into freehold. It was held that a lessee has no right to claim conversion of the leasehold into freehold or to compel the lessor to so grant conversion. Finding the policy floated by the L&DO for such conversion to be not providing for conversion of the properties qua which the conversion was claimed, the claim was denied. The contention for discrimination was also negated observing that the properties for which conversion had been allowed constituted a different class. It was also observed that such policies/claims are enunciated in the exercise of executive function and it is upto the appellant L&DO as lessor of the land to grant or not to grant freehold conversion and once it is found that the L&DO had not discriminated arbitrarily, the question of the Court interfering in policy matters did not arise. The said

observations of the Division Bench are also apt to the present controversy.”

LPA 612/2018

8. The challenge in this appeal is to an order passed by the learned Single Judge in W.P.(C) No. 9334/2018 dated September 10, 2018 wherein the challenge was to an order dated August 07, 2018 passed in PPA Appeal No.30150/2016 of the Court of District Judge (Headquarters) acting as an Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 of dismissal of appeal preferred by the appellant against the order dated January 27, 2016 of respondent no.2 Estate officer of respondent no.1 North Delhi Municipal Corporation in exercise of powers under Section 5(1) of the PP Act, of eviction of the petitioner from Hall No.1, MCD Market, Saraswati Marg, Karol Bagh, Delhi. Suffice it to state, that the learned Single Judge has dismissed the writ petition. Since the issue involved is connected with two aforesaid appeals, this appeal was also heard along with LPA Nos. 535/2016 and 499/2018 and as such is also being disposed of with the aforesaid two appeals.

9. Mr. Rakesh Saini, learned counsel for the appellant would reiterate the submissions as made by him before the learned Single Judge. He heavily relied upon the judgment of the Division Bench in the case of *Anuradha Sharma v. Municipal Corporation of Delhi* **FAO (OS) No. 140/2010 decided on October 08, 2010** and of this Court in the case of *Ashima Securities Pvt. Ltd. v. Municipal Corporation of Delhi* **2010 (115) DRJ 161** to contend that the Division Bench has, in clear terms concluded about the passing of the Resolution No. 494. He has taken us through various documents in support of his contention to say that the appellant having acted on the communication of the respondent No.2 dated April 02, 2017 and deposited the amount, the respondents could not have resiled out of their own promise.

10. Alternatively, he argued that in terms of the Circular dated July 22, 2013, the respondents need to consider afresh the allotment and renewal of license of shops on five yearly basis with an enhancement of license fee by 50% after every five years period, after expiry of the extended period by 100% enhanced license fee for five years. He also states, that the request of the appellant for consideration of her case also was rejected vide letter dated October

15, 2018, a copy of the same was produced in the Court and the same reads as under:-

“This is with reference to your representation dated 27.08.2018 for consideration of further extension of license of Hall No.2, MCD Market, Saraswati Marg, Karol Bagh, New Delhi-05 in pursuance to the North DMC’s Circular No.DA(Misc.)/L&E/2013-13/D-4688 dated 22.07.2013.

In this connection, it is informed that your similar request has already been rejected vide letter No. DA/KB/L&E (N)/2014/D-1986 dated 08.12.2014 and the said fact is also reflected at Page 4 and 5 of the Order dated 27.01.2016 passed by the Estate Officer, North DMC in PPA Case No. 1336/2011. (Copy of the rejection letter is attached for ready reference).

It is further, informed that the outstanding dues payable by you as on 31.07.2018 were to a tune of Rs.7,66,28,138/- and the copy was furnished before the Hon’ble High Court in consonance to the orders of Hon’ble High Court dated 05.07.2018 you have deposited 1 Crore (Rs.50 Lac each deposited on 13.07.2018 and 14.08.2018) and the balance of dues as 31.07.2018 remained Rs.6,66,28,138/-.

In the light of above, your request dated 27.08.2018 for consideration under the circular of North DMC dated

22.07.2013 is rejected by the Competent Authority as your similar previous request stands rejected on 08.12.2014 for non-extension of license period and non-deposit of outstanding Municipal dues.”

11. Mr. Viraj R. Datar, learned counsel appearing for the appellants in LPA 499/2018 and LPA 612/2018 conceding the legal position as has been concluded by the learned Single Judge, would submit that insofar as LPA 612/2018 is concerned, the appellant under a wrong legal advice was pursuing the appeal but in effect in terms of Circular dated July 22, 2013, the respondents are required to consider the case of the appellant. He concedes that there is an issue raised by the respondents on computation as the North DMC is claiming an exorbitant amount, which the appellant is disputing and they have also not adjusted the amount already paid by the appellant in the interregnum. He has also drawn our attention to a communication received from the North DMC dated December 04, 2018 wherein the North DMC inter alia stated as under:-

“This is with reference to your letter dated 29/10/2018 requesting for clearance of pending dues / desealing / restoration / occupation of Hall No.1, Mpl. Market, Saraswati Marg, Karol Bagh Delhi.

It is informed that the representation has been examined and it has been observed that the possession of the subject Public Premises was taken over by the North DMC on 09.08.2018 in compliance to the judgment and Order dated 07.08.2018 passed by the Hon'ble Distt. Judge in PPA No. 1337/2011. It is further, informed that your request for re-consideration as per MCD's policy dated 22.07.2013 was also examined and the Competent Authority vide order dated 03.12.2018 has rejected the same as you have not shown any inclination to deposit the outstanding dues amounting to Rs.7,29,01,924/- (Seven Crore Twenty Nine Lac One Thousand Nine Hundred Twenty Four Only) after making the adjustments of the payments made by you causing financial losses to the Mpl. Corporation and remained engaged in un-necessary litigations since 2009."

CONCLUSION:-

12. Having heard the learned counsel for the parties, we find no infirmity in the order of the learned Single Judge, which we have already reproduced which is well considered Judgment both on facts and in law. The submission made by Mr. Saini by placing reliance on the judgment of the Division Bench of this Court in the case of *Anuradha Sharma (supra)* and of this Court in the case of *Ashima Securities Pvt. Ltd. (supra)* were interlocutory orders. Initially the

learned Single Judge has vacated the interim protection in favour of the plaintiff therein and in the appeals filed thereof, the protection was granted by the Division Bench. Suffice it to state, the Division Bench in its order dated October 08, 2010 has clearly stated that the view taken by it is only a prima facie view and has no bearing on the trial. If that be so, the said conclusion is not final. We have been told that the suit is still pending consideration before this Court. Be that as it may, as concluded above, the learned Single Judge was justified in its conclusion, as noted above, we do not see any reason to interfere with the impugned orders, except noting the submissions made by Mr. Saini and Mr. Datar that the case of the appellants be considered in terms of Circular dated July 22, 2013 and observing that if representations are made by the appellants, the Competent Authority shall consider the same in terms of the Rules, Policies and such other material as deem fit, without being influenced by the fact that the appellants were pursuing the remedy of appeal before this Court. We may clarify that it is for the Competent Authority to take a decision. The appeals are dismissed, except with the aforesaid observations.

CM. No. 35819/2016 in LPA 535/2016

CM. Nos. 35389/2018 in LPA 499/2018

CM. Nos. 44803/2018, 44804/2018 and 48777/2018 in LPA 612/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 11, 2018/ak

