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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 764/2019, CM APPL No.5277/2019**

RAGHUBIR TYAGI Petitioner

Through : Mr.Sunny Arora, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through : Mr.Yoginder Handoo, ASC with
Mr.Prashant Bhatnagar, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **06.02.2019**

This writ petition is filed against an order and judgment dated 22.12.2018 passed by learned District and Session Judge, Patiala House Court, New Delhi in appeal bearing PPA No.21/17 titled as Raghbir Tyagi Vs. New Delhi Municipal Council.

The case of the petitioner is that on 25.04.1985 he was allotted a shop No.G-70, Palika Bhawan, R.K.Puram, New Delhi and a license deed dated 16.05.1985 was executed between the petitioner and the respondent.

After allotment, the petitioner started business of readymade garments in the said shop. However on 20.10.2006 the respondent issued a show cause notice to the petitioner alleging he has sub-let the premises and even changed the trade without seeking permission of the respondent.

On 02.01.2007 the respondent informed the petitioner qua cancellation of allotment on account of sub-letting and change of trade w.e.f. 15.12.2006. The reply dated 19.01.2007 was submitted by the petitioner requesting the respondent to withdraw the

cancellation notice and to give him a personal hearing but the licence was never renewed.

Thereafter the respondent filed a petition bearing No.46/eo/NDMC/2011 under section 5&7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the petitioner before the learned Estate Officer.

On 23.03.2012 the Estate Officer issued a notice under sub-section 1 of Section 4 of the Act and also under sub-section 3 of Section 7 of the Act.

On 19.01.2017 the petitioner appeared before the Estate Officer and requested for statement in order to calculate and understand the outstanding amount. On 05.05.2017 the Estate Officer passed an eviction order and also an order of damages. An appeal under Section 9 of the Act, filed by the petitioner, was also dismissed. It is alleged by learned counsel for the petitioner that he has neither sub-let the premises nor has changed the user of the premises and that he has been writing various letters in this regard and also for restoration of the licence deed but such requests were of no avail and now since the eviction order has been passed without verifying as to if the petitioner is carrying on the business of garments in the premises, the impugned order is liable to be set aside. Even otherwise, it is submitted the change of business does not violate any condition of the licence deed as the market in question is free trade zone and sale of packed food items does not fall in negative list issued by the respondent and it does not need any licence from the competent authority and per trade policy/guidelines issued by the respondent, the

respondent should have permitted the change in trade.

The learned counsel for the petitioner though stated the petitioner has been using the premises for the same purpose viz. sale of garments but the learned counsel for the respondent has referred to the impugned judgment which rather notes an order dated 28th November, 2016 passed by the Estate Officer saying *Mr.Pankaj Tyagi, Power of Attorney holder of the petitioner herein when enquired about the trade activities being done in the shop as well as about the outstanding dues against the petitioner herein, he accepted that he has not applied for the change of trade on the shop and doing the sale of Pan/Biri/Cigarette/Cold Drinks etc. as per the Inspection Report dated 19.09.2012* and hence admitted the violation of trade licence given by the NDMC and thus an eviction order was rightly passed.

It is further pertinent to mention the licence was cancelled on 02.01.2007 and the petitioner was directed to handover the possession of the said shop and further to pay the damage charges. The petitioner neither handed over the vacant possession of the shop nor paid the charges. He is still in occupation of the said shop.

The reference was though made of a resolution dated 30.09.2004 to show the changes are freely permitted amongst the trades which are not listed in the notified negative list or where licence is not mandatory, but the petitioner did not file nor could show such notified negative list or any document showing such alleged licences being not mandatory.

I have perused the orders of learned Estate Officer as also of

the learned District and Sessions Judge. No illegality is shown by the petitioner in the said order(s). Admittedly, the licence was cancelled in the year 2007 but the petitioner did not prefer to file any civil suit or Writ challenging such cancellation of the licence deed and now in 2019 he cannot urge such cancellation of licence deed in 2007 was illegal. There is no merit in the petition and is accordingly dismissed.

Pending application also disposed of as infructuous.

YOGESH KHANNA, J.

FEBRUARY 06, 2019

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