IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 04, 2019
Judgment delivered on: July 15, 2019

\+ W.P.(C) 4899/2019, CM No. 21776/2019

ARTI RANI

..... Petitioner

Through: Mr. Viraj R. Datar, Mr. Chetan Lokur, Mr. Rajiv Sirohi and Mr. Nitish Chaudhary, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms. Mini Pushkarna, Standing Counsel with Ms. Swagata Bhuyan and Ms. Shiva Pandey, Advs. with Mr. Vinod Mantoo, ALO, City CS Zone (Land and Building) Department.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

a) Set aside Order dated 25.04.2019 issued by the Respondent Corporation, whereby the representation(s) of the Petitioner for grant of extension of license of Hall No. 1, Municipal Market, Karol Bagh, under Circular dated 22.07.2013 was rejected by the Respondent;

b) Issue an appropriate Writ, order or direction to the Respondent to grant extension of license of Hall No. 1, Municipal Market, Karol Bagh, to the Petitioner in terms of the Circular dated 22.07.2013;

c) Consequently, issue an appropriate Writ, order or direction to the Respondent to de-seal and restore possession of Hall No. 1, Municipal Market, Karol Bagh to the Petitioner;

d) Pass any such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. As seen from the above, the challenge in the petition is to the communication dated April 25, 2019 whereby the representation (s) of the petitioner have been rejected by the respondent on the ground that (1) the possession of Hall No. 1, Municipal Market, Saraswati Marg has already been taken over by the respondent on August 9, 2018 and (2) the petitioner has not shown any inclination to deposit the outstanding Government dues amounting to ₹7,01,74,820/-. As noted from the impugned communication, the representation (s) of the petitioner were considered in view of the directions issued by the Division Bench of this court on December 11, 2018 in three LPAs being 535/2016, 499/2018 and 612/2018 to the following extent:

"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."

3. The facts as noted from the record are that on March 26, 1997, the erstwhile Municipal Corporation of Delhi, the predecessor-in-interest of the respondent issued tenders vide public notice for allotment of car-scooter parking / shops / kiosk / stalls / dhabas / office units on as is where is basis. The petitioner had also applied against tender and being successful was accordingly offered a shop bearing Hall No. X-10 I, Municipal Market, Karol Bagh. Pursuant thereto a license deed was executed for a period of 5 years at monthly license fee of ₹53,020/-. That on February 10, 2003, the license of the petitioner was renewed vide a duly executed license fee for another period of five years upon 100% enhancement of the monthly license fee fixed thereafter at ₹1,60,040/-. Vide order dated January 28, 2009, the license of the petitioner in respect of the said shop was cancelled and she was directed to vacate the subject shop and clear the outstanding dues of ₹79,85,994/- payable for the period between 2005 till 2009.

4. It is the case of the petitioner that she made a request to the respondent to withdraw the notice dated September 26, 2009. However, no action has been taken. It is a conceded case that respondent had initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'P.P. Act') and on January 27, 2016, the said proceedings have been decided by the Estate Officer, who directed the eviction of the petitioner from the subject shop. This order of the Estate Officer became a subject matter of an appeal before the District Judge and the learned District Judge vide his order dated August 7, 2018 upheld the order of the Estate Officer directing the

eviction of the petitioner. The petitioner not being satisfied with the order of the learned District Judge had filed a writ petition before this court being W.P.(C) 9335/2018. The Coordinate Bench of this court dismissed the writ petition on September 10, 2018. The decision of the Coordinate Bench of this court also became a subject matter of an appeal before the Division Bench being LPA 612/2018. It may be necessary to state here that the petitioner had also filed another writ petition which was also dismissed by the learned Single Judge. The decision in the writ petition also became a subject matter of an appeal being LPA 499/2018. Be that as it may, the Division Bench has rejected the Appeals, but had noted the submissions made by the counsels including the counsel appearing for the petitioner herein that their case may be considered in terms of circular dated July 22, 2013. Accordingly, the Division Bench has passed an order, which has already been reproduced above.

5. Having noted the brief facts of the case, at the outset it was the submission of Mr. Viraj R. Datar, learned counsel for the petitioner that even though two reasons have been given by the respondent while rejecting the representation(s) of the petitioner, but in their counter-affidavit, the respondent has taken a dramatically opposite stand inasmuch as they have questioned the directions given by this court in the LPAs decided on December 11, 2018. In this regard, he has drawn my attention to the counter-affidavit filed by this respondent. He also referred to the Judgment of the Supreme Court in the case of ***M.S. Gill v. Union of India and Ors.*** reported as ***AIR 1978 (SC) 851*** in support his submission that any order of the authority has to be tested on the grounds so mentioned in the same. That apart, it was is his submission that respondent has failed to consider the representation(s) in proper

perspective as the case of the petitioner is covered by the circular dated July 22, 2013 as the petitioner was a licensee of the subject shop since the year 1997 and has further paid total license fee of approximately ₹2.10 Crores from the year 2003 till 2018 when the shop was sealed. In other words, it was his submission that the circular dated July 22, 2013 is clear and categorical inasmuch as the same provides for extension of license of five years each followed by respective enhancement of license fee. However, despite being covered by the said circular, the respondent has arbitrarily rejected the representations. It was further his submission that the respondent had arbitrarily and unreasonably raised the demand of ₹7,29,01,924/- against the petitioner herein while overlooking the payments made by the petitioner till date. He during his submissions has drawn my attention to Page 343 of the paper book to contend that it is only an amount of ₹1,32,87,268/- which is due ad payable by the petitioner to the respondent and the petitioner is ready and willing to pay the same immediately. Unfortunately, according to him, this amount could not be paid by the petitioner as the respondent had not come forward for reconciling the account in order to arrive at the actual and accurate amount. In any case, according to him, the petitioner is ready and willing to pay the same at the earliest. That apart, it was his submission that the other ground that the petitioner has vacated the shop on September 9, 2018 is also untenable and the said ground goes contrary to the spirit and directions given by the Division Bench in its order dated December 11, 2018. In other words, it was his submission that it is a conceded fact that on the date when the Division Bench had disposed of the appeals and gave directions, the respondent had taken over the possession of the shop in question, and was lying vacant and despite that directions were given for consideration of the representation(s). So, the respondent could not have frustrated the directions of the Division Bench in the appeals on that ground. During the course of his submissions Mr. Datar had pointed out to certain documents to contend that the documents which were addressed to Ms. Anita Chitkara and reflects the dues payable by Ms. Anita Chitkara, have been imputed to be the dues payable by the petitioner, which is clearly untenable being without application of mind. In the end, he states, the action of the respondent being contrary to the letter and spirit of the order passed by the Division Bench and the petitioner is ready and willing to pay the balance amount of ₹1,32,87,268/-, the petition is liable to the allowed.

6. On the other hand, Ms. Mini Pushkarna, learned standing counsel appearing for the respondent has submitted that the directions of the Division Bench in the appeals are very clear that the representation (s) of the petitioner had to be considered in accordance with the rules and policies of the respondent. According to her, from the policy dated March 22, 2017, more specifically B(i) and (ii) which stipulates as under it is clear that if the property is vacant that has to be put for auction by the Land and Estate Department:

> *"(B) Licenced properties, i.e., Stalls / shops / office units / Show windows / Open Tharas/ Kolki/ Halls (other than road side kiosk) : -*
>
> *(i) The vacant properties may be put for auction by the Land &Estate Department or R.P. Cell immediately for licence for 5 years period by having the reserve price assessed keeping in view the remuneration, being fetched by similar type of properties in the vicinity. Further, auction of vacant properties which are likely to fall vacant or already fell vacant will be held twice a year i.e. in January &July;*

(ii) The period of allotment of these properties was earlier 5years and extendable by five years each time by enhancing the licence fee @100% of the prevailing licence fee. Now, the extension after every 5 years will continue but the licence fee will be enhanced @ 50% after every five years period after expiry of the extended period @ 100% enhanced licence fee for 5 years. The dues so calculated will have to be cleared within 3 months along with applicable interest. Thereafter, action for realization of pending dues with l8% per annum compound interest/penalty will initiated for further 3 months failing which the property will be got evicted and dues will be recovered as 'land revenue'; The initially deposited 3 months security (equivalent to 3 months licence fee) will be reviewed and the difference in the enhanced fees ratio will also have to be deposited in Municipal Account in continuation to the original security amount."

7. That apart, she submitted that petitioner's eviction having been upheld till the Division Bench, the directions of the Division Bench cannot have the effect of reviving the license that too when license fee was not paid. She submitted, the petitioner who was seeking conversion of the property on lease basis cannot take advantage of her own wrongs by resisting the challenge to the eviction and now when the petitioner has been evicted, seeking her re-entry in the property only on the ground that the directions have been given by the Division Bench for consideration of the representations. That apart, she also submitted that the petitioner having failed to pay a substantial amount of license fee amounting to ₹7,01,74,820/- she cannot now seek reentry in the property. She justifies the impugned order.

8. Having considered the submissions made by the counsel for the parties, there is no dispute that the Division Bench has directed the respondent to consider the representation(s), if filed by the petitioner and

consider the same in accordance with the rules and policies of the department and such other material as deemed fit without being influenced by the fact that the appellants were pursuing a remedy of appeal before this court. From the Circular dated July 22, 2017, the relevant para of which has already reproduced above, it is clear, in as much as if a shop is vacant then the same shall be put for auction for license of five years period by having the reserve price assessed keeping in view the remuneration being fetched by similar type of properties in the vicinity. There is no dispute that the possession of the shop has been taken over by the respondent on August 9, 2018. So, it follows when respondent had considered the representations, the property was vacant. So, the respondent is justified in contending that the possession of the shop in question has already been taken over by them on August 9, 2018 while rejecting the representations. The plea of Mr. Datar that the order of the Division bench was very clear that the representation (s) shall be considered in terms of the rules and policy and such other material as deemed fit without being influenced by the pendency of appeal before the Division Bench and as such the possession of the shop having been taken over by the respondent cannot be the ground for the respondent to reject the representations is concerned, the same looks appealing on a first blush, but on a deeper consideration, it is seen that the Division Bench also held that the representation (s) have to be considered in accordance with rules and policies and other materials as deemed fit. I have already reproduced the relevant stipulation in the policy which pre-supposes, if the shop is vacant, same shall be put for auction by the respondent. If that be so and the shop being vacant, respondent was justified in considering the factum of the shop being vacant while rejecting the representation (s). The decision is in conformity with policy of the respondent. That apart, this Court cannot substitute the opinion of the executive authority with its own view, more so when the decision is in accordance with policy and not perverse. I also note, the Supreme Court in ***Aggarwal and Modi Enterprises Pvt. Ltd. v. 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.

9. In so far as the second submission of Mr. Datar about the non-payment of the license fee is concerned, Mr. Datar has only disputed the amount of ₹7,01,74,820/-, but he conceded to the fact that the amount of ₹1,32,87,268/- is still payable. Without going into the issue as to how much amount is payable to the respondent, suffice it would be state when the petitioner has not paid the complete amount, as conceded by Mr. Datar, the ground of non-payment of license fee invoked by the

respondent cannot be faulted. That apart, even I find that in the circular dated July 22, 2013, a general policy was adopted by the Municipal Corporation that the occupants on that date may continue as a licensee provided they clear all dues up to date with a further rider that there would be enhancement of license fee in every five years to the tune of 50%. Despite directions, petitioner had not paid license fee and other dues. In fact, the respondent had written to the petitioner that an amount of ₹3,87,14,816/- is due and payable by her. In fact, it is the stand of the respondent that the petitioner never turned up. Be that as it may, as no payment was forthcoming from the petitioner, request of the petitioner was finally rejected vide letter dated August 23, 2013. The plea of the petitioner that as the respondent had not come forward to reconcile the account, the arrears were not paid appears to be appealing on a first blush, but on deeper consideration, it is seen that it is not the case of the petitioner that she has paid the complete amount to the respondent. In fact, the petitioner has been litigating with the respondent on the ground that the property in question needs to be converted as a leasehold property. It was only at the time of appeal, the counsel instead of pursuing the case on merit has made a submission for consideration of the representation (s) of the petitioner by the respondent.

10. In view of my aforesaid discussion, I am of the view, the impugned communication cannot be said to be arbitrary, illegal or perverse. I do not see any merit in the petition. The same is dismissed.

<u>CM No. 21776/2019 (for stay)</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 15, 2019/*jg*