

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

W.P.(C) 13446/2018, CM APPL. 52344/2018 (Interim Relief), CM APPL. 36880/2019 (restraining) and CM APPL. 11456/2023 (for settlement)

Date of Decision: 24.03.2023

IN THE MATTER OF:

ABDUL RAUF JAVED

..... Petitioner

Through: Mr. J.K. Sharma and Mr. Deepak
Jonia, Advocates

Versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr. Yoginder Handoo, ASC with
Mr.Ashwvin Kataria, Advocate for MCD

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks directions to the respondent to transfer *Shop No. 135, Palika Bazar, New Delhi* in his name.
2. Petitioner claims that the respondent had initially allotted the aforesaid shop to his father late *Sh. A.W. Javed* on 22.11.1978 in terms of its rehabilitation scheme. It is further claimed that the petitioner alongwith his father was carrying the business under a registered partnership deed and after the death of his father on 14.01.1995, the petitioner applied for transfer of the subject shop in his name in terms of the Policy No.6/1999 dated 18.03.1999. It is also claimed that after the

death of father, the petitioner continued to remain in possession and also regularly paid the licence fee till his eviction.

3. Learned counsel for the petitioner submitted that the petitioner's case be considered in light of respondent's policy of the year 2016 as well as internal noting in the file where it has been recommended that the petitioner's case be considered sympathetically.

4. Learned counsel for the respondent while vehemently opposing the petition submitted that the petitioner has not placed on record various orders passed by the different courts with respect to the relief claimed. He has handed over a copy of the order dated 01.05.2012 passed by the Supreme Court in **SLP(C) No.11981/2010**, judgment dated 17.08.2015 passed by a Coordinate Bench of this Court in **W.P.(C) No.956/2014**, and the order dated 01.12.2015 passed by Division Bench of this Court in **LPA 866/2015**.

5. Briefly, the facts as culled out from aforesaid decisions are that initially after the allotment of the subject shop in favour of the petitioner's father, the licence was cancelled on 31.11.1979 for non-payment of enhanced licence fee. Subsequently, on recommendation of a high powered committee, the respondent reduced the enhancement and vide its decision dated 12.11.1999, granted an opportunity to all such shopkeepers to pay the reduced licence fee and have their licence regularized even if the same were cancelled for non-payment of earlier demand. Concededly, the petitioner could not avail the opportunity as after the death of his father, disputes arose between him and other legal heirs.

Eventually, the respondent initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)

against the petitioner resulting in the Estate Officer passing an order for his eviction as well as recovery of damages. The eviction order was challenged by way of **CM (M) No.762/2009** and **W.P.(C) No.11070/2009** however, the same came to be dismissed on 07.04.2010. The two factions of legal heirs of late *Sh. A.W. Javed* preferred separate SLPs being SLP(C) No.11981/2010 and SLP(C) No.23145/2010. Both the SLPs came to be dismissed on 01.05.2012. Pertinently, the respondent took possession of the subject shop on 06.06.2012.

6. A perusal of the order passed in **W.P.(C) No.956/2014** would show that the said petition was filed by claiming that subsequent to the dismissal of SLPs, the disputes amongst the two factions of legal heirs were settled whereby the other legal heirs had given their no objection for transfer of the licence of the subject shop in favour of the petitioner. The respondent opposed the prayer and contended that in terms of Clause 9 of the Resolution No.9 (L-I) dated 30.09.2004, it was not obliged to permit continuation of allotment after the death of the allottee. The relevant extract reads as under:-

“NDMC is not obliged to permit continuation of allotment after the death of the allottee. The license stands cancelled on the death of the allottee. However, Council agreed to give a concession to the legal heirs on humanitarian grounds. If there is dispute in the family, unless they settle the dispute amicably, the license cannot continue and the premises have to be got evicted. In respect of cases pending in the department for transfer on legal heir basis, wherever there are disputes, the legal heirs be given a chance to settle the dispute by 30.11.2004. If dispute is not settled, it may be decided not to allow it to anyone of the legal heirs.”

7. This Court while noting the aforesaid facts dismissed the said petition by observing that the petitioner's right in the subject shop came

to an end on 01.05.2012 when the SLPs were dismissed and the eviction order passed by the Estate Officer was upheld by the Supreme Court.

8. The LPA No. 866/2015 preferred before the Division Bench was also dismissed on 01.12.2015. The Division Bench reiterated that the petitioner's right of inheritance in the licence for being a legal heir of late *Sh. A.W. Javed* came to an end after the eviction proceedings attained finality from the Supreme Court. It was further observed that the respondent having issued an advertisement for auction of the subject shop, the petitioner would be at liberty to participate in the auction as and when NDMC would proceed with the same. Admittedly, the order passed by the Division Bench was not challenged before the Supreme Court.

9. In the present petition, the petitioner has based his claim on the family settlement as well as respondent's policy in terms of Circular dated 16.08.2016. The relevant clause of the said Circular reads as under;

"6. Transfer of licence on Partnership basis:

(iii) for pending cases of transfer: Partnership entered before the date of issuing this circular i.e. 16.08.2016, NDMC will entertain such cases, irrespective of whether the same was done during the valid term of licence or after expiry of the licence, as an exceptional case. If the occupant now seeks the permission of the NDMC at this belated stage, such transfer cases shall be regularised after forfeiting the earlier security deposit by the licensee and subject to enhancement of the licence fee by such percentage as per the respective Council's resolutions applicable as on that date for each such transfer and completion of other required formalities like deposit of fresh security deposit etc."

10. The present petition is a third round of litigation, the petitioner having lost the earlier two. Unfortunately, in the aforesaid factual matrix, the opinion of this Court the petition fails. As noted above, this Court in

previous petitions concluded that the petitioner's right in the licence came to an end when the eviction order passed against him was upheld by the Supreme Court on 01.05.2012. The possession has been taken overlong back in the year 2012.

11. Insofar as submission with respect to sympathetic internal noting is concerned, a file noting can always be reviewed/reversed/overtaken [Ref: Shanti Sports Club & Anr. v. Union of India & Ors. reported as (2009) 15 SCC 705]. Suffice to note that the noting was neither approved by the decision-making authority nor communicated.

12. In these facts, this Court is of the considered opinion that filing of the present petition is nothing but an abuse of process of law and accordingly, the same is dismissed alongwith the pending applications with a cost of Rs.10,000/- to be deposited with *Delhi State Legal Services Authority* within four weeks. Let the aforesaid amount be utilized towards counselling/psychological support to be provided to POCSO victims requiring such assistance. Proof evidencing receipt of the deposit of the amount shall be filed with the Registry of this Court.


(MANOJ KUMAR OHRI)
JUDGE

MARCH 24, 2023

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