



\$~28

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

+ W.P.(C) 9410/2024 & CM APPL. 38621/2024

JAGDISH YADAV

.....Petitioner

Through: Mr.Abhishek Shandilya, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Ms.Kanika Agnihotri, Standing
Counsel with Mr.Sachin Sharma,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

19.11.2024

1. This writ petition concerns allotment of a shop bearing No. 8 (old shop No. 4), AIIMS Subway, New Delhi [“the shop”] by the New Delhi Municipal Council [“NDMC”] to the petitioner. The relief sought are as follows:-

“1. Issue a writ of Mandamus or appropriate writ, direction or order,

(a) Direction to the Respondent Calling for records of the Respondent pertaining to Shop No. 8, AIIMS Subway (Old Shop No. 4, AIIMS).

(b) Quash the demand raised vide Bills generated by the Respondent.

(c) Directing the Respondent to handover the possession of Shop No. 8, AIIMS Subway (Old Shop No. 4, AIIMS).

(d) Directing the Respondent to execute the license deed with the Petitioner.

(e) Directing the Respondent to raise fresh demand towards monthly license fee from the date of handing over the possession of the subject shop.

2. Pass any other Order that this Hon'ble Court may deem fit



and proper in the interest of equity, justice and fair play.”

2. The respondent-NDMC invited bids for allotment of a number of vacant shops by way of an “*Open Bid Notice*” issued in the year 2014. The petitioner bid for the abovementioned shop, and was issued an allotment letter on 14.03.2014. The allotment letter was subject to various conditions, including with regard to payment of licence fee, deposit of security deposit and payment of advance licence fee.

3. The petitioner claims to have completed all the formalities, but was not handed over possession of the shop. With the writ petition, copies of three letters addressed by the petitioner to the respondent in this regard, have been annexed. The letters are dated 11.08.2016, 30.07.2019 and 24.05.2024.

4. The petitioner submits that, instead of handing over possession pursuant to his representation, NDMC has demanded arrears of licence fee and current licence fee, amounting to ₹2,79,42,845/-.

5. In the counter affidavit filed by NDMC, NDMC contends that it is the petitioner who did not come to take possession of the shop, despite issuance of a possession letter dated 17.04.2014. NDMC, therefore, claims that it is entitled to levy of the licence fee for the entire period.

6. I have heard Mr. Abhishek Shandilya, learned counsel for the petitioner, and Ms. Kanika Agnihotri, learned Standing Counsel for NDMC.

7. The first point to be noted is that the proposed licence fee, as stated in the Open Bid Notice, was for a period of 10 financial years, as provided in Clause 2 of the Terms and Conditions of Allotment. Clause 4 required the licensee to complete the formalities within 10 days after the



issuance of the offer letter. Clause 7 provided that the liability for payment of licence fee would also commence from the 10th day of the issuance of the allotment letter. Learned counsel have also drawn my attention to Clause 47, which provides for forfeiture of the earnest money if the bidder fails to complete the formalities or withdraws or amends his offer, and Clause 52 which provides for forfeiture of security deposited in the event of breach of any of the conditions of allotment.

8. The allotment letter dated 14.03.2014, however, listed nine formalities to be completed, and also provided that the liability to pay licence fee would commence from the date of handing over possession.

9. Although there is some controversy as to whether the possession was, in fact, offered by NDMC as reflected in the letter dated 17.04.2014, annexed to the counter affidavit, the undisputed factual position is that possession was not handed over to the petitioner. This is accepted in paragraph 3 of the counter affidavit, where NDMC has categorically stated that possession of the shop continued with NDMC, although the petitioner is sought to be blamed for this.

10. While considering the relief sought by the petitioner in the context of these facts, it must first be borne in mind that this writ petition has been filed only in July, 2024, after the period of 10 years from the date of the allotment letter, have already lapsed. Mr. Shandilya submits that while the Open Bid Notice provided for a licence tenure of 10 financial years, it was not expressly stated, as to when the period would commence. He submits that in a case such as the present one, where possession has not been handed over to the petitioner at all, the period of 10 years would commence on the date the license is executed and/or



possession is, in fact, handed over.

11. This submission does not commend to me. The filing of the writ petition in July, 2024 after the period of ten years had already lapsed, is inexplicable. Even if there is some uncertainty as to the period from which the licence tenure commences, as alleged by Mr. Shandilya, it cannot be construed as entitling the petitioner to possession of the shop at this distance of time.

12. The only communications sent by the petitioner to the respondent during this period are the three letters referred to above. The first was sent in August, 2016, almost two-and-a-half years after the letter of allotment; the second, three years thereafter; and the third, almost five years thereafter. The record, thus, does not reveal any substantial anxiety on the part of the petitioner to complete the transaction within a reasonable time. The petitioner has asserted that he made many personal visits to NDMC's offices, but he apparently waited for ten years to lapse before taking legal recourse.

13. I am, therefore, of the view that the petitioner cannot be granted the relief sought in prayers (c), (d) and (e) of the writ petition, at this stage.

14. As far as the bills for licence fee raised by the respondent are concerned, however, I am of the view that the petitioner's case is merited. Even according to the respondent's counter affidavit, possession was never handed over to the petitioner. The allotment letter clearly provides that the liability for licence fee would commence from the date of taking over possession. Regardless of the dispute as to whether the possession letter was, in fact, issued by NDMC on 17.04.2014, the factual position is that the possession was not handed over. The first demand for license fee



was also raised only in July, 2019, five years after the date of the allotment letter. These facts do not establish the entitlement of NDMC to the licence fee. NDMC is, therefore restrained from enforcing the demand for licence fee imposed upon the petitioner in respect of the shop.

15. The writ petition is partially allowed to the extent indicated above.

16. If the petitioner wishes to claim damages and/or for refund of the security deposit or earnest money etc. arising out of the transaction narrated above, he is at liberty to file ordinary civil proceedings in accordance with law, if so advised.

PRATEEK JALAN, J

NOVEMBER 19, 2024

sv/AL/