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

+ **W.P.(C) 10390/2024 and CM APPL. 42671/2024**

PRINCE GUPTA

.....Petitioner

Through: Mr. Ankit Singh Sinsinwar,
Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.Respondents

Through: Mr. Abhinav Bajaj, ASC with Mr.
Dhruv Mohan, Mr. Saksham Ojha,
Ms. Geetashi Chandna and Mr. Tapas
Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
27.08.2024

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1. The petitioner, in the instant writ petition, seeks to challenge an order dated 10.07.2024, whereby, the respondent-New Delhi Municipal Council ("NDMC") has rejected the petitioner's representation seeking to grant possession of the kiosk bearing No. 1-A/S, Vayu Bhawan, Rafi Marg, New Delhi.
2. The factual matrix of the case would indicate that on 11.11.1968, the kiosk in question was allotted to Ram Sewak Gupta by NDMC on the basis of a license deed for the purposes of vending Pan Biri Cigs/ Cycle repairs etc.
3. The petitioner in the instant petition, who happens to be the son of



Mr. Pardeep Kumar Gupta, submits that his father Mr. Pardeep Kumar Gupta and Mr. Ram Sewak Gupta (original licensee) entered into a formal partnership agreement *vide* partnership deed dated 03.06.1998 to carry out vending from the aforementioned kiosk.

4. The petitioner submits that on account of certain disagreements between Pardeep Kumar Gupta and Ram Sewak Gupta (original licensee), the said partnership deed dated 03.06.1998 came to be dissolved and both parties were at liberty to act independently in accordance with the law. The petitioner submits that after the dissolution of the partnership deed, all rights qua the kiosk were transferred in the name of Pardeep Gupta (father of the petitioner) by Ram Sewak Gupta (original licensee). The petitioner further submits that the original licensee also executed an Affidavit, GPA, Will, SPA, Agreement to Sale, Receipt and Undertaking in that behalf in favour of Pardeep Gupta and thereafter Pardeep Gupta continued to carry out the business of vending from the said kiosk for the purpose it was allotted.

5. It is the petitioner's case that on 08.01.2008 and on 08.05.2010, Ram Sewak Gupta (original licensee) and Pardeep Gupta (father of the petitioner) passed away, respectively. He submits that after the demise of his father, he continues to operate the kiosk in question peacefully without any hindrance and between 11.09.2018 to 01.01.2019, on multiple occasions, he made several representations to the respondents for the purpose of mutation of the kiosk in his name. However, the respondents did not pass any appropriate order.

6. The petitioner submits that to his surprise, on 08.11.2023, he received a vacation notice from the respondents for the purpose of redevelopment of Kartavya Path. According to him, as per the redevelopment of Kartavya



Path, the kiosk in question would be restored in favour of the petitioner after 45 days. The petitioner thereafter received a notice on 29.12.2023 with respect to proceedings initiated under Sections 5 & 7 of the Public Premises (Eviction of Unauthorized Occupant) Act, 1971. The petitioner submits that he is contesting the said proceedings before the Competent Authority. However, he has filed the instant writ petition praying for a direction to direct the NDMC to mutate his name and to set aside the impugned order, whereby, his representation has been rejected by the NDMC in complete ignorance of his vested rights and also contrary to the decision passed by the Supreme Court in case of *Gainda Ram v. MCD*¹ and *Patri Vyapar Mandal Delhi (Regd.) (1) v. MCD*².

7. Mr. Ankit Singh Sinsinwar, learned counsel appearing on behalf of the petitioner strongly criticizes the approach of the NDMC in passing the impugned order dated 10.07.2024 and submits that they have solely relied upon the policy on licenses of NDMC's shops, kiosks, pan tharas and issues related thereto dated 16.08.2016. He submits that according to the policy itself, the cases pending before the issuance of the policy circular are to be governed as per the NDMC's resolutions as on that date.

8. Learned counsel then takes this Court through the Resolution dated 18.03.1999 to indicate that there exists a provision for multiple transfers and in cases where the request of transfer of allotments from the first allottee is not regularized and the subsequent subletting is made, the same should also be regularized by forfeiting the amount of security deposits required to be deposited by sublettee at the time of each subletting, and the entire amount

¹ (2010) 10 SCC 715.

² (2009) 12 SCC 475.



as payable at each partnership would be payable by the present sublettee on its regularization.

9. He, therefore, submits that in the instant case, even after the alleged termination of the license in the year 2011, the NDMC had not taken any steps to get the kiosk in question vacated. According to him, till 2024, the petitioner continued to be in possession of the kiosk and, therefore, there is an implied license granted in his favour by acquiescence and the petitioner is represented to fulfill all terms and conditions of the allotments, if the NDMC so directs. In any case, his endeavor is to convince this Court that on the basis of various documents, as has been indicated in the petition, the petitioner has been able to successfully prove before the NDMC that the original allottee has gifted/transferred all his rights and title over the aforesaid kiosk.

10. The submissions made by Mr. Ankit Singh Sinsinwar are strongly opposed by Mr. Abhinav Bajaj, learned counsel appearing for NDMC. He takes this Court through the impugned order and submits that the same has been passed strictly in accordance with the policy dated 16.08.2016. According to him, no writ can be issued against the Corporation to act contrary to its applicable policy and regulations. He, therefore, submits that the petitioner does not have any vested rights for getting the kiosk in question mutated in his name. According to the learned counsel, even the so-called partnership deed according to the petitioner's own understanding was dissolved after the same was executed.

11. He, therefore, submits that in the cases where the partnership is entered before the date of issuing of the circular, i.e. 16.08.2016, the NDMC will entertain such cases, irrespective of whether the same was done during



the valid term on or after the expiry of the license, as an exceptional case. He, however, submits that in the instant case, the licenses of the original allottee were withdrawn by the NDMC *vide* order dated 14.11.2011 due to the licensee/occupant being found preparing eatable items in a complete violation of the terms and conditions of the license (which was limited to vending Pan Biri Cigs/Cycle repairs, etc.) and having an illegal electricity and water connection. Due to the aforesaid, the learned counsel for the NDMC submits that a cancellation letter dated 14.11.2011 was issued to the licensee/occupant. On 01.12.2011, a cancellation order was passed indicating that the original license stands withdrawn and cancelled for not replying to the earlier cancellation letter and for not removing the said violations. Thus, he submits that the licenses stood terminated in the year 2011 and henceforth, the subsequent occupier at best can be termed to be an illegal occupant.

12. He, therefore, submits that NDMC thereafter has taken the eviction action with respect to the illegal occupation under the Public Premises (Eviction of Unauthorized Occupant) Act, 1971.

13. According to him, neither there exists any validly executed partnership deed nor there exists any valid document to indicate that on the date of the policy in question, the license validly continued to be in favour of the original allottee. Therefore, on the date of issuance of the policy in question, the cases of the subsequent applicant will have to be strictly dealt with as per the policy dated 16.08.2016 itself. He, therefore, submits that there is no scope of entertaining writ petition at the behest of a party who does not have any vested legal right in his/ her favour.

14. Learned counsel has also distinguished the decision relied upon by



counsel for the petitioner while highlighting that the case in question relates to *Tehbazari* and hawkers rights and according to him, the case in question relates to a validly issued license. He, therefore, distinguishes the said decision and further submits that the Resolution dated 09.10.2009 issued by the Municipal Corporation of Delhi Central Licensing and Enforcement Cell which is sought to be relied upon by the petitioner is not issued by the NDMC and according to him, no resolution has been passed or no recognition has been granted by the NDMC to any of the licensee that *dehors* the policy dated 16.08.2016.

15. In rejoinder submission, the learned counsel appearing for the petitioner submits that according to him the decision passed by the Supreme Court in ***Gainda ram*** (*supra*) not only relates to *Tehbazari* street vendors but the said judgment is applicable to kiosks as well. He, therefore, submits that the facts raised in the instant petition are squarely covered by the decision passed by the Supreme Court and the decision shall have application in the controversy in hand.

16. I have considered the submissions made by learned counsel appearing for the parties and have also perused the record.

17. The facts, as have been discussed hereinabove, would clearly indicate that as on the date of filing of the application by the petitioner, there does not exist any partnership deed in favor of the petitioner. The fact that the proceedings under the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 have already been initiated against the petitioner also remains undisputed.

18. The respondents have taken a categorical stand that the license granted in favour of Ram Sewak Gupta already stood cancelled in the year



2011. The petitioner draws his right to the subject kiosk from the license granted in favour of Ram Sewak Gupta. When the right in favour of Ram Sewak Gupta who occupied the kiosk in question itself got cancelled, the petitioner cannot claim superior rights than the right which would have accrued in favour of Ram Sewak Gupta.

19. The petitioner claims that in the year 2010, after the expiry of his father, he peacefully continued to operate the kiosk in question. However, the fact remains that between 2010 to 2018, there is nothing on record to indicate that the petitioner has ever made any attempt to get the kiosk regularized. The first application which appears to have been made according to the petitioner's own record is dated 11.09.2018 which appears to be after 8 years.

20. Clause 6(i) of the aforesaid policy as has been relied upon by the petitioner, no doubt, says that all cases before the date of issuing the circular shall be governed as per the NDMC's resolution applicable as on that date. However, in the instant case, what is required to be noted is that the petitioner's application was never accepted by the NDMC. The petitioner's application was, for the first time, considered by the NDMC on 10.07.2024 which came to be rejected while noting various aspects as can be seen from the impugned order.

21. The Court takes note of the aforesaid circumstances and also finds that the decision rendered by the Supreme Court in the case of ***Gainda ram*** (*supra*) was related to the settlement of *Tehbazari* rights under the Scheme which was formulated by MCD and NDMC. As on the date the judgment in the case of ***Gainda ram*** (*supra*) was pronounced, the policy dated 16.08.2016 was not issued by the respondent-NDMC.



22. In the instant case, the rights of the petitioner will have to be considered in accordance with the original allotment in favour of Ram Sewak Gupta or in view of the policy dated 16.08.2016. In either cases, the license in favor of the original allottee stood cancelled and therefore, as a natural corollary there exists no right in favour of the petitioner herein.

23. Moreover, the phraseology of Article 226 of the Constitution of India is couched in such a manner that provides for the exercise of extraordinary powers by the Constitutional Courts, if the vested legal right of the petitioner is infringed and a consequential breach of obligations on part of the concerned authorities takes place. The Supreme Court in the case of **Dwarkanath v. ITO**³, discussed the phraseology of Article 226 of the Constitution of India as compared to English Law and emphasised on the prerogative nature of such writs in public law. The relevant extract of the said decision reads as under:-

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast

³(1965) 3 SCR 536.



country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

24. The rigours of the extraordinary jurisdiction vested in the Constitutional Courts can only be triggered when sufficient exposition of vested legal right is established by the petitioner and consequent breach of those rights by instrumentalities of the State. The Constitution Bench of the Supreme Court in the case of *State of Orissa v. Madan Gopal Rungta*⁴ has held that the language of Article 226 of the Constitution of India gives an impression that the existence of a vested legal right is quintessential for the exercise of writ jurisdiction. The relevant observations of the Supreme Court in the said case read as follows:-

“13. The language of the article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (fundamental rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the rights is the foundation of the exercise of jurisdiction of the Court under this article.”

25. In view of the aforesaid, in the absence of there being any vested legal rights established in favour of the petitioner, the Court is unable to accept the prayer for mutation and accordingly, the instant writ petition stands dismissed alongwith pending applications.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 27, 2024/kd

⁴ 1951 SCC 1024.