$~21

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

\+ W.P.(C) 8539/2016, CM APPL. 37781/2017 & CM APPL. 4048/2023

ARUN GROVER .....Petitioner

Through: Mr. M. Tarique Siddiqui, Mr. Rakhshan Ahmed, Md. Bilal, Mr. Fajallu Rehman, Ms. Lakshmi and Mr. Anirudh Sharma, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Ms. Kanika Agnihotri, SC along with, Advocate for NDMC.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **26.09.2024**

1. By way of this petition under Article 226 of the Constitution, the petitioner seeks a direction upon the respondent–New Delhi Municipal Council ["NDMC"], to transfer a shop [*Shop No.45, Prithvi Raj Market, New Delhi- 110003*] in the name of the petitioner under the respondent's policy dated 18.03.1999 ["1999 Policy"], which contemplated transfer to the legal heirs of the allotee after death, without costs.

2. The facts, insofar as they are relevant for adjudication of the petition, are that the shop, which was located in a rehabilitation market, was allotted to the father of the petitioner on 26.03.1996 by issuance of a deed of license. On 18.03.1999, NDMC adopted Resolution No.6, with regard to transfer of licenses in rehabilitation shops. It is undisputed that

the said policy applies to the subject shop also.

3. The petitioner and his father entered into a partnership deed on 27.03.2000, which covered the business being carried on at the said location. The partnership firm was dissolved on 31.03.2000 and the petitioner thereafter requested a transfer of the shop in his name. The application was accompanied by an affidavit of no objection of his father. The respondent – NDMC, on the basis of the 1999 Policy, took the view that the said transfer would attract a fee of 100 times the original license fee in terms of Clause 3(iii) of the 1999 policy, read with the Annexure thereto. The petitioner and his father did not deposit the said amount and the transfer was, therefore never effected.

4. The petitioner's father died on 02.06.2009. According to the petitioner, he left a will dated 07.06.2004, by which the license was inherited by the petitioner. The petitioner applied for transfer of license in his name as one of the legal heirs on 14.02.2011. The respondent, however, required the petitioner to deposit a sum of Rs.20,82,628/- until August 2011, being 100 times the original license fee. There was some correspondence between the parties, after which the petitioner approached this Court in W.P.(C) 10646/2015. The writ petition was disposed of on 18.07.2016, directing NDMC to dispose of a representation filed by the petitioner.

5. By the impugned order dated 08.09.2016, NDMC has rejected the application on the following basis:

> *"With reference to your application dt. 14.2.2011 for transfer of above shop on legal heir basis, it is to inform that your request has been thoroughly considered/examined but cannot be exceeded to for transfer on legal heir basis as you have entered into partnership with your father w.e.f. 1.4.1999 dissolved on 1.3.2000 whereas you father*

expired on 2.6.2009.

The transfer can only be considered on partnership basis as per policy of NDMC framed vide Reso. No. 6 dt. 18.3.1999 by applying multiplying method of enhancement of licence fee.

The WILL submitted by you is also not applicable as Shop is a licensed unit and not a private property. Moreover, the WILL are operative only after death not during lifetime. As per resolution mentioned above at present a sum of Rs.51,65,788/- upto July 2016 is outstanding against the shop as intimated by Account Officer (Estate-I).

You are therefore directed to deposit the above said amount within 10 days of the receipt of this letter & hereby show cause as to why action for eviction and recovery shall not be initiated under section 5 & 7 of the P.P. Act. 1971."

6. I have heard Mr. M. Tarique Siddiqui, learned counsel for the petitioner, and Ms. Kanika Agnihotri, learned counsel for NDMC.

7. The question to be decided turns upon an application of Clause 3 of the 1999 Policy. Clause 3 reads as follows:

*"**Clause 3***
Policy on transfers

i. *To be freely allowed (except in case of reserved categories).*
ii. *On date of entry/deletion of partnership 30% enhancement in licence fee. After amalgamation with the original amount annual enhancement 7%.*
iii. ***Policy at Annexure, in case of rehabilitation markets as the base rate with annual increase @7%.***
iv. *Dependent family members to be permitted without any enhancement in licence fee: Other blood relations allowed with 30% enhancement.*
v. ***Legal heirs only after death without any cost.***
vi. *Multiple transfers: In cases where the request of the transfer of allotment 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 sub-lettee at the time of each subletting and-the entire amount as payable at each partnership would be payable would be payable by the present sub-lettee on its regularization."*

[Emphasis supplied.]

8. According to Ms. Agnihotri, the petitioner's case falls within Clause 3(iii) of the 1999 Policy. She refers me to the Annexure to the

policy, which provides "*sub-letting rates*" in respect of rehabilitation markets. For Prithvi Raj market, the existing sub-letting rate was stated to be 7 times the original license fee, and the proposed sub-letting rate was stated to be 100 times the original license fee.

9. Mr. Siddiqui, on the other hand submits, that the applicable provision is Clause 3(v) of the 1999 Policy, as the petitioner's claim is now on the basis that he is the legal heir of the deceased allotee.

10. Having heard learned counsel for the parties, I am of the view, on the facts of this case, that the petitioner must prevail. There is no dispute that the 1999 Policy applies to the case in question. Assuming for the present, that the sub-letting rates mentioned in the Annexure to the policy, were applicable to a transfer as requested by the petitioner in 2001, no such transfer, in fact, fructified. The respondent demanded a sum of approximately Rs.20.82 lakhs towards the charges for the transfer, which was not paid by the petitioner. The attempt of the petitioner to have the shop transferred to him, on the basis of a Partnership Deed or a Deed of Dissolution in the year 2000-01, was thus unsuccessful.

11. It is not the case of the respondent that the transfer had taken place, and the petitioner's deceased father ceased to be an allotee at that point. In fact, the shop remained in the possession of the petitioner's father for the next nine years, until his death in the year 2009. There is no basis in the record to suggest that NDMC, at any stage, contended that his allotment had lapsed by reason of the purported Partnership Deed dated 27.03.2000, and Ms. Agnihotri confirms, upon instructions, that no attempt to re-enter the property was taken by NDMC.

12. In these circumstances, the petitioner is right in submitting that his

father remained the allotee of the property until his death. The policy expressly requires transfer to be made in favour of legal heirs after the death of the allotee, without any costs. The petitioner is admittedly one of the children of the deceased allotee. He is, therefore, entitled to transfer on the basis of Clause 3(v) of the 1999 Policy.

13. Ms. Agnihotri submits that NDMC is reviewing its policy on transfer as it finds that rehabilitation shops in localities such as Prithivi Raj market can fetch very high amounts of license fee, whereas the allotees and their successors are paying a relatively meagre amount. No revised policy has, however, yet been made. The Court has to proceed on the basis of the 1999 Policy, which is undisputedly applicable to the allotment in question.

14. It is made clear that the petitioner will be liable to complete all formalities required for the transfer, including payment of any amounts due in respect of the shop, calculated on the basis that Clause 3(v) applies. NDMC is directed to take necessary steps and inform the petitioner of the requisite formalities within four weeks from today.

15. Ms. Agnihotri states that the deceased allotee had other legal heirs also. NDMC will proceed in accordance with the policy applied by it in all cases of a similar nature.

16. The petition, alongwith all pending applications, is disposed of in the above terms.

PRATEEK JALAN, J

SEPTEMBER 26, 2024
SS/