

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

% Reserved on : March 21, 2007
 Date of Decision : April 30, 2007

+ W.P. (C) 2845/2005 & CMS 2049/2005 & CM 674/2006

AVAT RAM MAMTANI PETITIONER
! Through : Mr. Anil Mittal, Advocate

versus

\$ N.D.M.C. RESPONDENT
^ Through: Ms. Anjana Gosain, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

: Dr. S. Muralidhar, J.

1. The petitioner, an allottee of stall no. 46, Municipal Market, Jan Path, New Delhi, challenges the demand notice dated 18.1.2005 issued by the New Delhi Municipal Council ('NDMC'), calling upon him to pay Rs.4,58,823/- on account of licence fee for the period ending in January 2005. There are further prayers made in the alternative: either the shop should be declared to be continuing in the name of the petitioner exclusively or be transferred in the name of son of the petitioner either exclusively or jointly with the petitioner without enhancement of the licence fee or that it should be transferred exclusively to the son with 30% enhancement in the existing licence fee as per the policy dated 18.3.1999 with prospective effect.

Pleadings of the parties

2. The facts leading to the filing of this writ petition are that shop in question was allotted to the petitioner in 1950. In 1992, the petitioner requested that the shop be transferred in the name of his son, Shri Bhim Sen Mamtani. The petitioner and his wife conveyed that neither of them had objection to this transfer. Two years later, on 18.3.1994, the petitioner was asked to confirm that he had given his no objection for transfer of allotment in favour of his son. The petitioner gave his confirmation by letter dated 22.3.1994.

3. By a letter dated 4.5.1994, the son of the plaintiff was informed that he should visit the office of the NDMC within 7 days for executing fresh licence deed, affidavit to the effect that he did not own any shop in Delhi, to make a fresh security deposit of Rs.5040 and pay municipal charges of Rs.1260/- from 30.3.1993 onwards. The petitioner's son on 9.5.1994 made security deposit and signed licence deed. He also deposited a sum of Rs.35,000/- towards monthly charges and interest with effect from 30.3.1992.

4. When despite all this, no fresh licence deed was issued in favour of the petitioner's son, he sent reminder on 17.10.1994. On 15.9.1995, the petitioner wrote another letter asking for issuance of fresh licence deed and in the meanwhile kept paying Rs.1260/- per month which was subletting rate although, the shop had in fact not been sublet.

5. On 18.3.1999, NDMC framed a policy for transfer of stalls. Nevertheless, the petitioner's request was still not acceded to. On 9.4.2001, he received a demand notice asking him to pay Rs. 1,77,353. The petitioner on 9.5.2001 protested against this demand.

However, the demand was not withdrawn and the petitioner again wrote on 14.2.2002, this time stating that he was no longer interested in getting the allotment transferred exclusively in favour of the son and that the name of the son be added along with his name. By a letter dated 14.8.2002, NDMC informed the petitioner that a sum of Rs.3,04,996 towards licence fee/damages was outstanding against the petitioner as on 3.6.2002. The petitioner questioned this demand by his letter dated 10.9.2002. He again wrote on 22.4.2003 withdrawing his request for transfer of the shop exclusively in the name of his son and requested that his son's name be added with his name without enhancing the licence fee. Nothing happened thereafter and on 12.5.2004, he addressed another letter to the Chairman, NDMC.

6. The petitioner received a challan dated 12.6.2004 asking that he should deposit Rs. 2,80,056/- towards arrears and damages including interest. He received another challan dated 12.7.2001 whereby the amount of damages was increased to Rs.4,41,299/-.

7. By a letter dated 20.7.2004, the petitioner was informed that the Chairman, NDMC had turned down his request for renewal of licence fee in his name along with the name of the son without enhancement of fee. The reason for this is stated to be failure of the petitioner and his son to complete formalities for execution of licence deed and making payment pursuant to the earlier letter dated 4.5.1994. By his letter dated 22.7.2004, the petitioner clarified that all payments have been made and the signed licence deed had also been handed over.

8. The matter was referred to the Lok Adalat before whom it was agreed by the NDMC that no demand in respect of stall would be

raised in the name of petitioner since he had stated before the said forum that liability was that of the son. It was then ordered that petitioner's son should be given benefit of one-time settlement scheme, subject to his making payment of the amount due with 12% simple interest from from 1.4.2003 to 30.9.2004. It is the petitioner's case that these statements were made under desperation and since in any event the NDMC never kept to its side of the settlement, it should not bind him either. He further points out that he had already paid excess amount by then and the shop still had not been transferred in the name of his son. He therefore, send another letter on 28.9.2004 stating that since he was originally allotted the stall and it should be regularized in his own name.

9. It is then stated that one Mr. Gauri Shankar, A.O. (Estate) informed the petitioner that NDMC was now free to recover the amount from the petitioner and would add the name of his son along with his name at the enhanced licence fee on subletting basis. Since the amount was huge, he agreed to accept payment in installments provided the petitioner paid 2 lakhs upto 8.10.2004 and the balance in the following month. A challan valid up to 8.10.2004 in the sum of Rs.2 lakhs was also issued.

10. Thereafter, the petitioner received the impugned demand notice dated 18.1.2005 stating that it was a being demand for property tax under Section 100 of the New Delhi Municipal Council Act, 1994. Questioning this demand notice, the petitioner filed the present writ petition.

11. The reply filed by the NDMC states that after the execution of

the licence deed by the son of the petitioner, he was liable to pay the enhanced licence fee as per the policy of the NDMC, which he refused to do. The counter affidavit does not deny that no fresh licence deed had been executed by the NDMC, but ambiguously states that the son of the petitioner started paying enhanced licence fee "on account of change of hand from Shri Avat Ram, the original allottee to Shri Bhim Sen Mamtani, the son of the original allottee and, therefore, the question for reducing the licence fee does not arise."

12. Thereafter it is contended in para 11 as under:-

"It is further submitted that as per policy of the Council framed vide Resolution No.6 dated 18.3.1999, the shop/ stall could be transferred in the name of the dependent family members without enhancement of the licence fee after the death of the allottee. In the instant case, the petitioner being alive parted with the possession of the stall and handed over to his son, hence under the present policy he is liable to pay enhanced licence fee and the case of the petitioner is not covered under the Resolution No.6 dated 18.3.1999."

13. The stand of the NDMC appears to be that the petitioner having conveyed 'no objection' and having handed over possession, could not withdraw his request for transfer of the licence to his son. Nevertheless in paragraph 14, it is stated as under:

"NDMC can consider his request for addition of the name along with his son if the petitioner undertakes to clear the outstanding dues and further pay the enhanced licence fee as per policy of the Council. Further it is a fact that name of any of the dependent family member can be added with the allottee

without enhancement of licence fee. The case of the petitioner is entirely different as he parted with the possession of his son after completion of all the required formalities of the Council.”

14. It is reiterated that:

“respondent is still ready to add his name with the name of his son, subject to the condition that the petitioner undertake to pay the enhanced licence fee fixed and paid by his son for the short period. Further it is pertinent to mention that by adding the name of the petitioner, the respondent will not further enhance the licence fee.”

15. Annexed to the affidavit is a copy of the resolution dated 18.3.1999 setting forth guidelines dealing with the “Estate Matters”. An account statement in respect of the arrears of licence fee is also set out.

16. In his rejoinder, the petitioner points out that the NDMC has delayed the execution of licence deed for over 13 years despite the petitioner having completed all formalities in the year 1992 itself. It is denied that the petitioner parted with possession of the shop to his son. It is maintained that the petitioner is not entitled to pay any enhanced licence fee and that whatever has been wrongly collected should be refunded.

Consideration of the issues

17. The reply filed by the NDMC nowhere denies that the petitioner had made an application for transfer of the allotment in the name of his son way back in 1992. The fact that he had given the no objection

on 22.3.1994, the fact that the son of the petitioner on 9.5.1994 made the security deposit, signed the licence deed and paid the municipal charges, is all not denied. It is stated that these are a “matter of record”. It is not even denied that although the son of the petitioner had handed over the licence deed to the NDMC for their counter signatures and execution, the NDMC did not do to anything or that. x There appears to be no justifiable explanation for the unconscionable delay on the part of the NDMC in considering the request of the petitioner.

18. It is only to be expected that where the petitioner did not hear anything from the NDMC even after the policy of 18.3.1999, he wrote a letter on 14.2.2002 stating that he was not interested in getting the allotment transferred in favour of his son.

19. The NDMC is not justified in its stand that the petitioner could not withdraw his request particularly when it failed to complete its part of transaction and communicate to the petitioner its decision one way or the other for over 11 years. It kept the petitioner in suspense throughout without informing him whether the transfer of the allotment in favour of his son was taking place or not.

20. The policy dated 18.3.1999 on transfers reads as under:-

“Policy on transfers

(i) To be freely allowed (except in case of reserved category)

(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 (See page 56-58) 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.”

21. It is clear from the above policy that transfer in favour of dependent family members is to be permitted without enhancement in licence fee, in favour of other blood relations it could be allowed with 30% enhancement. After the death of the allottee, transfer should be allowed without any cost. If this policy were to be apply, the request of the petitioner for transfer in the name of his son ought to have been permitted on the category of non-dependent family members with 30% enhancement. It appears that even prior to this date, transfers were being permitted. There seems to be no reason why NDMC kept setting on the petitioner's application without doing anything till 2002.

22. The demand for enhanced licence fee on the basis that the petitioner parted with possession or that the allotment of the shop had “changed hands” to his son cannot, on the NDMC's own showing, be sustained. Nowhere does the NDMC say in its affidavit that it has, in fact, recorded the change of such allotment in favour of the petitioner's son. It does not indicate that a fresh licence deed has

been executed in favour of the petitioner's son. In those circumstances, for the NDMC to insist on enhanced fee as if the petitioner had parted with possession and the allotment stood transferred to his son, is entirely without basis and unreasonable.

23. The petitioner having withdrawn his request for transfer in favour of his son, the NDMC is no longer justified in persisting with raising bills for the enhanced licence fee. The belated response in the counter affidavit that it is prepared to now consider adding the name of the petitioner together with that of his son on the condition of the petitioner undertaking to pay enhanced licence fee appears to be a plea of desperation knowing fully well that there was no formal transfer of the allotment in favour of the son. Viewed from any angle, it appears that the petitioner was justified in withdrawing his request for transfer in favour of his son.

24. The demand of enhanced fee at Rs.1260 per month, on the footing that the licence stood transferred to the petitioner's son is, in the circumstances, unjustified. The petitioner is entitled to seek refund of the amount of enhanced licence fee paid by him. The petitioner has calculated the amounts due to him on this score at Annexure 'I' to the petition (at p.29). He has also indicated the various payments made against the bills for enhanced licenced fee from time to time. In view of the finding by this Court that since no transfer took place, no enhanced fee is payable, the NDMC is now bound to calculate all the amounts paid by the petitioner towards enhanced licence fees and refund it to him.

25. In light of the above discussion, the petitioner is entitled to

succeed in both prayers (a) and (b) of the writ petition. Accordingly, the demand notice dated 18.1.2005 is hereby quashed. It is directed that the allotment of shop/stall No. 46, Janpath, should be treated as standing in the exclusive name of the petitioner. The NDMC will now calculate and refund to the petitioner the sums paid by him towards enhanced licence fee, in terms of para 24 above, within a period of four weeks from today, and in any event not later than 30.5.2007. Delayed payment beyond the said date would attract interest @ 18% p.a. In addition, the petitioner should be paid Rs.10,000/- as costs by the NDMC within four weeks from today, and in any event not later than 30.5.2007.

27. With these directions, the writ petition is allowed. Applications stand disposed of accordingly.

April 30, 2007
raj

Sd/-
S.MURALIDHAR, J.