
(2012) 10 DEL CK 0170
In the Delhi High Court
Case No : Writ Petition (C) 3831 of 2010

Avat Ram Mamtani

APPELLANT

Vs

NDMC

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 10 DEL CK 0170

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Anil Mittal and Mr. Amritansh Batheja, for the Appellant; Kanika Agnihotri and Mr. Vaibhav Agnihotri, for the Respondent

Judgement

G.S. Sistani, J.—Present writ petition has been filed by petitioner under Articles 226 and 227 of the Constitution of India seeking a direction

to respondent to transfer the allotment of shop No. 46, Municipal Market, Janpath, New Delhi, in the name of his dependent son, Sh. Bhimsen

Mamtani, without enhancing the license fee as per clause 3(iv) of the policy dated 18.3.1999. Rule. With the consent of counsel for the parties writ

petition is set down for final hearing and disposal.

2. The necessary facts, to be noticed for disposal of this writ petition, are that in the year 1950 the petitioner was allotted shop/stall No. 46,

Municipal Market, Janpath, New Delhi, by the respondent NDMC. Initially the license fee was fixed at Rs. 35/-, per month, but subsequently it

was increased to Rs. 45/-, per month. In the year 1992 petitioner requested the respondent to transfer the allotment of the said stall in the name of

his only son, Sh. Bhimsen Mamtani, as the petitioner had grown old and he was not in a position to go to the shop daily and carry on business, the

petitioner also furnished his no objection to this effect by way of an affidavit. After pursuing the matter for two years, no permission was granted to the petitioner, however, the petitioner received a show cause notice dated 18.3.1994 from the respondent whereby the petitioner was asked to verify that he has no objection for transfer of allotment of the said stall in favour of his son. Petitioner is stated to have given his confirmation and no objection to the respondent vide communication dated 22.3.1994. By a letter dated 4.5.1994 respondent requested, Sh. Bhimsen Mamtani, the son of the petitioner, that in order to regularize allotment of the said stall, he should visit the office of the NDMC within seven days from the receipt of the said letter so that a fresh license deed could be executed in his favour. The son of the petitioner was asked to execute an affidavit stating that he did not own any shop in Delhi and further he was called upon to deposit Rs. 5040/- as a fresh security deposit and monthly charges of the shop @ Rs. 1260/-, per month, w.e.f. 30.3.1992 onwards along with interest on delayed payment. The son of the petitioner contacted the concerned officer on 9.5.1994 and also deposited a sum of Rs. 5040/- as security deposit with the respondent. The son of the petitioner also signed the license deed and handed over the same to the respondent for their counter signature and execution. A sum of Rs. 35,000/- was also deposited by the petitioner with the respondent towards the monthly charges and interest w.e.f. 30.3.1992 even though the same was unreasonable because the delay was on the part of the respondent NDMC and not either on the part of the petitioner or his son. After the petitioner and his son had completed all the formalities and respondent did not take any step to execute fresh license deed in favour of the son of the petitioner, the petitioner wrote a letter dated 17.10.1994 informing the respondent to execute the license deed at the earliest. Another request was made by petitioner on 24.11.1994.

3. It is also submitted by the Learned Counsel for the petitioner that thereafter in the year 1995 subject to the furnishing of an undertaking and fulfilling other conditions the respondent NDMC permitted the allottees to carry out construction/renovation in their respective shops, but the respondent refused to accept the undertaking by the petitioner's son on the ground that he was still not the allottee and asked the petitioner since

he was the allottee to furnish the said undertaking.

4. Despite repeated reminders including a letter dated 15.09.1995 whereby the petitioner requested the respondent NDMC to expedite the

matter, respondent did not execute fresh license deed in favour of the son of the petitioner, although the petitioner kept on paying the enhanced

monthly charges/license fee of the shop @ Rs. 1260/-, per month, i.e. at the subletting rates though there was no change of hands.

5. According to the petition, various reminders were sent to the respondent. The respondent also framed a policy vide Resolution No. 6 dated

18.3.1999 for transfer of stalls. As per Clause 3 (iv) of the said Policy stall could be transferred in the name of the dependent family member of the

allottee without any enhancement in license fee. Clause 3 (iv) reads as under:

3. Policy on transfers

(iv) Dependent family members to be permitted without any enhancement in licence fee. Other blood relations allowed with 30% enhancement.

6. Learned Counsel for the petitioner contends that at the relevant point of time the son of the petitioner was only helping the petitioner in the

business and for all practical purposes he continues to remain dependent on his father. Counsel further submits that till the date of filing of the

present writ petition the petitioner has deposited a sum of Rs. 1,85,715/- with the respondent towards license fee from 1.4.1992 while as an

original allottee only Rs. 67,951/- was payable. Thus, the petitioner has already paid a sum of Rs. 1,17,764/- in excess to the respondent. Counsel

next contends that the petitioner was surprised to receive a demand letter in the sum of Rs. 1,77,353/- from the respondent on account of damages

with respect to the shop in question.

7. On 09.05.2001 the petitioner wrote a letter protesting against the said demand on the ground that the said demand nowhere mention the reason

for which it was being raised. In the said letter it was also intimated that there are no arrears against the petitioner the said letter also mentions that

even after completion of all formalities, license deed had not been executed in favour of his son till now. Thereafter several visits were made by the

petitioner to the office of the respondent NDMC requesting withdraw of the unreasonable demand as there was no justification for the same and to

execute license deed in favour of his son. The protest raised by the petitioner

had no effect. The respondent also did not execute the necessary documents in favour of the petitioner's son.

8. On account of inaction on the part of the respondent NDMC in neither withdrawing the demand nor issuing fresh license deed as requested, the petitioner vide letter dated 14.02.2002 requested the respondent that he was no longer interested in getting the allotment transferred in favour of his son and that the name of his son may be added alongwith his own name as per the policy of the NDMC. In support of argument reliance is placed by the Counsel for the petitioner on the policy of the NDMC.

9. Counsel further contends that vide communication dated 14.8.2002 respondent for the first time informed the petitioner that a sum of Rs.

3,04,996/-, as license fee/damages, was outstanding against the name of the petitioner as on 3.6.2002 and the petitioner was called upon to avail

the benefit of one-time settlement scheme of the respondent. Counsel submits that the petitioner was shocked to receive the demand raised by the

respondent and made representations to various officers of the respondent, vide letter dated 10.09.2002 petitioner requested that as the shop had

not been transferred in the name of his son he would remain the original allottee and is only liable to pay the monthly charges as applicable to

original allottees and there is no question of any change in the monthly license fee; vide letter dated 22.04.2003 petitioner withdrew his offer of

regularizing the shop in favour of his son and reiterated his request for addition of his son's name with his name. Thereafter on 22.10.2002 the

petitioner met Sh. Rangey, the then Director (Estate), NDMC where he was informed that on furnishing an affidavit of his wife giving her no

objection to the name of Sh. Bhim Sen Mamtani to be added along with the name of the petitioner without any enhancement to rent/license fee, the

same would be done immediately. Pursuant to the said assurance, the petitioner submitted the affidavit, but that also was not of any useful purpose;

and finally letter dated 12.05.2004 was addressed to the Chairman, NDMC, however, the same also fell on deaf ears and were of no avail.

Counsel further submits that on 12.6.2004 petitioner received a challan from the respondent by which the petitioner was asked to deposit Rs.

2,80,056/- with the respondent towards arrears of damages including interest. In the following month the petitioner received another challan dated

12.7.2004, in which the amount of damages was enhanced without justification to Rs. 4,41,299/-. It is also submitted by the Learned Counsel for

the petitioner vide letter dated 20.07.2004, the respondent intimated the petitioner that the Chairman had not acceded to his request for

regularisation/renewal of license in respect of the shop in question in his name alongwith the name of his son without enhancement of fee as per the

policy on the ground that pursuant to the letter dated 04.05.1994 from the respondent's office the petitioner and his son had failed to complete the

required formalities whereas as all the formalities were completed as per the petitioner vide letter dated 22.7.2004 the petitioner clarified the

position.

10. Petitioner referred the matter to the Lok Adalat of the respondent. The son of the petitioner in the said proceedings offered to pay Rs.

4,44,523/- provided he was given benefit of one-time settlement scheme of the respondent NDMC for interest, liability. In the said proceedings

the son of the petitioner also forced the petitioner to make a submission that he has no right, title or interest in respect of the said stall/shop and also

that the petitioner's son is liable to make the payment. It was made clear by the said order that the payment should be made on or before

30.09.2004 failing which the order would become infructuous. Since the time was granted upto 30.9.2004 to make the payment the son of the

petitioner could not make the payment Resultant thereto allotment of the stall/shop continued to be in the name of the petitioner.

11. Thereafter a representation dated 28.09.2004 was made by the petitioner to the Grievance Redressal Forum, requesting that since the

petitioner was the original allottee of the stall the same may be regularized in his own name alongwith the name of his son without any enhancement

of license fee. It is further submitted that from 1994 till June 2003, the petitioner has paid a sum of Rs. 1,65,715/- towards the payment of license

fee whereas the license fee payable till March 2003 by the petitioner was only Rs 56,387/-, an amount of Rs. 1,09,328 had already been paid in

excess to the respondent. It is next submitted that since the stall is still in the name of the petitioner, the respondent NDMC was not entitled to

enhanced license fee. Thereafter the petitioner met one Mr. Gauri Shanker A.O. (Estate) whereby on a request being made he was refused the

details of account statement and was further informed that since the last date of 30.09.2004 had passed NDMC was now free to recover the

amount from the petitioner and would add the name of the son of the petitioner along with his name at enhanced license fee on sub-letting basis.

Since the amount was huge the petitioner was offered to make the payment in installments i.e. Rs. 2,00,000/- on 08.10.2004 and remaining

balance by the next month with a warning that in case of non payment result would be attachment and sealing of the shop.

12. Learned Counsel for the petitioner submits that on 18.1.2005 the petitioner received another demand in the sum of Rs. 5,58,823/-. The

petitioner thereafter assailed the said demand by filing W.P. (C) 2845/2005 in this Court. While allowing the said writ petition on 30.4.2007 this

Court had quashed the impugned demand. The learned Single Judge took notice of the Policy of the respondent dated 18.3.1999. Counsel further

submits that thereafter the respondent filed LPA No. 397/2007 against the said order, which was dismissed on 11.5.2009. Thereafter the

petitioner filed a Review Petition No. 289/2007 against the order dated 30.4.2007 which was withdrawn by petitioner vide order dated

29.01.2010. Counsel further submits that during the pendency of the said writ petition the petitioner withdrew his request for transfer of stall in

favour of his son. Subsequently the petitioner made an application vide letter dated 22.2.2010 followed by a reminder dated 3.5.2010 for transfer

of the shop in favour of his son, however, the request has not been considered by the respondent, which has led to the filing of the present writ

petition.

13. Per contra it is the case of the respondent that the petitioner has sub-let the stall to a third party or even to his son. A short affidavit has been

filed by respondent, which reads as under:

.....

2. The petitioner was allotted Stall No. 46 at Municipal market, Janpath Marg, New Delhi as a part of the Rehabilitation Measures under taken by

the Respondent. Therefore the allotment/transfer of the same must be governed and regulated by the provisions of the policy made on such

rehabilitation allotment.

3. That as the allotment was made under Rehabilitation Policy, therefore the

Resolution No. 6 dt 18th March 1999 is pertinent to bring to the attention of this Hon"ble Court. Clause 3 is related to transfer of Estate under the jurisdiction of the Respondent and in specific sub-clause (iii) of the said clause is of some importance.

4. The said clause specifically relates to the estates like the stall under dispute in the present petition. It is humbly submitted that as per clause 3 the allotment can only be transferred in the name of legal heir without enhancement only after the death of the allottee. Therefore the transfer as prayed for by the petitioner is not permissible. However, the request of the Petitioner can be considered by enhancement of license fee by 30 times of the license fee as applicable in sub-letting cases.

5. The said license fee so arrived at would be applicable from date of transfer of the allotment and shall increase as per policy applicable from time to time.

14. Learned Counsel for the respondent NDMC submits that since the petitioner has sub-let the shop in question, he is liable to pay the penalty.

Counsel further submits that in case the request of the petitioner is to be considered it would be by enhancing the license fee by thirty times as applicable in cases of sub-letting.

15. I have heard Learned Counsel for the parties, considered their rival submissions and also perused the relevant material placed on record. The

stand of the respondent that since the petitioner has sublet the shop in question, the petitioner should pay thirty times enhanced licensee fee, as

applicable in sub-letting cases, is absolutely unreasonable to say the least firstly the counter affidavit does not address any of the issues, which have

been raised by the petitioner in the writ petition nor NDMC has been able to show on what grounds the NDMC has come to the conclusion of

subletting. The policy of the NDMC (relevant paras of which has been reproduced above) makes it clear that transfer is to be allowed freely. The

case of the petitioner is fully covered by Clause 20 (IV) of the Policy which pertains to transfer in favour of a family member as the petitioner has

sought transfer in favour of his only son. I am further fortified in my view as the question with regard to the terms of transfer has already been

decided by a Single Judge in W.P. (C) 2845/2012 filed by petitioner and upheld by the Division Bench in LPA 397/2007 filed by respondent.

Para 20 to 22 of the order passed in W.P. (C) 2845/2012 read as under:

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 license 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 license fee. Other blood relations allowed with 30% enhancement.
- (v) Legal heirs only after death without any cost.
- (vi) Multiple transfers: In case 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 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 license 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 applied, 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.

16. While dealing with the LPA 397/2007 filed by the NDMC the following observations were made by the Division Bench:

4. The learned Single Judge has correctly, in our view, held that the NDMC was not justified in its stand that the respondent could not withdraw

his request particularly when it failed to complete its part of the transaction and communicate to the respondent its decision one way or the other

for over 11 years. The learned Single Judge also took note of the fact that as per 18th March, 1999 policy, if the said policy were to be applied to

the respondent, then the request of the respondent for transfer of allotment in the name of his son ought to have been permitted in 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 sitting on the respondent's application without doing anything till 2002. Nowhere does the NDMC, in its affidavit

in the writ petition, states that it has, in fact, recorded the change of such allotment in favour of the respondent's son. In those circumstances, the

learned Single Judge rightly held that for the NDMC to insist on enhanced fee as if the respondent had parted with possession and allotment stood

transferred to his son, was entirely without basis and unreasonable. The learned Single Judge correctly observed that the respondent having

withdrawn his request for transfer in favour of his son, the NDMC was no longer justified in persisting with raising bills for the enhanced licence

fee. There was, admittedly, no formal transfer of the allotment in favour of respondent's son and viewed from any angle, the respondent was

justified in withdrawing his request for transfer in favour of his son.

17. In view of the finding of the Single Judge, which stands fortified by the decision passed in the LPA, which orders have not attained finality,

leaves no room for the respondent to charge the petitioner thirty times the license fee, which is being paid in sub-letting cases.

18. Petitioner is stated to be 95 years of age. The petitioner has only one son and it is a reasonable expectation of a father that his son should join

his business and share his burden on the one hand and secure the future of his son on the other hand, Present case is no different. It has been

averred in the writ petition that since the age of 18 years petitioner's son has

been helping his father. There is no denial to this averment, which has been made in the writ petition. There is nothing on record to show that the stall in question has changed hands.

19. The respondent is a public body, it is meant for public and a public body cannot be allowed to act in an unreasonable manner. There is also no explanation as to why the requests made by the petitioner on 22.2.2010 and 3.5.2010 to the respondent remained unattended. Since the year 1992 the petitioner has been running from pillar to post to seek transfer of his stall in favour of his son but to no avail.

20. Accordingly, present writ petition is allowed. Rule is made absolute. Writ of mandamus is issued to the respondent to consider the case of the petitioner in terms of Para 3 (iv) of its Policy dated 18.3.1999 within a period of four weeks from the date of receipt of this order. Costs quantified at Rs. 10,000/- to be paid by respondent to the petitioner. Petition stands disposed of in view of above.