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**(1996) 12 DEL CK 0002**  
**In the Delhi High Court**  
**Case No : Suit No. 1032 of 1979**

Kishan Lal

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

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**Date of Decision :** 01-12-1996

**Acts Referred:**

Punjab Municipal Act, 1911 — Section 49

**Citation :** (1997) 1 AD 652 : (1997) 65 DLT 281 : (1997) 40 DRJ 404

**Hon'ble Judges :** K. Ramamoorthy, J

**Bench :** Single Bench

**Advocate :** Jagdeep Kishore and Rekha Gupta, for the Appellant;

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## Judgement

K.Ramamoorthy, J.

(1) The plaintiff has filed the suit for the recovery of Rs.10 lakhs for damages against the New Delhi Municipal Committee.

(2) The case of the plaintiff briefly stated thus. In the year 1968 the plaintiff took on lease the premises at Regal Park, Connaught Place, New Delhi, popularly known as "Open Air Drive in Snack Bar" opposite Regal Cinema, New Delhi. the lease was with effect from 01.06.1968. The period fixed was five years. Rent fixed was Rs.5,104.00 per mensem plus Rs. 250.00 per mensem as rent for car parking space. The said lease expired and it was renewed with effect from 01.06.1973 for another period of five years with increase of rent to the extent of 25%, namely, Rs.6,380.00 per mensem plus Rs. 312.50 per mensem for car parking space.

(3) According to the plaintiff large amount was spent for putting up construction and for doing business and he was carrying on the business in the premises. While so, on 18.02.1976 a show cause notice was given by the defendant to the plaintiff to show cause as to why the allotment of the said premises be not cancelled on the ground that the plaintiff carried out some additions or alternations without the permission of the defendant. The plaintiff sent a reply on

20.02.1976. The defendant took proceedings u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 before the Estate Officer on 21.06.1976. On 24.07.1976 the plaintiff filed the reply to the proceedings initiated by the defendant.

(4) During the pendency of the proceedings according to the plaintiff on 07.08.1976 the defendant with the aid of the police dispossessed the plaintiff and thus caused damages to the plaintiff. Hence the plaintiff is entitled to damages.

(5) The defendant filed written statement contending, inter alia, that no notice u/s 49 of the Punjab Municipal Act, 1911 was issued by the plaintiff before filing the suit and Therefore, the suit was not competent, that the plaintiff could have filed an appeal against the order of the Estate Officer in the proceedings under the Act before the District Judge and the plaintiff cannot maintain a suit in this behalf. The plaintiff had led evidence and also the defendant. I do not want to go into the merits because Section 49 of the Punjab Municipal Act, 1911 stand in the way of the plaintiff. Section 49 of the Municipal Act, 1911 reads as under:-

SECTION 49 : Suits against committee and its officers - no suit shall be instituted against a committee, or against any officer or servant of a committee, in respect of any act purporting to be done in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff: and the plaint must contain a statement that such notice has been so delivered or left: Provided that nothing in this section shall apply to any suit instituted u/s 54 of the Specific Relief Act, 1877. Notice under this section was not issued. Therefore, in the light of this mandatory provision the suit cannot be said to be maintainable. Therefore, the suit is dismissed. There shall be no order as to costs.