(2008) 11 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (C) 19350 of 2006

Malarvizhi Elangovan APPELLANT

Vs

Director of Estates and Others RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:
Premises (Occupation of Unauthorized Occupants) Act — Section 4, 5(1), 9(1)

Citation : (2009) 156 DLT 394

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : R.K. Saini and Nikhil Bhalla, for the Appellant; Rajesh Mahajan, Namrata Toppo, for R.V. Sinha, for Respondents 1 and 2, for the Respondent

Judgement

Vipin Sanghi, J.—I am dealing with the aforesaid two petitions by this common judgment since the facts are more or less identical, except that the specific dates in the two cases are different. The appeals preferred by the petitioners in these two petitions u/s 9 of the Public Premises (Occupation of Unauthorized Occupants) Act ("The Act" for short) have been dismissed by the Ld. Additional District Judge by a common order impugned herein. For the present, I am narrating the relevant facts in W.P.(C) No. 19350/06 preferred by Malarvizhi Elangovan.

2. The Directorate of Estates made an allotment of stall No. 4 DIZ Area, Baba Kharag Singh Marg, New Delhi in favour of one Mohd. Zaffar on licence basis on 5.8.1998. The said allotment was made after inviting a tender. The licence was valid for a period of three years. Clause 16 of the licence deed, being relevant is reproduced herein below:

The allotment of the shop/stall is being made for a limited period of three years. The Government shall, however, sympathetically consider renewal of the licence for a further period of three years with a like term permitting further renewal if the licensee has not been in default of any term of the licence; provided always that the total period of licence together with renewed term shall not in any case exceed 30 years and further that the renewal of the licence, if any, shall be subject to increase in the licence fee as may be found reasonable by the Government and fulfillment by the licensee of such terms and conditions of the licences as may be prescribed by the Government from time to time.

3. During the currency of the said licence, the original licencee, Mohd. Zaffar entered into a partnership with the petitioner on 11.05.1999 to jointly carry out business from the licenced premises.

4. The partnership deed aforesaid was dissolved on 20.1.2002 and the assets and liabilities of the said firm were taken over by the petitioner. The petitioner continued to be in occupation of the stall and also continued to pay the enhanced license fee to the Directorate of Estate.

5. In the allotment letter dated 5.8.1998, it was stipulated that the premises shall not be transferred or sublet to any other person and in case of default, the allotment would be cancelled straightaway and premises resumed by the Government besides taking any other action that the Govt. may be advised. Clause 8 of the licence deed prohibited the licensee from permitting any other person from using the same without the previous consent in writing of the government. In default of the said condition, the licensee was liable for ejectment. The licensee was also precluded from introducing any partner or from parting with possession of the premises or otherwise carrying on any business in the premises with any other person or to assign, transfer, charge or otherwise alienate his interest in the premises.

6. Even prior to the issuance of the licence in favour of Mohd. Zaffar, the Directorate of Estates issued an office order on 25.7.1996. By this order, the Government decided to allow regularization of shops/stalls etc in the names of partners/occupants who had come into occupation of the premises on or before 20.01.1989, on certain terms and conditions.

7. Admittedly the petitioner''s case was not covered by the said office order since the said order applied only in respect of the shops/stalls and platforms in respect whereof the persons/occupants had come into occupation on or before 20.10.1989.

8. The Directorate of Estates issued a public notice dated 06.08.2001. By this notice, the Director of Estates invited applications from occupants of fourteen markets for grant of ownership rights. Amongst the categories of persons who were eligible for consideration for grant of ownership rights, occupants who had come in undisputed occupation after 20.10.1989 and upto 31.08.2000 were also included. However the petitioner''s case was not covered by this notice, since the market at Baba Kharak Singh Marg was not enlisted as one of the markets to which this notice applied.

9. Director of Estates issued a show cause notice to Sh. Mohd. Zaffar on 11.03.2004 alleging breach of conditions of the licence. It was alleged that he

had sublet the stall and he had made unauthorized construction. He was asked to explain why the allotment be not cancelled. The petitioner responded to the Show Cause Notice, and this was followed by an order dated 27.05.2004, cancelling the licence granted to Mr. Mohd. Zaffar at the expiry of the month of August 2004.

10. The Estate Officer/Directorate of Estates initiated eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants), Act 1971 by addressing notices dated 11.03.2004 to "All persons concerned in particular Sh. Mohd. Zaffar", u/s 4 of the Act. It was alleged in the notice that Mohd. Zaffar had continued in occupation of the premises in question even after its allotment stood cancelled w.e.f. 1.9.2004 vide Department of Estates Order dated 27.05.2004. These proceedings were defended by the petitioner before the Estate Officer. The said notice culminated in an eviction order dated 15.12.2005 passed u/s 5(1) of the Act. An appeal was preferred by Malarvizhi Elangovan, the present petitioner, before the District Judge u/s 9(1) of the Act bearing PPA No. 18/06.

11. In the case of Ganga Devi (the petitioner in W.P.(C) No. 19447/2006) the relevant facts are that the Directorate of Estates allotted open stall No. 1, DIZ Area, Baba Kharag Singh Marg, New Delhi to one Sh. Maheshi Dhaundiyal on licence basis on 04.08.1998. A partnership was entered into between Sh. Maheshi Dhaundiyal and the petitioner on 12.06.2000 for jointly carrying out the business of motor vehicle repair/job work and accessories from the stall in question. This partnership was dissolved on 03.08.2000 and the petitioner took over all the assets and liabilities of the partnership including all rights, title and interest in the allotment of the premises in question. It appears that the allotment in favour of Sh. Maheshi Dhaundiyal was cancelled w.e.f. 01.09.2004 vide letter dated 27.05.2004 and the Estate Officer initiated proceedings u/s 4 of the Act against him and all other person concerned by issuing a notice. The petitioner responded in response to the show cause notice before the Estate Officer. The same culminated into the passing of the eviction order dated 15.12.2005 by the Estate Officer. The petitioner Smt. Ganga Devi preferred an appeal before the District Judge bearing P.P.A. No. 15/2006 u/s 9(1) of the Act.

12. By a common order passed in the aforesaid two appeals, the learned Additional District Judge has dismissed the appeals on the ground that the petitioners had failed to show that the allotment of the premises in question had been regularized in their respective favour.

13. The first submission of Mr. Saini, learned Counsel for the petitioners in both the writ petitions, is that the allotments in question had been made by inviting tenders. The allotments were made purely for commercial considerations. The licence was renewable for a period of upto 30 years with periodic enhancement in the lincence fee. The primary concern of the respondents was that the licence fee is regularly paid and the stalls/premises in question are utilized for the purpose for which the licence was granted, and that the other terms and conditions of the licence are complied with. It really does not matter as to who is in occupation of

the premises. The respondent, Directorate of Estates, had even earlier on two different occasions, recognized the transferees/ occupants and regularized the licence in their favour. He submits that there is no reason why the petitioners should not have been treated similarly. The further submission of Mr. Saini is that during the pendency of the petitioners appeals before the learned District Judge the Directorate of Estates had transferred the market in question to the NDMC by issuing a public notice. The relevant part of the public notice reads as follows:

Government of India had decided to transfer the markets under the control of Land & Development Office, Directorate of Estates and Central Public Works Department (except Indira Chowk, Rajiv Chowk and I.N.A. Complex) comprising shops and flats, over the shops (excluding as the general pool flats, over the shops in R.K. Puram Market, Srinivaspuri, Andrews Ganj, Nanakpur and Lancer Road Markets) to the New Delhi Municipal Council and Municipal Corporation of Delhi on "as is where is" basis.

Consequent upon transfer of these markets, NDMC and MCD will function as the Lessor or Licensor, in respect of shops and flats in these markets and shall exercise all powers being performed by Land & Development Office, Directorate of Estates and Central Public Works Department as the case may be as lessor or licensor, in the matter of substitution/mutation of title, Gift Permission, Sale Permission, Mortgage Permission, Conversion of lease hold into freehold, change of use of premises, regularization/restoration of allotment of shops etc.

The transfer of Markets will take effect from 01st April, 2006 and transfer of all records shall be completed by 30th April, 2006.

With effect from 1.4.2006, all applications in respect of these markets may be submitted to the concerned local body. The names and addresses of the nodal officers of the local bodies are give below:

New Delhi Municipal Council

Sh. D. Verma, Director (Recovery) NDMC,

10th Floor, Palika Kendra,

Sansad Marg, New Delhi - 110001.

(Tel. No. 23340638)

14. He submits that once the market in question had been transferred to the NDMC, post 01.04.2006 the NDMC was obliged to follow its own stated policy for allowing mutation in favour of a partner/sub-lettee, which the NDMC had been applying in respect of the markets which were already under its control and management. He submits that the NDMC has a uniform and ongoing policy for this purpose. The petitioner has placed on record the gist of the said policy as downloaded from the website of the NDMC. The relevant extract from the said policy reads as follows:

TRANSFER OF ALLOTMENT

Transfer of allotment is made as per policies/resolutions of NDMC.

Partnership:

Partnership or subletting is allowed after enhancement of licence fee at rates fixed by Council from time to time.

15. Mr. Saini further submits that the treatment meted out to the petitioners by the NDMC is also partisan, inasmuch as, in respect of another similar appeal being P.P.A. No. 127/2005 preferred by one Mrs. Poonam Singh, also a sub-lettee in the same market, which was decided on 13.04.2006 (and the appeals in the case of the petitioners were decided later on 05.12.2006), the learned ADJ had remanded the case back for reconsideration by the Estate Officer. However, when the petitioners appeals were heard the respondent NDMC did not act fairly by bringing to the notice of the learned ADJ the order passed in the case Poonam Singh, who was identically situated. It is argued that in all fairness, the respondents should have themselves pointed out the order passed in Poonam Singh''s case so that their appeals could also be remanded back before the Estate Officer for reconsideration.

16. I may, at this stage, take note of certain other developments which have taken place during the pendency of the writ petition. The writ petitions had earlier come up before the Court on 08.09.2008. It had then been brought to the notice of the Court that there were substantial amounts of damages outstanding from the petitioners which had not been paid by them. Since the interim stay of dispossession had been granted in both these writ petitions at the initial stage subject to payment of licence fee/ damages, this Court vacated the interim stay in both the matters. Both the writ petitioners preferred Letters Patent Appeals bearing L.P.A. Nos. 556/2008 and 558/2008, respectively, against the orders dated 08.09.2008. The said LPAs were dispossessed off by the by the Division Bench on 15.09.2008. The Division Bench requested this Court to dispose off the writ petitions within a period of three months from the date of the said order and granted relief against dispossession subject to their depositing the amounts due.

17. The matters were thereafter listed before this Court on 01.10.2008 by the Registry. They were listed for hearing on 05.11.2008. On 05.11.2008 they were directed to be listed on 06.11.2008. In the meantime, the petitioner in W.P.(C) No. 19350/2006 filed C.M. No. 15102/2008 seeking a direction to the respondent Nos. 1 & 3 to disclose whether the NDMC has approached the Central Government for granting permission to regularize the stalls/shops in the market in question, in the name of the occupants/partners, and if so, to disclose the reply of the Central Government. The petitioners also sought information with regard to the actual date of implementation of the said proposed regularization. Since the said application was moved by the petitioner only on 04.11.2008 i.e. just before the date of hearing, I did not permit an adjournment of the matter to call for a reply in the said application, particularly considering the fact that the

petitioners had agreed to the disposal of the writ petitions within three months from the date of order of the Hon''ble Division Bench. Counsel for the NDMC, Mr. Mahajan categorically stated that there is no such proposal sent by the NDMC to the Central Government, as is sought to be made out by the petitioners in C.M. No. 15102/2008. After the arguments were heard and judgment reserved on 7.11.2008, the learned Counsel for the petitioner, Mr. Saini mentioned another application on 17.11.2008 with advance copy to counsel for the respondents, which was permitted to be listed on 18.11.2008. By moving C.M. No. 15669/08 in W.P(C)No.19350/2006, the petitioners sought to place on record the information/document received from the respondent NDMC in response to the queries made under the Right to Information Act. After hearing the parties, I directed that the documents filed along with the application would be taken into account. Based on the said documents, another submission of Mr. Saini, learned Counsel for the petitioners is that a proposal is pending before the Government of India, recommended by the NDMC to regularize the shops/stalls in the name of the occupants/partners, in a similar fashion as had been done in the year 1996 and 2001 by the Directorate of Estates.

18. These petitions are opposed by the learned Counsel for the NDMC.

19. Mr. Mahajan submits that admittedly the petitioner''s case is not covered by the office order dated 25.07.1996 issued by the Directorate of Estates or by the public notice dated 06.08.2001 aforesaid. Admittedly, the allotment in favour of the erstwhile licensees had been cancelled in both the cases and proceedings under the Act had been initiated. There was no defence raised by the petitoners and the Estate Officer had rightly passed the eviction orders. Mr. Mahajan submitted that vide a notification dated 24.03.2006 bearing SO-404(E) issued by the Ministry of Urban Development, the Central Government decided to transfer the markets under the land and development office, Directorate of Estates and Central Public Works Department comprising of shops and flats over the shops to, inter alia, the NDMC on "as is where is" basis. Clause 3 of the said notification provides as follows:

On transfer of these markets, New Delhi Municipal Council and Municipal Corporation of Delhi will function as the lessor or Licensor, in respect of shops and flats in these markets and shall exercise all powers being performed by Land & Development Office, Directorate of Estates and Central Public Works Department, as the case may be, as the lessor or licensor. The guidelines and procedure followed by Land & Development Office and Directorate of Estates in the matter of substitution/mutation of title, Gift Permission, Sale Permission, Mortgage Permission, Conversion of lease hold into freehold, change of use of premises, regularization/restoration of allotment of shops etc., change of trade, conferment of ownership rights, recovery of misuse/damages charges etc. may also be followed by the local bodies viz. New Delhi Municipal Council and Municipal Corporation of Delhi.

20. Mr. Mahajan submits that in respect of the markets transferred to NDMC,

which included the premises in question situated on Baba Kharag Singh Market, the NDMC had decided to continue to apply the same guidelines as were in application when these markets were under the control and jurisdiction of the Directorate of Estates and the set of rules and guidelines, inter alia, for the purpose of transfer of allotment in favour of the partner / occupant being followed by NDMC in relation to various other markets under its management from before had not been made applicable to such transferred markets. He also argued that the case of Poonam Singh was materially different from that of the petitioners. He submits that in the case of Poonam Singh, the remand was directed by the learned ADJ to the Estate Officer for re-consideration, primarily for two reasons: the first was that the appellant Poonam Singh had relied upon the cases of Ved Rajol, occupant of Stall No. 6 and Sh. Nasir Ahmed, occupant of Stall No. 7. The cases of both these occupants was covered by the scheme of regularization floated by the Directorate of Estates on 25.07.1996 as these occupants had come into occupation of premises on or before 20.01.1989. Mr. Mahajan has produced photocopies of the partnership deeds executed by the original allottees in favour of Sh. Ved Rajol and Sh. Nasir Ahmed respectively which are dated 22.08.1988 and 19.02.1988. Secondly, the learned ADJ in the case of Poonam Singh had found that the appellant Poonam Singh had not been given a proper hearing, and that there was a violation of principle of natural justice in her case. Mr. Mahajan, therefore, argues that the case of Poonam Singh cannot be relied upon by the petitioners and there was no discrimination in the approach of the respondents before the Estate Officer or the learned ADJ against the petitioners. Mr. Mahajan also relied upon Narmada Bachao Andolan Vs. Union of India and Others, to submit that the courts, in exercise of their jurisdiction, would not transgress in the field of policy decisions as the courts are ill equipped to adjudicate on a policy decision of the Government. When two or more options or views are possible, and after considering them the Government takes a policy decision, it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

21. Mr. R.K. Saini, counsel for the petitioner made his submissions in the rejoinder. Mr. Saini submitted that the discriminatory approach of the respondent vis-?-vis Poonam Singh''s case lay in not bringing to the notice of the learned ADJ the fact that the case of Poonam Singh is not covered by the public notice dated 25.07.1996 issued by the Directorate of Estates. It is argued that the respondent should have pointed out in the case of Poonam Singh that the cases of Ved Rajol and Nasir Ahmed are distinct from that of Poonam Singh, which the respondents deliberately did not do. It is also argued that the so called policy adopted by the respondent NDMC to apply a different set of rules and guidelines in relation to markets transferred to NDMC vide notification dated 24.03.2006 is discriminatory. Once the transferred markets became a part of the pool of markets being managed by the NDMC, there was no rationale in treating the said markets differently and in denying the benefit of the same liberal policies which the NDMC applies to other markets owned and managed by it from before.

22. Having considered the rival submissions of the parties I am inclined to agree with the submissions of the petitioners and to allow the writ petitions.

23. The premises in question was allotted to the original allottees against public auction and by charging licnese fee. The license fee itself was revised from time to time. These allotments were not made out of any other consideration apart from monetary considerations. The original license deed itself shows that the intention was to grant a long term license of up to 30 years. Therefore, unless there was a serious and un-remedied breach of an essential term of the license, normally the same would not be terminated. No doubt the license of the original allottees, in the present cases, were terminated since it was not open to induct a partner or to transfer or sublet the premises to a stranger without the prior permission of the Directorate of Estates. It cannot be argued that the said breach was not a material breach and that the termination of the licnese as originally done by the Directorate of Estates was bad in law. However, the matter does not end there. While the appeals filed by the petitioners u/s 9 were pending before the learned ADJ, Baba Kharag Singh Market stood transferred to the NDMC. On transfer of the market to NDMC, the NDMC became entitled to exercise the power being exercised by the Land & Development Office, Directorate of Estates as licenser. Mr. Mahajan, to justify the adoption of a different policy in respect of the transferred markets, from the policy adopted in markets owned and governed by it from before, has laid great emphasis on Para 3 of the notification dated 24.03.2006 which states: "The guidelines and procedure followed by Land & Development Office and Directorate of Estates in the matter of substitution/ mutation of title, Gift Permission, Sale Permission, Mortgage Permission, Conversion of lease hold into freehold, change of use of premises, regularization/ restoration of allotment of shops etc., change of trade, conferment of ownership rights, recovery of misuse/damages charges etc. may also be followed by the local bodies viz. New Delhi Municipal Council and Municipal Corporation of Delhi." The submission of Mr. Mahajan is that the markets were transferred to the NDMC with the express stipulation that the guidelines and procedures followed by Land & Development Office and Directorate of Estates, inter alia, in the matter of substitution / mutation of title would continue to govern the occupants of the shops / stalls being transferred and, therefore, the NDMC is justified in not applying its more liberalized norms to such markets.

24. I do not agree with the interpretation given by the respondents to the notification dated 24.03.2006. By the aforesaid extract of Para 3 of the notification dated 24.03.2006, in my view, the Central Government desired that after transfer of the markets to, inter alia, NDMC, the rights and privilege being enjoyed by the occupants in relation to, inter alia, mutation/substitution of title should be preserved so that the occupants are not faced with either more stringent rules and regulations or a complete ban in that regard. However, it could not mean that if more liberalized policies and norms were in vogue in the NDMC in relation to any of the matters including substitution/mutation of title, the occupants of the transferred markets would be denied the benefit of such

policies and norms. Once the markets were being transferred, inter alia, to NDMC it was not for the Land & Development Office or the Directorate of Estates to tell the transferee NDMC how it should deal with the aspects of, inter alia, substitution/mutation, except to say that the pre existing rights of the occupants be not adversely affected. While providing for the protection of the rights of the allottees/occupants, inter alia, in respect of substitution/mutation of ownership, all that the Central Government did was to recognize the vested rights of the allottees/occupants, since the same could not have been altered to their disadvantage merely on account of the transfer of ownership and management of the markets to, inter alia, the NDMC. The NDMC was not, and could not have been prohibited its own policy with regard to the manner in which it deals with occupants and allottees inter alia in relation to substitution / mutation of title. The imposition of such a condition by the Directorate of Estates while transferring the markets to, inter alia, NDMC would militate against the concept of the transfer itself, which clearly states that "on transfer, NDMC... will function as the lessor or licensor in respect of shops an shall exercise all powers being performed by.... Directorate of Estates as lessor or licensor". The aforesaid interpretation of the notification dated 24.03.2006 also finds support from the stand taken by the Directorate of Estates in their response dated 08.07.2008 to the communication dated 21.05.2008 sent by the NDMC. The NDMC sent a communication dated 21.05.2008 to the Directorate of Estates, Ministry of Urban Development, which stated as follows:

Sir,

The representative of market associations of the markets transferred to NDMC by the Dte of Estates are time and again representing for revision of prescribed cut off date i.e. 20-10-89 for transfer of shops in the names of the occupants entered into premises on sub-letting/partnership basis and are running their business.

Their representation have been examined and considered and it has been felt that as the cut off date is quite old now nearly about 20 years thus requires revision as many shops may have changed hands and operating business without paying any enhanced licence fee to the NDMC.

It is, therefore, requested to guide in this matter on priority.

25. In response, the Directorate of Estates, vide their reply dated 8.7.2008, after setting out the policy being followed by it till the time it was dealing with the market in question, further stated as follows:

3. Subsequently, a decision was taken by the Cabinet in October 2005 to transfer all markets under control of DOE, CPWD and L&DO to Local Bodies on "as is where is basis." Accordingly, all records was transferred to NDMC/MCD. In this background the representations of the associations of the non-ownership markets were further considered upto the level of Hon''ble Minister of Urban Development and it was decided that since the administration of markets have

been transferred to local bodies, decision in this regard may be left upon them.

4. In view of the above facts and having regard to the fact that all powers to administer the markets now rest with NDMC/MCD, the concerned local body i.e. the NDMC may take appropriate action in this particular case at their end.

26. The Directorate of Estates, therefore, did not even remotely suggest that its policies, which were being implemented till the market in question was under its control and regulation, should be continued to be applied by the NDMC. The decision has been left to NDMC to take since the market stands transferred to it. In all fairness, the respondent NDMC should have itself placed the aforesaid documents on record. At least when the petitioner made a categorical statement that the NDMC has itself favourably recommended the substitution/mutation in favour of the occupants, the NDMC should not have denied the same. Instances like this erode the confidence that the Court reposes in favour of public bodies in relation to their statements on the assumption that they would act fairly as no one has a personal interest in the matter.

27. Since the refusal of the NDMC to substitute/mutate the stalls/shops in question stems from its wrong interpretation and understanding of the meaning of para 3 of the notification dated 24.3.2006, the same cannot be sustained. Having itself recommended the grant of permission to substitute/mutate the shops/stalls in favour of the occupants, so as to be able to recover the enhanced licence fee, the respondent NDMC has not been able to show any good reason not to go by its own recommendation despite the Directorate of Estates giving it a "go ahead" to do as it considers proper.

28. No doubt, the court would not interfere with a policy decision of the Government merely because the policy adopts one of the many possible views. However, that does not mean that if the policy adopted by the NDMC is discriminatory the Court has to remain a mute spectator. If the policy itself is discriminatory and arbitrary, the Court will certainly step in to remove the discrimination and arbitrariness in the policy decision. Even in Narmada Bachao Andolan v. U.O.I (supra) the Court held that "the Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people''s fundamental rights are not transgressed upon except to the extent permissible under the constitution".

29. Once the transferred markets have got merged in the pool of markets being managed by the NDMC from before, it does not stand to reason that the NDMC should adopt a different yardstick in respect of such transferred market and give the occupants / allottees of such markets step motherly treatment. Merely because market in question i.e. Baba Kharag Singh Market has fallen into the lap of NDMC by virtue of the notification dated 24.03.2006, it does not mean that the policy with regard to substitution/mutation of ownership for that market can be different from the one adopted by NDMC for all other markets managed by it. The purpose of granting permission to the occupant to seek substitution/

mutation of the shop/stall in his favour is to be able to recover the enhanced license fee. As aforesaid, the shops/stalls in question were given only for monetary considerations. The classification of the transferred markets, like the Baba Kharag Singh Market differently from the markets managed by the NDMC from before does not bear a reasonable nexus with the object sought to be achieved, i.e. to recover the enhanced license fee. On the contrary, the said object would stand defeated as stated by NDMC itself in its letter dated 21.05.2008 aforesaid. The classification is therefore arbitrary and discriminatory and is quashed. The policy of NDMC to recognize substitution / mutation of title in favour of partner / sublettee also does not appear to be restricted to only such cases where the original allotment has not been cancelled.

30. An appeal is a continuation of the original proceeding. The NDMC became the licensor and manager of the market in question during the pendency of the appeals of the petitioners before the learned ADJ. It, therefore, cannot be said that the eviction proceedings had attained finality by the time NDMC assumed charge of the market in question. As soon as the NDMC became the owner and manager of the said market, the occupants who were still in occupation of the premises in question became entitled to seek relief in terms of the stated policy of the NDMC for substitution / mutation in their respective favour. The respondent NDMC could not have ignored such a request. It was the positive case of the petitioners both before learned Estate Officer and the learned ADJ, that they were entitled to regularization of allotment in view of Government''s policy and that they had represented in this regard. From the impugned order, it appears that the representation of the petitioners and 10 others were rejected. From the communication dated 31.10.2005 of Sh. Gulam Nabi Azad extracted in the order of the learned ADJ, it is seen that at the time of rejecting the representation of the petitioners seeking regularization of the allotment in their favour, the issue was not viewed in the light of the fact that the markets stood transferred to NDMC vide notification dated 24.03.2006. In fact the said decision rejecting the representation is of 31.10.2005, that, is even prior to the issuance of the said notification of March, 2006.

31. For the aforesaid reasons, I am of the view that the NDMC is bound to consider the representation of the petitioners for substitution / mutation of the allotment in favour of the petitioners by application of its policy for transfer of allotments in such like cases and cannot treat the petitioners differently only on the ground that their stalls are situated in a market which had been transferred to in March 2006, and is not in a market which NDMC had been managing from before.

32. I accordingly quash the impugned orders passed by the learned ADJ in the two cases and direct the NDMC to process the case of the two petitioners for transfer of allotments in their respective favour in accordance with its policies. However, in case the petitioners do not comply with the terms and conditions that may be laid down by the NDMC in terms of its policy for transfer of

allotment, the petitioners shall be liable to be evicted from their respective stalls occupied by them. The petition stands disposed of leaving the parties to bear their respective costs.

