(2009) 05 DEL CK 0023

In the Delhi High Court

Case No : LPA 397 of 2007 and CM No. 7910 of 2007

N.D.M.C. APPELLANT

Vs

Avat Ram Mamtani RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 05 DEL CK 0023

Hon'ble Judges : A.P. Shah, C.J;Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Rajesh Mahajan, for the Appellant; Anil Mittal, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant (original respondent in the writ petition) is aggrieved by the decision of the learned Single Judge dated 30th April, 2007. Briefly stated the facts of the present case are as follows:

2. A shop was allotted to the respondent (original petitioner in the writ petition) in 1950. In 1992, the respondent requested that the shop be transferred in the name of his son. Two years later, the respondent was asked to confirm that he had given his "No Objection. for transfer of allotment in favour of his son. The respondent gave his confirmation by letter dated 22nd March, 1994. By a letter dated 4th May, 1994, the son of the respondent was informed that he should visit the office of the New Delhi Municipal Corporation (in short "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 and pay municipal charges from 30th March, 1993 onwards. The respondent.s son made security deposit and signed the licence deed. He also deposited the amount as demanded towards monthly charges and interest. Despite all this, no fresh licence deed was issued in favour of the respondent.s son. Reminders were sent by the respondent but to no avail. In 2001, the respondent received a demand notice for payment of certain amounts. The respondent protested against this demand. However, the

demand was not withdrawn and the respondent accordingly wrote on 14th February, 2002 stating that he was no longer interested in getting the allotment transferred exclusively in favour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. Thereafter demands were raised on the respondent towards licence fee/damages which were outstanding. The respondent again wrote on 22nd April, 2003 withdrawing his request for transfer of 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. Correspondence was exchanged between the parties and certain challans issued to the respondent by the NDMC towards arrears and damages including interest. By a letter dated 20th July, 2004, the respondent was informed that the NDMC had turned down his request for renewal of licence fee in his name along with the name of the son without enhancement of the fee. The reason for this was stated to be the failure of the respondent and his son to complete formalities for execution of licence deed and making payment pursuant to the earlier demand letters of NDMC. The respondent clarified vide his letter dated 22nd July, 2004, that he had made all payments and had handed over the signed licence deed to the NDMC. The matter was also referred to the Lok Adalat. However, ultimately when the respondent received the impugned demand notice dated 18th January, 2005, the appellant filed the writ petition out of which the present appeal arises.

3. Essentially, the case of the NDMC in the writ petition was that the respondent having conveyed his "No Objection. and having handed over possession could not withdraw his request for transfer of the licence to his son. In the reply filed by the NDMC in the writ petition, it nowhere denied that the respondent had made an application for transfer of the allotment in the name of his son, the fact that the son of the respondent made the security deposit, signed the licence deed and paid the municipal charges. It was simply stated that these were "matter of record". It was not even denied that although the son of the respondent had handed over the licence deed to the NDMC for their counter signatures and execution, the NDMC did not do anything about the same. There was no justifiable explanation forthcoming for the unconscionable delay on the part of the NDMC in considering the request of the respondent. Since the respondent did not hear anything from the NDMC even after NDMC framed its policy for transfer of stalls on 18th March, 1999, he wrote a letter on 14th February, 2002 stating that he was not interested in getting the allotment transferred in favour of his son.

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.

5. We see no infirmity in the finding of the learned Single Judge that the demand of enhanced fee on the footing that the licence stood transferred to the respondent.s son was, in the circumstances, unjustified. The respondent was entitled to seek refund of the amount of enhanced licence fee paid by him. The learned Single Judge was absolutely right in holding that since no transfer took place, no enhanced fee was payable and the NDMC was bound to calculate all the amounts paid by the respondent towards enhanced licence fees and refund it to him. The allotment of shop/stall No. 46, Janpath, was correctly held by the learned Single Judge to be treated as standing in the exclusive name of the respondent.

6. During the course of arguments, the counsel for the appellant sought to place reliance on the relinquishment deed executed by the respondent on 4th April, 1996 in favour of his son. As per the respondent the relinquishment deed was executed by the respondent in aid of his application for transfer of allotment which never fructified. Nowhere did the NDMC, in its affidavit in the writ petition, ever say that it had, in fact, recorded the change of such allotment in favour of the respondent.s son. It did not indicate any fresh licence deed that had been executed in favour of the respondent.s son. For the NDMC, to now insist, relying on the relinquishment deed and reading it completely out of context, to suggest that the respondent had parted with possession and thus the allotment stood transferred to his son was entirely without basis and unreasonable. The action of every instrumentality of the State has to be informed by reason. There has to be fair play in action. Arbitrariness is the anti-thesis of equality as enshrined in Article 14 of the Constitution of India. The actions of the NDMC and the stand taken by them clearly reflect non-application of mind and a completely unreasonable and arbitrary approach. It was, in fact, the NDMC which failed to discharge its duties and 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 stand of the NDMC and their reliance on the relinquishment deed is completely misplaced and of no relevance whatsoever. 7. In the light of what is

stated hereinabove, we find no infirmity in the findings of the learned Single Judge and the appeal is accordingly dismissed. The pending application also stands disposed of.