
(2007) 09 DEL CK 0155
In the Delhi High Court
Case No : LPA No. 61 of 1989

New Delhi Municipal Committee

APPELLANT

Vs

Rajender Prasad Jain

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Citation : (2007) 09 DEL CK 0155

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Arjun Pant, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal has been filed by the appellant-NDMC against the order dated 4th May, 1989 passed by the learned Single Judge allowing the writ petition filed by the respondent herein. Challenge is made only to that part of the order whereby the learned Single Judge had restrained the NDMC from Realizing license fee from the respondent for the period during which the premises in question remained uninhabitable.

2. The respondent was allotted premises at underground Palika Parking at Connaught Place, New Delhi by the appellant-NDMC after inviting tenders.

3. Property was allotted to the respondent on monthly license fee basis on 15th May, 1987, before which the respondent had deposited the security amount and two month's advance license fee. However, it was found that the said premises was not habitable. Accordingly, it was pointed out by the respondent to the appellant by writing various letters that he would be liable to pay license fee only if the said premise is made habitable. The respondent did not pay arrears of license fee and took no steps to execute the license deed.

4. Appellant-NDMC cancelled his allotment, which was later on revoked and was again cancelled. Proceedings under the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 ("Public Premises Act" for short) were also initiated against the respondent.

5. The respondent approached this Court by filing a writ petition in which the impugned order was passed quashing orders passed under the Public Premises Act and also restraining the NDMC from charging license fee.

6. A plea was taken before the learned Single Judge that an assurance was given by the NDMC that defects would be attended to and it was on the assurance given by the appellant that the respondent bonafidely took possession of the premises. After examining pleas of the parties, the learned Single Judge held that it was the bounden duty of the NDMC to fulfill its obligations and since they had not made the said premises habitable, the appellant cannot charge any license fee.

7. Our attention is also drawn to a letter issued by office of Chief Fire Officer who refused to issue no objection certificate as the premises required structural changes to provide for a second fire escape, approach road, sprinkler system etc besides other requirements. It was claimed that there was constant water seepage. Thus the premises were not habitable and Therefore no license fee could be charged. The respondent raised all these issues. Records reveal that the learned Single Judge on 30th September, 1988 had directed the Chief Architect of the NDMC to inspect the premises and submit a report about the condition of the premises as to whether the same is fit for occupation and, if not, what improvements or repairs are required to be done to make it fit for occupation. In compliance of the direction, the Chief Architect inspected the premises on 18th October, 1988 and in his report had pointed out that the premises had not been used for long time and there was presence of water all over the floor of the basement to a depth of about 50 mm. He had also pointed out that for the purpose of ventilation only one exhaust fan had been provided whereas the position of the second exhaust fan had been blocked with ply board for security reasons. The said report gives a clear picture of the nature and condition of the said premises and it completely justifies the stand taken that the premises was not habitable and usable.

8. We find no reason to take a different view than that was taken by the learned Single Judge on appreciation of the records. The learned Single Judge was justified in holding that as the premises is not habitable, appellant could not have demanded license fee from the respondent. The respondent was willing to start using the said premises once it was made fit for occupation. Considering the facts and circumstances of the case we are of the considered opinion that it would not be proper to allow the appellant to charge license fee for the period during which the aforesaid premises was not habitable and no repair and rectification was done.

9. In this view of the matter we find no error in the judgment and order passed by the learned Single Judge. There is no merit in this appeal and the same is

dismissed.