

(1984) 11 DEL CK 0013

In the Delhi High Court

Case No : Letter Patent Appeal No. 9 of 1975

Sandersons

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Citation : (1985) 27 DLT 156

Hon'ble Judges : Yogeshwar Dayal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : Yogeshwar Prasad and C.M. Malik, for the Appellant;

Judgement

Yogeshwar Dayal, J.

(1) This is an appeal under clause 10 of the Letters Patent against the judgment of the learned Single Judge of this court dated December 12, 1974 whereby the learned Single Judge modified the decree passed by the learned first appellate court dated 19th October, 1972. While allowing the appeal partly, the learned Single Judge modified the decree of the lower appellate Court to the extent that the respondent/committee was restrained from recovering the license fee from the plaintiff/firm for the period from 5th February, 1969 to 9th May, 1969 in relation to shop No : 98, Jaswant Place, Chankaya Puri, New Delhi.

(2) The plaintiff/appellant had filed a suit against the respondent/ committee for a permanent injunction to restrain the respondent/committee from Realizing license fee in relation to the aforesaid shop and also from revoking the license in relation to the said shop.

(3) The respondent/committees had invited tenders for allotment of certain shops in Jaswant Place, Chankaya Puri, New Delhi, and the last date for tenders was 16th November, 1968.

(4) The plaintiff/appellant had submitted its tender on 16th November, 1968, (Exhibit D/2) for allotment of a shop inter alias for carrying on the business of

the Chemists and general merchants, electrical goods radios, television and cosmetics.

(5) On December 20, 1968, the respondent/committee informed the plaintiff that its tender has been accepted for the trade of Chemists and General Merchants subject to the condition that the plaintiff will deposit security equal to six months license fee in cash by 28th December, 1968. The Committee also informed the plaintiff that the building will be ready by 1st February, 1969 from which date the liability for payment of the license fee will commence. The license fee was @ Rs. 2.00 per sq. feet per month and the license deed was to be executed by the plaintiff before the possession of the shop will be given.

(6) The plaintiff inspected the shop on or about 28th December, 1968 and learnt that there was no water connection in the shop.. and it informed the respondent/Committee that it was not in a position to give a firm reply to the offer made to it by letter dated 20th December, 1968 without getting a firm assurance from the committee that a water connection will be provided in the shop premises and a disposal for the water will also be provided by the Municipal Committee (Ex. P-I).

(7) The respondent/Committee through its Secretary by reply dated 7th January, 1969 (Ex. P/2) stated that water connection and disposal arrangements in the chemist shop applied for and allotted to it will be provided by the Committee and it was requested to select a shop of an area of 485.33 sq. feet and intimate its Serial number to the Committee and deposit security equal to six months license fee in cash latest by 11th January, 1969.

(8) Thereafter the plaintiff/appellant deposited the required security and gave its choice for shop No : 98, 1st Floor.

(9) On 5th February, 1969 the plaintiff/appellant sent the license deed duly signed to the respondent Committee. The license deed itself did not provide any condition providing water connection as a condition precedent to the coming into force of the license agreement. However, the plaintiff/appellant again requested that it may be given water connection as soon as possible otherwise it will be difficult for then to carry the trade.

(10) It appears that the Commercial and Tax Officer by its communication dated 19th March, 1969 (Ex. P-4) informed the plaintiff that its shop was in the basement and there is no sever connection thus no water connection can be provided. The Commercial & Tax Officer erred in assuming that the shop was in basement and on plaintiff's notice dated 28th March, 1969 the Secretary of the respondent/Committee by its communication dated 9th May, 1969 informed the plaintiff that the shop was given to it as it is basis. The Committee, however, agreed to provide water connection and disposal arrangements which has to be as per the bye-laws of the committee. It was also stated that the Commercial Taxation Officer has been informed that shop number is 98 and it is on the first floor and not on the basement floor and the plaintiff was again advised to contact him for water connection. For other necessary details e.g. cost of laying

pipelines, departmental charges, the plaintiff was requested to contact the Municipal Engineer (CP), N.D.M.C. New Delhi.

(11) The plaintiff, however, by communication dated 15th June, 1969 again requested the committee that it should honour the commitments and not force the plaintiff to go to Court.

(12) The respondent Committee by its letter dated 25th June, 1969 asked the plaintiff to deposit a sum of Rs. 3,300.00 which had become outstanding against it on account of license fee for the period February, 1969 to June, 1969. The plaintiff was asked to deposit the amount failing which the license stands revoked.

(13) Another letter dated 30th June, 1969 (Ex. Dw 1/1) was also sent to the plaintiff intimating it that it may deposit a sum of Rs.170.00 so that connection for water can be sanctioned of its shop on its depositing the amount towards the costs for giving the connection.

(14) The plaintiff's case, however, is that this letter was never received by it. However, since the plaintiff did not deposit the license fee, the license of plaintiff's shop was cancelled by the respondent/Committee on July 7, 1969 (Ext. Dw 1/4).

(15) The plaintiff filed the suit on or about 10th July, 1969 for permanent injunction restraining the respondent/Committee from Realizing the license fee revocation of the license.

(16) It was a case of the plaintiff that grant of water connection was a condition precedent to the charging of license fee.

(17) The case of the respondent/Committee, however, was that grant of water connection was not a term of the license deed though the defendant/ Committee had agreed to provide the water connection on plaintiff's applying for it in accordance with the rules applicable for grant of water connection. It was also pleaded that there was no cause of action for a suit for injuncting regarding license as the license had already been duly revoked. It was also pleaded that the license was revoked as the plaintiff committed default in payment of the license fee. It was also pleaded that the allotment of the shop was made to the plaintiff on "as it is basis" and that the plaintiff was to apply for water connection as per Municipal bye-laws. The plaintiff was also advised to deposit necessary charges amounting to Rs. 170.00 for water connection but for the reasons best known to the plaintiff, it did not deposit the same.

(18) The learned trial Court framed the following ten issues :

1. Whether the plaintiff is entitled to supply of water in shop No. 117 before being liable to pay license fee for the shop ? O.P.P. 2. Whether the defendant is not entitled to cancel the license even in case of non-payment of fees by the plaintiff because of default of defendant in not supplying water to plaintiff in the disputed shop ? O.P.P. 3. Whether the defendant agreed to supply water to

plaintiff's shop as a pre-condition of plaintiff's liability to pay fee or rent ? O.P.P. 4. Whether the defendant has already cancelled the license-in respect of the disputed shop prior to institution of the suit if so its effect ? O.P.D. 5. If issue No : 4 is proved, whether the suit is not maintainable in the present form ? O.P.D. 6. Has the plaintiff got a cause of action? O.P.P. 7. Whether the civil court has no jurisdiction to entertain the suit ? O.P.D. 8. Whether the non-supply of water to plaintiff's shop is on account of default and negligence on the part of defendant ? O.P.P. (Objected to) 9. Whether the plaintiff is a tenant of the disputed premises ? O.P.P. 10. Relief.

(19) The trial Court decided all the issues against the plaintiff/appellant except issue No : 6 and 7 and dismissed the suit.

(20) The plaintiff being dis-satisfied went up in appeal to the Court Of District Judge, Delhi, and the learned District Judge affirmed the findings of the trial Court.

(21) The learned first appellate Court on crucial issue No: 3 gave a finding that it is not possible to draw an inference from the terms and conditions incorporated in the license deed that the Municipal Committee could not claim license fee from the appellant before a water connection could be provided in the premises. This finding was given by the first appellate Court after considering all the entire material on record.

(22) The plaintiff being dissatisfied with the decisions of both the courts below filed a second appeal which came up before a learned Single Judge. who noticed the aforesaid finding of the lower appellate court and observed "a resume of the facts of the case and perusal of the material documents show that the Municipal Committee had expressly not undertaken to provide the water connection to the plaintiff in the sense as any landlord would undertake to let out a premises fitted with water connection or agree to do so soon thereafter. The express terms of the license deed (Ex. D-I) are on this point silent." After giving this finding the learned Single Judge took the view that the letter of the Secretary of the respondent Committee dated 7th January, 1969 (Ext. P-7) coupled with the second letter of the Committee dated 9th May 1969 (Ex. P-8) the respondent Committee had agreed to provide the water connection and disposal arrangements in accordance with the bye-laws of the Committee. The learned Single Judge gave a finding that in his opinion there was an implied term of the contract between the parties that the defendant committee would allow and facilitate the plaintiff in having water connection in accordance with the bye-laws and thereby allow the plaintiff to have quite enjoyment of the premises and carry on its business in accordance with law. The learned Single Judge also held that the defendant did not have to provide and install the water connection at its own initiative and expense in the premises for the amenity for the enjoyment of the license but the plaintiff was entitled to have a water connection installed in the said premises in accordance with the bye-laws and the defendant/committee had a duty and obligation as an implied term of the contract to allow it to have the

same.

(23) The learned Single Judge thereafter considered the letter dated 19th March, 1969 (Ext. P-4) in which it was stated that no water could be provided as the shop was in the basement and felt that this letter prevented the plaintiff from occupying the premises and carry on its business but this wrong was remedied by the defendant by its letter dated 9th May, 1969 and since during the period 5-2-1969. When the plaintiff had requested the Committee to supply water connection till the letter dated 9th May, 1969, the defendant/Committee prevented user and thereafter it was the duty of the plaintiff to take steps in accordance with bye-laws to obtain water connection to carry on its business. It was also held that "Nothing has been brought on record to show that the defendant Committee created any hardies subsequently in the way of the plaintiff in obtaining the water connection in accordance with the bye-laws and surely the plaintiff was free to obtain it and if he has failed to do so, he had to thank himself and be cannot lay the blame at the door of the defendant Committee and decline to pay the license fees for the subsequent period."

(24) We have heard Mr. Yogeshwar Prashad, learned counsel for the appellant, and are of the firm view that the finding of the two courts on issue No. 3 was a pure finding of fact. Once it is held that the provision of water connection was not a condition precedent to the plaintiff's liability to pay the license fee, no other question arises. The learned Single Judge on an equitable view passed a partial decree in favor of the plaintiff/appellant. For the rest of the period in dispute we agree with the learned Single Judge that there is no reason why the plaintiff should not pay the license fee. We agree with the learned first Appellate court that the supply of water connection was not a condition precedent to the liability of the plaintiff to pay the license fee but since there is no appeal by the respondent/Committee, we cannot interfere with the finding of the learned Single Judge, thereby the learned Single Judge gave a partial decree for the limited period i.e. 5-2-1969 to 9-5-1969.

(25) Admittedly, the plaintiff never paid the license fee for the first six months for the fist of the license. It merely paid the security for six months and inspire of the express notice of demand for license fee it failed to deposit it and consequently the action of the respondent/Committee in revoking the license was in accordance with the license deed and no exception can be taken to it.

(26) The appeal consequently fails and is dismissed with costs.