
(2006) 05 DEL CK 0100
In the Delhi High Court
Case No : CW No. 4700 of 1995

Shri Mizan Ali

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

Citation : (2006) 05 DEL CK 0100

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : B.L. Chawla, for the Appellant; Vibhu Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Before noting the facts and dealing with the issues of law which arise for consideration, I must record displeasure in respect of the working of the officers of MCD. Case after case is coming to my notice where officers concerned are just not maintaining the records, resulting in counsel for MCD not being briefed properly and as a result thereof, municipal revenue not flowing to the coffers of MCD. Instant case shows how valuable revenue has been lost to MCD.

2. Petitioner brought the present action in the year 1995 praying that directions be issued to MCD to de-seal Kiosk No. 1, Near Rajdoot Hotel, Bhogal Bus Stand. Mandamus was sought directing MCD to transfer the kiosk in favor of the petitioner.

3. Briefly stated, facts are that in April, 1980, MCD granted a license to one Suraj Prakash permitting him use and occupation of the kiosk on license basis for a period of 5 years. licensee fee was fixed at Rs. 462/- per month. Notwithstanding the fact that it was a term of the license that Suraj Prakash would not part with possession of the kiosk nor would transfer the license to any third party, by and under an agreement, Suraj Prakash handed over possession of the kiosk to the petitioner on 3.12.1982. Neither prior permission from MCD was taken nor

information of the transfer given to MCD.

4. license having expired in April,1985, officers of the Corporation went to resume possession for the reason, Suraj Prakash never sought extension of the license. Since petitioner was in possession of the kiosk, he filed a suit and obtained certain orders from the civil court that he should not be dispossessed except by following due process of law.

5. Thereafter, MCD initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act,1971 to regain possession. Said proceedings were initiated against the petitioner and Suraj Prakash.

6. Suraj Prakash died. His sons stated that they had no problem with the petitioner. Proceedings initiated before the Estate Officer vide case No. 567/PP were dismissed by the Estate Officer vide order dated 29.11.1990. The Estate Officer held that in view of resolution No. 1180 dated 26.6.1970 passed by MCD transfer of shops was permissible. He also relied upon resolution No. 1317 dated 23.3.1987 as per which license could be extended on enhancement of license fee by 40%.

7. MCD questioned the decision dated 29.11.1990 passed by the Estate Officer by way of an appeal before the District Judge, Delhi. The appeal was dismissed for non-prosecution on 16.11.1992.

8. Thereafter, in the year 1990, officers of MCD attempted to repossess the kiosk by sealing the same. Present petition was filed. Prayers made were as afore-noted in para 1 above.

9. Show cause notice was issued in the writ petition on 12.12.1995. Counsel appeared for MCD on 22.1.1996. Time was taken and was granted to file counter affidavit. On 21.3.1996, further time was granted. On 26.4.1996 noting that in spite of repeated opportunities, counter affidavit was not filed, Rule was issued in the writ petition. Interim order was passed directing MCD to de-seal the kiosk on the condition of petitioner paying license fee @ Rs. 1000/- per month.

10. Counter affidavit has not been filed till date. However, stand of the Corporation has come on record in the form of CM.14853/05 praying that interim orders be recalled/vacated.

11. Learned counsel for the petitioner urged that in view of order dated 29.11.1990 passed by the Estate Officer and the fact that the appeal challenging the same was dismissed, order having attained finality, MCD cannot resume possession and is bound to extend the license in favor of the petitioner.

12. Learned counsel for the respondent Shri Vibhu Shankar except for shaking his head has no counter submissions to make.

13. A two fold issue arises in the present writ petition. Firstly, whether the petitioner has a right to occupy the site as a licensee and whether he can claim a mandamus directing MCD to transfer the license in his favor. Second issue is, as

to in what manner MCD can regain possession of the kiosk.

14. On the first issue, unfortunately neither party has placed on record the policy resolutions of the Corporation dated 26.6.1997 and 23.3.1987 relied upon by the Estate Officer. Assuming that by and under the former policy resolution shops given by the Corporation under a license are transferable and under the later, the licensee is entitled to extension of the license by enhancing the existing the license fee by 40%, it would not mean that a transferee under a license can pop up at any point of time claiming the benefit. Before transferring the license, the transferor and the transferee must approach the Corporation.

15. Admittedly, petitioner and Suraj Prakash never informed MCD that the license granted to Suraj Prakash was transferred in favor of the petitioner. Petitioner kept quite about the same. Further, when the five year period of the license expired on 26.3.1985 (license being for a period of 5 years w.e.f. 26.3.1980) neither Suraj Prakash nor petitioner sought extension of the license period, much less offered to pay the enhanced license fee.

16. It is unfortunate that this aspect of the matter was not projected by MCD before the Estate Officer. It is unfortunate that learned Counsel for MCD has not projected this aspect of the matter.

17. Assuming that the license was extendable, was it extendable indefinitely" The said question can only be decided when policy resolutions are placed on record. It was for the petitioner to have placed the same on record.

18. Be that as it may, fact of the matter remains that even after the Estate Officer passed the order on 29.11.1990, till date petitioner has not applied to the Corporation for transfer of the license in his favor and has not offered to pay the enhanced license fee.

19. I may note that on 16.6.1994 MCD addressed a communication to Suraj Prakash offering to enhance the license fee by 50% on each occasion. In response thereto, vide letter dated 7.7.1994, petitioner wrote that he was ready to pay legally recoverable license fee. On 2.9.1994, MCD informed petitioner that license fee payable was Rs. 1,99,078/-. Petitioner responded on 8.9.1994 and tendered a sum of Rs. 16,632/- towards license fee as according to him he was liable to pay @ Rs. 462/- per month and MCD could not recover the fee for the period 3 years prior to date of demand.

20. Learned counsel for the petitioner submitted that legally recoverable license fee would be only for a period of 3 years prior to 16.6.1994.

21. I am afraid, a person who invokes the equitable jurisdiction of this Court must do equity himself. Petitioner got an opportunity to have the license renewed when Corporation offered to renew the same but demanded the enhanced license fee w.e.f. the date same required to be enhanced.

22. Petitioner has continued to occupy the site without fulfilling his reciprocal

obligations. Petitioner wants a relief in equity but does not want to act equitably himself. I decline relief to such a petitioner.

23. On the second issue of how Corporation has to regain possession, issue stands conclusively decided by a Full Bench decision of this Court reported as AIR 1978 SC 174, Chandu Lal v. Delhi Municipality.

24. Dealing with a similar license for a stall/kiosk, Full Bench held that legal possession remained with the Municipal Corporation of Delhi. In para 35, it was held as under:

35...The petitioners being licensees, legal possession all along remained with the Corporation. That being so, as held by the Supreme Court in Munshi Ram v. Delhi Administration AIR 1968 SC 702, the Corporation had a right to re-enter the premises and reinstate itself provided it does not use more force than necessary. Such an entry would be received only as a resistance to an intrusion upon possession which had never been lost. Further, the law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities, there being nothing more degrading to the human spirit than to run away in the face of peril.

25. For the reasons noted above, the writ petition is dismissed.

26. Costs in favor of the respondent and against the petitioner in the sum of Rs. 5,000/- to follow.