

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: May 17, 2012**  
**Pronounced on: July 02, 2012**

+ **W.P.(C) 702/2009**  
**&**  
**CM No. 1480/2009**

NDMC ..... Petitioner  
Through: Mr. Manoj K.Singh, Mr. Nilava  
Banerjee and Ms. Vandana,  
Advocates  
versus

PARVEEN KUMAR ..... Respondent  
Through: Mr. Ravi Gupta, Senior Advocate  
with Mr. Mohit Gupta, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

% **ORDER**  
**02.07.2012**

1. By virtue of the License Deed of 11<sup>th</sup> March, 1992, respondent was operating Fuel Depot at Sarojini Nagar, Delhi at a monthly license fee. In proceeding under Section 5 and 7 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, order of 15<sup>th</sup> October, 2008 was passed by the Estate Officer evicting the respondent from the aforesaid public premises (hereinafter referred to as the subject premises), as it was found that the license in respect of the subject premises had expired on 17<sup>th</sup> March, 1997 and was not renewed.

2. In the statutory appeal preferred by the respondent, appellate forum vide impugned order of 5<sup>th</sup> December, 2008 (Annexure P-1) had kept the eviction order in abeyance till respondent's application

of 20<sup>th</sup> December, 1997 for the *change of trade* is not decided by the petitioner herein.

3. At the hearing of this petition it was urged by petitioner's counsel with much vehemence that the appellate forum has exceeded its jurisdiction in keeping the Eviction Order (Annexure P-1) in abeyance because equity jurisdiction cannot be exercised by the appellate forum. As regards the request of the respondent for withdrawing the cancellation order alongwith respondent's request for *change of trade*, in view of the directions issued vide order (Annexure P-13) of 31<sup>st</sup> January, 2000 in CW 5250/1999 is concerned, it is contended by learned counsel for the petitioner that since the respondent had not removed the unauthorised construction made on the subject premises despite undertaking given to this Court in the earlier proceedings/Order (Annexure P-13), therefore, respondent's request for restoration of the subject premises to the respondent could not be acceded to.

4. Attention of this Court was drawn by learned counsel for the petitioner to the Inspection Report of 17<sup>th</sup> July, 2000 (Annexure P-14) indicating that the unauthorised construction was not removed despite order (Annexure P-13) and so, there was no question of restoration/renewal of the license deed in question. Thus, it was contended on behalf of the petitioner that the impugned order stands vitiated as the appellate forum has no power to direct the petitioner to decide the application for change of trade, in proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* and so the eviction order which has been ordered to be kept in abeyance, be made operative.

5. In support of the aforesaid submissions, learned counsel for the petitioner relies upon the decisions in *'The Corporation of Calicut vs.*

*K.Sreenivasan*, (2002) 5 SCC 361; W.P.(C) No.10931/2009, *Shri Tek Chand vs. Estate Officer, Delhi Jal Board and Anr.*, decided on 6.12.2010; *C.Sudhan Reddy vs. South Central Railway and Anr.*, 2006(3)ALD720; *A.Thayal Nayagi vs. Union of India*, (2005) 1 MLJ 453; *Vijay Kumar vs. NDMC & Ors*, 176(2011) DLT 453; *Triloki Nath Dhir vs. NDMC & Anr.*, 171(2010) DLT 628; *Uttam Parkash Bansal and ors. vs. Life Insurance Corporation of India & Ors.*, 100(2002)DLT497; Civil Appeal No.8201/2010, *Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Anr.* decided on 22th September, 2010; *K.T.Corporation and ors vs. India Tourism Development Corporation and Anr.*, 165(2009)DLT65; *Jagat Talkies Distributors and Ors vs. MCD and Anr.*, 2008(102)DRJ733; *Aggarwal and Modi Enterprises Pvt.Ltd. & Anr. vs. New Delhi Municipal Council*, (2007) 8 SCC 75; *Jiwan Dass vs. Life Insurance Corporation of India and Anr.*, 1994 Supp(3)SCC694; *Chandigarh Administration and another vs. Jagjit Singh and another*, (1995) 1 SCC 745; CM(M) No.981/2010, *Prominent Hotels Ltd. vs. The New Delhi Municipal Council*, decided on 10<sup>th</sup> August, 2010.

6. Learned senior counsel for the respondent contends that in the face of the categorical admission of petitioner's witness – Shri Prasadi Lal, Deputy Director (Estates) (PW-1), regarding there being no encroachment upon the road by the respondent and of there being no other construction or encroachment in the subject premises, petitioner's refusal to decide respondent's application for change of trade is patently illegal and thus, the impugned order is eminently justified, requiring dismissal of this petition. To emphasise the concept of fairness in the proceedings like the instant one, reliance is placed upon Apex Court decision in '*New India Assurance Company Ltd. vs. Nusli Neville Wadia and Anr.*' (2008) 3 SCC 279 .

7. Upon consideration of the rival submissions advanced and on perusal of the impugned order, the cited decisions and the material on record, I find that petitioner's insistence upon non-consideration of respondent's application for change of trade in view of the Inspection Report (Annexure P-14) is hardly justified, as there is no whisper of the aforesaid Inspection Report (Annexure- P-14) in the deposition of petitioner's witness – PW-1 who rather admits in cross-examination that as per petitioner's note of 24<sup>th</sup> February, 1998, respondent's case for change of trade was found to be fit and that there was no encroachment on the road by the respondent and there was no unauthorised construction on the subject premises.

8. In the face of the aforesaid evidence, petitioner cannot turn around to technically urge that the license in respect of the subject premises came to an end by efflux of time. The decisions relied upon by the petitioner's counsel are of no avail as in earlier proceedings between the parties, vide order (Annexure P-13) the petitioner was directed to withdraw the order cancelling the license in question subject to respondent herein removing the unauthorised construction. It is evident from the deposition of petitioner's witness- PW-1 that there is no unauthorised construction in the subject premises and so the eviction order against the respondent cannot be upheld.

9. The Appellate Forum instead of setting aside the eviction order, has given an opportunity to the petitioner to decide as to whether unauthorised construction/ encroachment still exists and till then, eviction order has been kept in abeyance. Infact, Appellate Forum has exercised the equity jurisdiction in favour of the petitioner. Strictly speaking it is not within the domain of the Appellate Forum to exercise the equity jurisdiction to put the eviction order on hold. However, it is very well within the purview of this Court to exercise

the equity jurisdiction and while doing so, this Court puts the eviction order on hold till the petitioner decides respondent's application for change of trade.

10. It would be pertinent to note that the Inspection Report (Annexure P-14) strongly relied upon by the petitioner does not disclose the nature and extent of addition/ alteration made in the subject premises or about the nature of the encroachment made by the petitioner on the municipal land. Therefore, petitioner would be at liberty to carry out fresh inspection of the subject premises and thereafter would decide respondent's application in the light of the order of this Court (Annexure P-13). Needless to say, respondent would be granted an effective opportunity of hearing to meet the fresh Inspection Report before petitioner takes a decision on respondent's application for *change of trade*. It is expected that the needful would be done by the petitioner with expedition and till then, eviction order be not implemented.

11. With aforesaid directions, this petition stands disposed of. The pending application does not merit consideration as the same has been made while being oblivious of the Inspection Report (Annexure P-14) and is thus rejected.

**(SUNIL GAUR)**  
**JUDGE**

**July 02, 2012**  
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