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

+ **W.P.(C) 2527/2019**

CAPT. S. L. SHARMA Petitioner

Through: **Mr. R.K. Saini, Adv.**

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondent

Through: **Ms. Prabhsahay Kaur, SC-DDA**

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **20.03.2019**

CM No. 13352/2019 (for amendment)

1. This application seeks to effect certain amendments in the prayer clause.
2. Ms. Prabhsahay Kaur, learned counsel for the respondent does not oppose the application.
3. Accordingly, the application is allowed.
4. The amended writ petition filed alongwith the application is taken on record.

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5. *Vide* a letter dated 9th December, 1987, the Delhi Development Authority (hereinafter referred to as the “DDA”) allotted a gas



godown to M/s Bharat Petroleum Ltd. (BPL) on temporary license fee basis. The site was allotted for the purpose of a gas godown with the condition that the premises would not be used for any other purpose.

6. The BPL, apparently, sub-allotted the said premises to the petitioner, who has been managing the gas godown at the said site since 1991. On 16th November, 2018, the petitioner, as well as BPL, was issued a show cause notice, by the DDA proposing cancellation of the allotment of the aforementioned gas godown on various grounds. The petitioner responded to the said show cause notice *vide* a communication dated 29th January, 2019.

7. *Vide* the impugned Order dated 1st February, 2019, the DDA has proceeded to cancel the allotment of the aforementioned gas godown. Needless to say, the order is addressed both to BPL as well as to the present petitioner. The impugned order reads thus :

**“DELHI DEVELOPMENT AUTHORITY
COMMERCIAL LAND BRANCP**

No.F.13 (78)87/CRC/908

Dated: .1/2/19

To,

1. The Territory Manager (Retail), Delhi
M/s. BPCL Ltd.
Bijwasan Installation,
Bijwasan, New Delhi-110061

2. M/s. Shyamjee Enterprises,
CSC-14, Sector B-10,
Vasant Ktinj, New Delhi-110070



Sub: Regarding cancellation of allotment of Gas Godown site No.2 Vasant Vihar near DTC Terminal, New Delhi.

Whereas the land for Gas Godown site No.2 Vasant Vihar measuring 605.46 sqm allotted to M/s. BPCL for the work, which has further been given to the distributor, vide this office letter dated 09.12.1987 on purely temporary licence fee basis on standard licence fee subject to its revision from time to time depending on market rate as may be revised by the Govt. of India The site was allotted for the purpose of Gas Godown with the condition that premises would not be used for any other purpose.

Whereas as per condition No.5 Of the allotment letter the premises of the storage shall not used for any other purpose. However, it has been noticed during site inspection on 05.09.2018 that a room has been constructed outside the boundary wall of gas godown other than the allotted land which is contrary to the terms and conditions of allotment letter dated 09.12.1987

Whereas, show cause notice No.F.13(78)/CRC/355, dated 16.11.2018 was issued to you seeking explanation as to why allotment on temporary licence fee basis should not be cancelled due to encroachment on the Govt. Land. However, no reply/response has been received by this branch so far.

Whereas it has also been found that an amount of Rs.8,76,595/- on a/c licence fee upto to 31.03.2018 has also not been paid by you wherein it is to be paid regularly as per terms and condition of licence fee allotment.

The Competent Authority has accorded approval for cancellation of the allotment (on temporary licence fee basis) due to violations of terms and conditions of the allotment as stated above.

It is therefore, requested to handover the vacant possession of the land to DDA on or before 07.02.2019 positively:



Sd/-
Dy. Director (CL)”

8. Apropos the conditions, on which the impugned order has proceeded to cancel the allotment of the gas godown, Mr. R.K. Saini, learned counsel for the petitioner, submits that none of the conditions can sustain the scrutiny by law.

9. The first ground for cancellation as contained in the impugned order is that as per Condition No.5 of the allotment letter, the premises of the godown would not be used for any other purpose. Mr. Saini submits that there is no allegation that the petitioner was using the premises of the storage for any other purpose. The subsequent noting was to the effect that when the site was inspected on 5th September, 2018, a room was found constructed outside the boundary wall of the gas godown, as he points out cannot be a basis to say that there was violation of condition no.5 of the allotment letter.

10. The second ground on which the impugned order proceeds is that an amount of ₹ 8,76,595/-, as arrears of license fee, was outstanding. Mr. Saini's submission is that license fee was payable by the BPL and not by his client as BPL was the licensee. Ms. Prabhsahay Kaur submits that, for a long period of time the petitioner, who was a sub-allottee, was paying the license fee. Irrespective of the correctness of the said submission, there is substance in Mr. Saini's submission that BPL, being the licensee, has to pay the license fee, and not the petitioner. Mr. Saini submits that in order to bring a



quietus to this issue, his client is willing to deposit the outstanding license fee of ₹ 8,76,595/- forthwith.

11. In view of the above, *prima facie*, the challenge of the petitioner, to the impugned order dated 1st February, 2019 has substance.

12. It is sought to be contended by Ms. Prabhsahay Kaur, learned counsel appearing for the DDA, however, that as a sequitur to the passing of the impugned order on 1st February, 2019, an order, dated 8th March, 2019 evicting the petitioner from the premises in its occupation stands passed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the “PP Act”). Relying on the judgment of the Supreme Court in ***B. Sharma Rao H. Ganeshmal v. Head Quarters Asst., (1998) 9 SCC 577***, Mr. Saini would seek to submit that this Court should not interfere with the order of eviction as it is appropriately appealable to the learned District Judge under the provisions of the PP Act.

13. The impugned order, as Ms. Kaur points out is a sequitur to the cancellation of the license granted to the BPL-Respondent No.2. The cancellation of the license and the eviction of the petitioner from the premises are, therefore, inextricably intertwined and it would not be possible to bifurcate the two. This Court undoubtedly would have jurisdiction to adjudicate on the validity of the impugned order dated 1st February, 2019, the decision on this aspect would necessarily have to inform the adjudication of the challenge to the order dated 8th



March, 2019, evicting the petitioner from the premises in its occupation. As such, it is in the interests of justice that both the challenges are by one authority, rather than relegating the petitioner to the remedy of appeal only in respect of the challenge to the order of eviction.

14. The judgment in ***B. Sharma Rao H. Ganeshmal (supra)*** did not relate to such a situation, in which two actions were being sought to be challenged, of which one lay within the jurisdiction of the High Court.

15. In view thereof, issue notice to the respondents to show cause as to why *rule nisi* be not issued, returnable on 16th July, 2019.

16. Ms. Prabhsahay Kaur accepts notice on behalf of Respondents No.1 and 3. Notice be issue to the remaining respondents on the petitioner taking steps within one week.

17. Counter affidavits to the writ petition be filed within four weeks with advance copies to the petitioner who may file rejoinder thereto, if any, within two weeks thereof.

18. Renotify on 16th July, 2019.

CM No. 11755/2019 (for stay)

19. Issue notice to the respondents, returnable on 16th July, 2019.

20. Till the next date of hearing, the respondents are restrained from



dispossessing the petitioner from the premises in its occupation, subject to the petitioner depositing, with the DDA, the amount of Rs.8,76,595/- which is stated to be outstanding, as per the impugned order within a period of two weeks from today.

Dasti.

C.HARI SHANKAR, J

MARCH 20, 2019/kr