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

+ W.P.(C) 12156/2018 & CM APPL. 47178/2018, CM APPL. 11959/2019, CM APPL. 7497/2024

MOHD. UBAID

.....Petitioner

Through: Md. Azam Ansari, Advocate
(M:9990066404)

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Ms. Kanika Agnihotri, SC-NDMC
with Mr. Sachin Sharma, Advocate
(M:9310225726)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

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22.08.2025

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking directions to the respondent – New Delhi Municipal Council (“NDMC”), to regularize the shop bearing *no. 83, Palika Bazar, New Delhi* (“subject shop”) in favour of the petitioner, and execute a License Deed in his favour. The petitioner further seeks quashing of the letters dated 18th June, 2018 and 21st December, 2011, issued by the respondent, thereby, rejecting the petitioner’s request for regularization.

2. Facts, as canvassed in the petition, are as follows:

2.1 The subject shop was initially allotted to M/s Marveilleuse Arts & Crafts on 01st November, 1978, comprising of three Partners, i.e., Mohd.



Shafi Wani, Mr. Gautam Mustafa Wani & Mr. Mukhtar Ahmad Wani, who subsequently, entered into a Partnership Deed with Ms. Madhu Aggarwal. Later on, Ms. Madhu Aggarwal approached the respondent with a Partnership Deed and a Dissolution Deed, however, the necessary formalities for execution of the License Deed were not completed. On 25th August, 1987, Ms. Madhu Aggarwal entered into a Partnership Deed with Smt. Jasbir Kaur. Subsequently, a License Deed dated 08th November, 1988 was executed in the name of Smt. Jasbir Kaur, who then, entered into a Partnership Deed with Sh. Sanjeev Gupta on 14th December, 1993.

2.2 The respondent-NDMC executed a License Deed in favour of Sh. Sanjeev Gupta on 01st June, 1994. As no request for renewal was made on his behalf, consequently, on 07th November, 1998, Sh. Sanjeev Gupta was declared as an unauthorized occupant.

2.3 Subsequently, Sh. Sanjeev Gupta was also found to have sub-let the shop to one Mr. Abdul Rauf Javed, due to which, enhancement in license fee was levied. Further, the respondent proceeded against Sh. Sanjeev Gupta under Sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (“PP Act”), on the grounds of subletting of the public premises, and also the determination of the License Deed by efflux of time. Pursuant to the proceedings under the PP Act, an Eviction Order dated 24th December, 2008, was passed by the Estate Officer, by way of which Sh. Sanjeev Gupta was evicted, and directed to vacate the shop within 15 days.

2.4 Sh. Sanjeev Gupta challenged the Eviction Order in the Appeal bearing no. *PPA 110/09* before the District Judge, Tis Hazari Courts, Delhi, wherein, *vide* order dated 18th February, 2010, the appeal was dismissed, and the Eviction Order was upheld.



2.5 Thereafter, Sh. Sanjeev Gupta filed a writ petition bearing no. W.P.(C) 1199/2010, titled as “*Shri Sanjeev Gupta Versus New Delhi Municipal Council & Anr.*”, challenging the Eviction Order and the order passed in the Appeal, i.e., PPA 110/09, wherein, *vide* order dated 25th February, 2010, the Court allowed temporary possession of the shop to Sh. Sanjeev Gupta.

2.6 During the pendency of the said writ petition, Sh. Sanjeev Gupta entered into a partnership with the present petitioner by way of a Partnership Deed dated 08th September, 2010, and the same was later dissolved by way of a Dissolution Deed dated 11th October, 2010. Thereafter, the petitioner *vide* letter dated 26th October, 2010, applied with the respondent-NDMC to get the subject shop transferred, and regularized in his name.

2.7 The writ petition bearing no. W.P.(C) 1199/2010 was dismissed as withdrawn *vide* order dated 03rd February, 2011, and the Court vacated all interim orders, and further directed the respondent-NDMC to take possession of the subject shop. The possession of the subject shop was taken over by the respondent-NDMC on 10th February, 2011.

2.8 The petitioner preferred a writ petition being W.P.(C). 867/2011, titled as “*Mohd Ubaid Versus NDMC*”, seeking directions to the respondent-NDMC to regularize or transfer the subject shop in the name of the petitioner, and execute a Licence Deed thereto. The said petition was dismissed by this Court *vide* judgement dated 21st February, 2011, wherein, the Court found the petitioner to have abused the process of the Court, and held that the petitioner cannot claim any right with respect to the subject shop.

2.9 Aggrieved by the said judgement, the petitioner filed an appeal



bearing no. *LPA 450/2011*, titled as “*Mohd Ubaid Versus New Delhi Municipal Council*”, wherein, the Division Bench of this Court, by order dated 12th May, 2011, directed the respondent-NDMC to consider the representation of the petitioner, and accept or reject it, in a time-bound manner.

2.10 After considering the representation of the petitioner, the respondent-NDMC on the recommendation of the sub-committee, rejected the application for transfer. Consequently, the respondent-NDMC issued a letter dated 21st December, 2011, to the petitioner, rejecting the petitioner’s request for regularization of the subject shop.

2.11 The appeal, i.e., *LPA 450/2011*, was dismissed as withdrawn *vide* order dated 27th April, 2012, wherein, the petitioner sought and was granted liberty to challenge the rejection letter dated 21st December, 2011, separately.

2.12 The petitioner sent representations dated 12th February, 2013 and 18th December, 2013, to the respondent-NDMC for seeking transfer and regularization of the subject shop in the petitioner’s name. However, no decision was taken on the said representations, and therefore, being aggrieved by the non-consideration of the representations, and the rejection letter dated 21st December, 2011, the petitioner filed a writ petition bearing no. *W.P.(C) No. 4863/2015*, titled as “*Ubaid Versus New Delhi Municipal Council*”. The same was dismissed as withdrawn *vide* order dated 18th May, 2015, on the first date of hearing.

2.13 Thereafter, the respondent issued a new policy to grant and renew licences of shops *vide* Circular no. D-1043/SO(Estate-I)/2016, dated 16th August, 2016. The petitioner filed a fresh representation with the



respondent-NDMC for regularization of the subject shop by letter dated 12th October, 2016, based on the Circular dated 16th August, 2016.

2.14 *Vide* letter dated 18th June, 2018, the respondent-NDMC replied to the fresh representation of the petitioner, thereby, clarifying the status of the subject shop, and informing that the possession of the subject shop has been taken over by the NDMC.

2.15 The petitioner filed another representation dated 18th September, 2018, based on the Circular dated 16th August, 2016.

2.16 Being aggrieved by the said communication dated 18th June, 2018 and the rejection letter dated 21st December, 2011, the petitioner filed the present writ petition seeking regularization, and issuance of a license with regard the subject shop in favour of the petitioner.

3. On behalf of the petitioner, it is submitted as follows:

3.1 The letter dated 21st December, 2011, rejecting the request for regularization, is cryptic and violative of Principles of Natural Justice. The respondent-NDMC failed to apply its Resolution, titled “*Estate Policy/ Guidelines for Declaring with Estate Matters*” dated 18th March, 1999, and the Resolution titled “*Policy Regarding Cases in Which Eviction and Recovery Orders Have Been Passed*” dated 30th December, 1997. Thus, the letter dated 21st December, 2011, should be set aside for non-application of mind.

3.2 The letter dated 18th June, 2018, by which the representation of the petitioner for regularization of the subject shop was again rejected by the respondent-NDMC, also failed to apply the Circular dated 16th August, 2016.

3.3 The respondent, being a “state” under Article 12 of the Constitution of



India, must apply its resolutions uniformly, without discriminating between the applicants. The respondent-NDMC has regularized the shops of similarly placed persons, against whom eviction notices were issued, either on its own or upon intervention by the Court. Thus, the subject shop of the petitioner should also be regularized under the resolutions of the respondent-NDMC, on the grounds of parity and uniform application of policy.

3.4 The decision of the respondent to reject the application of the petitioner was in contravention of the legal opinion given by the Standing Counsel, Special Counsel and Law Department of the respondent-NDMC.

3.5 In the writ petition bearing no. *W.P.(C) 1199/2010*, titled “*Shri Sanjeev Gupta Versus New Delhi Municipal Council & Anr.*”, this Court, by order dated 25th February, 2010, permitted Sh. Sanjeev Gupta (petitioner therein) to use and occupy the subject shop, upon depositing the entire arrears of the license fee, along with the subletting charges from February, 1999 onwards. Thereafter, the respondent-NDMC demanded a payment of Rs. 17,18,590.13/- as arrears from February, 1999 till 22nd February, 2010, by letter dated 05th March, 2010. The aforesaid demand was duly paid by the present petitioner, and the subject shop was de-sealed. However, despite clearing the dues of the last 11 years, the subject shop was again sealed by the respondent-NDMC on 10th February 2011, as the writ petition bearing no. *W.P.(C) 1199/2010* was dismissed as withdrawn, and possession was granted to the respondent-NDMC by the order of the Court dated 03rd February, 2011. The subject shop has remained in the possession of the respondent-NDMC for the last one and a half decades. The sealing of the subject shop violates the petitioner’s “Right to Livelihood”, protected under Article 21 of the Constitution of India.



4. On behalf of the respondent-NDMC, it is submitted as follows:

4.1 The present writ is not maintainable as it is barred by delay and laches. The application of the petitioner seeking regularization already stands rejected, in absolute terms, by the letter dated 21st December, 2011. Despite this, the petitioner persistently sent representations for regularization, because of which the letter dated 18th June, 2018, was issued by the respondent-NDMC to merely clarify the existing situation that the respondent had taken possession over the subject shop. The letter dated 18th June, 2018, being merely clarificatory in nature, cannot be considered to give rise to a fresh cause of action.

4.2 The writ petition is not maintainable as the same is barred by *res judicata*. This Court, while deciding the writ petition being W.P.(C) 867/2011, titled as “*Mohd Ubaid Versus NDMC*”, passed the judgement dated 21st February, 2011, wherein, the Court held that the petitioner was not entitled to any treatment in parity. This is because the subject shop had gone much beyond the stage of termination of the License Deed, an Eviction Order had been passed, appeal against the Eviction Order had been dismissed, and possession was taken over. The Eviction Order attained finality, and the petitioner could not claim any right in the subject shop, when the person, through whom the petitioner claims his right, stood evicted. The Court, *vide* order dated 21st February, 2011 in the aforesaid writ, also noted that the petition was an abuse of the process of the Court and dismissed the writ petition. In view of the order dated 21st February, 2011, the petitioner is barred by *res judicata* from raising the same relief, and from raising new pleas for the same old relief.

4.3 On merits, the claim of the petitioner has to be rejected. The Eviction



Order dated 24th December, 2008, passed by the Estate Officer against Sh. Sanjeev Gupta has attained finality. Therefore, Sh. Sanjeev Gupta stood divested of all the rights in the subject shop, and had no legal right to effectuate any transfer in favour of the petitioner by the Partnership Deed dated 08th September, 2010. Thus, no right in the subject shop has accrued in favour of the present petitioner.

4.4 Additionally, the Circular dated 16th August, 2016, is only applicable to pending cases of transfer of license. Since the application of the petitioner for regularization of the subject shop was rejected in 2011 itself, with finality, the petitioner's case cannot be regarded as being "*pending*", and the said Circular does not apply to the petitioner.

5. I have heard learned counsels for the parties, and have perused the record.

6. By way of the present writ petition, the petitioner has prayed for regularization of the subject shop, and consequently, for the respondent-NDMC to issue a license in favour of the petitioner towards the same.

7. As per the facts on record, the subject shop was initially allotted to a partnership firm, i.e., M/s Marveilleuse Arts and Crafts on 01st November, 1978. Thereafter, one Ms. Madhu Aggarwal became a partner of the said firm. She submitted documents with the NDMC related to Partnership Deed and subsequent dissolution of partnership by way of a Dissolution Deed, but failed to complete the necessary formalities for execution of License Deed in her favour.

8. The said Ms. Madhu Aggarwal, then entered into a Partnership Deed with Smt. Jasbir Kaur and a License Deed was executed in her name for a period of five years starting from 08th November, 1988, who on 14th



December, 1993, executed a Partnership Deed with Sh. Sanjeev Gupta, i.e., predecessor-in-interest of the petitioner, in favour of whom the respondent-NDMC granted license for the subject shop on 01st June, 1994.

9. It is undisputed that on account of non-renewal of the License, Sh. Sanjeev Gupta was declared an unauthorized occupant on 07th November, 1998. Furthermore, as it was found that the subject shop was sub-let by Sh. Sanjeev Gupta to one Mr. Abdul Rauf Javed, in contravention to the Terms of the License, the respondent-NDMC initiated eviction proceedings under Sections 5 and 7 of the PP Act against Sh. Sanjeev Gupta. Pursuant thereto, an Eviction Order dated 24th December, 2008, was passed by the Estate Officer.

10. The said Eviction Order was challenged by Sh. Sanjeev Gupta, predecessor-in-interest of the petitioner herein, before the District Judge, Tis Hazari Courts, New Delhi by way of appeal bearing no. *PPA/110/09*, wherein, *vide* order dated 18th February, 2010, the appeal was dismissed, and the Eviction Order was upheld. Thereafter, the order dated 18th February, 2010, along with the Eviction Order dated 24th December, 2008, was challenged before this Court in *W.P.(C) 1199/2010* by Sh. Sanjeev Gupta.

11. It is pertinent to note that during the course of the said writ petition, Sh. Sanjeev Gupta executed a Partnership Deed dated 08th September, 2010, with the petitioner herein, and within just a span of a month, the said parties executed a Dissolution Deed dated 11th October, 2010, upon which, the petitioner herein sought to claim the right to have the shop licensed in his favour by the respondent-NDMC, by way of a representation dated 26th October, 2010.

12. It is also pertinent to note that the Court in *W.P.(C) 1199/2010*, had



passed several orders, wherein, it was indicated that the identity of Sh. Sanjeev Gupta was in doubt, and directed Sh. Sanjeev Gupta to produce documents in this regard. However, *vide* order dated 03rd February, 2011, Sh. Sanjeev Gupta withdrew the said writ petition, which was allowed to be withdrawn by the Court with imposition of costs, and direction to the respondent-NDMC to take possession of the subject shop. Accordingly, the possession of the subject shop was taken by the respondent-NDMC, on 10th February, 2011. The order dated 03rd February, 2011, passed in W.P.(C)1199/2010, is reproduced as under:

“Learned counsel for the petitioner seeks to withdraw the present petition.

Dismissed as withdrawn with costs of Rs. 25,000/- to be deposited by the petitioner with the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund within two weeks from the date of this order. Let the respondent take possession of the subject shop forthwith.

All interim orders passed in this matter stand vacated.”

(Emphasis Supplied)

13. The aforesaid facts clearly show that the Eviction Order dated 24th December, 2008, passed by the Estate Officer and upheld *vide* order dated 18th February, 2010, in the appeal, against Sh. Sanjeev Gupta, predecessor-in-interest of the petitioner, has attained finality. Thus, the operation of the Eviction Order against Sh. Sanjeev Gupta was effective from 24th December, 2008, when the Eviction Order was initially passed by the Estate Officer. Thus, when Sh. Sanjeev Gupta entered into Partnership Deed with the petitioner herein, on 08th September, 2010, he had no right, title or interest over the property in question.



14. It is to be noted that at the time when Sh. Sanjeev Gupta entered into Partnership Deed with the petitioner herein, he had merely been permitted by this Court in *W.P.(C) 1199/2010*, *vide* order dated 25th February, 2010, to use and occupy the subject shop, as an interim measure. Thus, when the said writ petition was dismissed as withdrawn, the interim measure in favour of Sh. Sanjeev Gupta was vacated. Consequently, upon withdrawal of the said writ petition, i.e., *W.P.(C) 1199/2010*, challenging the Eviction Order, the Eviction Order against Sh. Sanjeev Gupta became effective and attained finality. Thus, any transaction *qua* the subject shop entered by Sh. Sanjeev Gupta, after Eviction Order dated 24th December, 2008, was *non-est* and had no recognition in the eyes of law. When the said Sh. Sanjeev Gupta himself had no right, title or interest over the subject shop, he could not have transferred any right, title or interest to the present petitioner by way of the Partnership Deed. Law in this regard is settled that no one can transfer a better title than what he himself has. Thus, in the absence of any title in favour of Sh. Sanjeev Gupta, he could not have transferred any title, right or interest in favour of the petitioner herein.

15. At this stage, it is to be noted that the petitioner herein has averred that he had paid the dues against the arrears of license fees for the subject shop to the tune of Rs. 17,18,590.13/-, from February 1999 till 22nd February, 2010. On the basis of the Partnership Deed, and payment of the arrears of license fees for the subject shop, the petitioner further filed a writ petition bearing no. *W.P.(C) 867/2011*, seeking regularization and execution of a License Deed in his favour.

16. The said writ petition, *W.P.(C) 867/2011*, was dismissed by way of judgement dated 21st February, 2011, wherein, the Court held that the



eviction of Sh. Sanjeev Gupta had attained finality, and Sh. Sanjeev Gupta had no right whatsoever to transfer the possession of the subject shop, and that the petitioner herein could not have acquired any title from Sh. Sanjeev Gupta. The aforesaid writ petition filed by the petitioner herein, was dismissed in the following manner:

“xxx xxx xxx

9. ***This petition has been filed pleading that Shri Sanjeev Gupta had on 8th September, 2010 i.e. after 25th February, 2010 vide interim order of which date Shri Sanjeev Gupta was permitted to use and occupy the shop had for consideration transferred the possession of the shop to the petitioner herein by executing a Partnership Deed and Dissolution Deed in quick succession. It is further claimed that the respondent NDMC has a Policy for transferring and regularizing shops which had been illegally sublet; direction for regularizing the transfer of the shop by Shri Sanjeev Gupta in favour of the petitioner herein is sought.*** Though the earlier writ petition and the order dated 25th February, 2010 therein is disclosed but it is pleaded that since Shri Sanjeev Gupta after transfer had lost interest in the writ petition filed by him he had withdrawn the same. ***Neither were the further orders in the said writ petition whereby this Court had expressed doubts as to the identity of Shri Sanjeev Gupta and as to the abuse of the process of the Court were disclosed nor was it disclosed that this Court while dismissing the writ petition as withdrawn had also directed NDMC to takeover possession of the shop.***

10. Not only is it contention of the counsel for the respondent NDMC that the Advocates representing Shri Sanjeev Gupta and the petitioner herein are the same but it is also stated that Shri Abdul Rauf Javed who was pursuing the earlier writ petition as the attorney of Shri Sanjeev Gupta is closely related to the petitioner herein. The senior counsel for the petitioner appearing today has fairly admitted so. From the same also, a case of concealment having been practiced by the petitioner is made out. It is well settled that a party indulging in abuse of the process of the Court and in concealment of facts from this Court is not entitled to invoke the discretionary remedy under Article 226 of the Constitution of India.

11. ***The senior counsel for the petitioner has contended that the petitioner herein cannot be accused of concealment, having***



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disclosed the factum of earlier writ petition. I am unable to agree. Partial disclosure or disclosure to the extent that does not hurt the litigant is no excuse. What was required to be informed was that the petition in the name of Shri Sanjeev Gupta was being pursued by a close relative (brother-in-law) of the petitioner and that serious doubts had been cast therein with respect to the very identity of Shri Sanjeev Gupta and of the genuineness of the documents produced in that Court. It was also required to be disclosed that the Court in the earlier writ petition had directed the respondent NDMC to takeover possession. On the contrary an attempt was made to have the said direction in the earlier writ petition nullified by obtaining a contradictory order from a Co-ordinate Bench. The senior counsel for the petitioner of course contends that till the filing of the present petition, the copy of the order dated 3rd February, 2011 in the earlier writ petition had not been obtained. Even if that be so, the order dated 3rd February, 2011 in the earlier writ petition directing the respondent NDMC to takeover possession was made in the presence of the counsels then appearing and who appeared before this Court also in the present writ petition on 10th February, 2011 and there was no reason for concealing the said fact. Such practices are but to be deprecated and disentitle the petitioner from any hearing.

12. I had on 10th February, 2011 also enquired from the petitioner as to how the petitioner could base his case on transfer of the shop by Shri Sanjeev Gupta when Shri Sanjeev Gupta himself was custodia legis i.e. in use of the shop under orders in the earlier writ petition. The said use permitted to him was under the control of the Court and he could not have transferred the possession of the shop to the petitioner herein as claimed.

13. The senior counsel for the petitioner has today argued that there is nothing in the order dated 25th February, 2010 in the earlier writ petition to suggest that Shri Sanjeev Gupta was put into possession of the shop on that date as a receiver or that the shop was in custodia legis.

14. Merely because such words have not been used in the order cannot change the position as emerging from the records. An order of eviction had been passed against Shri Sanjeev Gupta and the appeal of Shri Sanjeev Gupta thereagainst been dismissed. The possession of the shop was taken over by the respondent NDMC thereafter and in execution of the order of eviction. The petitioner Shri Sanjeev Gupta had claimed the interim relief of being put into possession during the pendency of the said earlier petition and which was granted. Such possession could be nothing but under



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directions of the Court. Thus Shri Sanjeev Gupta had no right whatsoever to transfer the possession of the shop and the petitioner who atleast admits knowledge of the order dated 25th February, 2010 in the earlier writ petition could not have acquired any title from Shri Sanjeev Gupta.

15. The senior counsel for the petitioner has argued that the petitioner cannot be deprived of the right under the Policy of the respondent NDMC regularizing unauthorized transfers. However in the present case the transfer of title claimed by the petitioner is of a date after the right and title if any in favour of Shri Sanjeev Gupta stood extinguished by the eviction order and by execution thereof. There was thus nothing to which the petitioner could have acquired title.

16. The senior counsel for the petitioner has next argued that the petitioner has paid over ₹17.8 lacs as consideration for the said shop and is willing to pay to the respondent NDMC all charges also for transfer and the respondent NDMC will not suffer any loss if transfer in favour of the petitioner is regularized. The counsel for the respondent NDMC on the contrary has argued that the shop will be put to public auction.

17. In the face of doubt as to the identity of Shri Sanjeev Gupta, the version of the petitioner of having paid ₹17.8 lacs to Shri Sanjeev Gupta cannot be believed. Rather what appears is that the shop had been sublet, assigned or illegally parted with possession of much prior to the initiation of the proceedings under the PP Act against Shri Sanjeev Gupta. However instead of availing of the Policy aforesaid at that stage, the eviction proceedings were contested tooth and nail and on false grounds of the shop having not been sublet, assigned or parted with possession. It appears that it was the petitioner only who was contesting the earlier proceedings also including proceedings before the Estate Officer. Though the senior counsel for the petitioner has urged that Shri Abdul Rauf Javed is different from the petitioner but there is nothing to explain as to why the Power of Attorney in favour of Shri Abdul Rauf Javed was executed when it was the petitioner who had been transferred the shop. Normally such power of attorney are executed as part of transfer and there is no reason for me to believe that it was not so in the present case also.

18. There is yet another aspect. It is disclosed that an application for transfer was made to the respondent NDMC on 26th October, 2010 i.e. when the earlier writ petition was still pending. Even then it was not disclosed in the earlier writ petition that an application for transfer had been made. When the deceit and falsehood in the



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earlier writ petition was caught, the same was conveniently withdrawn and this second round commenced.

19. The senior counsel for the petitioner has drawn attention to the paper book where it is pleaded that benefit of the Policy has been given even in cases where license of the shop had been terminated. It is contended that the petitioner is to be treated at par. The shop subject matter of the present petition had however gone much beyond the stage of termination of license; eviction order had been passed, appeal dismissed and possession taken over. The writ petition preferred by Shri Sanjeev Gupta against the order of eviction was withdrawn. The said order of eviction has now attained finality. The petitioner cannot claim any right with respect to a shop from which the person through whom petitioner claims right stood evicted. The petitioner thus cannot claim parity with those cases.

20. The present petition is found to be a continuation of abuse of the process of the Court noticed in the earlier writ petition and is dismissed. I refrain from imposing any costs."

(Emphasis Supplied)

17. Against the aforesaid judgment, the petitioner herein preferred an appeal bearing no. LPA 450/2011, wherein, the Division Bench of this Court vide order dated 12th May, 2011, without entering into the merits of the dispute, directed the respondent to decide the representation of the petitioner, earlier submitted with the respondent. The order dated 12th May, 2011, passed by the Division Bench in LPA No. 450/2011, reads as under:

"Heard Mr. Arvind Nigam, learned senior counsel with Mr. Sanjay Kr. Pathak, learned counsel for the appellant and Mr. Nilava Banerjee, learned counsel for the respondent/NDMC. In course of hearing of the appeal Mr. Nigam submitted that the appellant has filed an application for consideration by the NDMC and that should be considered in accordance with the policy of the NDMC. Without expressing any opinion on any of the aspects, we only direct NDMC to consider the representation and accept or reject the same within four weeks from the date of receipt of the order passed today.

We repeat at the cost of repetition that all grounds are available to the NDMC to deal with the application within four weeks.

When we have directed for consideration it shall not be construed that



there has been direction by this Court for initiating the process of auction, if NDMC so advised.

After the decision is communicated to the petitioner the matter be listed on 4th July, 2011.”

18. Thus, it is manifest that though the Division Bench directed that the representation of the petitioner herein be considered, however, the findings in the writ petition, *W.P.(C) 867/2011*, *vide* judgment dated 21st February, 2011, were not disturbed. Thus, the findings that Sh. Sanjeev Gupta himself being *custodia legis*, i.e., in use of the subject shop under orders in the earlier writ petition, and could not have transferred the possession of the shop to the petitioner, attained finality. It was established that when the title of the predecessor-in-interest of the petitioner herein, stood extinguished by the Eviction Order, there was nothing to which the petitioner could have acquired title. Further, the finding by this Court in *W.P.(C) 867/2011*, that the petitioner cannot claim any right with respect to a shop from which the person, through whom the petitioner claims the right, stood evicted, also attained finality. Thus, it is undisputed that the petitioner did not acquire any right from his predecessor-in-interest, since the right of his predecessor-in-interest, was extinguished upon passing of the Eviction Order against him, legality of which order has been sustained, and has not been set aside.

19. Upon the directions of the Division Bench, as aforesaid, the respondent-NDMC considered the representation of the petitioner, and by way of rejection letter dated 21st December, 2011, rejected the representation of the petitioner for regularization. The rejection letter dated 21st December, 2011, is reproduced as under:

“xxx xxx xxx



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OFFICE OF THE DIRECTOR (ESTATE-I)
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA, NEW DELHI

No. D-4738.....

Dated: 21/12/11.

Mohd. Ubaid
s/o Mohd. Aqil
R/o 1738, Pahari Bhajla,
Turkman Gate,
Delhi-110006

Sub: Regarding application to transfer / Regularize the license of Shop No. 83,
Palika Bazar, New Delhi.

With reference to your application dated -25.10.2010 on the subject cited above received in this office and in pursuance to the order of Hon'ble Court dated 12.05.2011, the competent authority considered your application in accordance with the policy of NDMC.

I am to inform you that the aforesaid application for transfer of license of Shop No. 83, Palika Bazar from Sanjeev Gupta ex-licensee is not tenable and hence rejected by the competent authority.

(JUHI MUKHERJEE)
Director (Estate-I)

THIS ANNEXURE IS TRUE COPY
OF ORIGINAL DOCUMENT

xxx xxx xxx”

20. Pursuant to the said rejection, the petitioner herein, i.e., appellant in the aforesaid appeal, sought to withdraw the appeal, with liberty to challenge the rejection letter separately, and the same was allowed *vide* order dated 27th April, 2012, in the following manner:

“The learned counsel for the appellant seeks permission to withdraw this appeal in view of the fact that a subsequent order has been passed by the NDMC on 21.02.2011 and that he would be



challenging that order separately.

Dismissed as withdrawn with the aforesaid liberty.”

(Emphasis Supplied)

21. Instead of challenging the aforesaid rejection letter dated 21st December, 2011, in terms of the liberty taken from the Division Bench, the petitioner sent further representations dated 12th February, 2013 and 18th December, 2013, to the respondent, seeking regularization of the subject shop. However, on account of no reply on behalf of the respondent-NDMC, the petitioner filed another writ petition bearing no. W.P.(C) 4863/2015, which was dismissed as withdrawn *vide* order dated 18th May, 2015, on the first date of hearing, after some arguments. The order dated 18th May, 2015, passed in W.P.(C) 4863/2015, reads as under:

“CM APPL. No. 8793/2015 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 4863/2015 & CM APPL. No. 8794/2015 (stay)

“After some arguments, learned counsel for the petitioner seeks to withdraw this petition. The petition and the application are dismissed as withdrawn.”

(Emphasis Supplied)

22. Subsequently, the petitioner, by taking shelter under the new policy of the respondent-NDMC, issued by way of Circular dated 16th August, 2016, for transfer and renewal of license of shops, again sent a representation dated 12th October, 2016, seeking regularization of the subject shop in his favour. By way of letter dated 18th June, 2018, the respondent-NDMC clarified the status of the shop, thereby, communicating that the subject shop was in possession of the respondent-NDMC, and that the eviction of Sh. Sanjeev Gupta, predecessor-in-interest of the petitioner, had attained finality. The letter dated 18th June, 2018, is reproduced as under:



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“xxx xxx xxx”

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA- NEW DELHI
ESTATE-I DEPARTMENT

31

NO.D-567/SO/Estate-I/2018 Date 19/01/2019

Sh. Mohd Ubaid,
H.No. 1738, Pahari Bhojla,
Turkman Gate-110006.

Sub: Regarding transfer/regularization of licence of Shop No. 83, Palika Bazar New Delhi.

This is with reference to the Grievance Wide Registration No. PMOPG/D/2016/0198707, in this connection it is to inform you that the Licence of Shop No. 83, Palika Bazar was valid upto 07.11.1998 in the name of Sh. Sanjeev Gupta.

The said shop was found subjected to one Shri Abdul Rauf Javed due to which enhancement is levied. The proceeding was initiated before E.O. Court under PP Act. An eviction order was passed in 2008. Sh. Sanjeev Gupta preferred an appeal against the said order before ADJ District Court. The said appeal was dismissed and eviction order was upheld. Sh. Sanjeev Gupta preferred an appeal before Hon'ble Delhi High Court against the said order ADJ and EO Court.

During the pendency of case Sh. Sanjeev Gupta was entered into partnership in Sept-2010 and dissolved in Oct-2010 transferring the shop in favour of Mohd. Ubaid. The petitioner i.e. Sh. Sanjeev Gupta was having documents showing different date of birth, unable to appear before the Hon'ble Court despite standing instruction of Court. The writ petition was dismissed as withdrawn with cost and direction was issued to the NDWC to take possession of the said shop forthwith in Feb-2011 vide Wpc No. 1199 of 2010 dated 3.2.2011. accordingly, the possession of the shop was taken over by NDWC on 10/02/2011.

The possession of the said shop was taken over by NDWC on 10.2.2011 and the same was handed over to Civil Department, NDWC.

Dy. Director (Estate-I)

Copy to:

PA to Director (Estate) for uploading the reply on PGMS web Site.

Dy. Secretary, PGMS, A-805, 8th floor, Delhi Secretariat.

xxx xxx xxx”

23. The petitioner again filed a representation dated 18th September, 2018, and thereafter, filed the present writ petition seeking regularization and issuance of license in relation to the subject shop in favour of the petitioner.



24. Taking into account the aforementioned facts and the conduct of the petitioner in relation to filing subsequent representations, despite his earlier representation having been rejected by the respondent-NDMC *vide* letter dated 21st December, 2011, it is evident that the petitioner has agitated and re-agitated the substantial prayer of seeking regularization time and again, by way of several petitions before this Court.

25. It is noted that the petitioner, despite receiving a liberty *vide* order dated 27th April, 2012, to challenge the rejection letter, again sent representations to the respondent dated 12th February, 2013 and 18th December, 2013, for regularization of the shop in his favour. The petitioner despite having the opportunity to challenge the rejection letter by the respondent in 2012, when the aforesaid liberty was granted by the Division Bench, chose to again file representations with similar prayers as was already decided by the respondent, which was also the basis for withdrawal of the appeal, *LPA No. 450/2011*, before the Division Bench, *vide* order dated 27th April, 2012.

26. Furthermore, as noted above, the petitioner, in 2015 had filed another writ petition, i.e, *W.P.(C) 4863/2015*, being aggrieved by the fact that the subsequent representations submitted by him had not being decided, and also challenged the rejection letter dated 21st December, 2011, which was again withdrawn by the petitioner on the first date of hearing itself, *vide* order dated 18th May, 2015.

27. Thus, it is apparent that the petitioner has resorted to filing representations time and again, despite the fact that the finding against the petitioner has attained finality, wherein, this Court in *W.P.(C) 867/2011*, *vide* judgment dated 21st February, 2011, has categorically held that after the



eviction of the predecessor-in-interest of the petitioner, the said predecessor-in-interest of the petitioner did not have any title or interest left in him *qua* the shop in question, which could be transferred in favour of the petitioner herein. The mere fact that the Division Bench of this Court in *LPA 450/2011*, had granted liberty to the petitioner to challenge the rejection letter issued by the respondent-NDMC separately, would not imply that the interest of the petitioner in the shop in question stood revived, when he had no interest in the shop ever. Even otherwise, the pending representation of the petitioner which was considered pursuant to directions issued by the Division Bench stood rejected way back *vide* letter dated 21st December, 2011, which is also sought to be challenged belatedly in the present writ petition.

28. Thus, it is evident that the findings against the petitioner having no right or title over the shop in question, in view of the fact that his predecessor-in-interest himself had no right or title over the shop in question at the time of entering into the Partnership Deed with the petitioner herein, has attained finality in view of the judgment dated 21st February, 2011, passed in *W.P.(C) 867/2011*. The said findings still hold the field and have not been set aside in the appellate proceedings initiated by the petitioner in *LPA 450/2011*. Thus, the findings against the petitioner, having become conclusive and final, the present petition is barred by the Principles of Constructive *Res Judicata*. The petitioner's attempt to re-argue the case, which has already been finally decided, is clearly a misuse and abuse of the process of law. Thus, Supreme Court in the case of ***M. Nagabhushana Versus State of Karnataka and Others, (2011) 3 SCC 408***, has held as follows:



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“xxx xxx xxx

18. Therefore, any proceeding which has been initiated in breach of the principle of res judicata is prima facie a proceeding which has been initiated in abuse of the process of court.

19. A Constitution Bench of this Court in *Devilal Modi v. STO* [AIR 1965 SC 1150], has explained this principle in very clear terms: (AIR p. 1152, para 7)

“7. ... But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. **The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice** (vide *Daryao v. State of U.P.* [AIR 1961 SC 1457 : (1962) 1 SCR 574]).”

20. This Court in *AIMO* case [(2006) 4 SCC 683] explained in clear terms that **principle behind the doctrine of res judicata is to prevent an abuse of the process of court.** In explaining the said principle the Bench in *AIMO* case [(2006) 4 SCC 683] relied on the following formulation of Somervell, L.J. in *Greenhalgh v. Mallard* [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (*AIMO* case [(2006) 4 SCC 683] , SCC p. 700, para 39)

“39. ... ‘I think that on the authorities to which I will refer it would be accurate to say that **res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.**’ ”

(emphasis supplied in *AIMO* case [(2006) 4 SCC 683])

The Bench in *AIMO* case [(2006) 4 SCC 683] also noted that the judgment of the Court of Appeal in *Greenhalgh* [(1947) 2 All ER 255 (CA)] was approved by this Court in *State of U.P. v. Nawab Hussain* [(1977) 2 SCC 806 : 1977 SCC (L&S) 362] , SCC at p. 809,



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para 4.

21. Following all these principles a Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)

“35. ... *an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.*”

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions.

23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in *K.K. Modi v. K.N. Modi* [(1998) 3 SCC 573]. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p. 592)

“44. *One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reargitation may or may not be barred as res judicata.*”

24. In coming to the aforementioned finding, this Court relied on *The Supreme Court Practice, 1995* published by Sweet & Maxwell (p. 344). The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (*K.K. Modi case* [(1998) 3 SCC 573], SCC p. 592, para 43)

“43. ... *This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court*



will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.’ ”

25. On the premises aforesaid, it is clear that the attempt by the appellant to reargue the same issues which were considered by this Court and were rejected expressly in the previous judgment in AIMO case [(2006) 4 SCC 683], is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto.

xxx xxx xxx”

(Emphasis Supplied)

29. By taking advantage of the liberty granted by the Division Bench, the petitioner cannot resort to making similar representations time and again, when the earlier pending representation of the petitioner that was considered pursuant to the order of the Division Bench, already stood rejected. As noted above, the petitioner withdrew the appeal, LPA 450/2011, vide order dated 27th April, 2012, with liberty to challenge the rejection of the representation vide letter dated 21st December, 2011, by the respondent-NDMC. However, taking benefit of the said order passed by the Division Bench, the petitioner cannot seek to file numerous representations when the earlier pending representation considered by the respondent-NDMC as per direction of the Division Bench, had already been rejected. This is abuse and misuse of the process, as there was no liberty from the Division Bench to file innumerable representations later, when the earlier pending representation had been rejected. Rather, the appeal before the Division Bench was dismissed as withdrawn to only challenge the letter by which the representation of the



petitioner had already been rejected by the respondent-NDMC.

30. As noted above, the present petition is evidently barred by *res judicata*, as the issue at hand, which is regularization and issuance of license in relation to the subject shop in favour of the petitioner, has already been dealt by this Court *vide* judgement dated 21st February, 2011, which findings have not been interfered with, and have accordingly attained finality. The principles of *res judicata* apply to writ proceedings, as held by the Supreme Court in the case of ***Raghavendra Rao and Others Versus State of Karnataka and Others, (2009) 4 SCC 635***, wherein, it has been held as under:

“xxx xxx xxx

13. As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants. The claim of the appellants is, thus, barred under the principles of res judicata/constructive res judicata, the earlier judgment having attained finality. It is now a well-settled principle of law that the principle of res judicata applies also to the writ proceedings.

xxx xxx xxx”

(Emphasis Supplied)

31. The present writ petition has been filed seeking to set aside the letter dated 21st December, 2011, by which the earlier pending representation of the petitioner that was considered by the respondent-NDMC pursuant to directions issued by the Division Bench, was rejected. Despite, rejection of the representation of the petitioner *vide* the aforesaid letter, the petitioner continued making representations to the NDMC. Thus, *vide* letter dated 18th June, 2018, the respondent-NDMC clarified about the status of the shop in question, which letter has also been impugned by way of the present writ petition.



32. The petitioner has taken the aforesaid letter of 2018 as a cause of action, and filed the present writ petition, challenging the said clarificatory letter dated 18th June, 2018 and the rejection letter dated 21st December, 2011. It is to be noted that any cause of action that may have arisen in favour of the petitioner, has arisen from the date of the first representation of the petitioner, i.e., 26th October, 2010. No fresh cause of action can be said to have arisen in favour of the petitioner from the date of the rejection letter dated 18th June, 2018, issued by the respondent. Further, no fresh cause of action can be said to have arisen in favour of the petitioner from the date when the liberty was granted by the Division Bench to challenge the said rejection letter. Further, fresh cause of action cannot also be said to have arisen in favour of the petitioner from the date of any further representations filed by the petitioner or the consequent clarification of the respondent with regard to the subject shop. In this regard, it would be apposite to refer to the judgement of the Supreme Court in the case of ***Union of India and Others Versus M. K. Sarkar, (2010) 2 SCC 59***, wherein, it has been categorically held that a direction to consider a representation and a decision in compliance thereof, will not create a new cause of action, and the aspect of delay has to be seen from the original cause of action. Thus, it has been held as follows:

“xxx xxx xxx

15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.



Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.

xxx xxx xxx"

(Emphasis Supplied)

33. As discussed above, the issue with regard to eviction in relation to the subject shop was dealt with by way of judgement dated 21st February, 2011 in W.P.(C) 867/2011, wherein, this Court recognised the fact of eviction of predecessor-in-interest of the petitioner, i.e., Sh. Sanjeev Gupta in categorical terms, and dismissed the claim of the petitioner for regularization of the subject shop. In the aforesaid judgement, it has been held that the petitioner's predecessor-in-interest, i.e., Sh. Sanjeev Gupta, did not have an effective title and stood divested of all rights in the subject shop in view of the Eviction Order against him. When the predecessor-in-interest of the petitioner himself, by virtue of the Eviction Order having attained finality, did not have an interest to transfer, in that case, no right accrued in favour of the petitioner from Sh. Sanjeev Gupta, as the said Sh. Sanjeev Gupta, predecessor-in-interest of the petitioner, was himself divested of all interest in relation to the subject shop.

34. Thus, the Supreme Court in the case of ***Umadevi Nambiar Versus***



Thamarasseri Roman Catholic Diocese, (2022) 7 SCC 90, while holding that no one can confer a better title than what he himself has, held as follows:

“xxx xxx xxx

19. It is a fundamental principle of the law of transfer of property that "no one can confer a better title than what he himself has" (Nemo dat quod non habet). The Appellant's sister did not have the power to sell the property to the vendors of the Respondent. Therefore, the vendors of the Respondent could not have derived any valid title to the property. If the vendors of the Respondent themselves did not have any title, they had nothing to convey to the Respondent, except perhaps the litigation.

xxx xxx xxx”

(Emphasis Supplied)

35. Furthermore, it is manifest that the petitioner made the same prayer for regularization in the earlier writ petitions, as has been made in the present writ petition. Therefore, this Court is of the considered view, that the prayer of the petitioner for regularization of the subject shop in his favour, is a misuse and abuse of the process of law as the finding against him in this regard, had attained finality when the representation of the petitioner was rejected *vide* letter dated 21st December, 2011. Further, the various issues raised by the petitioner time and again, including, in the present writ petition for regularization of the shop in question in the name of the petitioner, were settled by this Court *vide* its judgement dated 21st February, 2011, which was not interfered with by the Appellate Court, and has no existing challenge against it.

36. Furthermore, the present petition largely suffers from delay and latches. Consequent to the rejection letter dated 21st December, 2011, which was passed pursuant to the directions issued by the Division Bench *vide* order dated 12th May, 2011 in *LPA/450/2011*, the petitioner withdrew the



said appeal *vide* order dated 27th April, 2012, with liberty granted to the petitioner to challenge the rejection letter separately. However, the challenge of the petitioner to the said rejection letter first came in writ petition filed in 2015, i.e., W.P.(C) 4863/2015 which was also withdrawn on the first date itself. Despite the same, the petitioner has again re-agitated the said challenge to the rejection letter dated 21st December, 2011, by way of the present petition which was filed in 2018.

37. There is no cogent reason presented by the petitioner with regard to the delay in challenging the rejection letter of the year 2011, despite receiving liberty to do the same, by the Division Bench of this Court. Even if the subsequent proceedings before this Court are taken into account, nevertheless, on account of the said proceedings being withdrawn and the judgement dated 21st February, 2011, attaining finality, the present petition suffers from delay and laches. The petitioner, to surpass this hurdle of delay, has time and again attempted to revive the cause of action by way of repeated representations. This course of action of the petitioner, cannot be accepted, or allowed. In this regard, the Supreme Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and Others. Versus T.T. Murali Babu, (2014) 4 SCC 108***, while holding that delay and laches should not be lightly brushed aside in writ petitions, has held as follows:

“xxx xxx xxx

13. First, we shall deal with the facet of delay. In *Maharashtra SRTC v. Balwant Regular Motor Service* [AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Hurd* [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221], which is as follows: (*Balwant Regular Motor Service case* [AIR 1969 SC 329] , AIR pp. 335-36, para 11)



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“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in, either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.’ (Lindsay Petroleum Co. case [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221] , PC pp. 239-40)”

xxx xxx xxx

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

xxx xxx xxx”

(Emphasis Supplied)

38. This Court also rejects the premise that any fresh cause of action may have arisen in favour of the petitioner on account of letter dated 18th June,



2018, issued by the respondent. The said letter was merely clarificatory in nature and did not decide nor substantiate any rights, as the petitioner's earlier pending representation dated 26th October, 2010 considered by the respondent-NDMC pursuant to the directions issued by Division Bench of this Court, already stood rejected by way of letter dated 21st December, 2011. The respondent by way of the said letter only provided the status in relation to the subject shop to the petitioner.

39. The Supreme Court has categorically laid down that every representation to the Government for relief may not be replied on merits. The representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. Thus, the Supreme Court in the case of ***C. Jacob Versus Director of Geology and Mining and Another, (2008) 10 SCC 115***, while holding that a reply to a dead claim cannot raise a fresh cause of action, has held as under:

“xxx xxx xxx

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and



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dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

xxx xxx xxx”

(Emphasis Supplied)

40. There is another aspect of the matter. This Court notes that the petitioner had filed a writ petition in the year 2015 seeking the same prayer for regularization of the shop in question in his name, and for setting aside the letter dated 21st December, 2011, rejecting the representation of the petitioner. The said writ petition, being W.P.(C) 4863/2015, titled as “*Ubaid Versus New Delhi Municipal Council*” was withdrawn on the first date



itself, as recorded in the order dated 18th May, 2015.

41. Thus, it is apparent that the earlier writ petition filed in the year 2015 was withdrawn by the petitioner *simpliciter*, without any liberty to file a fresh petition. In this regard, it would be fruitful to refer to the judgment of the Supreme Court in the case of ***Sarguja Transport Service Versus State Transport Appellate Tribunal, M.P., Gwalior and Others, (1987) 1 SCC 5***, wherein, the Supreme Court held that once a writ petition filed under Article 226 of the Constitution of India has been withdrawn, without permission to file a fresh writ petition, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition, when he withdraws it without such permission. Thus, it was held as follows:

“xxx xxx xxx

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case [AIR 1961 SC 1457: (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. **It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in**



holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.
xxx xxx xxx”

(Emphasis Supplied)

42. Accordingly, considering the aforesaid judgment, the present writ petition, would not be maintainable on account thereof, also.

43. This Court rejects the submission on behalf of the petitioner that the respondent has acted in contravention to the legal opinion of the Standing Counsel, Special Counsel and Law Department. Mere legal opinions are not binding upon an authority, and are merely tools to aid the authority for arriving at a decision or conclusion. (***See: J.S. Arora Versus D.V.C. and Others, 2022 SCC OnLine Del 173, Para 45***)

44. Furthermore, the petitioner cannot place reliance on the file noting of the respondent, as the same cannot amount to any form of decision that was taken by the respondent (***See: State of Uttaranchal and Another Versus Sunil Kumar Vaish and Others, (2011) 8 SCC 670, Para 24***).

45. As far as the petitioner’s claim for parity with similarly placed persons in relation to the policy of the respondent, this Court accepts the submission of the respondent that the petitioner is not at par with the said persons. The policy of the respondent allowed for regularization of the shops of such persons, against whom the proceedings of eviction were initiated. However, the case of the petitioner, through its predecessor-in-interest, falls short of the said condition, as the eviction proceedings in the present case



had attained finality. Furthermore, reliance by the petitioner on the order dated 23rd April, 2025, in W.P.(C) 5657/2024, titled as “***Rajiv Kohli Versus New Delhi Municipal Council***”, to claim parity is again misplaced. In the said case, there was no proceeding of eviction initiated against the petitioner therein, and the said case merely pertained to question of renewal of License.

46. Thus, in view of the detailed discussion hereinabove, the petitioner has failed to make out a case for regularization and issuance of license in its favour for the subject shop. No merit is found in the case of the petitioner.

47. Accordingly, present writ petition, along with the pending applications, is dismissed.

**MINI PUSHKARNA
(JUDGE)**

AUGUST 22, 2025
Ak/Au /Kr/Sk