

ITEM NO.106

COURT NO.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 644 OF 2000

NEW DELHI MUNICIPAL COUNCIL

Appellant (s)

VERSUS

OM PRAKASH AND ANR.

Respondent(s)

(With prayer for interim relief )

Date: 04/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Rakesh K. Khanna, Adv.

Dr. Rashmi Khanna, Adv.

Ms. Jahanvi Warah, Adv.

Mr. Surya Kant, Adv.

For Respondent(s)

Mr. Rana Ranjit Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is disposed of in terms of the signed order.

( RAVI P. VERMA )

( ANAND SINGH

Court Master

Court Ma

ster

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 644 OF 2000

NEW DELHI MUNICIPAL COUNCIL  
PLANT

APPEL

Versus

DOM PRAKASH AND ANR.  
PLANTS

RESPOND

O R D E R

The challenge in this appeal is to the order dated 10.3.1999 passed by the

High Court of Delhi affirming the order dated 27.2.1999 passed by the  
Addl.

District Judge.

Heard the parties.

Briefly stated, the facts are as follows. Respondent herein, Shri Om Prakash, was a licensee in Shop No.52 at Prithvi Raj Market, New Delhi. His licence was issued on 1.2.1977 for a period of five years. The period of five years expired on 31.1.1982. Fresh application for renewal of licence is stated to have been filed (this was disputed by the appellant because the renewal was not filed by the appropriate attorney-holder). It appears that on the basis of the renewal application, a fresh licence was stated to have been issued in 1993. The appellant contended that the licence alleged to have been issued in 1993 is not a valid licence as it has not been signed by a competent authority who has been authorised to do namely, Officer on Special Duty, NDMC. We have perused the copy of fresh licence dated nil 1993 annexed in this appeal and we also find that it does not bear the

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signature of Officer on Special Duty, NDMC. Therefore, according to the appellant, the so-called alleged renewal in 1993 is not validly made and the occupation of the respondent of the said shop after the expiry of the lease on 31.1.1982 is unauthorised. An eviction application was filed before the Estate Officer vide Case No.21/140/89/EO dt.29.3.89. It appears that the Estate Officer

after hearing the parties and considering the evidence on record passed eviction

order dated 3.3.1998. Aggrieved thereby, the respondent filed an appeal before

ADJ. The learned ADJ, by its order dated 27.2.1999, allowed the appeal which was affirmed by the High Court by the impugned order dated 10th March 1999. Aggrieved thereby, this SLP has been preferred by the NDMC.

The whole question revolves around for determination in this appeal is as to whether the renewal of licence in 1993 is validly made or not on the basis of which the respondent can claim their right of occupation of the shop in question.

Before the Estate Officer, the appellant has led evidence including PW3 who is no other than the senior clerk dealing with the shops cases of P rithvi Raj Market. In his examination, PW3 specifically stated that the case of Om Prakash for regularisation of allotment of shop was considered. He also stated that the respondent Om Prakash was directed to complete the necessary formalities such as execution of fresh licence deed, deposit of difference of security and c learance of arrears of licence fee and interest due from them. The matter was also examined by Law Department on 15.4.1995 and the case for regularisation of renewal of licence was accordingly processed but the matter was not finalised and the shop was not regularised.

This would clearly show that in fact the process has already started for

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regularisation of the shop and the respondent also deposited the difference of

security and clearance of arrears of licence fee and interest due from them. The

reason as to why the matter was not regularised has not been stated by the

appellant. It is also not the case of the appellant that ultimately the request for

regularisation of shop has been rejected.

It appears that on perusal of the order dated 27.2.1999 passed by the ADJ,

the entire finding is based on the renewal of licence in 1993. We have already

observed that in the fresh licence said to have been issued in 1993 the signature of

the competent authority namely Officer on Special Duty, NDMC does not appear.

In this view of the matter, it cannot be said that the renewal of 1993 has been validly

made on the basis of which the respondent could claim right of occupation of the

shop in question. The order of the High Court, in our view, was cryptic and there

was no application of mind at all. By the impugned order the High Court simply

affirmed the order of the ADJ and the Writ Petition was dismissed in limine.

Since the validity of the renewal of licence in 1993 was questioned, both

the order of the ADJ dated 27.2.1999 and the High Court order dated 10.3.1999

basing on the licence of 1993 cannot be sustained. The orders dated 27.2.1999 of

ADJ and 10.3.1999 of the High Court are accordingly quashed and set aside. This

left us to consider as to what order is required to be passed in the facts and

circumstances of this case and in the interest of justice.

As already observed, it is not a case of the appellant that the renewal

application of the respondent has been rejected. At the same time, it clearly appear

from the evidence of PW3 that the respondent has deposited difference of security

and clearance of arrears of licence fee and interest due from them. This would show

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the respondent in fact has completed all the formalities. At the risk of repetition, it

is not the case of the appellant that the request for renewal of licence was rejected.

If that be the case, the application for renewal of the licence is still pending before

the appropriate authority, even if we hold that the renewal of licence in 1993 is not

validly made.

In the background facts and circumstances, the ends of justice would

meet if we direct the appellant to consider the renewal application of the respondent

in which all the formalities are completed within a period of three months from

today by passing an appropriate speaking order. Till the application for renewal is

considered and order is passed finally, the respondent shall be allowed to continue

to run the business in the said shop. With the aforesaid direction the appeal is

disposed of.

.....J.

( H.K. SEMA )

New Delhi;

.....J.

May 04, 2006.

( A.K. MATHUR )