

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

Date of decision: 20th August, 2010.

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W.P.(C) No.3071/2008

DHEERAJ KUMAR

..... Petitioner

Through: Mr. Sarvesh Bisaria with
Mr. Prakash Chandra Sharma, Advocate.

Versus

N.D.M.C. & ANOTHER

..... Respondents

Through: Mr. Manoj K. Singh, Mr. Nilana
Banerjee and Mr. Pradyuman Sevar, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner was a licensee under the respondent no.1 NDMC for running a snack bar at the water fall in Talkatora Garden, New Delhi. The petitioner was removed/evicted from the said site. The said removal/eviction was *inter alia* the subject matter of WP(C) 10644/2006 before this court which was disposed of on 7th January, 2008. This court did not find the order cancelling the licence of the petitioner to be suffering from the vice of arbitrariness or irrationality. The cancellation of the licence was thus upheld. During the course of hearing, it has emerged that proceedings under

the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were instituted against the petitioner thereafter and the petitioner was evicted in pursuance to the order therein.

2. The petitioner, at the time of dismissal of the writ petition WP(C) 10644/2006 aforesaid, contended that he was entitled to be considered for an alternative allotment. This court in the order dated 7th January, 2008 (supra) left it open to the petitioner to approach the respondent no.1 NDMC for alternative allotment in terms of their policy, if any, and further directed that if any such request was to be made, the same shall be considered sympathetically in accordance with law.

3. The request of the petitioner for alternative site was rejected by the respondent no.1 NDMC on 11th March, 2008 on the ground that no alternative site can be provided to any occupant against the tender space. It is not in dispute that the site at Talkatora was licenced to the petitioner pursuant to an open tender.

4. The petition came up for hearing before this court yesterday when at the outset it was enquired from the counsel for the petitioner as to on what ground the petitioner was claiming a right to alternative site. The counsel for the petitioner contended that the licence of the petitioner for Talkatora site was w.e.f. the year 2002 and for an initial period of ten years with a right of renewal and thus the petitioner was entitled to an alternative site for

the balance period of the licence term. Having not found any copy of such licence / agreement on the file, it was enquired from the counsel as to on what basis the said argument was made. The counsel stated that the licence deed has not been placed on record. He did not even have the licence deed with him. The matter was however adjourned for today. The counsel for the petitioner has today handed over a copy of the deed of the licence dated 31st July, 2002 which is “for an initial period of ten years in the first instance”. It was enquired from the counsel for the petitioner whether the same had any clause for prior determination. The counsel draws attention to clause 36 which permits prior determination for the reason of breach of licence condition. The counsel for the respondent no.1 NDMC intervenes at this stage and draws attention to clause 24 of the licence deed which is as under:

“24. That the allotment of the licensed premises in favour of the license would be purely temporary one and the same shall be treated as a bare licence which would be revocable at any time without assigning any reasons and in the event of revocation of the licence, the licensee shall be bound to quit the premises within a week of the issue of the notice of revocation of the licence by the licensor and shall not claim any compensation for any resultant injury thereof.”

5. In view of the aforesaid clause permitting the respondent no.1 NDMC to terminate the licence at any time without any right of compensation or otherwise to the petitioner, and also in view of Section 64 of the Indian Easements Act, 1882 providing that if a licensee for a consideration is evicted before he has fully enjoyed the term of the licence, he is entitled

only to recover compensation from the grantors of the licence, it was enquired from the counsel for the petitioner as to how, on the basis of the said licence deed also, the petitioner had a claim for relocation. The counsel then contended that the respondent no.1 NDMC has been allotting alternative site to others similarly situated as the petitioner and have wrongfully denied the same to the petitioner. Attention in this regard is drawn to the representation of the petitioner to the respondent no. 1 NDMC for alternative site, giving instances of such alternative allotment and blanket denial thereof in the counter affidavit of the respondent. It is further stated that the petitioner in his rejoinder gave details of the alternative sites allotted by the respondent no.1 NDMC to others. It is further contended that owing to the said facts the respondent no.1 NDMC was directed to file a further/additional affidavit and in response where to the respondent no.1 NDMC has admitted having granted alternative sites to those also who had been granted licences pursuant to open tenders. The counsel for the petitioner contends that the respondent no.1 NDMC is not only guilty of false pleadings but has been, without any policy in this regard and at the whims and fancy of its officers, granting alternative sites to some while denying to others. Reliance in this regard is placed on *Zenit Mataplast Private Ltd Vs. State of Maharashtra* (2009) 10 SCC 388, particularly to para 27 thereof laying down that every action of the State or its instrumentalities should not only be fair, legitimate but should be without any affection or aversion and in accordance with rule of law. I have

enquired from the counsel for the petitioner that even if it were to be so, how could the petitioner in the face of his express contract, whereunder he is not entitled to any relocation and in view of the position in the Indian Easements Act assert a right of relocation. The counsel has no answer.

6. In my opinion, grant of any alternative site to the petitioner would not be in accordance with rule of law i.e., the contract under which the petitioner occupied the original site as well as under the Indian Easements Act. In fact, it appears that the grant of any alternative site to the petitioner would fortify the allegation of arbitrariness inasmuch as the petitioner without being entitled to any alternative site would be awarded one. The counsel for the respondent no.1 NDMC also draws attention to the judgments of this court in *Brahampal Vs. UOI* 124(2005) DLT 35 and to the order dated 28th August, 2009 in WP(C)9251/2009 titled *L.C. Mahendru Vs. NDMC* but the same are not found relevant. The petitioner is therefore not entitled to the relief claimed.

7. Finding from the affidavit of the respondent no.1 NDMC that in the matter of allotment of alternative site, there is no policy and decisions are being taken on a case to case basis, during the course of hearing it was offered to the counsel for the petitioner that inspite of dismissal of the petition the matter can be placed before the PIL Bench as a Public Interest Litigation and to which the counsel for the petitioner had agreed. However, on further consideration it is felt that it will be expedient that the petitioner,

if desirous in public interest, of challenging the action of the NDMC of allotting the alternative sites without any policy in that respect, should make a composite petition with all the pleas rather than the pleas being spread out over several pleadings. The counsel for the respondent NDMC has controverted the case of arbitrariness and has contended that none of the recent evacuees owing to the Commonwealth Games have been allotted any alternative site.

8. In the aforesaid circumstances while dismissing the petition, liberty is granted to the petitioner to if so desirous in accordance with law take up the matter of arbitrariness in allotment of alternative sites as a Public Interest Litigation. No order as to costs.

**AUGUST 20, 2010
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RAJIV SAHAI ENDLAW, J