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**HIGH COURT OF DELHI : NEW DELHI**

**CM (M) No. 981/2010 & CM Appl. No. 13504/2010**

% **Judgment reserved on: 5<sup>th</sup> August, 2010**

**Judgment delivered on: 10<sup>th</sup> August, 2010**

Prominent Hotels Ltd.  
A Company incorporated under  
The Companies Act, 1956 having  
Its registered Office at  
37, Shaheed Bhagat Singh Marg,  
New Delhi.

.....Petitioner

Through: Mr. V.P. Singh, Sr. Adv. with  
Mr.N.S. Vashisth & Mr.Vishal  
Singh, Advocates.

Versus

The New Delhi Municipal Council  
A statutory Body constituted,  
under the New Delhi Municipal Council Act, 1994  
having its Office at Palika Kendra,  
New Delhi-110001.

.....Respondent

Through: Mr. Manoj K. Singh with  
Mr.Pradyuman Sevar, Advocates.

Coram:

**HON'BLE MR. JUSTICE V.B.GUPTA**

1. Whether the Reporters of local papers  
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**V.B.Gupta, J.**

1. Recently Supreme Court observed that “wheels of justice are moving too slowly.” Present petition is also a classic example of the above observations. After 15 years of long journey when a civil suit is going to reach its ultimate destination, the petitioner is not keen to end the journey. Now petitioner wants to change the track and is keen to get new parties impleaded to this litigation against whom earlier no relief was sought during the entire period of 15 years. It would be pertinent to point out that two deadlines given by this Court to the trial court to decide the matter in a time bound frame, have already expired. This is how this petition under Article 227 of the Constitution of India for setting aside the order, dated 24<sup>th</sup> July, 2010, passed by Additional District Judge, Delhi, vide which petitioner’s application under Order 1 Rule 10 r/w Section 151 of Civil Procedure Code (for short as ‘Code’) was dismissed, has reached this Court.

2. In 1995, petitioner filed a suit for declaration, mandatory and permanent injunction against the respondent. When the matter was fixed before trial court for final arguments, then application under Order 1 Rule 10 of the Code was filed.

3. Brief facts are that petitioner was allotted 0.62 acres of land by respondent described as 37, Shaheed Bhagat Singh Marg, New Delhi, on license to construct, run and operate business of hotel of three star categories in terms of lease deed dated 16<sup>th</sup> July, 1982. On February 21, 1995, said lease deed was cancelled. Petitioner in the suit made following prayers;

- i) Pass a decree of declaration declaring that the term and condition in the License Deed dated 16.07.1982 “that the Plaintiff Company is liable to pay annual license fee for plot numbered as 37-Shaheed Bhagat

Singh Marg, New Delhi at the rate of 23% on the annual gross turnover of the business” is unlawful and is null and void abinitio.

ii) Pass a decree of Mandatory Injunction directing the NDMC to grant to the Plaintiff Company for the plot of land referred to in para (i) above, a Floor Area Ratio at the rate of 250.

iii) Pass a decree of Permanent Injunction restraining the Defendant NDMC from in any manner interfering, obstructing and otherwise affecting the supply of water, electricity and other amenities provided to the Plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi.

iv) Pass a decree of Permanent Injunction restraining the Defendant NDMC from in any manner re-entering into the Plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi or taking any action pursuant to order of cancellation dated 21.02.1995 of License Deed dated 16.07.1982.”

4. In application under Order 1 Rule 10 of the Code, amongst other, it is stated;

“The suit land belonged to Land & Development Office, Govt. of India who vide a lease agreement, dated 27.07.1935, leased it out the said land to defendant/NDMC, on a annual premium/rent of Rs.1/- for the purpose of construction of Child Welfare Centre. Thereafter, this land was allotted to plaintiff by defendant for the construction of a hostel. At the time of licence, the defendant concealed the terms of lease agreement with L&DO. So the allotment of land to plaintiff is in violation of terms of allotment of the said land to NDMC. It is further stated that a meeting was held in the office of Land & Development Office on

24.02.1983 wherein the request of NDMC to construct a youth hostel on the said land was considered by the government. It can be seen from the minutes of meeting dated 24.02.1983 that defendant was not the owner of the said land and it was allotted to the

defendant at a nominal rent of Rs.1/- only and it was allotted to defendant for a specific purpose i.e. for the construction of Child Welfare Centre, but defendant allotted the same to plaintiff for a commercial purpose without informing it. Accordingly, it is stated that Union of India, Land & Development Office and Ministry of Works & Housing are necessary and proper parties because, Union of India is the real owner of the said land.”

5. It is contended by learned counsel for petitioner that as per Minutes of Meeting held on 24<sup>th</sup> February, 1983 (copy of which has been placed on record at page 95 of the paper book), respondent made a request for permission to construct a youth hostel on the suit land. As per the minutes, ownership of land vests in the Government and it was only leased out to the respondent. Conversion of the site intended for a Child Welfare Central for hostel purposes, was not in order and under the terms of the lease, Government could re-enter the site.

6. Other contention is that, vide letter dated 8<sup>th</sup> March, 2004 of Ministry of Urban Development (Land & Development Office), addressed to the chairman of respondent council, it is clearly stated that “there is no doubt that the land belongs to the Central Government”. Respondent was requested through various letters to furnish terms and conditions under which the land has been transferred to petitioner but respondent did not give any response. It was observed in this letter, that respondent has violated the terms and conditions of the allotment letter/lease deed.

7. Under these circumstances, Union of India, Land & Development Office and Ministry of Work and Housing, are necessary and proper parties to the suit.

8. On the other hand, it is contended by learned counsel for the respondent that, application under Order 1 Rule 10 of the Code for impleadment has been filed by the petitioner just to prolong the proceedings, pending before the trial court. This suit was filed about 15 years ago and when the matter was listed before trial court for final arguments, this application has been filed, just to delay the proceedings. During last 15 years, petitioner never raised any objection with regard to the ownership of the land and has been enjoying the property on the basis of lease deed dated 16<sup>th</sup> July, 1982. Now after 30 years, he is challenging the legality of the lease deed and for the first time he has raised this objection, which cannot be allowed at this stage. There is no illegality or infirmity in the impugned order.

9. In support, learned counsel cited “*Track Innovations India Pvt. Ltd. Vs. Union of India (UOI) & Ors*” MANU/DE/1427/2010 a decision of Division Bench of this Court, in which it was observed;

“It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (Per Scrutton, L.J., *Verschures Creameries Ltd. v. Hull and*

Netherlands Steamship Co.; see Douglas Menzies v. Umphelby; see also Stroud's judicial dictionary, Vol. I, p.169, 3<sup>rd</sup> Edn.)”

10. Other judgment cited by learned counsel is “*Sri S.K. Sarma Vs. Mahesh Kumar Verma*” AIR 2002 Supreme Court 3294 in which the Court observed;

“In this view of the matter, respondent cannot be permitted to contend that property was not belonging to the railway administration. Whether the railway administration is owner, mortgage, lessee or licensee is not required to be decided in such proceedings at the instances of sub-lessee or licensee of railway administration.”

11. This petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

12. Article 227 of The Constitution of India reads as under;

**“227. Power of superintendence over all courts by the High Court-** (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings

of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

13. In *Waryam Singh and another Vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in –‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

14. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1)SCALE71, Supreme Court held;

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

15. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar*, JT 2009 (11) SC 258 Supreme Court held;

‘10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* (AIR1975SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.’

16. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT 1995(7) SC400*, Apex Court observed;

“The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or



wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

17. In light of principles laid down in the above decisions, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

18. Provisions of Order 1 Rule 10 of the Code relevant for deciding the controversy between the parties read as under;

**Rule 10. Suit in name of wrong Plaintiff-**(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

**(2) Court may strike out or add parties** – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

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|---------|-----|-----|
| (3) XXX | XXX | XXX |
| (4) XXX | XXX | XXX |
| (5) XXX | XXX | XXX |

19. For determining the question who is a necessary party there are two tests;

(i) there must be a right to some relief against such party in respect of the matter involved in the proceedings in question and

(ii) it should not be possible to pass an effective decree in the absence of such party.

20. Necessary parties are those who ought to have joined and without whom no order can be passed effectively. While a proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Where the impleadment of a person would change the complex of the litigation, his/her presence is neither necessary for the decision of the question involved in the proceedings nor to enable the court effectively and completely to adjudicate upon and settle the question involved in the case such a person is neither a necessary nor a proper party. Necessary consideration before the court while determining the question of impleadment of a party to the proceedings is whether the said party is necessary or proper party and presence of such party before court is necessary for complete and effective adjudication of the such matter.

21. In **“Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Ors., Civil Appeal No. 4900/2010 decided on 06.07.2010**, Supreme Court observed;

“In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* MANU/SC/0502/1980: 1981 (1) SCC 80 reiterated the classic definition of ‘discretion’ by Lord Mansfield in *R.v. Wilkes* 1770 (98) ER 327 that ‘discretion’ when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, ‘but legal and regular’”.

22. In “*Ruma Chakraborty Vs. Sudha Rani Benerjee*”, AIR 2005 Supreme Court 3557, apex court observed;

“A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

23. It further observed;

“We are of the opinion that the court has no jurisdictional power to add a person as a party who is neither a necessary party nor a proper party.”

24. So, keeping in view these principles in mind, it is to be seen as to whether the parties proposed to be impleaded in the suit are necessary or proper parties.

25. In the entire suit, petitioner nowhere claimed that property in question vests with Government of India. Petitioner has claimed reliefs against respondent alone. Moreover, there is no privity of contract at all between petitioner and any of the proposed parties sought to be impleaded

in the suit. After enjoying the property for more than thirty years on the basis of licence granted by respondent and having entered with fresh licence deed in the year 1982 and after fighting this litigation for 15 years, now petitioner has suddenly woken up and is trying to repudiate those very documents on the basis of which petitioner had been enjoying the fruits of licence/lease deed for about last thirty years. Petitioner cannot be permitted to blow hot and cold at the same moment.

26. Trial court in this regard observed;

“The first ground of the application is that the suit property was allotted to the defendant for construction of Child Welfare Centre with the condition that if it was used commercially, it will revert to the original owner. In support of it, only recorded of minutes of meeting held way back on 24.02.1983 has been filed. There is nothing on the record or filed with the application showing that there was a condition of reversion. The lease deed vide which the suit property was given to the defendant has not been filed.

Plaintiff's case is that the terms of licence deed on which the suit property was given to it are null and void. Admittedly, this license was granted by defendant. He has sought of declaration of terms and conditions as null and void on the plea that some other hotels mentioned in the plaint have been granted licence on reasonable terms and conditions. So the necessary party is the defendant only. Whether the terms and conditions are void or not, can be decided even in the absence of proposed parties and that is why those are not proper parties even.

The third contention of the plaintiff is that defendant cannot grant licence of the suit property for commercial purpose because it was allotted to it (defendant) on the condition that it shall not be used for commercial purpose but for the purpose of construction of Child Welfare Center. This contention

is highly untenable because plaintiff is using the suit property and simultaneously he is saying that defendant cannot grant him any licence for it. Also such a plea is prohibited by Section 116 of Indian Evidence Act, 1872.

This suit is pending since 1995. Evidence from both sides have been closed way back in 2002 when the case was pending in the Hon'ble High Court. Thereafter, it was sent to District Courts for disposal, after revision of pecuniary jurisdiction. Applications after applications have been moved by the plaintiff which have invariably been dismissed. This court had received directions from the Hon'ble High Court for disposal of other case up to February, 2010. Thereafter another order was received from the Hon'ble High Court wherein pronouncement of judgment was stayed. That stay has also been vacated. After vacation of the stay, the present application has been filed and it suggests it is having some other purpose.”

27. As observed by trial court also the present application under Order 1 Rule 10 of the Code is highly belated one and has been filed after 15 years after filing of the suit when the matter is listed for final arguments. The only purpose of the petitioner in filing of this application is just to delay the trial and nothing more.

28. Under these circumstances, this application is nothing but gross abuse of the provisions of law. The order passed by learned trial court would not call for any interference since there is no ambiguity, illegality or irrationality in the impugned order.

29. Present petition under Article 227 of the Constitution of India is not maintainable and the same is hereby dismissed.

**CM Appl. No. 13504/2010**

30. Dismissed.

**V.B.GUPTA, J.**

**AUGUST 10, 2010**

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