

A NEW DELHI MUNICIPAL COUNCIL

v.

GANGA DEVI & ANR.

(Civil Appeal No. 310 of 2015)

B SEPTEMBER 27, 2021

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

- Eviction – Predecessor of the occupant-respondent no.1 was allotted the site in question in 1998 by license deed – Shop transferred in favour of occupant – Show cause notice issued alleging sub-letting and unauthorized construction – Eviction order passed ordering eviction of the allottee – Appeal dismissed – Challenged by occupant – Writ petitions allowed – Writ appeal by New Delhi Municipal Council – Dismissed – Held: Cut-off date for regularization of the shops, stalls, flats was 20.10.89 as mentioned in the Circular dated 25.07.96, relied on by occupant – Occupant was not in possession of the stall on or before 20.10.89 – Further, public notice dated 06.08.2001 conferring ownership rights to the shopkeepers was in respect of the 14 markets which does not include the market in question – It specifically stipulated that the earlier decision of the Cabinet dtd. 20.10.89 shall cease to operate – Therefore, the date fixed in the office order dated 25.07.96 ceased to be effective after the Cabinet decision dated 31.08.2000 – Moreover, the partnership deed executed by predecessor of the occupant with the occupant was in contravention of the terms of the license deed which prohibited subletting/induction of partner – Such license deed was executed after the office order dated 25.07.96 – Orders passed by Division Bench and Single Bench of the High Court set aside – Eviction order restored.*

Allowing the appeals, the Court

- G HELD:** 1. The cut-off date for regularization of the shops, stalls, flats was 20.10.1989 as mentioned in the Circular dated 25.7.1996. It is to be noted that the occupant was not in possession of the stall on or before 20.10.1989. Still further, the public notice dated 6.8.2001 was in respect of the 14 markets which does not include the market at Baba Kharag Singh Marg. The said public notice specifically stipulates that the earlier decision of the

Cabinet dated 20.10.1989 shall cease to operate. Therefore, the date fixed in the office order dated 25.7.1996 ceased to be effective after the Cabinet decision dated 31.8.2000. There was a clear stipulation in the license deed executed by the predecessor of the occupant that she shall not induct any partner or sublet the premises. But in utter violation of the terms of the license, firstly, the partnership was executed and within two months, it was dissolved. The act of the predecessor of the occupant and the occupant are clearly and unequivocally in contravention of the terms of the license deed. Such license deed was executed after the office order dated 25.7.1996. Further, the public notice dated 6.8.2001 would not be applicable in respect of Baba Kharag Singh Marg market. [Paras 11, 12][236-G-H; 237-A-C]

2. The rights of Government of India in administering the markets as a lessor or licensee alone was transferred and not the land or the building thereon. The Council was to administer the properties as a delegate of the Union. The regularization/ restoration of allotment of shops in para 3 was in terms of the policy of the Union and not that of Council. The relevant clause is “the guidelines and procedure followed by Land & Development Office and Directorate of Estates in the matter of....regularization/ restoration of allotment of shops may also be followed”. Thus, if there is a policy of regularization or restoration of the Union, the same may be followed by the Council. However, the policy of the Council, if any, in respect of regularization/restoration of allotment would not be applicable. Therefore, even if the Council has not produced policy of regularization, it is not material to the questions raised in the present appeal. The rights of the Council are to administer the properties as a delegate of the Government of India and not as an owner as there were no transfer of rights in the markets in favour of the Council. This is evident from the fact that the revenue generated from the transfer of markets has to be deposited in a separate corpus of funds to be utilized only for the purpose of development of markets and for no other purpose. Such income would not accrue to the Council as a part of their budget. Therefore, the markets transferred by the Government of India to the Council have to be dealt independently and separately than the properties owned by the Council as the Council has no title over such markets as it has been asked only to manage

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A them on behalf of the Government of India. The orders passed by the Division Bench of the High Court as also the Single Bench of the High Court are erroneous in law. The same are set aside. The order of eviction affirmed by the Additional District Judge on 5.12.2006 is restored. [Paras 15-17][237-G-H; 238-A-F]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No.310 of 2015.

From the Judgment and Order dated 06.04.2009 of the High Court of Delhi at New Delhi in LPA No.145 of 2009.

C With Civil Appeal Nos.311, 312 and 313 of 2015.

Yoginder Handoo, Ashwin Kataria, Advs. for the Appellant.

Sanjay Jain, ASG, A. K. Sinha, Sr. Adv., S. R. Rajagopal, S. Santanam Swaminadhan, Ms. Abhilasha Shrawat, Ms. Aarthi Rajan,

D Rajesh Kumar Singh, Ms. Sunita Sharma, Ms. Reena Pandey, Amrish Kumar, B. V. Balaram Das, Advs. for the Respondents.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

E 1. This order shall dispose of four appeals arising out of an order dated 6.4.2009 passed by the Division Bench of the High Court of Delhi in the Letters Patent Appeals.

2. Since the facts in all the appeals are similar, for facility of reference, facts from Civil Appeal No. 310 of 2015 are referred herein.

F A show cause notice dated 11.3.2004 was issued to respondent no.1¹ alleging sub-letting and unauthorised construction in a stall located at Baba Kharag Singh Marg, New Delhi on the basis of a survey conducted on 4.3.2004. A reply was filed that the shop was allotted to Smt. Maheshi Dhoundiyal and the same was sublet in the year 1999 to the occupant. Smt. Maheshi Dhoundiyal transferred the shop in favour of the occupant

G in the year 2000 and therefore, the occupant claimed ownership of this property. In addition, the occupant relied upon the Circular dated 25.7.1996 as well as the policy adopted by the Government in pursuance of the Cabinet decision dated 31.8.2000 whereby occupants of the shops

H ¹Hereinafter referred to as the 'occupant'

in the 14 specified markets were resolved to be granted ownership rights. Thus, the occupant claimed that there cannot be discrimination and she should also be treated in the same category as the occupants in the said 14 markets.

3. After considering the reply filed, an order of eviction was passed by the Estate Office, Directorate of Estates, New Delhi on 15.12.2005, ordering eviction of the allottee from whom the occupant had purchased the stall in question. The appeal against the said judgment was dismissed by the learned Additional District Judge on 5.12.2006. The said order was challenged by the occupant before the Writ Court. The learned Single Bench allowed the two writ petitions holding that merely because market in question *i.e.*, Baba Kharag Singh Marg Market has fallen into the lap of New Delhi Municipal Council² by virtue of notification dated 24.3.2006, it does not mean that the policy regarding substitution/mutation of ownership for that market can be different from the one adopted by the Council for all other markets managed by it. Therefore, the Council cannot treat them differently and the occupant was held to be entitled to regularization of allotment in accordance with its policies. The Council was directed to transfer the allotment in the favour of the occupant within two months. An intra-court appeal filed by the Council was dismissed on 6.4.2009 vide the impugned order. Still aggrieved, the Council is in appeal before this Court.

4. The predecessor of the occupant was allotted the site in question on 4.8.1998. Some of the conditions of the license deed executed on 11.8.1998 read thus:

“8. The licensee(s) shall not permit the said premises or any part thereof being used by any other person for any purpose whatsoever without the previous consent in writing of the Government and in default thereof shall be liable for ejection. The licensee(s) shall not introduce any partner nor shall he/they transfer possess on of the premises or part thereof or otherwise carry on the business in the premises alienate his interest in the premises.

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11. The licensee(s) shall on revocation or termination of this licence hand over possession of the said premises to the Government in

²For short, the ‘Council’

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- A as good condition as they were in at the date of the licence, normal wear and tear excepted.

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14. This licence shall stand ipso-facto determined, without any

- B right to compensation whatsoever to the licensee(s), in any of the following events, that is to say:-

(i) If the licensee(s) being an individual or if a firm, any partner in the licence firm shall die, or at any time be adjudicated insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceedings for

- C liquidation or composition under any Insolvency Act, for the time being in force or make any conveyance or assignment of his effects or enter into any agreement for composition with his creditors to suspend payment or shall introduce a new Partner or shall change the constitution of the partnership or if the firm be dissolved under

- D the Partnership Act, or

(ii) If the licensee(s) being a company shall pass a resolution or the court shall make an order for the liquidation or its affairs or a receiver or manager on behalf of the debenture holders shall be appointed or circumstances shall have arisen which entitle the court or debenture holders to appoint a receiver or manager.

Provided always that such determination shall not prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to the Government.”

5. It is an admitted fact that a partnership deed was executed by

- F the predecessor of occupant on 12.6.2000 with the occupant wherein the predecessor had kept only 20% share in the partnership firm and the remaining 80% share was that of the occupant. Such partnership was dissolved on 3.8.2000, that is within 2 months of the partnership firm was created. One of the conditions of the dissolution deed was that the

- G predecessor of the occupant would have no objection for transfer of the shop in favour of the occupant and regularization in her name.

6. It was on 24.3.2006, the Ministry of Urban Development, Government of India transferred certain markets to the Council and Municipal Corporation of Delhi w.e.f. 1.4.2006. The said order reads thus:

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“S.O. 404(E). – Whereas the Land and Development Office, Directorate of Estates and Central Public Works Department under the Ministry of Urban Development are administering various markets in Delhi. A

2. And whereas the Central Government has decided to transfer the markets under Land & Development Office, Directorate of Estates and Central Public Works Department (except Indira Chowk, Rajiv Chowk and I.N.A. Market Complex) comprising of shops and flats over the shops (excluding the general pool flats over the shops in R.K. Puram Market, Srinivaspuri, Andrews Ganj, Nanakpura and Lancer Road Markets) to the New Delhi Municipal Council and Municipal Corporation of Delhi on “as is where is” basis, it is decided as follows; B

3. On transfer of these markets, New Delhi Municipal Council and Municipal Corporation of Delhi will function as the lessor or Licensor, in respect of shops and flats in these markets and shall exercise all powers being performed by Land & Development Office, Directorate of Estates and Central Public Works Department, as the case may be, as the lessor or licensor. The guidelines and procedure followed by Land & Development Office and Directorate of Estates in the matter of substitution/mutation of title, Gift Permission, Sale Permission, Mortgage Permission, Conversion of lease hold into freehold, change of use of premises, regularization/restoration of allotment of shops etc., change of trade, conferment of ownership rights, recovery of misuse/ damages charges etc. may also be followed by the local bodies viz. New Delhi Municipal Council and Municipal Corporation of Delhi. C

4. In addition to performing the functions as lessor/licensor, local bodies can also take appropriate action against violation of building bye-laws, municipal bye-laws and exercise other statutory powers. D

5. Both New Delhi Municipal Council and Municipal Corporation of Delhi shall create a separate Corpus of Fund to which the revenue generated from the transfer of markets by way of receipt of rent, licences, unearned increase, premium, conversion fee, damages/misuse charges etc. shall be deposited. If for any reason the amount is credited in the common Municipal Fund, then a G

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- A separate Account shall be maintained in respect of the revenue realized from transfer of markets and this be duly accounted for. These Funds shall be utilized only for the purpose of development of the markets and for no other purpose. A quarterly report of the deposits made and the amount spent are to be furnished to the Land and Development Office and Ministry of Urban Development, Nirman Bhawan, New Delhi.
- B 6. The details of the markets being transferred to the New Delhi Municipal Council are listed under Annexure-I. Similarly, the details of the markets being transferred to the Municipal Corporation of Delhi are at Annexure-II.
- C 7. The transfer of Markets will take effect from 1st April, 2006 and transfer of all records shall be completed by 30th April, 2006.”
- D 7. The argument of the occupant was that in terms of clause 3, the policy of regularization/restoration of allotment may also be followed by the local bodies. It was argued that the Government of India on 25.7.1996 allowed regularization of shops, stalls, flats which had come into occupation of the respective premises on or before 20.10.1989. Reliance was also placed upon an advertisement issued by the Government of India published in the Hindustan Times on 6.8.2001 to confer ownership rights to the shopkeepers of 12 markets. It was also mentioned that earlier decision of the Cabinet dated 20.10.1989 which finds mention in the office order dated 25.7.1996 will cease to operate. It may be mentioned that Baba Kharag Singh Marg Market is not one of the market areas covered by the said public notice. The relevant extract from such public notice reads thus:
- E F “Consequent upon the decision of Cabinet dated 31.8.2000 to grant ownership rights to the shop keepers of 12 markets, it has been decided by the Ministry that the earlier decision of the cabinet dated 20.10.1989 shall cease to operate. Now Director of Estates, Nirman Bhawan, New Delhi on behalf of the President of India, calls for applications from let out allottees occupants of the following fourteen markets who have not been given ownership rights under the cabinet decision 1989. It has been decided consider their cases for granting ownership rights acceding to the prescribed terms and conditions as approved by the Cabinet in its decision dated 31.8.2000.
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2. The following categories of persons would be eligible for consideration to the grant of ownership rights subject to production of adequate proofs A

(a) Original allottees

(b) The allottees in whose names the shops have been regularised with the consent of the original allottees on or before 20.10.1989. B

(c) Undisputed occupants after 20.10.1989 till 31.8.2000.”

8. The occupant also relied upon a policy of regularization appended as Annexure R/3, probably appearing on the website of the Council and downloaded on 18.12.2006. The relevant clauses read as under: C

“TRANSFER OF ALLOTMENTS

Transfer of allotment is made as per policies/resolutions of NDMC.

Transfer is allowed in following cases on merits: D

1. Partnership:

Partnership or subletting is allowed after enhancement of license fee at rates fixed by Council from time to time.

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4. Renewal of license of shops/commercial units:

The application for renewal must reach within the time stipulated as per terms and conditions i.e. 60 days before the date of expiry of present license. An affidavit is required that there is no violation of the terms and conditions is of the present license. F

Renewal of license in case of shops, stalls, kiosks, tharas, office space/units and restaurants may be allowed for a period of ten years on year to year basis subject to enhancement in license fee @ 10% per annum and as may be fixed by the council from time to time. G

a) Shops/Markets:- Palika Place, Palika Bazaar and Palika Bhawan's license fee freezed w.e.f. 1-9-2000 to 1-9-2007.

b) Non-renewal of license in time will attract damage charged @ 30% of the license fee.” H

- A 9. Learned counsel for the occupant also relied upon an interim order passed by this Court on 30.10.2012 wherein, the policy of regularization as referred to in the notification dated 24.3.2006 was asked to be produced by Union of India and the Council. It was argued that no such policy has been produced on record, therefore, the occupant is entitled to regularization of the stall site in accordance with the policy available on the website of the Council. The occupant had also relied upon communication dated 21.5.2008 by Director (Estates), Council to the Director (Estates), Directorate of Estates of the Government of India seeking guidance for revision of prescribed cut-off date i.e., 20.10.1989 for transfer of shops in the names of the occupants in possession of the premises. In response thereto, the Director of Estates, Government of India communicated on 8.7.2008 that all powers to administer the markets shall now rest with Council/MCD, the concerned local body i.e., the Council may take appropriate action in this particular case at their end. It may be mentioned that the letters dated 21.5.2008 and 8.7.2008 are interdepartmental communication and not any policy decision or circular meant for public. Thus, such interdepartmental communications are not the enforceable orders of the Union or of the Council.
- B 10. In this factual background, learned counsel for the appellant had vehemently argued that the license deed executed in the year 1998 had clearly prohibited subletting of premises, including induction of a partner. The specific reference was made to clauses 8 and 14 of the license deed, as reproduced above. It was also argued that the notice published on 6.8.2001 would not be applicable to the stalls located at the Baba Kharag Singh Marg market and that the administrative decision of the Cabinet dated 20.10.1989 had ceased to operate. The applications were invited from the allottees/occupants who have not been given ownership rights in the Cabinet decision in the year 1989 to apply on or before 30.9.2001.
- C 11. The cut-off date for regularization of the shops, stalls, flats was 20.10.1989 as mentioned in the Circular dated 25.7.1996. It is to be noted that the occupant was not in possession of the stall on or before 20.10.1989. Still further, the public notice dated 6.8.2001 was in respect of the 14 markets which does not include the market at Baba Kharag Singh Marg. The said public notice specifically stipulates that the earlier decision of the Cabinet dated 20.10.1989 shall cease to operate.
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Therefore, the date fixed in the office order dated 25.7.1996 ceased to A
be effective after the Cabinet decision dated 31.8.2000.

12. There was a clear stipulation in the license deed executed by B
the predecessor of the occupant that she shall not induct any partner or
sublet the premises. But in utter violation of the terms of the license,
firstly, the partnership was executed and within two months, it was
dissolved. The act of the predecessor of the occupant and the occupant
are clearly and unequivocally in contravention of the terms of the license
deed. Such license deed was executed after the office order dated
25.7.1996. Further, the public notice dated 6.8.2001 would not be
applicable in respect of Baba Kharag Singh Marg market. C

13. The policy of transfer of allotments of the Council is to be D
made 60 days before the expiry of the present license. The transfer is
also to be allowed in the cases of partnership, transfer, mutation in favour
of the legal heirs on merits. It is not necessary for us to examine the
applicability of such policy in view of the terms of the transfer of the
markets to the Council.

14. Para 1 of the notification dated 24.3.2006 explains that the E
Land and Development Office and Central Public Works Department
are *administering* various markets in Delhi. In Para 2, the markets
were transferred on “as is where is” basis. In terms of Para 3, the
Council was to function as a lessor or licensee and was to exercise all
powers being performed by Land and Development Office, Directorate
of Estates and Central Public Works Department, as the case may be.
Para 3 further provides that guidelines and procedures of the Department
in matters of substitution/mutation of title, gift permission, sale permission,
mortgage permission, conversion of lease hold into freehold, change of F
use of premises, regularization/restoration of allotment of shops may
also be followed by local bodies. Para 5 further contemplates that the
revenue generated from the transfer of markets by way of receipt of
rent, licenses, unearned increase, premium, conversion fee shall be
deposited in a separate corpus of funds and such corpus was to be
utilized only for the purpose of development of the markets and for no G
other purpose.

15. Thus, the rights of Government of India in administering the H
markets as a lessor or licensee alone was transferred and not the land or
the building thereon. The Council was to administer the properties as a

- A delegate of the Union. The regularization/restoration of allotment of shops in para 3 was in terms of the policy of the Union and not that of Council. The relevant clause is “the guidelines and procedure followed by Land & Development Office and Directorate of Estates in the matter of regularization/restoration of allotment of shops may also be followed”. Thus, if there is a policy of regularization or restoration of the Union, the same may be followed by the Council. However, the policy of the Council, if any, in respect of regularization/restoration of allotment would not be applicable. Therefore, even if the Council has not produced policy of regularization, it is not material to the questions raised in the present appeal. The rights of the Council are to administer the properties as a delegate of the Government of India and not as an owner as there were no transfer of rights in the markets in favour of the Council. This is evident from the fact that the revenue generated from the transfer of markets has to be deposited in a separate corpus of funds to be utilized only for the purpose of development of markets and for no other purpose. Such income would not accrue to the Council as a part of their budget.

16. Therefore, the markets transferred by the Government of India to the Council have to be dealt independently and separately than the properties owned by the Council as the Council has no title over such markets as it has been asked only to manage them on behalf of the Government of India.

- F 17. Thus, we find that the orders passed by the Division Bench of the High Court as also the Single Bench of the High Court are erroneous in law. The same are set aside. The order of eviction affirmed by the learned Additional District Judge on 5.12.2006 is restored. However, the occupants are granted time to vacate and hand over the physical vacant possession of the sites in question on or before 30.11.2021. The appeals are thus allowed.