

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1750 OF 2019
(Arising out of SLP(C) No.3762 of 2014)

GOVT OF NCT OF DELHI

APPELLANT(s)

VERSUS

MOOL CHAND SHARMA (DEAD) BY LRS.

RESPONDENT(s)

O R D E R

Leave granted.

This appeal arises from a judgment dated 26 February 2013 of a Division Bench of the High Court of Delhi in LPA 73 of 2007.

On 1 November 1980, Shop No.7 situated at Kalyan Vas, Delhi was allotted by the Land and Building Department, Government of NCT to Arjun Dass Khattar for running a vegetable shop on a licence fee of Rs 450 per month. The allottee applied for the inclusion of P S Oberoi as a partner. The request seems to have been accepted. Subsequently, the partnership was dissolved and P S Oberoi remained the sole occupant of the shop. In 1991, P S Oberoi submitted a request to include Mool Chand Sharma (since deceased) as a partner of a partnership firm by the name of Bharat Flour Mills and Bharat Kerosene Oil Depot. According to the appellant, in 1993, the request for a partnership with Mool Chand Sharma was accepted. Subsequently, Mool Chand Sharma, respondent,

became the sole occupant of Shop No.7.

The respondent in the counter affidavit has annexed, among other documents:

- (i) A letter of allotment dated 17 February 1981 of Shop No.7 to Arjun Dass Khattar and P S Oberoi on a licence fee of Rs 495 per month;
- (ii) An order dated 24 September 1982 for the allotment of an area measuring 204 sq. m. on the rear side of Shop No.7 to P S Oberoi, allottee of Shop No.7 at the rate of Rs 321 per month for storage and cleaning of wheat.

The dispute in the present case arises out of a Writ Petition instituted by the respondent before the High Court seeking a *mandamus* to the appellant herein to "comply with and implement the order of allotment dated 10 April 1997" issued in favour of the respondent; to hand over possession of the premises of three semi-permanent shops and one tin shed constructed behind Shop No.7 and for a declaration that the respondent is a lawful licence holder of the said three shops and tin shed. The Writ Petition was the subject matter of an order dated 8 October 2002 of a learned Single Judge.

Before we advert to the findings of the learned Single Judge, it is necessary to note that the document of 10 April 1997 which formed the subject matter of the Writ Petition was an inter-departmental correspondence, a copy of which was addressed to the respondent. The

letter dated 10 April 1997 of the Under Secretary to the Government of Delhi in the Land and Building Department (Estate Branch), Vikas Bhavan, New Delhi bears the following file number:

"F.1(S-7)KV/Allot./L&B/97"

It has been addressed to the SSW-I, MSO Building, New Delhi. The material part of the letter reads as follows:

"Sub: Fixation of licence fee of three S.P.S. shops, and a Tin Shed at Kalyan Vas, Delhi.

Sir,

Kindly refer to the above subject, I am to say that the aforesaid shops and a tin shed have been allotted to Shri Mool Chand Sharma and Shri P.S. Oberoi partners of shop No.7. You are therefore requested to fix the licence fee of three S.P.S. shops and a tin shed at the earliest, so that this office may be able to recover the licence fee from the allottee. It is also pointed out that the land measuring 204 sq. mts. in which these shops and tin shed has been constructed is already in his possession since 1982 @ Rs.369/- (licence fee) P.M."

It was this letter which the respondent construed as an allotment in his favour of three semi-permanent shops and a tin shed.

Dealing with the Writ Petition, the learned Single Judge on 8 October 2002 recorded the statement of learned counsel for the Government of NCT that there was no document on the record either cancelling the allotment or indicating an objection thereto. A *mandamus* was issued to the appellant directing it to implement the letter

within two months, save with the clarification that this will not affect the rights of the appellant to proceed against the respondent if there was any infringement of the rules or terms of allotment.

Against the order of the learned Single Judge, a Letters Patent Appeal¹ came to be instituted. On 10 January 2003, the Letters Patent Appeal was withdrawn since the appellant intended to move the learned Single Judge by way of review. The order reads thus:

“Counsel for the appellant wants to withdraw this appeal with a liberty to approach the learned Single Judge. Request allowed. Appeal is dismissed accordingly as withdrawn.”

The appellant thereafter filed a petition for review before the learned Single Judge. Basically, the appellant disputed that there existed any allotment in favour of the respondent, since it is their contention that the rules do not permit the allotment of more than one shop. The Review Petition was dismissed by the learned Single Judge by an order dated 3 November 2006. During the course of the hearing of the Review Petition, the respondent offered that if one of the three semi-permanent shops is allotted to him, together with the tin shed, he would give up his claim in respect of the remaining two shops. The learned Single Judge directed that if the appellant agrees to the above offer of the

respondent, the latter shall abide by his statement. However, the learned Single Judge held that, failing this, the *mandamus* which was already issued will prevail.

This order was carried in appeal. By the impugned judgment and order of the Division Bench dated 26 February 2013, the appeal has been dismissed. The Division Bench has observed that once the Letters Patent Appeal was withdrawn against the original order of the learned Single Judge, another appeal would not lie and the appeal against the order in review was not maintainable. The Division Bench, however, issued a direction that the concession which was made by the respondent would remain binding on the respondent for eight weeks and, if the appellant allots any one out of the three semi-permanent shops and the tin shed at a market rate to be determined by the appellant, that would constitute sufficient compliance of the order of the learned Single Judge.

During the course of the hearing of the present appeal, the following order was passed on 24 November 2015:

"We have heard learned counsel for the parties at some length. We see no reason why three semi permanent shops (SPS) in dispute in these proceedings which are currently under the lock and key of the petitioner should not be offered for allotment in an open public auction in accordance with the Rules. We accordingly direct that the order passed by the High Court notwithstanding the competent authority shall offer the three shops mentioned above in an open auction for

occupation by the successful bidders. A report regarding the result of the auction, the details of the bidders and the amount offered towards rent shall be filed by the competent authority in this Court within a period of three months."

We have been informed by Ms. Aakanksha Kaul, learned counsel appearing on behalf of the appellant that though the three semi-permanent shops which are under the lock and key of the appellant were put up for auction on two occasions, but no bidder has come forth. Learned counsel stated that the Delhi Administration has presently taken a decision to utilize the shops for its own purposes.

During the course of the hearing, the learned counsel appearing on behalf of the appellant states that in view of the order dated 24 November 2015 and, as recorded therein, the shops are now in the possession of the appellant.

The respondent has no claim in respect of the said shops, as stated before the Court by learned counsel, on instructions. The claim, however, is in respect of the tin shed. It has not been disputed by the respondent that the three semi-permanent shops and the tin shed were constructed by the appellant. The basis of the claim to the tin shed is ambiguous and unsubstantiated. The respondent has no formal allotment of the tin shed.

We find from the record that the entire case for the issuance of a writ of *mandamus* was on the basis of an inter-departmental letter dated 10 April 1997. The

respondent does not, as such, have any allotment in his favour. He claims that since the letter was marked to him, he can rely upon this to establish the creation of a licence in his favour. Moreover, it has been submitted that the land on which the tin shed was constructed has been granted on licence to the respondent since 1982. However, be that as it may, it is not disputed that the tin shed has been constructed by the appellant and the status of the respondent, at the highest, can only be as a licensee. At the present stage, the tin shed is also in the possession of the appellant though this has been sought to be disputed by the respondent.

The appellant, if it is so advised, is at liberty to take necessary steps in respect of the tin shed and, for that matter, any part of the property which is the subject matter of the licence. In the meantime, we direct that for a period of four months from today, the *status quo* shall be maintained in respect of the premises comprising of the tin shed. The parties shall abide by the result of any such proceedings, as may be initiated by the appellant in respect of the alleged licence. Any action in that regard, it is needless to add, shall be taken in accordance with law and this will not preclude the respondent from taking recourse to such rights and remedies as are available in law.

We, however, clarify that, as we have noted earlier, the appellant would be at liberty to utilize the premises comprising of the three semi-permanent shops in any manner that the Delhi Administration considers appropriate.

The appeal stands disposed of in the above terms. However, there shall be no order as to costs. Pending application, if any, stands disposed of.

.....J.
(DR DHANANJAYA Y CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
FEBRUARY 19, 2019

ITEM NO.11

COURT NO.12

SECTION XIV

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

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VERSUS

MOOL CHAND SHARMA (DEAD) BY LRS.

RESPONDENT(s)

Date : 19-02-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Ms. Aakanksha Kaul, Adv.
Mr. Vijay Prakash, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s) Mr. Rahul Gupta, Adv.
Mr. Gagan Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order. However, there shall be no order as to costs. Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)