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

% *Date of Decision: 10th January, 2025*

+ W.P.(C) 11500/2024 and CM APPL. 47726/2024

SMT. SATYA SHARMA

....Petitioner

Through: Mr. Harkirat Singh and Mr. Kartik,
Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

....Respondent

Through: Mr. Yoginder Handoo, Additional
Standing Counsel with Mr. Ashwin Kataria,
Advocate with Mr. Prabhat (Estate Department)
and Mr. Vicky (Accounts Department)

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioner laying a challenge to the demand notice dated 30.07.2024 as also for a direction to the Respondent to re-compute the licence fee with respect to Shop bearing no. 157-C, Palika Bazar, Connaught Place, New Delhi w.e.f. 02.09.2002 taking the monthly license fee as Rs.21,202/- as the base license fee with an enhancement of 30% as per judgment of this Court in *Satya Sharma vs New Delhi Municipal Council, 2022 SCC OnLine Del 1970* passed in favour of the Petitioner in the earlier round of litigation.

2. Petitioner entered into a partnership with Mr. Pankaj Mehta and Mr. Adarsh Taneja on 02.09.2022 and the business was run by all the three in the shop in question. Mr. Pankaj Mehta and Mr. Adarsh Taneja dissolved their



partnership and Petitioner continued to run business from the said shop. From 2002 to 2010, regular invoices were raised by the Respondents towards license fees which was duly paid by the Petitioner from time to time.

3. It is further averred that on 28.09.2010, Petitioner enquired from the Respondents about the status of regularization of the shop and also sought transfer of the shop in her name. By demand letter dated 15.11.2010, Respondent claimed an amount of Rs.77,36,808/- as arrears of license fee for the period 1979 to 2010 along with interest @ 24%. On 11.05.2011, Petitioner lodged her protest as according to her no outstanding dues were payable by her and Respondent was well aware of the partnership in the year 2010. On 17.06.2011, a revised statement of dues was issued by the Respondent and the Petitioner paid the arrears in the sum of Rs.38,22,399/- under protest for the period 1979 to May, 2011. As against the demand of interest of Rs.45,23,786.58/-, Petitioner paid a sum of Rs.2 Lacs under protest. Despite this, Respondent failed to regularize the shop in favour of the Petitioner.

4. In this backdrop, Petitioner filed W.P.(C) 2670/2019 seeking quashing of letter dated 15.11.2010 demanding arrears on the ground that she came into possession of the shop only in 2002 and period prior thereto had been regularized and all outstanding dues had been paid and settled by the earlier sub-lettees. Writ petition was allowed by judgment dated 04.07.2022 after detailed examination of the rival contentions of the parties directing the Respondent to regularize the license in favour of the Petitioner in accordance with Resolution No.6 dated 18.03.1989 and re-compute the license fee w.e.f. 02.09.2002 taking the fee demanded as on 02.09.2002 as



the base license fee and thereafter enhancing it by 30% plus annual increment of 7% on the amalgamated amount with interest @ 24% from the date the amount became due and payable, amongst other directions.

5. The grievance of the Petitioner ventilated in the present writ petition and articulated by her learned counsel is with regard to the demand letter dated 30.07.2024, wherein the base license fee has been taken by the Respondent as Rs.42,730/- despite the judgment of this Court to re-compute the fee taking the fee demanded on 02.09.2002 as the base license fee which was Rs.21,202/- and it is evident from the impugned demand letter that while calculating the license fee per month, Respondent has yet again included the subletting charges and have proceeded on the basis that there were outstanding arrears for the period prior to 02.09.2002. Demonstrably, as on 02.09.2002, license fee payable by the Petitioner has been computed at Rs.42,730/- per month, i.e., Rs.32,869/- plus 30% enhancement. It is strenuously urged that the file notings of the Respondent clearly reflect that all dues were cleared by all the sub-lettees up to Mr. Adarsh Taneja and Mr. Pankaj Mehta, who had entered into partnership with the Petitioner, which was subsequently dissolved.

6. Mr. Handoo, learned Additional Standing Counsel for the Respondent submits that there is no legal infirmity in the impugned demand letter. The subject premises, i.e., Shop No. 157-C, Palika Bazar, Connaught Place, New Delhi was originally allotted to M/s. Mod Cottage on a monthly license fee of Rs.7,824.60/- for a period of five years, w.e.f. 20.07.1979 and there have been five sublettings and one cancellation of the shop. The earlier sub-lettees did not clear the dues. The shop was regularized in the name of Joginder Sethi subject to clearance of the dues, however, before clearing the



same, he entered into partnership with Smt. Laxmi Devi on 09.12.1991, which was dissolved on 03.02.1992. She also did not clear the dues and vide order dated 03.12.1993, earlier order of regularization was withdrawn. Later, Smt. Laxmi Devi entered into partnership with Mr. Pankaj Mehta and Mr. Adarsh Taneja, which was dissolved on 25.05.1995, whereafter they entered into partnership with the Petitioner on 02.09.2002, which too was dissolved on 10.02.2002. On 26.03.2008, license was cancelled on account of trade zone violation. By letter dated 28.09.2010, Petitioner sought regularization on the basis of the Dissolution Deed and subsequently filed a writ petition in this Court.

7. It is explained that the demand notice dated 30.07.2024 is in conformity with the directions of this Court and as per the detailed break-up furnished in the counter-affidavit, the license fee as on 02.09.2002 was correctly taken as Rs.42,730/-, i.e., Rs.32,869/- enhanced by 30% with annual increment of 7%. Since the premises were sublet and the earlier sub-lettees did not pay the charges, the outstanding dues are to be recovered before regularization order is passed with respect to the shop in question.

8. Heard learned counsel for the parties and examined their respective submissions.

9. The short point arising for consideration before this Court is, whether the demand letter is in consonance with the directions of this Court in *Satya Sharma (supra)*. Subject shop was originally allotted to the M/s. Mod Cottage and was sub-let on partnership basis from time to time. Partners were inducted; partnership firms dissolved and businesses were carried on. By a resolution dated 05.11.1985, Respondent decided to regularize allotment of shops in Palika Bazar that had been sub-let on partnership basis.



Petitioner admittedly entered into a partnership with the sub-lettees Mr. Pankaj Mehta and Mr. Adarsh Taneja on 02.09.2002, which was eventually dissolved, a fact confirmed by both of them.

10. On 07.02.2007, Master Plan for Delhi-2021 was notified and trade restrictions were liberalized in Palika Bazar. On 28.09.2010, Petitioner enquired about the status of regularisation of the shop and sought transfer in her name, whereafter demand letter dated 15.11.2010 was issued, demanding a sum of Rs.77,36,808/- as arrears of license fee for the period 1979 to 2010. Interest was also claimed for the said period. When the objections raised by the Petitioner did not meet with the positive response, she approached this Court and the writ petition was decided by judgment dated 04.07.2022 in *Satya Sharma (supra)*. Several directions were issued by the Court and for ease of reference, the same are as follows:

“48.

i) Respondent-NDMC shall regularize the licence in favour of the petitioner in respect of Shop No. 157- C, Palika Bazar in accordance with the Resolution No. 6 dated 18.03.1989; and

ii) Respondent-NDMC shall re-compute the licence fee with effect from 02.09.2002, taking the fee demanded as on 02.09.2002 as the base licence. Thereafter the base fee shall be enhanced by applying the policy dated 18.03.1999 i.e. apply an enhancement of 30% (because of subletting to the petitioner) plus an annual increment of 7% on the amalgamated amount upto date; and

iii) The enhanced licence fee calculated from 02.09.2002 shall attract interest @ 24% with effect from the date the respective amounts became due and payable till the date the above referred amount of Rs. 40,22,399/- was paid by the petitioner; and

iv) The sum of Rs. 40,22,399/- plus the enhanced licence fee paid by the petitioner with effect from 2011 till date shall also be adjusted from the amount calculated in terms hereinabove; and

v) In case any amount is due and payable by the petitioner, after the above adjustment, petitioner shall clear the entire arrears within four weeks from today; and



vi) *In case any amount is liable to be refunded to the petitioner, respondent shall refund the same to the petitioner within a period of four weeks from today, failing which respondent shall be liable to refund the same with interest @ 24% per annum.*”

11. Broadly understood, the case of the Respondent is that Petitioner is liable to pay sub-letting charges and thus the impugned demand includes the sub-letting charges. This computation in my view is in the teeth of the judgment of this Court in *Satya Sharma (supra)*. It is pertinent to note that even in the earlier round of litigation, the stand of the Respondent was that as per the policy adopted by NDMC by Resolution No.6 on date of entry/deletion of partnership, 30% enhancement in license fee is attracted and thereafter 7% annual increment is payable by the allottee. It was also contended that the earlier sub-lettees had not cleared their dues. These contentions were negated by the Court, observing that the office notings established that the entire amount demanded by the Respondent including sub-letting rate up to the induction of sub-lettees Mr. Pankaj Mehta and Mr. Adarsh Taneja had been cleared and consequently Respondent cannot claim any amount from the Petitioner as arrears of enhanced license fee for the period 1979 to 2002. Relevant observations of the Court are as follows:

“29. *The office noting dated 17.10.1995, inter-alia, records as under:-*

“As per the above details the account position of the shop No. 157-C, Palika Bazar is upto date and A.O. Estate has already given his report that account position is upto date at page 175/ante.

Now the party i.e. Smt. Laxmi Devi has entered into partnership with Shri Pankaj Mehta Smt. Adarsh Taneja on 3.12.94 and the same was dissolved on 25.5.95 after retired from the business as well as from the shop and the allottees have requested for regularization of the allotment of shop in their sole name at page 196/C.

In view of the above if approved we may issue a notice to Smt. Laxmi Devi for confirmation of documents placed at page 188 to 195/C



executed with Shri Pankaj Mehta and Smt. Adarsh Taneja as per fair copies of the same are placed below for signature and issue please.”

30. Office noting dated 19.08.1996 records that Mr. Pankaj Mehta and Smt. Adarsh Taneja requested for transfer of allotment in the joint names. Said office noting records as under:

“Now Shri Pankaj Mehta and Smt. Adarsh Taneja have requested for transfer of allotment of shop in their joint names on the basis of the documents of Partnership and dissolution deed on pages 185 to 195/C and have duly been confirmed by Smt. Laxmi Devi vide her letter placed on 204/C. The present occupants have paid all the outstandings calculated at subletting rates including interest and damages as per report of A.O.E on page 126/N at bottom.

In this context, it is pertinent to submit that presently there is violation of trade zone system and a show cause notice dated 22.3.96 on page 207/C stands issued in compliance to the orders of the Hon'ble Supreme Court of India dated 2.2.96. As per orders of the Supreme Court of India all the shopkeepers of Palika Bazar have to revert to their allotted trade by 31.12.96. In this case too, the sublettees are bound to abide by the orders of the Hon'ble Supreme Court of India. Meanwhile if approved, the case may be allowed to keep pending as it may not be advisable to process the case for transfer of allotment on account of trade zone violation or the date to which the sublettees reverts to the allotted trade zone please.”

31. As noticed from the office notings dated 17.10.1995 and 19.08.1996, the entire outstanding calculated at sub-letting rates had been duly cleared. The only issue was with regard to trade zone violation, which also got resolved when on 07.02.2007, the Master Plan for Delhi 2021 was notified and the trade restrictions imposed in respect of the shop at Palika Bazar were liberalized.”

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38. In the present case, as is apparent from the office notings, all the charges including the charges payable at subletting rates were cleared by Smt. Laxmi Devi as noticed in office noting dated 17.10.1995 and Mr. Pankaj Mehta and Mr. Adarsh Taneja as noticed in the office noting dated 19.08.1996.

39. Said office noting clearly establish that the entire amount demanded by the respondent including subletting rate upto the sublettees - Mr. Pankaj Mehta and Mr. Adarsh Taneja i.e. the sublettees prior to the present petitioner have been cleared.

40. Repeated bills were raised by the respondent upto the year 2010 without reflecting any amount towards the arrears. This clearly establishes



that the amount being paid by the sublettees prior to the petitioner upto the year 2002 was including the enhanced subletting charge. Consequently, respondent cannot claim any amount from the petitioner as alleged arrears of enhanced licence fee for the period 1979 till 2002.

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44. Clearly the monthly licence fee was liable to be enhanced by 30% on the induction of the petitioner into the partnership on 02.09.2002 which was not done. Consequently, petitioner is liable to pay the increased licence fee in terms of the policy by enhancement of the same by 30% and thereafter an annual increment of 7% p.a. calculated w.e.f. 02.09.2002.

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46. Though, strictly speaking in terms of the policy, interest cannot be levied on the arrears, however, in the instant case, as the respondent-NDMC were not aware of the subletting and admittedly the increased licence fee on account of subletting has not been paid and is payable from 02.09.2002, petitioner is liable to pay the increased licence fee with effect from 02.09.2002 along with interest @ 24% per annum.

47. The amount Rs. 40,22,399 (Rs. 38,22,399/- plus Rs. 2,00,000/-) paid by the petitioner under protest as also the enhanced licence fee paid upto date is liable to be adjusted from the amount payable to the respondent-NDMC.”

12. From a reading of the judgment it is crystal clear that Respondent cannot claim arrears from the Petitioner prior to 02.09.2002, as all the outstanding dues were cleared by the earlier sub-lettees. The directions of the Court, as extracted hereinabove were also clear on re-computation of the license fee w.e.f. 02.09.2002, i.e., taking the fee demanded as on 02.09.2002 as the base license fee enhanced by 30% with annual increment of 7% on the amalgamated amount. Petitioner has placed on record invoices which reflect that the license fee on the relevant date was Rs.21,202/- and therefore Respondent was bound to take this amount as the base license fee in consonance with the judgment of this Court and enhance the same by 30%, whereas the Respondent has illegally taken the base license fee as Rs.32,869/- for the starting year 02.09.2002 to 19.07.2003 and proceeded to



make further calculations on this basis. As rightly pointed by counsel for the Petitioner the demand is wholly erroneous and against the judgment of this Court.

13. Accordingly, this writ petition is allowed quashing demand letter dated 30.07.2024 and directing the Respondent to re-compute the license fee in accordance with the directions of this Court in *Satya Sharma (supra)*, taking the base license fee as Rs.21,202/- as on 02.09.2002. Further action of calculating the final demand and adjusting the payments etc. will be taken as per paragraph 48 of the judgment. Revised demand letter will be issued to the Petitioner within a period of one month from today. Upon the Petitioner making payment in accordance with the revised demand and any adjust/refund, Respondent shall regularise the license in favour of the Petitioner in respect of shop No. 157-C, Palika Bazar, Connaught Place, New Delhi in accordance with Resolution No. 6 dated 18.03.1989. In case of any surviving grievance, it shall be open to the Petitioner to take recourse to appropriate legal remedies.

14. Pending application also stands disposed of.

JYOTI SINGH, J

JANUARY 10, 2025/KA/jg