

**Mr. Nawabuddin Vs. Mcd and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/909649](http://sooperkanoon.com/909649)

**Court :** Delhi

**Decided On :** Jan-27-2011

**Judge :** Rajiv Sahai Endlaw, J.

**Acts :** [Delhi Rent Control Act, 1958](#)

**Appeal No. :** W.P.(C) 504/2011 & CM No.1057/2011

**Appellant :** Mr. Nawabuddin

**Respondent :** Mcd and ors

**Advocate for Def. :** Ms. Mansi Gupta, Adv.

**Advocate for Pet/Ap. :** Ms. Arundhati Katju, Adv.

**Judgement :**

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 No in the Digest?

1. The petition impugns the order dated 20th January, 2011 of the Zonal Veterinary Officer of the respondent MCD revoking/cancelling the trade licence given to the petitioner for sale of mutton and chicken at shop No.E- 377, Ramesh Nagar, New Delhi. It is the case of the petitioner that earlier his father and after the demise of his father, he has been carrying on the same business in the said shop;

that the trade is being so carried on for the last over 50 years and the licenses have been issued/renewed from time to time; the respondent MCD as a condition for renewal of the licence of the petitioner required the petitioner to submit a No Objection Certificate (NOC) and rent receipt from the landlord and also an affidavit to the effect that there was no dispute of any nature pending in any court of law with respect to the shop; though the petitioner submitted an affidavit but did not submit the NOC and the rent receipt from the landlord; it is the case of the petitioner that some persons claiming to be the landlord have filed a petition for eviction under the provision of [Delhi Rent Control Act, 1958](#) in which an order of eviction has been made against the petitioner but the Revision petition of the petitioner thereagainst is pending consideration before this Court. Upon failure of the petitioner to submit the NOC and the rent receipt and further finding that the affidavit furnished by the petitioner was false since disputes raised by the landlord did exist with respect to the shop, the licence of the petitioner has been revoked as aforesaid.

2. It is the case of the petitioner that the affidavit was furnished on the understanding that the same was to be with respect to the dispute with the respondent MCD.

3. The petitioner contends that in view of the dispute aforesaid with the landlord, the NOC and the rent receipt cannot be produced.

4. The rules of the respondent MCD regarding issuance of the said licence provide for an appeal to the Director, Veterinary Services of the respondent MCD against the orders of the Zonal Veterinary Officer. It has as such been put to the counsel for the petitioner that in the face of the alternative remedy available, the remedy of the writ petition would not be available. The counsel for the petitioner has however contended that owing to the impugned order, the petitioner has been deprived of his livelihood and seeks protection till the consideration of the appeal. It is also the case of the petitioner that the respondent MCD vide its Resolution No.203 dated 10th August, 2009 has itself done away with the requirement of furnishing the NOC as is being demanded.

5. The counsel for the respondent MCD appearing on advance notice states that instructions will have to be sought with respect to the said Resolution No.203 and as to whether it is applicable to the meat trade licence or not.

6. This Court is of the opinion that once the petitioner is in lawful possession of the premises and till evicted therefrom in accordance with law, cannot be prevented by the respondent MCD from using the premises. The effect of the respondent MCD denying licence to the petitioner for the reason of the inability of the petitioner to produce the NOC and the rent receipt from the landlord would be to prevent the petitioner from using the premises even before he has been evicted therefrom. The said state of affairs cannot be accepted. The only requirement is of the petitioner being in lawful occupation of the premises and till the petitioner is evicted, his possession cannot be said to be unlawful.

7. In the circumstances, the writ petition is disposed of with the following directions:-

i. Subject to the petitioner preferring an appeal to the Director, Veterinary Services on or before 7th February, 2011, the same shall be considered on merits by the Director, Veterinary Services of the respondent MCD;

ii. The Director, Veterinary Services to decide the appeal in the light of the observations aforesaid of this Court and after making independent inquiries as to whether the petitioner is in lawful occupation of the shop or not;

iii. The petitioner is also granted liberty to submit other documents before the Director, Veterinary Services to show his lawful occupation of the premises, including the certified copies of the eviction proceedings aforesaid;

iv. Till the decision of the said appeal and for a period of 5 days thereafter, there shall be stay of the operation of the order dated 20th January, 2011.

No order as to costs.

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