

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

+ **Crl.M.C.No. 1608/2007**

% Date of Decision : 12.05.2008

Shri Sandeep Bahl .... Petitioner

Through: Mr. Rakesh Tikkoo, Advocate

versus

Municipal Corporation of Delhi .... Respondent

Through: Mr. Naveen Gupta, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest? No

**VIPIN SANGHI, J. (Oral)**

1. This petition under Section 482 Cr.P.C. has been filed to seek quashing of criminal complaint No.1495/2001 titled as "MCD vs. Sandeep Bahl" pending before the learned Metropolitan Magistrate, Patiala House, New Delhi. The complaint has been filed under Section 347 and 461 of the Delhi Municipal Corporation Act, 1957 (the Act).

2. The petitioner was running a shop under the name and style of M/s Ritikas. Petitioner obtained the certificate of ad hoc registration of commercial units/business under registration policy of

the year 1994 issued by the MCD in his wife's name. This registration was granted by the Central Licensing and Enforcement Cell. The certificate when translated reads as "Certificate of Adhoc Registration of Commercial Unit/Business Working in Non-conforming Area under Special Registration Scheme, 1994." When the registration was firstly obtained, it was valid till 31.3.1999, and thereafter upon payment of the requisite fees, the same was extended year after year upto 31.3.2003.

3. The respondent MCD filed the aforesaid complaint under Section 347 and 461 of the Act in November, 2001 wherein it was alleged that according to the prosecution report dated 25.8.2001 the accused Shri Sandeep Bahl (petitioner herein), the owner and occupier of the property bearing No.B-23, Ground Floor, Greater Kailash-I, New Delhi was found committing the offence on the said date under Section 347 of the DMC Act which is punishable under Section 461 of the said Act.

4. Section 347 of the Delhi Municipal Corporation Act reads as follows:

"347. Restrictions on uses of building.- No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission-

(a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and the bye-laws made thereunder;

(b) change or allow the change of the use of any land or building;

(c) convert or allow the conversion of one kind of tenement into another kind.”

5. As per the complainants case, violation of clause (b) was alleged by the petitioner. Learned counsel for the petitioner submits that since the petitioner had applied for, and was granted the registration as aforesaid under the Scheme of the MCD, and on the relevant date i.e. 25.8.2001 the registration was subsisting, no offence is made out under Section 347 of the DMC Act. His submission is that it cannot be said that the petitioner was carrying on business or the business activities without the written permission of the Commissioner, or otherwise not in conformity with the condition that were imposed upon the petitioner, while granting permission. He submits that the MCD was aware of the fact, when the registration certificate was granted in respect of the residential premises bearing No.B-23, Ground Floor, Greater Kailash-I, New Delhi, that the permitted use of the said premises was only residential. The MCD consciously granted the registration under the scheme floated by it for permitting non-conforming user .i.e commercial user. Non-conforming use means a use which does not conform to the use of the premises permitted under the law. Since in this case the permitted use was residential, the need for registration in 1994 arose as the premises was used for a non-conforming use i.e. for commercial use. That being the position, it is argued, that the change of use of the building or part thereof was

also implicit in the registration certificate issued by the MCD. Learned counsel for the petitioner has also relied on ***Sports Plaza & Ors. vs. MCD & Anr.*** 2001 VII AD (Delhi) 666. In that case, the petitioner was granted license for use of the residential premises for commercial purpose. The respondent MCD sought to justify the prosecution of the petitioner on the ground that the prosecution related to the period prior to the issuance of license. However, this Court took the view that since the license had been granted with retrospective effect, the deeming effect of the retrospective license would be to validate the past use as well. The court proceeded to quash the pending proceedings before the Magistrate.

6. The submission of learned counsel for the respondent is that Section 347(b) of the DMC Act pertains to the change of use of any land or building. In the present case, mere registration of the petitioner under the aforesaid scheme does not tantamount to allowing the change of use of land and building.

7. Though the respondent is right in contending that the mere registration of the petitioner under the aforesaid scheme does not tantamount to permitting the change of use of the premises from residential to commercial for all times, it certainly connotes the grant of a temporary permission, till so long as the registration is subsisting, to the change of use of the land and building to which it pertains. In this case, the registration certificate itself sets out the conditions to which it was subject. Some of the clauses/conditions of the certificate,

which are relevant for the present purpose read as follows: -

- “1. Whole of the business shall be only in the premises mentioned in the plan or application form.
2. This temporary registration certificate is valid for rooms/places situated in mentioned/accepted premises.
3. Registration Certificate is valid for those business units which work during day time. Business hours will be from 8 a.m. to 6 p.m.
8. The Municipal Commissioner will not be responsible for any proceedings initiated against the holder of this license by the Delhi Administration/DDA or any other officer.”

8. From these conditions it is evident that the respondent MCD expressly permitted the change of use, though temporarily, and during the period of validity of the registration, from residential to commercial of the specified area/portion. Even more importantly, the MCD conveyed through its silence, that it would not take any action against the non-conforming use i.e. use for commercial purposes of the residential premises, while it took no responsibility and gave no assurances when it came to other civic bodies such as Delhi Administration/DDA.

9. Having permitted the petitioner to carry on his business in a non-conforming area by granting the registration year after year, the MCD cannot later on turn around and contend that the petitioner had not obtained the permission of change of use and is liable to be prosecuted under Section 347/461 of the DMC Act. Penal liability

cannot be fastened upon a citizen who has come forward to obtain permission for a non-conformity use of his premises and when he has been granted such permission, which is also statutorily permissible.

10. For the aforesaid reasons I quash the complaint filed by the respondent against the petitioners in Complaint Case No.1495/2001, leaving the parties to bear their respective costs.

May 12, 2008  
aj

VIPIN SANGHI, J.