

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

+ W.P.(C) 1835/2008

BANGA MOTOR CENTRE & ANR. Petitioners
Through Mr. Amit Mahajan, Advocate.

versus

M.C.D. Respondent
Through Mr. Sanjeev Sabharwal, Standing Counsel
for MCD along with Mr. A.K. Mittal, AE (Building),
Rohini Zone, MCD.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
24.03.2008

CM No. 4426/2008

The petitioner has already filed an affidavit stating that he shall not carry out washing activities in the premises located at 17, BQ Market, Shalimar Bagh, New Delhi. In fact, the said statement was made earlier also and is recorded in the order dated 20th December, 2007 disposing of W.P. (C) No. 9339/2007.

The petitioner has also filed an affidavit stating that he shall not repair any cars on the street, in parking lots or in any park. He will repair cars only within the four corners of the shop.

In view of the above position, the application is allowed with a direction that the respondent-MCD will de-seal the said shop and allow the petitioner to operate and carry out repair work within the shop itself. In case there is any violation of the undertaking/ affidavit filed by the petitioner, respondent-MCD will be entitled to take action as per law. The application is accordingly disposed of. The shop will be de-sealed within a period of five days from today.

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1. With the consent of the parties, the writ petition is taken up for hearing today itself.
2. The petitioner had earlier filed W.P.(C) No. 9339/2007, which was disposed of on 20th December, 2007 after recording statement of the petitioner that he would abide by stipulations and Master Plan of Delhi, 2021, which permits only repair of automobiles in the local shopping centres. The Court disposed of the writ petition with liberty to the petitioner to make an appropriate application for grant of licence for such purpose as is permissible under the Master Plan of Delhi, 2021. MCD was required to consider the application in accordance with the applicable laws and policies of MCD with a further direction that in case permission is granted, the petitioner will abide by all restrictions and prescriptions imposed.

Thereafter, the petitioner made an application on 4th January, 2008. In the said application he gave an undertaking that henceforth he will use the property No. 17A, BQ Market, Shalimar Bagh, Delhi for use permitted under the Master Plan of Delhi, 2021, that is, repair of automobiles and will not carry out any activity that is not permitted under the Master Plan. It may be noted here that the petitioner has been carrying out repair of automobiles since 1995 from the property in question and was granted a valid trade licence, which has not been renewed after 31st March, 2007.

3. Respondent-MCD, however, refused to grant the said licence on the ground that car servicing is not covered under the Master Plan of Delhi, 2021. Respondent-MCD, however, forgot that the petitioner had never applied for a trade licence to carry out car servicing. He had applied for licence for repair of automobiles and had given an undertaking that he shall not be doing car servicing. This reasoning given in the impugned order dated 2nd February, 2008 is factually incorrect and cannot be accepted. MCD has also refused to grant licence because the petitioner was found to be repairing cars on municipal/public land. No dates and particulars have been mentioned in the order. This stand was not taken by the respondents, when W.P. (C) No. 9339/2007 was disposed of. In fact, the petitioner has now given an undertaking that he shall carry out repairs

within the shop and not outside and shall not use public/municipal land for car repair business. In case the petitioner violates the undertaking, it is always open to the respondents to challan him and impose penalty and even cancel his licence. Petitioner has filed affidavit and similar undertaking also in this Court not to violate conditions specified under Master Plan of Delhi, 2021.

4. In view of the above, the impugned order dated 2nd February, 2008 is quashed. The respondent-MCD will pass a fresh speaking order examining the application of the petitioner dated 4th January, 2008. The petitioner will appear before the Licensing Officer on 2nd April, 2008 at 3 p.m. The petitioner will file an undertaking/affidavit before the Licensing Officer that he shall not use the property for washing cars or repair cars on public/municipal land and the repair activities of the petitioner shall remain within the confines of his shop.

The writ petition is disposed of.

DASTI.

MARCH 24, 2008

VKR

SANJIV KHANNA, J.