

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

Date of decision: 5th October , 2010.

+
%

W.P.(C) No.225/2008

ANIRUDH KUMAR

..... PETITIONER

Through: Mr. B.K. Sinha & Ms. Pratibha Sinha,
Advocates.

Versus

M.C.D. & ORS.

..... RESPONDENTS

Through: Mr. Sanjeev Sabharwal & Mr. Hem
Kumar, Advocates for R-1.
Mr. Arjun Pant, Advocate for R-5.
Mr. Rajiv Nayyar, Sr. Advocate with
Mr. Kunal Tandon & Mr. Abhinav
Agnihotri, Advocates for R-6&7.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|----|
| 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 in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a resident of second floor of property No.D-1, Hauz Khas, New Delhi and aggrieved from the setting up of a Diagnostic Centre/Pathological Laboratory in the name and style of Dr. Dang's Diagnostic Medical Centre by the respondents no.6 & 7 at the ground and first floors of the said property, preferred the present petition impugning the order dated 11th July, 2006 of the respondent no.1 MCD permitting the

setting up of such Diagnostic Centre/Pathological Laboratory and seeking a mandamus against the respondent no.1 MCD for prohibiting the running of the said Clinical Pathology Laboratory and to ensure removal of all plant & machinery installed therein which are alleged to be a health and a fire hazard to the property and occupants thereof.

2. The petition came up before this Court first on 11th January, 2008 for admission. This Court finding that the Clinical Pathological Laboratory had been set up in the year 1995 and was continuing since then and the petitioner had first objected to the same by filing W.P.(C) No.8808/2004 and during the pendency whereof the Master Plan of Delhi (MPD)-2021 had come into force and whereunder Regularization Certificate dated 11th July, 2006 (supra) was issued and whereafter the earlier writ petition was withdrawn, held the challenge by the petitioner to the said Regularization Certificate dated 11th July, 2006 to be not maintainable. The grievance of the petitioner with regard to the installation of the Generator set was also held to be a private grievance which could not form the subject matter of a writ petition. Thus limited notice of the petition was issued “in respect of non-compliance of the Clauses 3 & 7 of the Regularization Certificate aforesaid”.

3. The said clauses 3 & 7 of the Regularization Certificate dated 11th July, 2006 granting permission for running of a Clinical Pathology Laboratory at the ground and first floors of the property are as under:-

“3. All parking arrangements will be made by you within the plot in question.

7. The applicant will ensure that no nuisance or hardship is created for the local residents.”

4. The counsel for the petitioner during the course of hearing has sought to expand the scope of the petition, reiterating the grounds urged in the petition and in which respect the petition was dismissed *in limine* as aforesaid. The arguments in so far as the enforcement of Clauses 3 & 7 is concerned, are as under:-

- i. that about 200 people visit the Diagnostic Centre-cum-Pathological Laboratory everyday and no space for parking their vehicles has been provided as required; such visitors in the absence of a parking site in the vicinity also, park their cars/vehicles on the road in front of the property and all-around causing a huge traffic jam and depriving the petitioner of the parking space in front of his house and compelling him and his guests to park at a distance far away from his house;
- ii. the aforesaid is also stated to cause nuisance;
- iii. it is stated that the chimneys of the 25 air conditioners installed in the Diagnostic Centre/Pathological Laboratory

open their vents near the balconies of the second floor of the petitioner.

- iv. it is stated that the two Generators also are a cause for nuisance;
- v. that though the permission has been granted with respect to the ground and first floors only but the basement and the mezzanine floor are also being misused for Diagnostic Centre-cum-Pathological Laboratory; it is contended that hazardous bio medical waste is accumulated in the staircase and in the basement.

Reliance is placed on *In Re Noise Pollution* (2005) 5 SCC 733 to contend that fundamental right of the petitioner to live a life of dignity in his premises is being violated.

5. Per contra, the counsel for the respondent no.1 MCD informs that the respondents no.6 & 7 who have set-up the Diagnostic Centre/Pathological Laboratory aforesaid have on 15th June, 2007 paid the parking charges of ₹11,91,261/- to the MCD and thus the condition No.3 aforesaid qua parking arrangements now does not survive.

6. The counsel for the respondent no.5 Delhi Pollution Control Committee (DPCC) has argued that as per the latest inspection, the Diagnostic Centre/Pathological Laboratory is being run at ground and first floors only and no violations were found.

7. The senior counsel for the respondents no.6 & 7 has taken objection to the petitioner raising matters which already stand settled. It is informed that the petitioner had preferred an intra Court Appeal against the order dismissing the petition *in limine* in so far as challenging the permission granted to set-up Diagnostic Centre/Pathological Laboratory and the said appeal after considerable arguments was withdrawn. It is also argued that the matter relating to Generators also stands settled in the order dated 11th January, 2008 (*supra*) in this writ petition and the petitioner cannot re-agitate the same. It is stated that the matter of alleged misuser of basement and mezzanine floor also stands concluded vide order dated 28th May, 2009 in the present petition whereby the application moved by the petitioner in that regard was withdrawn. It is contended that no activity of Diagnostic Centre/Pathological Laboratory is being carried out from the basement or mezzanine floor. It is urged that there are other commercial establishments in the nature of Banks and Suzuki Motor Car Dealership in the neighbourhood and the petition against the respondents no.6 & 7 is motivated. It is yet further contended that the petitioner is in any case not entitled to any equitable relief, since he is himself carrying on commercial

activity in the name and style of 'Jewels of India' from his premises on the second floor.

8. The counsel for the respondents no.6 & 7 has also drawn attention to an affidavit dated 7th August, 2008 filed at page 172 of the paper book to the effect that no complaint of nuisance from any other neighbour has been received. The counsel for the petitioner rejoins by drawing attention to the copies of complaints by other neighbours to the Office of the ACP (Traffic), annexed to CM No.276/2010 in this petition. The said complaints are of July/August, 2009. Attention is also invited to complaints (Annexure P-17 to the petition) of July, 2006 of other neighbours. The counsel for the petitioner also states that the petitioner is carrying on business in the name and style of 'Jewels of India' with a showroom at Ashoka Hotel, New Delhi and merely because has given the address of the said business at the second floor also would not mean that the second floor was being used for commercial purpose. Immediate inspection of the second floor by a Court Commissioner is offered to satisfy the Court that no commercial activity is being carried out from the second floor.

9. Notwithstanding heated arguments, the only question for consideration is whether the respondents no.6 & 7 have not complied with Clauses 3 & 7 (supra) of the Regularization Certificate dated 11th July, 2006

granting permission to them to set-up the Diagnostic Centre/Pathological Laboratory.

10. In so far as Clause 3 regarding parking arrangements is concerned, in the opinion of this Court, upon the respondents no.6 & 7 paying the requisite parking charges, they stand relieved of the said condition. The MPD-2021 has allowed mixed use of certain areas/properties on the conditions prescribed therefor. One such condition is levy of parking charges. The said parking charges are levied to develop a fund to enable the MCD to provide for parking facilities in the vicinity of the properties, mixed use whereof for residence-cum-commercial/professional purposes is permitted. Once the respondents no.6 & 7 have paid the said parking charges, they stand relieved of the obligations for making arrangements for parking. Even otherwise, the decision whether the respondents no.6 & 7 have complied with or violated the said conditions is to be of the respondent no.1 MCD. The respondent no.1 MCD, upon payment of the parking charges aforesaid by the respondents no.6 & 7 is satisfied of the compliance of the condition. The petitioner as an affected party would certainly have a right to approach this Court to urge that the decision of the respondent no.1 MCD is not in accordance with law. However in view of the provisions of MPD-2021, I am satisfied that there is no error in the decision of the respondent no.1 MCD in not treating the respondents no.6 & 7 to be in violation of Clause 3 (supra). The respondents no.6 & 7 cannot be held responsible for parking

arrangements after paying the charges levied therefor to the respondent no.1 MCD. To hold otherwise would nullify the very reason for levy of such parking charges. Attention of the counsel for the petitioner was drawn to the properties in NDSE Part-I & Part-II, New Delhi abutting the main road and commercial use whereof has been permitted and on whom parking charges have been levied. It was enquired as to whether the said properties notwithstanding the payment of parking charges would continue to remain liable to provide parking for their customers. The counsel for the petitioner could only state that their position was different without showing how.

11. Clause 7 is with respect to nuisance or hardship for the local residents. The present petition is filed by a single resident of the same property only and not by an association of residents. It thus appears that none other than the petitioner is aggrieved. The contentions aforesaid of the petitioner on the one hand that complaints have been made by other residents and of the respondent no.1 MCD on the other hand that no such complaints have been received, raises a disputed question of fact and which cannot be adjudicated in the present petition. Moreover as aforesaid, it is inexplicable as to why if the local residents are aggrieved, they have not approached this Court. The petition as it stands lends support to the contention of the senior counsel for the respondents no.6 & 7 that the petition is motivated more by a private dispute of the petitioner with the

respondents no.6 & 7 rather than owing to any nuisance or hardship to the local residents.

12. The senior counsel for the respondents no.6 & 7 has also stated that the chimneys of the air conditioners were broken by the petitioner at the level of his balcony to take photographs filed before this Court; it is contended that else the said chimney are above the height of the terrace of the property. The senior counsel for the respondents no.6 & 7 further assures that the respondents no.6 & 7 are ready and willing to do anything else which may be required in accordance with law with respect thereto. However the counsel for the respondent no.5 DPCC states that nothing further is required to be done.

The petition is therefore dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th October, 2010
pp