

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

Date of decision: 6th July, 2011

+ **Review Petition No.281/2011 in W.P.(C) No.2300/2011**

AFSAR & ORS **Petitioner**

Through: Mr. Sanobar Ali Qureshi, Adv.

Versus

COMMISSIONER (MCD) & ANR. Respondents

Through: Ms. Madhu Tewatia & Ms. Sidhi Arora, Advocates for MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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. Review is sought of the order dated 6th April, 2011 disposing of the writ petition as under:-

"1. The respondent MCD has lodged an FIR against the three petitioners of having committed offences under Sections 278/295A/ 429 r/w Section 34 of IPC and under Sections 4/8/12 & 13 of The Delhi Agricultural Cattle Preservation Act, 1994

and the petitioners are being prosecuted therefor and have been granted bail. The petitioners however claim that the respondent MCD has in pursuance to the aforesaid, also sealed the ground floor of their house no.979, Gali no.31, Jafrabad, Delhi, even though they were not carrying on any activity for which they are being prosecuted from the said premises and claim to have been carrying on their meat trade from their shop on the ground floor of property no.973, Gali No.31, Jafrabad, Delhi. They have filed this writ petition seeking de-sealing of the ground floor of their house no.979.

2. The counsel for the respondent MCD appears on advance notice.

3. The only controversy being legal i.e. whether the respondent MCD has any power to seal the premises even if finds the petitioners to be carrying on activities constituting offences under the aforesaid provisions of law, no need to issue any formal notice or call for reply has been felt and the counsels have been finally heard on the writ petition.

4. A perusal of the aforesaid provisions of law under which the petitioners are being prosecuted does not show any such power. No such power is found in any other provision of the Delhi Municipal Corporation Act, 1957 also. Though Section 11 of The Delhi Agricultural Cattle Preservation Act, 1994 provides for seizure of cattle and vehicles but does not provide for seizure/sealing of premises from where activities in contravention of the Act are being carried out. This Court in the past, after giving opportunity to the respondent MCD to approach the prosecution court for an order of sealing, has directed de-sealing. There is no reason to not follow the same orders in the present petition also.

5. Similarly here, since the offence for which the petitioners are being prosecuted is stated to have been committed in the premises aforesaid, it is deemed expedient to grant an opportunity to the respondent MCD to, if found entitled to by the Court where the petitioners are being prosecuted, obtain

the order for keeping the property sealed as a case property. The counsel for the petitioners of course contends that pursuant to the similar order in other writ petitions, the respondent MCD, though had applied to the Court where the prosecution is pending but was unsuccessful in satisfying the Court of any right to keep the property sealed.

6. Accordingly, it is directed that unless there is any order from prosecution court on or before 30th April, 2011 to keep the property sealed, the respondent MCD to de-seal the property of the petitioners at 1600 hours on 2nd May, 2011. The petitioners on their part through their counsel undertake to this Court to, in future without obtaining any license from the respondent MCD not use the said property for the purpose of meat trade.

The petition is disposed of with no order as to costs.”

2. Review is sought of the order only qua de-sealing of ground floor of House No.979, Gali No.31, Jafrabad, Delhi. It is pleaded that the MCD raid team detected cow slaughtering in the said premises; in terms of the Policy instructions of the MCD the power to seal the premises where illegal slaughtering of animal is going on has been conferred on the Zonal Veterinary Officer without even waiting for the approval of the competent authority and to lodge an FIR in regard thereto in the concerned Police Station; that the said premises were sealed since the accused persons were caught red handed indulging in the slaughtering of cows therein; that the initial/immediate sealing of a given premises/shop where cow slaughtering

is found—is a must for the police to be able to lift blood samples and other vital incriminating case property/slaughtered cows/carcasses of cows/blood stained articles lying in the premises / residue of the slaughtered cows etc., otherwise the premises can be washed and articles removed besides destroying other incriminating evidence and the matter really needs to be left to the Magistrate who after considering the facts of a given case can always direct de-sealing of the premises; that the power of the MCD to seal the premises/shop where cow slaughtering is found cannot be doubted.

3. The respondent MCD has along with the review petition filed a document dated 29th July, 2009 issued by the Director (Veterinary Services) MCD as under:-

“Following clarifications are issued for compliance by all concerned in respect of the meat shops:-

- 1. The concerned Zonal Veterinary Officer should seal all unlicensed meat shops running in their zones after issuance of a show cause notice to the owner and approval of the Dy. Commissioner of the Zone.*
- 2. If the Zonal Veterinary Officer finds illegal slaughtering of animals at any premises, the same should be sealed by the Zonal Veterinary Officer on the spot without issuance of any show cause notice to its owner/approval of competent authority.*
- 3. If cow slaughtering is found at any place, the Zonal Veterinary Officer shall seal the premises immediately on the*

spot without waiting for approval of the competent authority and lodge FIR in the concerned Police Station against the persons involved in cow slaughtering to initiate the action against them as per law.

4. The Zonal Veterinary Officers should seal all unlicensed/illegal/unauthorized meat shops by issuance of a show cause notice and after approval of the Dy. Commissioner of the concerned Zone. However, if a person is found selling the meat suspected for cow or its progeny at his shop, the Zonal Veterinary Officer should immediately contact the Veterinary Officer of GNCTD to lift the meat samples for laboratory testing and the FIR in this case should also be lodged by the Zonal Veterinary Officer in the Police Station. If the laboratory report of meat samples confirms the meat of cow or its progeny, the licensed meat shop should be sealed immediately after arrival of the laboratory report by the Zonal Veterinary Officer with the approval of Dy. Commissioner of the Zone.

The issues with the approval of the Commissioner, M.C.D.

*Sd/-
Director (V.S.)”*

4. The review petition came up first before this Court on 10th May, 2011 when it was enquired from the counsel for the respondent MCD review applicant as to how the power of sealing affecting the Constitutional Rights of the property owner can be conferred by administrative instructions, as aforesaid. Attention of the counsel was also invited to the Full Bench judgment of this Court in ***Bajaj Departmental***

Stores Vs. MCD 99 (2002) DLT 401 subsequently considered in *M.C. Mehta Vs. Union of India* AIR 2006 SC 1325 by the Apex Court, where in the absence of a statutory provision, DDA was held to be not empowered / entitled to seal the property for misuse.

5. The counsel for the respondent MCD has today in response to the aforesaid query invited attention to Sections 415 and 424 of the Delhi Municipal Corporation Act, 1957 which are as under:-

“Section 415 - Butcher's, fish-monger's and poulterer's licence—

1) No person shall without or otherwise than in conformity with a licence from the Commissioner carry on the trade of a butcher, fish-monger, poulterer or importer of flesh intended for human food or use any place for the sale of flesh, fish or poultry intended for human food :

Provided that no licence shall be required for any place used for the sale or storage for sale of preserved flesh or fish contained in airtight or hermetically sealed receptacles.

(2) The Commissioner may by order and subject to such conditions as to supervision and inspection as he thinks fit to impose, grant a licence or may by order refuse for reasons to

be recorded, to grant the same.

(3) Every such licence shall expire at the end of the year for which it is granted or at such earlier date as the Commissioner may, for special reasons, specify in the licence.

(4) If any place is used for the sale of flesh or poultry in contravention of the provisions of this section, the Commissioner may stop the use thereof by such means as he may consider necessary.

Section 424-Power of Commissioner to inspect places where unlawful slaughter of animals, etc., is suspected—

(1) If the Commissioner or any person authorised by him in this behalf has reason to believe that any animal intended for human consumption is being slaughtered or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorised under this Act, he may, at any time by day or night without notice, inspect such place for the purpose of satisfying himself as to whether any provision of this Act or of any bye-law under this Act at the time in force is being contravened thereat and may seize any such animal or the carcass of such animal or such flesh found therein.

(2) The Commissioner may remove and sell by auction or otherwise dispose of any animal or carcass of any animal or any flesh seized under sub-section (1).

(3) If within one month of such seizure the owner of the animal, carcass or flesh fails to appear and prove his claim to the satisfaction of the Commissioner or if the owner is convicted of an offence under this Act in respect of such animal, carcass or flesh, the proceeds of any sale under sub-section (1) shall vest in the Corporation.

(4) Any person slaughtering any animal or selling or exposing for sale the flesh of any such animal in any place or manner not duly authorised under the provisions of this Act may be arrested by any police officer without a warrant.

(5) No claim shall lie against any person for compensation for any damage necessarily caused by any such entry or by the use of any force necessary for affecting such entry. ”

6. The instructions issued by the respondent MCD aforesaid are stated to be in exercise of powers under Section 415(4) (supra). It is urged that the power to seal the premises flows therefrom. Reliance is also placed on ***State of Uttar Pradesh Vs. Dr. Anupam Gupta*** 1993 Supp. (1) SCC 594 laying down that administrative instructions would fill in the yawning gaps in the statutory rules and are legal, valid and would supplement the statutory rules.

7. In the order sought to be reviewed, opportunity was granted to the respondent MCD to, if found entitled to, by the Court where the prosecution for the offence of cow slaughtering is underway obtain the order for keeping the property sealed as case property. It is only that Court which can determine whether the property is required to be preserved for the purposes of prosecution. The counsel for the respondent MCD has however not informed as to whether any such application was made to that Court and/or the outcome thereof. It is only that Court which is competent to consider the aspects as raised by the petitioner also.

8. I am however unable to fathom that the respondent MCD can, for the aforesaid reason keep the premises sealed indefinitely. The instructions dated 29th July, 2009 (supra) also do not prescribe any procedure pursuant to sealing or the modality for de-sealing of the premises. A premises/property cannot be kept sealed indefinitely. In a given case it is well nigh possible that the person accused of the offence may not even be the owner of the property and may merely be a tenant, licensee or a partner etc. The property owner cannot be deprived of the use

of his property for all times to come merely because there is a charge of an offence of cow slaughtering having been committed therein. The counsel for the petitioners appearing on advance notice also states that in the present case the investigation stands completed and the prosecution has commenced but inspite thereof the premises have not been de-sealed. The counsel for the petitioners in this regard also relies upon *State of Uttar Pradesh Vs. Chandra Mohan Nigam* (1977) 4 SCC 345 laying down that not all instructions issued by Govt. are mandatory.

9. Faced with the aforesaid, the counsel for the respondent MCD states that fresh guidelines for sealing of the premises where the offence of cow slaughtering is charged to have been committed are being prepared and underway and the same shall deal with all the aforesaid aspects.

10. In view of the aforesaid statement of the counsel for the respondent MCD, need is not felt to go into the larger question whether the Commissioner, MCD in exercise of powers under Section 415(4) and/or Section 424 is empowered to direct sealing of such premises and the said question is left open for adjudication in an appropriate matter.

11. Even though the instructions aforesaid were not noticed in disposing of the writ petition vide order dated 6th April, 2011 but for the reasons aforesaid, no case for review is made out.

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

**RAJIV SAHAI ENDLAW
(JUDGE)**

JULY 06, 2011
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