

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2816/2011 and CM 5990/2011**

Decided on 05.07.2011

IN THE MATTER OF :

PARVEEN AHUJA

..... Petitioner

Through: Mr. Sameer Abhyankar, Advocate

versus

MCD AND ORS

..... Respondents

Through: Ms. Suparna Srivastava, Standing
Counsel, MCD.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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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 |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing the action of respondent No.1/MCD in sealing the shop of the petitioner situated at premises bearing No.7/56, Old Rajinder Nagar, New Delhi, being run under the name and style of M/s Ahuja Tailors.

2. Counsel for the petitioner states that the aforesaid shop was being run by the father of the petitioner since 29.11.1960. He submits that on 03.03.2008, the said shop was sealed by respondent No.1/MCD

without issuing a notice to show cause to the petitioner. From 04.03.2008 to 19.06.2009, the petitioner made several representations before the Monitoring Committee appointed by the Supreme Court as well as before respondent No.1/MCD for temporary/permanent de-sealing of the said shop. Finally on 19.06.2009, the said shop was permanently de-sealed by respondent No.1/MCD under the directions of the Monitoring Committee appointed by the Supreme Court (Annexure P-4). Thereafter, the petitioner continued to conduct his business from the aforesaid shop right upto 30.03.2011, when the officers of respondent No.1/MCD suddenly came to the shop of the petitioner and re-sealed the same, without issuing him any notice to show cause or affording an opportunity of hearing to him.

3. Counsel for the petitioner submits that the petitioner kept running from pillar to post to ascertain the cause of the sealing action undertaken by respondent No.1/MCD on 30.3.2011, but to no avail. Finally, he filed an application under the Right to Information Act, 2005 with the Executive Engineer, MCD, raising queries as to the basis on which his shop was sealed, the name of the authority under whose order the same was sealed and as to whether any notice to show cause was served upon the petitioner regarding the sealing action. As per the reply dated 26.04.2011 received by the petitioner from the MCD on 01.05.2011, the shop in question was re-sealed on 30.03.2011 on the

directions of the Monitoring Committee and it was further stated that no notice to show cause was served upon the petitioner before sealing the said shop. Counsel for the petitioner also draws the attention of this Court to the letter dated 18.05.2011 issued by MCD to the petitioner, wherein it was mentioned that based on the petitioner's request dated 19.04.2011, a report was forwarded to the Monitoring Committee, and vide order dated 12.05.2011, the said Committee observed that the premises had been rightly sealed as no mixed use is permissible in an unauthorized construction. Further, the MCD was directed to take necessary action regarding the unauthorized construction in the premises. As a result, the request of the petitioner for de-sealing of the shop was declined by the Monitoring Committee. Pertinently, the aforesaid communication dated 18.05.2011 was addressed by the respondent/MCD to the petitioner in compliance of the order dated 02.05.2011 passed in the present case, wherein a direction had been issued to the MCD to request the Monitoring Committee to take a decision on the pending application of the petitioner within 10 days, under written intimation to the petitioner.

4. Counsel for the petitioner states that the aforesaid action of the Monitoring Committee as also the MCD in sealing the shop of the petitioner on 30.03.2011, is contrary to law and is in complete violation of the principles of natural justice, as no notice to show cause was issued to

the petitioner much less an opportunity afforded to him for making a representation and being granted a personal hearing before sealing the shop. In this regard, he relies on the following judgments:-

(i) **W.P.(C) 651/2011** entitled M/s Unique Innovation Pvt. Ltd. vs. MCD decided on 03.02.2011.

(ii) **W.P.(C) 2284/2011** entitled Devyani International Limited vs. MCD. decided on 05.04.2011.

5. There is no dispute on the facts of the case and it is not denied by the respondent/MCD that no notice to show cause was issued to the petitioner before sealing the premises in question. It is also not denied that a personal hearing was not granted to the petitioner before the sealing of his shop. Furthermore, admittedly no notice to show cause was issued to the petitioner, before passing of the order dated 20.5.2011 by the Monitoring Committee directing MCD to take action regarding the unauthorized construction at the premises in question. However, counsel for the respondent/MCD states that MCD had placed the representation of the petitioner dated 19.04.2011 for de-sealing of the premises, before the Monitoring Committee, which was duly considered and disallowed.

6. It cannot be denied that principles of natural justice have been violated in the present case, particularly when it is settled law that rules of natural justice must be read into Section 345-A of the DMC Act, as observed in the case of Ahuja Property Developers (P) Ltd. vs. MCD

reported as **42(1990) DLT 474 (DB)** and followed in the case of Shrimati Shamim Bano vs. MCD reported as **2007 VIII AD (Delhi) 304**.

7. This Court is not inclined to agree with the submission of the counsel for the respondent/MCD that merely placing the representation of the petitioner dated 19.04.2011 before the Monitoring Committee and the decision taken by the said Committee after considering the same can be treated as sufficient compliance of the principles of natural justice. It was incumbent on the respondent/MCD to have issued a notice to show cause to the petitioner before proposing to seal his shop and further, any action proposed to be taken in respect of the unauthorized construction existing at the premises in question is required to be preceded by a notice to show cause to the owner/occupier. Having failed to take such measures before resorting to coercive measures against the petitioner is unacceptable. This Court is of the opinion that principles of natural justice have certainly been violated by the respondent/MCD. As a result, the present petition succeeds. The sealing action undertaken by the respondent/MCD on 30.03.2011, in respect of the shop of the petitioner is held to be illegal. The respondent/MCD is directed to de-seal the shop of the petitioner forthwith, preferably within 48 hours from today. However, this does not preclude the respondent/MCD from issuing a notice to show cause to the petitioner for sealing and/or for demolition of the unauthorized construction, if any, existing at the premises, in accordance

with law. As and when the petitioner receives such a notice to show cause, he shall be entitled to submit his reply thereto and seek a personal hearing, if necessary. The said representation shall be placed before the appropriate authority for consideration and personal hearing shall be granted to the petitioner, whereafter, the decision taken shall be duly communicated to him in writing. In the event that the petitioner is aggrieved by the orders that may be passed, he shall be entitled to seek his remedies as may be available to him in law.

8. The petition is disposed of with no orders as to costs.

A copy of this order be given ***DASTI*** to the counsels for the parties under the signatures of the Court Master.

JULY 5, 2011
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(HIMA KOHLI)
JUDGE