

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 3rd November, 2011

+ LPA 652/2011

MUNICIPAL CORPORATION OF DELHI ...Appellant
Through: Ms.Madhu Tewatia, Advocate and
Ms.Sidhi Arora, Advocate.

versus

AFSAR & ORS. ...Respondents
Through: Mr.Sanobar Ali Qureshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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?

PRADEEP NANDRAJOG, J. (Oral)

CM No.14978/2011 (Delay)

For the reasons stated in the application delay in filing the appeal is condoned.

Application stands disposed of.

LPA No.652/2011

1. W.P.(C) No.2300/2011 filed by the respondents has been allowed vide order dated 6.4.2011 and MCD has been

directed to de-seal the ground floor of property No.973/31, Jafrabad, Delhi, which was sealed on account of the alleged reason that cow meat was being sold from the premises in question and for which an FIR for having committed offences punishable under Sections 278/295A/429/34 IPC read with Sections 4/8/12/13 of the Delhi Agricultural Cattle Preservation Act 1994 was registered against the respondents. Review sought of the order dated 6.4.2011 has been dismissed vide impugned order dated 6.7.2011.

2. The learned Single Judge has held that no power is vested in the Municipal Corporation of Delhi under the Delhi Municipal Corporation Act 1957 to seal any property on account of an unauthorized user thereof, a finding which we have no hesitation in setting aside for the reason the issue is no longer res integra. Interpreting Section 345A which empowers the Commissioner of Municipal Corporation of Delhi to seal properties in Delhi on account of violation of the building bye-laws framed under the Delhi Municipal Corporation Act, in the decision reported as 2006 (3) SCC 399 M.C.Mehta Vs. UOI & Ors. it was held that change of user of a building would entitle the Commissioner to seal a property on account of misuse and suffice would it be to state that the subject property is a residential property and cannot be used for any commercial purpose and thus irrespective of the fact whether or not cow meat was being sold from the property, there being no permission from the Commissioner of the Corporation to

change the user of the subject property, the Commissioner MCD was fully justified in sealing the property and thus we need not deal with the submission urged by learned counsel for the respondents that buffalo meat and not cow meat was being sold from the subject property. Further, we find that under Section 415 of the Delhi Municipal Corporation Act if a flesh product or flesh is to be sold from a premises, a specific license has to be obtained from the Commissioner MCD and for contravention, the Commissioner is empowered to adopt such means as he may considered necessary to stop illegal trade by way of sale of flesh from a premises and this power would include the power to seal the premises.

3. The view taken by the learned Single Judge while disposing of the review application that the property cannot be indefinitely sealed is correct in view of the fact that the respondents have expressed a willingness to file undertakings before the Commissioner MCD that they would not misuse the premises in question and would strictly use the same for a residential purpose.

4. We note that the Corporation has now, vide office order dated 2.9.2011 revised a policy pertaining to grant of license to meat shops which includes the power to prevent violation of the statute and the policy.

5. We need not deal with the said policy inasmuch as the respondents are willing to undertake as per para 3 above and thus we dispose of the appeal observing that the view

taken by the learned Single Judge with respect to the power to seal vested in the Commissioner MCD is incorrect. But, we maintain the mandamus issued by the learned Single Judge with a modification that the same would be obeyed upon the respondents and if there are any other co-owners of the subject property, undertakings be filed recording that they would not use the subject premises for any commercial use save and except after obtaining a license from the Commissioner MCD and till then would use the subject premises for residential use and no other. Upon the undertakings being filed, within a week thereof the premises would be de-sealed. It is made clear that if respondents violate the undertaking, the Commissioner MCD would be fully justified in re-sealing the premises in question.

6. No costs.

CM No.14976/2011 (Stay)

Since the appeal stands disposed of, the instant application seeking interim relief against the impugned order stands disposed of as infructuous.

**(PRADEEP NANDRAJOG)
JUDGE**

**(S.P. GARG)
JUDGE**

November 3, 2011/mm