

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No.7407/2011 & C.M.No.16794/2011**

Decided on 10.10.2011
RAJINDER RAI Petitioner
Through: Mr. Ravinder Sethi, Sr. Advocate with
Mr. Sumit Bansal and Mr. Gaurav Sarin, Advs.

versus

MCD AND ORS Respondents
Through: Mr. Ajay Arora, Advocate with
Mr. Kapil Dutta, Advocate

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

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for directions to the respondent/MCD not to take any coercive action in respect of premises bearing No.147-B, Gujjar Dairy, Gautam Nagar, New Delhi.

2. Learned Senior Advocate appearing for the petitioner states that the aforesaid premises were purchased by the petitioner by virtue of a sale deed dated 18.08.2008 (Annexure P-1). Prior to the purchase of the property by the petitioner, it was being used for commercial purposes and

was sealed in the year 2007 in terms of the directions issued by the Monitoring Committee appointed by the Supreme Court of India. Subsequently, the predecessor-in-interest of the petitioner submitted an undertaking that the subject premises would be used only for residential purposes, on the basis of which, the premises was de-sealed on 11.09.2007 and was subsequently purchased by the petitioner in August 2008.

3. It is the contention of the petitioner that the said premises is being used for residential purposes and that he has got the premises registered under the National Capital Territory of Delhi (Incredible India) Bed & Breakfast Establishment Registration and Regulation Act, 2007 (hereinafter referred to as '**the Act**'). He further states that out of the built-up structure comprising of a basement, ground floor, first floor, second floor and third floor, whereon 12 rooms have been constructed, only five rooms have been registered under the Act. The said five rooms include two rooms on the ground floor and three rooms on the first floor. In support of the submission that five rooms are registered under the aforesaid scheme, the attention of this Court is drawn to the Certificate of Registration at page 45, which shows that the same is valid w.e.f. 12.10.2009 to 11.10.2012. It is further stated that the remaining rooms are being used only for private residential purposes.

4. It is further submitted that recently, the petitioner was served with a notice dated 18.09.2011 issued by the respondent/MCD under Section

345-A of the Delhi Municipal Corporation Act, 1957 informing him that it had been found that the entire property comprising of ground floor, first floor, second floor and third floor was being put to use for commercial purposes, in violation of the sanctioned use of the premises. By virtue of the aforesaid notice, the petitioner was called upon to stop the misuse and bring the premises within the permitted use, failing which he was warned that the premises would be sealed.

5. Learned Senior Advocate appearing for the petitioner states that immediately upon receipt of the aforesaid notice, the petitioner submitted to the respondent/MCD, a reply dated 19.09.2011 (Annexure P-9), followed by a reminder dated 30.09.2011 (Annexure P-10), but no response whatsoever has been received from the respondent/MCD till date. Instead, the petitioner has been threatened with the sealing action.

6. Counsel for the respondent/MCD, who appears on advance copy, denies the aforesaid submissions made on behalf of the petitioner and asserts that the subject premises was got inspected by the officers of the respondent/MCD on 15.09.2011 and in the course of the said inspection, it was found that the entire premises including the basement was being illegally used to run a guest house for commercial purposes, which is contrary even to the Registration Certificate issued by the Government of National Capital Territory of Delhi under the Act. He further states that recently, the Monitoring Committee appointed by the Supreme Court of India inspected the subject premises on 14.9.2011 along with four other

premises situated in the same area, i.e., Gujjar Dairy, Gautam Nagar and directed the officers of the respondent/MCD to seal the subject premises, which was de-sealed after the undertaking given by the predecessor-in-interest of the petitioner. He hands over the file of the Department containing the noting dated 03.10.2010 signed by a member of the Monitoring Committee appointed by the Supreme Court, wherein directions have been issued to the respondent/MCD to re-seal/seal the subject premises as also four other premises in the same area on the ground that they have been found to exist on government land, which has already been acquired.

7. At this stage, learned Senior Advocate states that the petitioner is completely unaware of the orders passed by the Monitoring Committee and the entire inspection and the ensuing proceedings have taken place behind his back and that no opportunity has been afforded to the petitioner to place his stand before the Monitoring Committee before such an extreme order of sealing has been directed against the subject premises. It is further asserted on behalf of the petitioner that the built-up structure exists on land which is unacquired private land, which fact was confirmed by the DDA in a writ petition preferred earlier by the petitioner, registered as **W.P.(C) 7126/2009** entitled Rajinder Rai vs. MCD & Ors. wherein an order dated 22.11.2010 was passed recording DDA's confirmation of the said fact in para 9 thereof. Reliance is also placed on the order dated 28.02.2011 passed by the Deputy

Commissioner, South Zone, wherein the proceedings of W.P.(C) 7126/2009 have been taken note of. It is stated that the petitioner must be afforded an opportunity to place all these facts before the Committee for its consideration and having been confronted with the aforesaid turn of events only in the course of the present proceedings, counsel for the petitioner at least be permitted to peruse the noting file of the respondent/MCD to enable the petitioner to make a representation to the Monitoring Committee before implementation of the sealing orders passed by the said Committee against the subject premises.

8. What emerges from the above is that the reply dated 19.9.2011 filed by the petitioner to the notice to show cause issued by the respondent/MCD under Section 345-A of the Delhi Municipal Corporation Act, 1957, seeking a personal hearing, has admittedly yet to be decided upon by the respondent/MCD, one way or the other. Furthermore, the inspection conducted by the Monitoring Committee on 14.9.2011 was prior to the issuance of the show cause notice on 18.09.2011 and as per the noting dated 03.10.2011 made by a member of the Monitoring Committee, the direction for re-sealing/sealing of the premises was issued to the respondent/MCD as the premises of the petitioner was found to be on land acquired by the Government, and not for any misuse found on the premises, which is the ground taken in the show cause notice dated 18.9.2011. It is to be noted that even as regards the issue of ownership of the subject land, the petitioner has admittedly not been heard either by

the respondent/MCD or by the Monitoring Committee and the order of sealing passed by the Committee on the ground that the land underneath the built-up structure is government land, has come to the knowledge of the petitioner only in the course of the present proceedings.

9. It is settled law that before any coercive steps are initiated by a civic authority or any other government authority against a party, such party is entitled to make a representation and to be heard by the said authority before a decision is taken in that regard.

10. In the given facts and circumstances, it cannot be denied that any action on the part of the respondent/MCD to seal the subject premises without the petitioner being afforded a personal hearing, would amount to violation of principles of natural justice, particularly when the settled law is that rules of natural justice must be read into Section 345-A of the DMC Act, as observed in the case of Praveen Ahuja vs. MCD & Ors. in **W.P.(C) 2816/2011** decided on 05.07.2011 and Ahuja Property Developers (P) Ltd. Vs. MCD reported as **42(1990)DLT 474 (DB)**, a decision which was followed in the case of Shrimati Shamim Bano vs. MCD reported as **2007 VIII AD (Delhi) 304**.

11. In the present case, it is clear that neither has the petitioner been heard on the issue of misuse of premises, subject matter of the notice dated 18.9.2011 issued by the respondent/MCD under Section 345-A of the DMC Act, nor has he been afforded an opportunity to submit any representation, much less heard on the issue of ownership of the land on

which the built-up structure stands, subject matter of the noting dated 3.10.2011, made by a member of the Monitoring Committee.

12. In view of the aforesaid facts and circumstances, the present petition is disposed of on the following lines: -

- (i) The respondent/MCD shall give an opportunity for inspection of the Departmental file containing the noting dated 03.10.2011, by a member of the Monitoring Committee, to the counsel for the petitioner today itself.
- (ii) The petitioner shall be entitled to make a further representation within one week, to the respondent/MCD and place on record all the relevant facts with regard to the ownership of the subject premises, alongwith the relevant documents/orders, if any, relied upon by him, in the light of the observations made in the noting dated 03.10.2011.
- (iii) The aforesaid representation shall be immediately processed by the respondent/MCD and forwarded to the Monitoring Committee for its consideration.
- (iv) As counsel for the respondent/MCD states that now the Monitoring Committee is seized of the matter with regard to the re-sealing/sealing of the subject premises, it shall also place before the said Committee the notice to show cause dated 18.09.2011 issued by the respondent/MCD under Section 345-A of the Act, along with the representations dated 19.9.2011 and 30.9.2011 received earlier

from the petitioner with regard to the alleged misuse of the premises, alongwith the subsequent representation to be made by the petitioner within one week as regards the ownership of the land on which the building is situated, for appropriate orders to be passed by the Monitoring Committee, after granting a hearing to the petitioner.

- (v) The decision taken on the representation made by the petitioner shall be duly intimated to him in writing.

13. It is directed that till the representation already submitted by the petitioner (Annexure P-9) and the one to be submitted by the petitioner within one week, as mentioned hereinabove, are considered after a hearing is granted to the petitioner and an order is conveyed in writing to the petitioner thereafter, the respondent/MCD shall not take any coercive steps by way of sealing action against the subject premises. Needless to state that the observations made hereinabove shall not influence decision to be taken by the Monitoring Committee which shall proceed to deal with the representation of the petitioner as per law.

The petition is disposed of alongwith the pending application.

DASTI to parties under the signatures of the Court Master.

HIMA KOHLI,J

OCTOBER 10, 2011
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