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

+ W.P.(C) 7854/2011

VIJAY REHAL

..... Petitioner

Through: Mr. Pramod Ahuja & Dr. N. Pradeep
Sharma, Advocates.

versus

DDA

..... Respondent

Through: Ms. Sangeeta Chandra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
04.11.2011

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CM No.17770/2011 (u/S 151 CPC)

Exemption allowed subject to all just exceptions.

W.P.(C) 7854/2011 & CM No.17777/2011 (u/S 151 CPC)

1. Faced with the eviction order dated 16.6.2008, passed by the Estate Officer of the respondent, petitioner who is in possession of a portion of premises being 12-A/20 WEA, Karol Bagh, Delhi (hereinafter referred to as the 'premises in question'), had availed of the statutory remedy of appeal but without success and thereafter, had approached this Court by way of W.P.(C) No.4236/2011, wherein challenge to the order of 26.5.2011 of learned District Judge passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was confined to the purported non-consideration of Circular/

Notification dated 7.9.2006 and vide order of 6.6.2011, while disposing of the aforesaid writ petition, the matter was

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2

remanded back to the learned District Judge to hear the parties upon the purported non-consideration of the Circular/ Notification dated 7.9.2006, which permitted commercial use of an area less than 20 sq.m. in the residential area for being used by the residents for their business.

2. Upon remand, the learned District Judge, vide impugned order of 3.10.2011 has dismissed petitioner's appeal while holding that the entire property is being misused and so the aforesaid Circular/ Notification dated 7.9.2006 is of no help to the case of petitioner herein.

3. Petitioner claims that he is in possession of an area measuring 10'x10' in the premises in question, as a sub-lessee since long and from this premises an electronic repair shop in the name and style of 'Universal Radio', is being run and is covered as permissible residential activity in the aforesaid Circular/ Notification dated 7.9.2006, which has been upheld by the Apex Court in its decision in '**M.C.Mehta Vs. Union of India & Ors.**' 2006 (9) SCALE 634.

4. It is not in dispute that M/S Udipi Restaurant as well as M/S Balajee Enterprises are also doing their business from the premises in question and at the hearing it was urged by petitioner's counsel that in the writ filed by M/s Udipi Restaurant, being W.P.(C) NO.4680/2011, eviction order has been stayed and the said writ petition is pending consideration and the case of the petitioner is at par with the case of M/s Udipi Restaurant and similar orders are prayed for.

5. It is revealed from the aforesaid order of 8.7.2011 passed in the writ petition being W.P.(C) NO.4680/2011 of M/s

Udipi Restaurant that the order impugned therein had failed to consider the important Circular/ Notification which permits sub-lessee to carry on business in the residential premises.

6. The aforesaid order of 8.7.2011 is apparently of no assistance to the petitioner's case, as in this second round of litigation, the Circular/ Notification permitting certain businesses to be carried on from the residential premises has been dealt with, in the impugned order.

7. The impugned order has found substance in the respondent's contention that it is not the case that the petitioner alone is using the premises in question for running his business, rather the whole area of the premises in question is being misused for commercial purpose by different occupants therein. It also stands noted in the impugned order that this aspect has been already considered by learned District Judge in its order of 26.5.2011. Though there is no specific reference to the said Circular/ Notification in the order of 26.5.2011, but the substance of this Circular/ Notification has been adequately dealt with in Para-21 thereof.

8. Be that as it may, the crux of the dispute raised by the petitioner is not as to whether the Circular/ Notification of 7.9.2006 applied to the free hold properties alone or the lease hold properties also. In fact, the purpose of Circular/ Notification of 7.9.2006 is to permit the residents to have a shop of less than 20 sq.m. to run business from their residential premises. Finding the premises in question is being grossly misused by putting it to commercial use, its lease in the favour of lessee has been cancelled, which requires the sub-lessees like the petitioner to be evicted. Strangely, the lessee

4

of the premises in question has not come forward to get the lease of the premises in question restored and it is the sub-lessees only who are fighting in vain to retain their possession upon the premises in question.

9. The larger question raised by petitioner's counsel in these proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is that the Master Plan of 2021 has declared area of Karol Bagh, New Delhi, where the premises in question is located, to be commercial one and so, it was contended before the learned District Judge that there is no question of misuse.

10. Though the impugned order has dealt with this question but it was not required to be gone into, for the reason that the remand order was restricted to examine the scope and effect of Circular/ Notification of 7.9.2006 alone.

11. The issue of commercial misuse of residential premises was dealt with by the Apex Court in **M.C.Mehta** (*Supra*), while noting that that entire misuser cannot be stopped at one point of time because of its extensive nature and so, a beginning had to be made in a phased manner and it was in this context, small shops opened in residential areas for catering day to day needs were left out for the time being. This is how Circular/ Notification of 7.9.2006 came to be issued which was given effect to, by the respondent as is evident from Annexure-A to this petition, which reiterates that '*only one small shop was permitted on each plot*'. If many small shops are permitted in one premise, then the very purpose of the herculean task undertaken by the Apex Court in **M.C.Mehta** (*Supra*), of curbing rampant commercial misuse of residential

5

premises would be defeated.

12. Whether the Notification of 7.9.2006 would apply to the subsisting lease hold properties also, does not really fall for consideration for the reason that lease of the premises in question already stands terminated. Unless and until the lease of the premises in question is restored, it would be absurd to take into consideration as to whether Circular/ Notification of 7.9.2006 would be applicable to the subject lease hold property or not.

13. In the last, it was vainly asserted by petitioner's counsel that no opportunity to lead evidence was granted by the Estate Officer. This contention is noted only to be rejected for the reason that the petitioner had confined the challenge in the earlier petition to the applicability of the Circular/ Notification of 7.9.2006 alone to dislodge the eviction order passed against him. Perhaps for this reason, it is not averred in the writ petition that grievance of denial of opportunity to lead evidence was made before the learned District Judge and the same has not been dealt with in the impugned order.

14. Finding no apparent error in the impugned order upholding the eviction of the petitioner from the premises in question, this petition is dismissed in *limine* with no order as to cost and pending application is dismissed as infructuous.


(SUNIL GAUR)
JUDGE

NOVEMBER 04, 2011

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