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

+ **W.P.(C) 5914/2011**

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Judgment dated on 9th May, 2013

DELHI DARBAR GASTRONOMY & ORS Petitioners

Through : **Mr.A.K. Singla, SR. Adv. with Ms.Manju Gupta, Advs.**

versus

MCD & ORS

..... Respondents

Through : **Ms.Mini Pushkarna and Mr.Shantanu Tyagi, Advs. for respondent no.1 MCD. Ms.Swati Verma, Adv. for Mr.Rajiv Bansal, Adv. for respondent DDA.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present writ petition, filed under Article 226 of the Constitution of India, the petitioners seek quashing of the orders dated 8.3.2010 and 4.5.2010 passed by the respondent no.4. The petitioner also seeks a direction to respondents no.1 to 4 to consider petitioner's application for Health Trade License in respect of petitioner's restaurant, Delhi Darbar Gastronomy, in the light of Notification dated 12.4.2007.
2. Pleadings in this matter are complete. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
3. The necessary facts to be noticed for disposal of the present writ petition are that the petitioners are running a restaurant in the name and style of **Delhi Darbar Gastronomy** at the property bearing no.84, Adhchini at **Arrobindo Marg, New Delhi**, which according to the petitioner is situated

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in a notified "commercial street/area" under the Master Plan for Delhi 2021 vide notification dated 12.4.2007. The petitioner applied for a trade license under the provisions of the Delhi Municipal Corporation Act, 1957. The application of the petitioner was rejected vide orders dated 8.3.2010 and 4.5.2010 on the ground that "the property does not covered under in MPD-2021 (sic.)".

4. It is the case of the petitioners that the impugned orders dated 8.3.2010 and 4.5.2010 are perverse, vague, arbitrary and illegal as respondent no.4 has no authority or power to overreach the decision of the Government of NCT of Delhi, the Central Government and the Delhi Development Authority, who have decided, declared and notified the street/area as "commercial". According to the petitioners, the petitioners can run their restaurant at the said property as provided under Chapter 15 vide para 15.12.1(b), 15.12.2, 15.12.3(iv) and Chapter 5.0 vide para 5.2 and Table 5.1 of MPD-2021 as notified on 7.2.2007. It is averred in the petition that a notification was published by Urban Development Department, GNCTD, on 15.9.2006 notifying the mixed use streets, commercial stretches/streets and pedestrian shopping streets zone wise. It is submitted that the stretch of Road i.e. NCERT boundary to M.C. Primary School, Adchini, on Aurobindo Marg at Adhchini Village (having the Right of Way- ROW - 45-60 Mtrs.), which is at Serial No.26 of Annexure II (Identification of Commercial Street in South Zone) to the notification dated 15.9.2006 was notified as a commercial street. It is further the case of the petitioner that on 7.9.2007 MPD 2021 was notified by notification dated 7.9.2007 by the Central Government, *inter alia*, providing for identifying and notifying the commercial streets and areas in Para 15.12. Under Clause IV of Para 15.12.3 and on notification of a commercial streets/ area, such streets/areas shall be considered as local shopping

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centers, as mentioned in Chapter 5.0. It is also pointed out that the plot owners/allottees on these commercial streets/areas would have to pay special conversion charges for the area used for commercial purposes and according to para 5.2 and Table No.5.1 under Chapter 5.0 activities of restaurant is permissible under the heading 'Local Shopping Centre' in Column No.IV of the said Table.

5. Learned counsel for the petitioner has drawn the attention of the Court to various photographs, which have been filed by the petitioner and the photographs, which have been filed by the respondent along with the Status report filed by the MCD, to show that the area where the shop of the petitioners is situated is surrounded by the commercial properties, carrying on commercial activities.
6. The sole ground for rejecting the request of the petitioner for grant of a trade license and as mentioned in the letters dated 8.3.2010 and 4.5.2010 is that the property is not covered as per the Master Plan 2021.
7. The respondent has filed an additional affidavit dated 6.5.2013, paragraphs 3, 4, 5 and 7 of which read as under:

"3. That in terms of the comments received from the Town Planning Department, SDMC, it is submitted that the stretch of Aurbindo Marg at Adchini Village from NCERT boundary to MC Primary School, Adhchini was earlier notified at commercial street vide notification dated 15/9/2006 by the GNCTD. The said notification has already been attached by the petitioner as Annexure P-3 at Page 47.

4. That subsequently vide notification dated 12/04/2007, the aforesaid stretch was amended as NCERT boundary/A-4, Sarvodya Enclave to property No.84, Adchini Village. The said notification dated 12/04/2007 has been attached in the petition as Annexure P-6 at Page 68.

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5. That in this regard it is submitted that there is discrepancy with regard to the status of the property as shown in the MPD-2021 and the Zonal Development Plan issued by the DDA. The property in question is shown as falling on commercial street as per the notification dated 12/4/2007. On the other hand, the Zonal Development Plan of the DDA shows the property in question as falling in Green Belt. Copy of the Zonal Development Plan of the DDA showing the area as Green Belt is annexed hereto as Annexure A-1.

7. That it may not be out of place to mention here that the Corporation by its Resolution No.55 dated 7/6/2007 has again proposed that the commercial street on the stretch of Aurobindo Marg be shown from NCERT boundary/A-4, Sarvodya Enclave to property no.81, Adchini Village. The said proposal has been forwarded to the GNCTD for notification, however the same is yet to be notified."

8. According to the additional affidavit, which has been filed, the subsequent notification dated 12.4.2007 has included the property of the petitioner as a property which is situated on a commercial street. It is also stated in para 5 of this affidavit that as per MPD-2021 the property in question falls on a commercial street whereas the Zonal Development Plan of the DDA shows the property in question as falling in Green Belt.
9. Having regard to the fact that a license was declined to the petitioners by the impugned orders dated 8.3.2010 and 4.5.2010 purely on the ground that the property in question is not covered under MPD-2021 and whereas the affidavit filed by the respondent itself shows that the property in question is on a commercial street, the impugned orders dated 8.3.2010 and 4.5.2010 are quashed. It may also be noticed that even though the Zonal Development Plan of the DDA has shown the property in question in Green Belt, however, factually the area does not comprise of in any

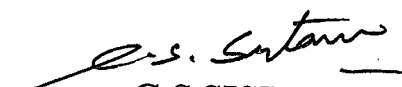
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green belt, which is evident from the photographs, which have been filed on record. Needless to say that in case at any point of time the area in question is converted into the green belt this order will not come in the way of the respondent to either cancel the license granted to the petitioner or take such action which may be available to the respondent in accordance with law. The MCD will consider the request of the petitioner for grant of trade license within a period of four weeks from today subject to the petitioner complying with all other legal formalities.

10. Writ petition and application stand disposed of in above terms.

MAY 09, 2013

msr


G.S.SISTANI, J