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

+ **W.P.(C) 1207/2015**

INDIA CARES

..... Petitioner

Through: Mr. Suhail Dutt, Sr. Adv. with
Mr. Sankalp Goswami, Ms. Karishma
Singhania and Mr. Azhar Alam,
Advts.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Mukesh Gupta, Adv. for SDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **05.02.2015**

CM No.2119/2015 (Exemption)

1. Allowed subject to just exceptions.

W.P.(C) 1207/2015 CM No.2118/2015 (Stay)

2. Issue notice.

3. Mr. Gupta accepts notice on behalf of the respondent.

4. In view of the directions that I propose to pass, Mr. Gupta says that he does not wish to file a reply.

5. Broadly, the petitioner's case is that, it is running a non-profit Non-Governmental Organisation (in short NGO), which provides health services in the field of AIDS/HIV.

5.1 The petitioner thus avers, that accordingly, it provides free HIV treatment and/or other support services, such as, conducting tests for persons suffering with HIV/AIDS and enabling supply of contraceptives.

5.2 The petitioner to effectuate its purpose, has taken on lease, the premises situate at S-323, Panchsheel Park, New Delhi (in short the demised premises). The demised premises are subject matter of a registered lease agreement dated 20.11.2014. The lessor is, one Shri Bhupender Singh Sadana.

6. The petitioner is, presently, aggrieved by the notice dated 27.1.2015 issued by the Respondent-Corporation, whereby on the ground of alleged misuse, it has been directed to stop use of the demised premises for the purpose indicated hereinabove . The impugned notice exhorts the petitioner to bring the demised premises in line with the use permitted under the Master Plan for Delhi – 2021 (in short the MPD-2021).

6.1 Furthermore, by virtue of the said notice, the petitioner, was accorded 48 hours to file an affidavit in the prescribed format in respect of the above, failing which, it is indicated, that the, demised premises would be sealed, without further notice.

7. It is in this background that the petitioner has approached this court by way of the instant petition under Article 226 of the Constitution.

8. The petitioner asserts that it is constituted as a Trust, which runs, as an NGO. It is also the assertion of the petitioner that it has obtained a registration for that purpose under Section 12A read with Section 12AA(1)(b) of the Income Tax Act, 1961. The petitioner states that it has been in existence since 12.1.2006.

8.1 To be noted, the registration certificate issued by the Income Tax Department is dated 8.10.2007.

9. Based on the aforesaid facts, the petitioner, seeks to place reliance on Regulation 15.7.1(b)(ii) and (g) of MPD-2021. It is the petitioner's

submission that since the petitioner, falls in either or both sub-clauses of Regulation 15.7.1, referred to above, it is entitled to, carry on activities in a residential area.

9.1 Apart from the above, it is stated, that the impugned communication which purports to be a show cause notice, is non-est in law as no opportunity was given prior to its issuance. It is contended, in this context, that a bare reading of the impugned communication would disclose that the Respondent-Corporation had already made up its mind that the petitioner is carrying on an activity, which tantamounts to misuse, and hence, ought not to be continued.

10. Mr. Gupta, on the other hand, has drawn my attention to the very same lease deed, on which, reliance is placed by the petitioner to contend that the demised premises have been taken on lease to run an office, and not to, run a laboratory.

10.1 It is, therefore, Mr. Gupta's contention that the petitioner is misusing the demised property and hence cannot be permitted to carry on the aforementioned activity. Furthermore, it is Mr. Gupta's say that the petitioner has been afforded an opportunity to file an affidavit within 48 hours, an opportunity it chose not to avail of.

11. However, on being queried, Mr. Gupta could not but agree that the petitioner not having been heard, time would have to be accorded to it for making a suitable representation.

12. Having heard the learned counsels for the parties, I am of the view, that the petitioner has an arguable case which, the Respondent-Corporation, is required to consider.

13. The impugned notice, does not give the petitioner any leeway; rather

proceeds to close down forthwith the activity, presently being carried on by the petitioner, without affording it an opportunity of being heard in the matter.

14. In my opinion, no emergent situation had arisen which required, the respondent, to direct the closure of demised premises, forthwith. Mr.Gupta's contention that 48 hours were given to file an affidavit has no merit, as the affidavit sought is not by way of reply. The affidavit that the petitioner was called upon to file was to demonstrate compliance. The Respondent-Corporation could have easily worked in the reverse. In other words, in the first instance called for reply, and then, proceeded to pass a suitable order, after hearing the petitioner.

15. Therefore, having regard to the aforesaid circumstances, for the moment, the following directions are issued:-

- (i) The impugned notice will be kept in abeyance and, not acted upon by the Respondent-Corporation till such time, as indicated hereafter.
- (ii) Respondent-Corporation, will permit the petitioner to make a representation, within one week from today.
- (iii) Upon a representation being made, Respondent-Corporation will issue a formal written communication to the petitioner, calling upon it, to participate, in their deliberations qua the notice at hand.
- (iv) The notice will indicate the date, time and the venue at which the petitioner's authorised representative is required to appear, for the aforesaid purpose.
- (v) After according due opportunity of hearing to the authorised representative of the petitioner, the Respondent-Corporation will pass a speaking order, which shall be duly communicated to the petitioner, within

three days from the date of the order.

(vi) In case the order passed by the Respondent-Corporation is against the interest of the petitioner, no precipitative action will be taken for a period of two weeks so as to enable it, to take recourse to an appropriate remedy; albeit in accordance with law.

16. Before I conclude, I may also mention that the petitioner has asserted that the impugned notice is addressed to an organisation which is not the lessee of the demised premises.

16.1. The Respondent-Corporation will consider this objection and, if deemed necessary, will issue a fresh notice.

16.2. Needless to say that if, the impugned notice, is persisted with, the petitioner, will be at liberty to raise this objection, as well.

17. The petition is disposed of with the aforementioned directions.

RAJIV SHAKDHER, J

FEBRUARY 05, 2015

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