* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 8th May, 2015

\+ **LPA No.166/2015 & CM No.5395/2015**

RESIDENTS WELFARE ASSOCIATION (REGD) ..... Appellant

Through: Mr. Anshum Jain & Ms. Isha Agarwal, Adv.

Versus

GOVT OF NCT OF DELHI & ORS ..... Respondents

Through: Mrs. Zubeda Begum & Ms. Sana Ansari, Advs. for R-1.
Mr. Arjun Pant, Adv. for R-2.
Mr. Abhimanyu Garg, Adv. for R-4.
Mr. Manish Garg, Adv. for R-3&5.
Ms. M.T. Pandey & Mr. Ashutosh Kaushik, Advs. for DDA.

AND

\+ **W.P.(C) No.4909/2013**

VIRENDER KUMAR GUPTA ..... Petitioner

Through: Mr. Yogesh Chhabra, Adv.

Versus

DEPARTMENT OF EXCISE (GNCT OF DELHI) & ORS. ..... Respondents

Through: Mrs. Zubeda Begum & Ms. Sana Ansari, Advs. for R-1.
Mr. Amiet Andlay, Adv. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The common issue in both these proceedings, is the permissibility of a liquor vend in a "Convenient Shopping Centre" (CSC) within the meaning of the Master Plan of Delhi 2021 (MPD-2021). A Single Judge of this Court has held that there is no bar, in the MPD-2021 or even under the earlier Master Plans of Delhi or under the Delhi Excise Rules, 2010, to the existence of a liquor vend in a CSC.

2. WP(C) No. 4909/2013, though not labeled as a Public Interest Litigation but ordered to be treated as a Public Interest Litigation upon it being found that the petitioner therein does not claim any personal interest in the matter except to the extent that he is also a resident of the locality in which the liquor vend had been opened, has been filed impugning the grant of L-7 licence for retail sale of liquor from Shops No.43 and 45, CSC (Sunder Plaza Market), Pocket GH-10, Zone G-17, Paschim Vihar, Delhi.

3. WP(C) No. 8053/2012 from which LPA No. 166/2015 arises, was filed by the Residents Welfare Association of the colony impugning the grant of licence for vending liquor from a shop in CSC, C Block Market,

East of Kailash, New Delhi and which led to the judgment dated 18th December, 2014 of dismissal of that writ petition.

4. It is the case of the petitioner in W.P.(C) No.4909/2013, (i) that the liquor vend is very close to the other shops such as mother diary, general stores etc where the small kids and women of the neighbouring area visit regularly for buying the household goods; (ii) that as per the policy of the Delhi Development Authority (DDA) and direction issued to the Excise Department, it is impermissible to open liquor vend for selling hard liquor in CSC; (iii) that the liquor vend had been opened by amalgamating two shops and which itself is illegal and of which one of the shops had been earmarked for a flour mill; (iv) that DDA also in response to the query under the Right to Information Act, 2005 (RTI Act) has stated that an opening a liquor vend of L-7 (under the Excise Rules) category is not permissible; and, (v) that the operation/running of a liquor vend is a security risk to the residents as a lot of anti social elements gather around the liquor shop and cause nuisance to the residents of the area and it is not a good sight to watch so many people drinking in open in full public view.

5. It is the case of the appellant in LPA No.166/2015, (i) that the liquor vend was illegally allowed to operate for last several years and which has

resulted in complaints from the residents, with regard to the safety of children and women because of bad atmosphere in and around the liquor vend; (ii) that DDA in reply to RTI query has stated that wine shops are not permissible in CSC built by DDA; (iii) that the basic purpose of developing the CSC for each block of the colony is to meet the basic daily needs of the residents; (iv) that due to the existence of the liquor vend and opening of snacks stalls in the market alongside with liquor shop, the entire atmosphere of the CSC market has been degraded, wreaking havoc in the everyday lives of the families of the residents; (v) that retail sale of liquor is only permissible from commercial markets and there is no provision of sale of liquor from CSCs built by DDA; (vi) there is no provision in the MPD-2021 permitting liquor shops to run from CSCs; and, (vii) that this Court vide order dated 15th December, 2011 in WP(C) No. 7983/2010 titled ***Sarita Vihar Pocket A Resident Welfare Association Vs. Government of NCT of Delhi*** had ordered closure of the liquor vend in the CSC of the said Pocket of the colony of Sarita Vihar.

6. Both proceedings were filed after the complaints and representations of the petitioner/appellant met with no success and seeking a direction for closure of the respective liquor vends.

7. DDA, in its counter affidavit in WP(C) No. 4909/2013 has pleaded, (i) that as per MPD-2021, there is no mention of the permissibility of liquor shops in CSCs and a liquor shop cannot exist in the CSCs; (ii) that DDA had made its such stand known in response to the writ petition with respect to the CSC of Sarita Vihar.

8. Same was the stand of the DDA in the counter affidavit in the writ petition from which LPA No. 166/2015 arises.

9. The respondent No.1 Department of Excise, GNCTD in its counter affidavit in WP(C) No. 4909/2013 has stated, (i) that the licence for the liquor vend at Sunder Plaza Market, Pachim Vihar was issued in accordance with the rules and regulations and after spot inspection and satisfying that the same is not within the prohibited distance from any major educational institution or religious place and hospital with 50 beds and above; (ii) that the Excise Department, GNCTD, before issuing the licence for the said liquor vend, had also satisfied itself that the land use of the shops with respect to which the liquor vend was being issued prescribed in the documents of conveyance thereof was "commercial"; (iii) that as per Rule 51(9) of the Delhi Excise Rules,2010 liquor retail licence for consumption "off" the premises is permitted at sites or premises located at a pucca

building, the land use of which is commercially approved; (iv) that as per the MPD – 2021 CSCs are included in the list of places where commercial activities are allowed; (v) accordingly the licence was granted; and, (vi) after receiving the complaint, clarification had been sought from the DDA and the response was awaited.

10. GNCTD and the Commissioner of Excise, NCT of Delhi in their joint counter affidavit to the writ petition from which LPA 166/2015 arises stated,

(i) that the subject liquor licence at CSC, East of Kailash was issued way back in 1986-87 under the then prevailing Punjab Excise Act, 1914 and on the basis of the prevailing DLLR 1976 which only prohibited liquor licence within the prohibited distance of major education institution, religious places and hospital with 50 beds and above;

(ii) that the Punjab Excise Act and the Rules framed thereunder were repealed w.e.f. 4th October, 2010 and the Delhi Excise Act, 2009 and Delhi Excise Rules 2010 came into force;

(iii) that as per Rule 51(9), retail licenses for consumption "off" the premises are permitted at sites or premises located in a *pucca* building, the land use of which is commercial approved and are to conform to the orders and instructions issued by the Excise Commissioner from time to time;

(iv) that presently fresh license are not being issued in CSC; however where liquor licenses have already been issued as per past practice and then permissible use, the licenses have not been disturbed;

(v) further, the Government has requested the Ministry of Urban Development to amend the MPD-2021 for allowing the opening of liquor shops in area other than the approved commercial area, so as to bring the MPD in consonance with the current practice and usage under the Excise Act;

(vi) that the review of MPD is underway;

(vii) that the request to the Ministry of Urban Development also stresses the need for a provisional opening of a retail liquor shop in notified commercial streets / areas which for other business purposes has been taken at par with Local Shopping Centre (LSC), as also in mixed land used areas;

(viii) that the license in question was granted in 1986 when CSC related restrictions were not in existence; and,

(ix) that the restriction of not allowing liquor shop in CSC should not affect the licenses which were already granted prior to the time, the said restrictions became applicable.

11. The licensee of the liquor vend subject matter of W.P.(C) No.4909/2013 has also filed an affidavit pleading, (a) that the petition is motivated as the petitioner is a close relative of one Sh. Sanjeev Mittal who himself had earlier applied for a license for vending liquor from the subject premises but which request was rejected and the said Sh. Sanjeev Mittal has thereafter opened his liquor vend at a distance of about 250 meters from the subject liquor vend and the purport of the petition is to have the subject liquor vend closed, to increase the sales of the liquor vend of the said Sh. Sanjeev Mittal; (b) denying that the existence of the liquor vend causes any nuisance to anyone; (c) that liquor license can be granted at a place which is commercial by nature; (d) that there is no statutory prohibition / restriction to the liquor vend in the subject premises; (e) that the amalgamation of the shop was in consonance with the policy and was not violative of the building

bye-laws; and, (f) that nobody has filed any complaint of any nuisance, for the last nearly three years since when the subject liquor vend has been operating.

12. The licensee of liquor vend subject matter of LPA No.166/2015 in its counter affidavit has stated:

(I) that the concerned CSC at East of Kailash had been de-notified and DDA has no authority over the administration thereof;

(II) that the running of the subject liquor shop is in accordance with Section 11(1) of the Delhi Excise Act and does not violate any condition laid down in Rule 51 of the Delhi Excise Rules;

(III) that it is not even clear whether the market in which the subject liquor vend is situated, is a CSC or LSC and has been described differently at different places;

(IV) that in MPD-2021, in Table 5.5, a CSC has been defined as a group of shops not exceeding 50 in number in residential area serving a population of 5000 persons; on the contrary an LSC has been defined as a group of shops not exceeding 75 in number in a residential area serving a population of 15000 persons; and,

(V) that “C” Block Market in East of Kailash where the subject liquor vend is situated consists of shops more than 50 in number in a residential area serving a population of more than 5000 persons and is therefore not a CSC.

13. DDA filed another affidavit dated 23rd January, 2014 in the writ petition from which LPA No.166/2015 arises clarifying, (A) that as per MPDs-1962, 2001 and 2021, there is no mention of permitting liquor shops in CSC; (B) that in the year 2010 permissibility of liquor shops in LSC and CSC was discussed in the meeting of the 5th Technical Committee held on 16th June, 2010 vide Item No.36/10 and a proposal was put forward for permitting licensed liquor shops at notified commercial street and in LSC; (C) however from the planning point of view, such shops were not proposed to be allowed in CSC, as they primarily cater to the day to day need of the residential area; the Technical Committee agreed only to the proposal for permitting liquor shops in LSC; (D) thus liquor shops are not permitted in CSC; (E) that the area of East of Kailash stands de-notified to Municipal Corporation of Delhi (MCD) and it is the MCD which is to take action, if any.

14. The learned Single Judge, in the judgment impugned in LPA No.166/2015, has *inter alia* held:-

(a) that no prohibition in the Master Plan against the running/operating of a liquor vend in a CSC could be shown;

(b) the plea in the counter affidavit of the GNCTD that fresh licenses for liquor vends in CSCs were not being issued does not lead to the conclusion that liquor vends in the CSC are illegal or impermissible;

(c) that the reliance placed on the minutes of the meeting of the Technical Committee of the DDA was also misplaced; the Technical Committee in the meeting held on 16th June, 2010 had decided to permit liquor vends in local shopping centres; counter arguments were raised whether the same implied rejection of the proposal to allow liquor vends in CSCs; however the same was irrelevant in as much as the decision of the Technical Committee did not translate in a review or amendment of the MPD-2021; in fact the said decision of the Technical Committee was not even approved by the

Management Action Group or the Advisory Group of the DDA; the minutes of the meeting of the Advisory Group held on 23rd August, 2013 under the Chairmanship of the Lt. Governor, Delhi indicated that the proposal to prohibit sale of liquor in a CSC was not accepted;

(d) although MPD-2021 does not expressly indicate that liquor vends can be operated in a CSC, there is no specific mention that such activity is prohibited;

(e) otherwise it is not disputed that retail activity is permissible in CSCs and there is no specific reason why retail of liquor should be excluded;

(f) that even the Excise Act and the Rules framed thereunder do not prohibit a liquor vend in a CSC; and,

(g) the decision dated 15th December, 2011 of a Single Judge of this Court in W.P.(C) No.7983/2010 (supra) pertaining to the colony of Sarita Vihar was not an adjudication and was a consent order and thus has no precedential value.

Accordingly the writ petition was dismissed.

15. Before us, the counsels for the parties raised the same contentions as have been recorded hereinabove.

16. We had during the hearing asked the distinction between a LSC, in which according to all appearing parties liquor vend is permitted, and a CSC, in which according to the writ petitioners and the DDA a liquor vend is not permitted.

17. However no clear answer was received by us.

18. Reference to LSC and CSC is to be found in Chapter-5 titled 'Trade and Commerce' of the MPD-2021. Clause 5.2 thereunder provides that a five-tier system of commercial areas, comprising of (i) Metropolitan City Centre; (ii) District Centre; (iii) Community Centre; (iv) Local Shopping Centre; and, (v) Convenience Shopping Centre is envisaged to accommodate required shopping, commercial, office and other service activities like cinema, hotel and restaurant and various community services and facilities in an integrated manner.

19. In Table 5.1 thereunder, of the Five-Tier System of Commercial Areas, in the column titled 'Population', against the Metropolitan City Centre no population is mentioned, against District Centre population of

about 5 lakhs is mentioned, against Community Centre population of about 1 lakhs is mentioned, against Local Shopping Centre population of about 10,000 is mentioned and against Convenience Shopping Centre population of about 5,000 is mentioned. Similarly against the column 'Area', the area of a Local Shopping Centre is described as 0.3 HA. and the area of Convenience Shopping Centre is described as 0.1 HA. While the activities permitted in LSC are mentioned as "retail shopping, stockists and dealers of medicines and drugs, commercial offices, clinical laboratory, clinic & poly clinic, repair/services, bank, ATM, guest home, informal trade, coaching centres/training institutes, restaurant" the activities permitted in CSC are described as "retail shopping, local level service activities, repair, office up to 125 sqm., bank, ATM, informal trade, restaurant".

20. Table 5.4 thereunder, prescribing 'Development Controls-Commercial Centres' does not make any distinction between CSCs and LSCs with the same maximum coverage, FAR, height and parking standards being prescribed for both.

21. Table 5.5 thereunder, defining the activities permitted in use premises, defines retail shop as a premise for sale of commodities directly to the consumer with necessary storage and the activities permitted therein as of,

retail shop, repair shop, personnel service shop. In the said table, Convenience Shopping Centre is defined as a group of shops in residential area serving a population of about 5000 persons and a Local Shopping Centre as a group of shops in a residential area serving a population of about 10000 persons with the activities permitted in both, as per Table 5.1 supra.

22. We have not found reference elsewhere in the Master Plan to the LSCs and CSCs.

23. The aforesaid would show that the only difference between a LSC and a CSC vis-à-vis the activities permitted therein is, that in CSC there cannot be a commercial office of a size more than 125 sqm. and a clinical laboratory and clinic and poly clinic, guest home, coaching centre/training institutes which are permitted in a LSC. Else, the activities of retail shopping, repair, bank, ATM, restaurant are common to both.

24. Further, the definition of Retail Shop as a premise for sale of commodities directly to the consumer with necessary storage, is wide enough to take within its ambit sale of liquor directly to the consumer.

25. The only other difference between a LSC and CSC as per the MPD-2021 is of the land size over which it is constructed and the population to

which it is meant to cater. Neither the petitioner / appellant nor the DDA who are contending that a liquor vend is not permitted in a CSC and that the subject premises in both proceedings are situated in a CSC, have in their pleadings given any particulars in this regard. We therefore do not know the size of the land on which the shopping centres at Paschim Vihar or at East of Kailash Market are situated i.e. whether over 0.3 HA. in which case it would be classified as a LSC or over land *ad measuring* 0.1HA. in which case it would be a CSC. Similarly the population of the surrounding areas i.e. whether of about 10000, in which case it would be a LSC or of 5000 in which case it would be a CSC, which each of the said shopping centre was planned or is catering to, has also not been pleaded. DDA has also failed to show any layout plan of the respective colonies earmarking the respective shopping centres as an LSC or a CSC.

26. It is also not as if under the Master Plan, the LSC is supposed to be at a larger distance away from the residences and a CSC is supposed to be within walking distance to be easily accessible to the residents, particularly the ladies and children.

27. We have thus wondered as to on what basis DDA has taken a stand that a liquor vend though is permitted in a LSC is not permitted in a CSC. If

both, LSC and CSC can be situated in the midst of a cluster of houses, whether housing 5000 or 1000 persons and naming thereof as LSC or CSC is dependent only on the area of land on which it is constructed, the problem / nuisance highlighting which both proceedings have been filed will persist, whether it is a LSC or a CSC. MPD 2021 appears to be half baked in this respect.

28. We have also perused the minutes of the 5th Technical Committee meeting of the Master Plan Section of the DDA held on 16th June, 2010 and also the minutes of the 11th meeting of the Advisory Group of the DDA held on 23rd August, 2013 under the Chairmanship of Lt. Governor, Delhi and concur with the reasoning given by the learned Single Judge with respect thereto.

29. We, from the nomenclature understand, a CSC as a small shopping centre in the midst of the houses within the colony or a block thereof with shops therein selling items of daily need of households of perishable items and which shops ordinarily an outsider from the colony would not visit and a LSC as situated outside the residential colony, to cater to the needs of the households of consumables which may be required say once a month and also having offices, service centres like travel agents, car rentals, clinics,

laboratories, banks, restaurants etc. and which will be frequented by residents of several surrounding localities and may be by others as well. In such case it could have been said that as per our culture, there ought not to be a liquor vend in a CSC. However we do not find the MPD-2021, though having the nomenclature of CSC and LSC to have made any such distinction. The draftsman of the Master Plan, after drawing the five tier system of commercial areas comprising *inter alia* of LSC and CSC, has provided retail shopping without any restriction on the size of the retail shop or on the commodities to be retailed therefrom, in both LSC and CSC and the only restrictions are on commercial offices of size more than 125 sq. mtrs., Clinical Laboratory, Polyclinic, Guesthouse, Coaching Centre, which activities though can exists in a LSC but not in a CSC. When there is no restriction on the commodities / items which can be retailed from a shop in a CSC, we fail to see on what basis DDA can say that retail of liquor is not permitted from therein. Not only so, restaurants have been permitted in both, LSC and CSC. We have wondered that if a public place as a restaurant is also permitted in the CSC, with again no restriction on alcohol being served therein, then how can it be said that a liquor vend is not permitted.

30. In these circumstances, though the concerns expressed by the petitioner/appellant cannot be said to be totally unfounded but cannot be addressed on the basis of MPD-2021, pegging on which the Court has been approached. The same is the position under the Excise Act and the Rules framed thereunder. Though care has been taken therein to prohibit a liquor shop in close proximity to an educational institution, religious place etc. but there is no such limitation placed with respect to proximity to residences.

31. Before parting, we may also observe that the vesting of the management of the shopping centres by the DDA in the municipality is irrelevant as they continue to be governed by the MPD-2021.

32. We thus, in the said state of affairs are unable to find any illegality in the grant of license for liquor vends at the subject sites. All that we can do is to direct that in accordance with the minutes of the 11th meeting of the Advisory Group of the DDA held on 23rd August, 2013, a suitable framework be formulated so as to curb the nuisance associated with consumption of liquor around CSCs in residential neighbourhood. The same be done preferably within a period of four months of today.

The writ petition and the appeal are disposed of in terms of above.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 08, 2015
M/bs/pp