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

+ W.P.(C) 4694/2014

SHAHZEB RAZA Petitioner
Through: Mr M. Sufian Siddiqui, Mr Rakesh
Bhugra & Mr M. Tabish Zia, Advs.

versus

THE STATE NCT OF DELHI Respondent
Through: Mr Subodh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
04.03.2015

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1. This writ petition is directed against order dated 16.07.2014, passed by the Sub-Divisional Magistrate, Kotwali, New Delhi. By virtue of the impugned order the petitioner's request for de-sealing the premises, which is a shop bearing no. 6540, situate at Main Road, Bara Hindu Rao, New Delhi (hereinafter referred as the premises in issue), has been declined on the ground that the petitioner has failed to obtain a No-Objection Certificate (NOC) from the landlord. This objection is articulated in the impugned order, which reads as follows:

“..... No objection Certificate from the Landlord on the Stamp Paper of Rs. 10/- duly attested by Notary Public stating that he has no objection if the above said premises may be de-sealed in the favour of Sh. Shahzeb Raza....”

2. Notice in this petition was issued, as far back, as on 28.07.2014. On that date, the respondent was represented by Mr Subodh Kumar. The notice was made returnable on 29.09.2014. On the returnable date, a request for accommodation was made on behalf of the respondent, whereupon the

learned counsel for the respondent was directed to file a counter affidavit within a period of four weeks. The matter was re-notified, for today.

2.1 Even today, there is no counter affidavit on record. Consequently, the assertions made in the writ petition remained un-traversed.

2.2 Mr Subodh Kumar, learned counsel for the respondent, says that the facts emanating from the impugned order are not in dispute. It is his submission that the respondent's refusal to de-seal the premises in issue is pivoted on two grounds. First, that the petitioner who is the son of one, Shri Zahid Raza, since deceased, is not the tenant of the premises in issue. Second, that it is not known as to whether or not there is any dispute pending between the petitioner and the landlord.

3. Before I proceed further, I may record, briefly, the facts which have led to filing of the present petition. The premises in issue, was sealed on 20.04.2010, by the Delhi Pollution Control Committee, apparently, on the complaint of a neighbour. The allegation, was that, the petitioner was carrying on a "non-conforming" activity. Concededly, at the relevant time, the petitioner's father was alive. The petitioner's father, Sh. Zahid Raza, was the tenant of the premises in issue.

3.1 It is averred that the petitioner's father expired on 18.10.2010. In support of this contention, a copy of the death certificate has been appended to the writ petition; which is marked as Annexure P-4 at page 26 of the paper book.

3.2 Evidently, the petitioner made representations for de-sealing the premises in issue. The first representation was made on 10.10.2011, followed by a representation dated 17.01.2013.

3.3 In so far as the first representation was concerned, a reply was sent by

the respondent, wherein the only objection which the respondent raised, was that, the petitioner had not supplied a legal heir/ surviving member certificate.

3.4 As indicated above, this communication of the respondent was followed by a communication from the petitioner dated 17.01.2013. In the said communication, the petitioner indicated that, he along with other legal heirs, undertake not to carry out any “non-conforming activity”, if the premises in issue is de-sealed.

3.5 The petitioner finding no movement in the matter approached this court by way of a writ petition, which was numbered as : WP(C) No. 5955/2013. The said writ petition was disposed of by this court vide order dated 16.01.2014. By the said order, the respondent was directed to deal with the petitioner’s representations.

3.6 Pursuant thereto, the respondent sent a communication dated 23.04.2014, wherein several documents were sought, including a NOC from the landlord, as indicated above. The petitioner vide a return communication dated 10.07.2014, supplied all documents except a NOC from the landlord. The petitioner in the said communication took the stand that he continued to occupy the premises and that, therefore, imposing requirement of obtaining an NOC, from the land lord, was illegal. In support of his stand, the petitioner, submitted rent receipts, as well as utility bills, which were in the name of his deceased father.

3.7 Thereafter, the petitioner attempted to revive the WP(C) 5955/2014, by moving an interlocutory application being: CM No. 4371/2014. The court declined to pass any order in the interlocutory application. While doing so, it gave liberty to the petitioner to approach the appropriate forum.

4. The captioned writ petition has been filed in the aforesaid circumstances, as vide the impugned order dated 16.07.2014, the petitioner's last representation dated 10.07.2014, has, effectively, been rejected.

5. Therefore, the only question which arises for consideration is : whether the petitioner could be called upon to furnish a NOC from the landlord. A consequent question is, whether the respondent could enter into the arena of any dispute, if at all, which may obtain between the petitioner/ occupier and the landlord.

6. According to me, the contention of the respondent has no merit. The respondent has placed nothing on record to show that the petitioner is not the occupier of the premises in issue. The rent receipts and the utility bills, which were filed, are not disputed by the respondent. The petitioner's only prayer, is that, the premises in issue be de-sealed. The petitioner, is also, willing to undertake that the premises in issue, will not be used for a non-conforming activity.

7. Having regard to the same, in my view, there is no impediment in the respondent de-sealing the premises in issue. The respondent has no role to play in the dispute, if any, which may or may not obtain between the landlord and the occupier of the premises. The landlord will have his remedy in law, if he was so aggrieved by the continued occupation of the premises in issue by the petitioner. Therefore, in these circumstances, the respondent is directed to do the needful in the matter, i.e., de-seal the premises in issue if, there is no other objection, within four weeks from today.

7.1 The writ petition is disposed of in the aforesaid terms. As indicated

above, the petitioner will file an undertaking with the respondent, within one week from today, that he shall not use the premises in issue for any non-conforming activity.

8. Dasti.

RAJIV SHAKDHER, J

MARCH 04, 2015

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