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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 377/2016 & CMs 33844/2016 & 33845/2016
PRADEEP KUMAR

..... Appellant

Through Appellant in person
versus

NORTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondent

Through Ms Prabhsamay Kaur, Adv. for
NDMC/R1 with Mr S.K. Singhal, AE,
Karol Bagh Zone
Mr Siddhartha Shankar Ray, Adv. for
R2
Mr Amit Dubey and Mr Vijay Kumar,
Advs. for R3 and 4

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **18.10.2016**

1. We have heard Pradeep Kumar who appears in person in this Intra Court Appeal which impugns the order dated 18th March, 2016 disposing of the Writ Petition (Civil) 234/2014 and application filed therein.
2. The appellant is the owner of the first floor of the residential property bearing number 5/2, TC, New Moti Nagar. Narender Kapoor and Omi Kapoor, the respondent nos. 3 and 4 herein are the owners of separate portions of the ground floor of the same property which has been assigned and given property no.5/1 TC, New Moti Nagar, Delhi.
3. The appellant is aggrieved by the fact that Narender Kapoor and Omi Kapoor, respondent Nos. 3 and 4 are carrying on commercial activities on the ground floor of the said property. The appellant avers that respondent

Nos.3 and 4 cannot be permitted to carry out commercial activities of denting, painting and repairing vehicles, from the aforementioned premises. Master Plan of Delhi 2021 prohibits such activities and is being violated.

4. The impugned order reads as under:

“Status reports have been filed from time to time. Lastly, affidavit of Assistant Commissioner of the respondent no. 1 has been filed on 4th July, 2015. It has been stated therein that besides removing illegal encroachment, shop owners operating without municipal licence were challaned. It has been further stated that as per MPD-2021, the road in question has been notified as “mixed use street”. Respondent no. 3 has already been granted licence on payment of conversion charges for the mixed land use, in accordance with law. Municipal licence has been granted to the respondent no.3 on 30th October, 2014 for carrying on the business of sale and storage of spare auto parts. During the course of hearing, it has been pointed out that earlier respondent nos. 3 and 4 were doing the business together, but now they have separated. Respondent no. 4 has applied for a licence, which is under process. Learned counsel for the respondent no. 1 submits that shop of respondent no. 4 is lying closed. Counsel for the respondent no. 4 submits that shop will be opened by respondent no. 4 only after grant of licence to the respondent no. 4. In view of the above, no further orders are required to be passed in this writ petition and the same is disposed of. Miscellaneous applications are disposed of as infructuous.”

5. When the appeal had come up for hearing before us on 16th August, 2016, following order was passed:

“We have heard the petitioner, who appears in person and counsel for the respondents.

The respondent no.3 - Narender Kapoor has the license for carrying on business of sale /storage of tyres, trade and sale of auto parts, tyres and tubes. As per the NDMC, the respondent no.3 – Narender Kapoor is complying with the terms and conditions of trade license.

It is submitted by counsel for the respondent no.1 – NDMC that the respondent no.4 had applied for license for the same trade but his application for grant of license was rejected on 13.08.2016 for the reason that he is carrying on repair etc.

Learned counsel for the respondent no.1 – NDMC will file a short

affidavit affirming and stating the said facts. They shall also enclose the orders passed by them and copy of the license issued to the respondent no.3.

The petitioner who appears in person submits that there is violation of Master Plan. He relies upon clause 15.6.3 of the Master Plan. Counsel for NDMC, however, submits that the said clause is not applicable as the said clause applies to residential plots. In the present case, it is submitted, clause 15.6.2 would be applicable as the respondents have paid the conversion charges.

We will examine the said aspect on the next date of hearing.

It is submitted by counsel for the respondent no.4 that they would file a fresh application for grant of license.

We have not expressed any opinion on the question whether or not license should be granted to the fourth respondent.

The respondent no.3 would file an undertaking in this Court that they would abide by the terms and conditions of the license and would not undertake any repair and denting or painting work etc. The undertaking will state and affirm that if they notice another person carrying on the said work, they shall immediately inform the NDMC on telephone and also in writing. A copy of the said undertaking would be furnished to counsel for the respondent – NDMC and the petitioner. The undertaking will be filed within a period of 10 days.

Relist on 18.10.2016.

Dasti.”

6. Pursuant to the said order, respondent no.3 – Narender Kapoor has filed affidavit-cum-undertaking stating therein that he has been issued Trade License No.0160225 by the North Delhi Municipal Corporation and that he would not carry on any work or activity in the premises in violation of the terms of the license. Further in case he finds anybody carrying on denting, painting or repair work before his shop, he shall inform the North Delhi Municipal Corporation in writing as well as on the phone.

7. The order dated 16.08.2016 records that the North Delhi Municipal Corporation has rejected the application for a trade license filed by respondent no.4 – Omi Kapoor. In case the said respondent carries on or

undertakes any activity contrary to law, for which he does not have requisite and required license, it will be the duty and responsibility of the North Delhi Municipal Corporation to take appropriate action as per law. Any violation would be viewed seriously.

8. The last issue which requires consideration is regarding the submission of the appellant that as per the Master Plan of Delhi – 2021, respondent no.3 could not have been granted and issued the trade license to sell spare parts, tyres and tubes etc. Reliance is placed on paragraph 15.6.3, which reads as under:-

“The Small Shops of maximum 20 sqm. Area each, restricted to maximum permissible number of DUs in the plot or four numbers, whichever is less, trading in or dealing with the following specified 24 items /activities are allowed on ground floor only in residential plot, excluding A & B category of colonies. However, small shops of maximum 20 sqm area each, restricted to maximum permissible number of dwelling units in the plot or four in number, whichever is less, trading in or dealing with specified items/activities existing as on 7.2.2007 may continue on ground floor only in a residential plot in A & B category of colonies but in future only one small shop of 20 sqm area shall be allowed on ground floor in a residential plot in A & B category of colonies.”:

- i) Vegetables / fruits / flowers*
- ii) Bakery items/Confectionary items;*
- iii) Kirana/General store;*
- iv) Dairy product;*
- v) Stationery/Books/Gifts/Book binding;*
- vi) Photostat/Fax/STD/PCO;*
- vii) Cyber café/Call phone booths;*
- viii) LPG booking office/Showroom without LPG cylinders;*
- ix) Atta Chakki;*
- x) Meat/Poultry and Fish shop;*
- xi) Pan shop;*
- xii) Barber shop/Hair dressing saloon/Beauty parlour;*
- xiii) Laundry/Dry cleaning/ironing;*
- xiv) Sweet shop/Tea stall without sitting arrangement;*

xv) Chemist shop/Clinic/Dispensary/Pathology lab;
 xvi) Optical shop;
 xvii) Tailoring shop;
 xviii) Electrical/Electronic repair shop; and
 xix) Photo studio;
 xx) Cable TV/DTH Operation;
 xxi) Hosiery/Readymade Garments/Cloth shop;
 xxii) ATM
 xxiii) Cycle Repair Shop
 xxiv) Ration shop & Kerosene Shop under PDS.
 Any other item / activity that may be notified by the Central Government.”

9. Learned counsel appearing for respondent no.1 – North Delhi Municipal Corporation has rightly pointed out that the said paragraph would not be applicable to the street where the premises are situated, namely, Main Road, ANB Block, New Moti Nagar between 1/STC Block to C-1 Moti Nagar, Delhi. She has drawn our attention to the list of streets or roads on which mixed land use is permitted in the West Zone. The said street is shown at serial number 22.

10. The appellant, who appears in person, accepts the said factual position.

11. In the present case, therefore, paragraph 15.6.2 would be applicable, which reads as under:

“15.6.2. The following activities shall not be allowed under Mixed Use:

a) Retail shops of building materials [timber, timber products excluding furniture), marble, iron and steel,(gravel, cement and sand], firewood, coal and any fire hazardous and other bulky materials.

b) Repair shops / workshops of automobiles, tyre resoling and re-treading, and battery charging.

c) Storage, go-down and warehousing.

d) Junk shop (except paper and glass waste)

e) Liquor shop

f) Printing, dyeing and varnishing

g) Any other activity that may be notified from time to time by Government.

Notes: will not include:

1. Business of finished marble products where cutting and polishing activity of marble is not undertaken.

2. Retail shops of gravel, sand and cement shall be permissible in residential plots of at least 50sq.m., in notified mixed use streets in E, F and G category colonies, provided that the material is kept entirely within the plot premises.

3. Repair shops and workshops in case of automobiles shall not be prohibited on plots abutting mixed-use streets or commercial streets of right of way (ROW) of 30m or more.”

A reading of the aforesaid paragraph would show that it enumerates in negative the trades and activities which are not allowed on the mixed use land. Other or unlisted trades or activities are impermissible. It also specifies other impermissible activities. Repair shops and workshops are permitted on mixed use streets with right of way of 30 meters or more and therefore Narender Kapoor cannot operate a repair shop or workshop of automobiles. There is no negative stipulation for automobile spare parts or tyre and tube shops. The trade license granted to Narender Kapoor –respondent no.3 does not fall in the negative category mentioned in paragraph 15.6.2. The contention of the appellant is, therefore, not correct.

12. Respondent no.1- North Delhi Municipal Corporation in its short affidavit filed on 07.10.2016 has clarified the street in question is notified for mixed use and, therefore, sale of spare parts, tyres and tubes etc. on the ground floor is permissible. Accordingly Narender Kapoor – respondent no.3 has been granted a trade license dated 03.11.2014 for running and carrying on storage and sale of motor vehicle parts, tyres, tubes, etc. This trade license was renewed on 07.04.2015 and 04.04.2016.

13. The appellant, who appears in person, submits that the width of the road in question is 18 meters. He relies upon the dimensions of the said road

as mentioned in the Master Plan – 2021, at serial no.22 of the identified streets for mixed use in the West Zone. He submits that as per an application made by the third respondent, the width of the street has been represented as 100 ft. We do not see any merits in the contention. A perusal of the map, relied upon by the appellant, would show that it refers to the length of the street and not width. The width of the street, as mentioned in the Master Plan – 2021 is 18 ft. The street has been declared as mixed use and therefore the license was rightly issued. The Master Plan itself and inclusion of the street in the roads identified for mixed use was not under challenge either in the writ petition or in this appeal. We have also noted that the Municipal Corporation of Delhi had accepted the street in question is authorised for mixed land use in the West Zone.

14. The appellant states that respondent no.4 is still operating and has not closed his shop or repair activities. Learned counsel for respondent no.4 on instructions denies this assertion. In case respondent no.4 is running and operating the repair shop and carrying on activities contrary to law, the appellant may write a letter or inform respondent no.1 Corporation who shall take action as per law.

15. Respondent no.3 has filed an application being CM No. 33844/2016 in this Court alleging therein that the appellant has carried out unauthorized construction in his premises and is also threatening the said respondent. He demands payment of Rs.10,000/- per month from respondent no.3. Learned counsel for the respondent nos. 3 and 4 have also made the allegation that the appellant has suppressed documents including the counter affidavit filed by the said respondents before the learned Single Judge. These papers have been filed by the respondents along with documents to show that the

appellant had carried out unauthorized construction. The appellant, who appears in person states that he is not completely familiar with the procedure and had filed relevant papers. He states that the question of unauthorized construction is not the subject matter of the present appeal, and that the construction has been in existence for a long time. The respondent nos. 3 and 4 contest the said submission of the appellant.

16. We would not like to comment on the said allegations or assertions. We would only like to deal with the limited controversy which is the subject matter of the present appeal. This order would not be construed as an order expressing any opinion on the said allegations made by the third or the fourth respondents or the assertions made by the appellant, who appears in person, on other aspects or disputes inter se the said parties. We are not inclined to make any comment or observations on the said disputes.

17. In case there is any violation of the undertaking and affidavit filed by the third respondent, it will be open to the appellant to make a telephone call or write complaints in writing to the respondent no.1 – North Delhi Municipal Corporation, which, we hope and trust, will take appropriate action as per law. As recorded earlier, any violation and breach of the undertaking would be viewed seriously. In paragraph 7, we have issued directions in respect of the shop of the fourth respondent.

The appeal is disposed of.

Pending CMs are also disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

OCTOBER 18, 2016/*rd*