

\$~33

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

%

Judgment delivered on: 29.05.2017

+ W.P.(C) 1859/2017 & CM No.8211/2017 & 19527/2017

DARSHAN COLD STORAGE P. LTD. & ANR. Petitioners

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Sibal, Mr. Rahul Sharma and Mr. Jitender Ratta, Advocates.

For the Respondents : Mr. Peeyoosh Kalra, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

29.05.2017

SANJEEV SACHDEVA, J. (ORAL)

PRESENCE OF RESP

1. The petitioner seeks a direction to respondents to desal the premises of the petitioner situated at C-34 Lawrence Road, Industrial Area and to permit the petitioner to carry out business from the said premises.

2. The petitioner operates the cold storage and processing plant for meat and poultry under the name and style of M/s. Darshan Cold

Storage Pvt. Ltd. from the premises at C-34 Lawrence Road, Industrial Area, New Delhi.

3. It is contended that an FIR was lodged on 10.02.2017 with the Police Station Keshav Puram by one Gaurav Gupta contending that he had received information that 15 camels from Nagaur, Rajasthan were slaughtered on the hills of Tawadu Mewat and three cows were slaughtered from Tawadu and meat of the camels and cows was going to be stored in M/s. Jagdish Cold Storage.

4. The premises of the petitioner have been sealed on 15.02.2017 by a sealing order, issued by the Sub Divisional Magistrate. Learned counsel for the petitioner contends that there is no provision of law under which the premises could be sealed. He, further, submits that there is no report to show that any cows or camel meat was being stored in the premises of the petitioner.

5. Learned counsel for the petitioner submits that the petitioner was *bona fide* carrying on the business with regard to chicken and meat products and does not deal with prohibited meat product. He submits that the sealing order does not refer to any provision of law under which the premises have been sealed.

6. Reliance is placed on the decision of a coordinate Bench of this Court dated 04.01.2011 in WP(C) 8147/2010 titled **Munna vs. The Commissioner (MCD) and Anr.** and on another decision, dated 06.04.2011 in WP(C) 2300/2011 titled **AFSAR & Ors. vs. The**

Commissioner (MCD) & Anr. (hereinafter referred to as AFSAR – I) and the decision of the Division Bench dated 03.11.2011 in LPA 652/2011 titled **Municipal Corporation of Delhi vs. AFSAR & Ors** (hereinafter referred to as AFSAR – II).

7. Learned counsel for the respondents submits that information was received that a truck carrying prohibited meat articles was going to deliver the same to the premises of Jagdish Cold Storage at C-34/1, Lawrence Road, Industrial Area.

8. He submits that the truck was apprehended and, on examination, it was found to contain meat, which was prohibited. Learned counsel for the respondent submits that in view of the evidence then available, the owner/driver and cleaner of the truck have been apprehended and are being prosecuted. Learned counsel for the respondents, under instructions from the Investigating Officer, submits that the investigation is on and, if further evidence is found incriminating others, appropriate action would be taken.

9. Learned counsel for the respondents submits that the meat samples were also collected from the premises of the petitioner which is adjacent to the premises of Jagdish Cold Storage. Two Cold rooms in the premises of the petitioner have been sealed in view of the evidence collected and, in case, the said premises are desealed, there is an apprehension that the petitioner would continue to deal with banned cow meat.

10. Learned counsel for the respondents further submits that the sample analysis by one of the two forensic laboratories with regard to some of the meat articles have tested positive for banned cow meat though, the other report is negative. He submits that a third sample had been sent to the Forensic Laboratory at Hyderabad and report received from the said laboratory is negative for cow meat.

11. Learned counsel for the respondents submits that in view of inconsistency of test reports, sealing of the premises would be required to be continued and the same would be subject to the jurisdiction of the Court where prosecution in terms of the FIR is pending.

12. Learned counsel for the respondents, however submits that the two test reports of the samples drawn from the premises of the petitioner have shown negative result.

13. Learned counsel for the petitioner submits that the latest report from the Hyderabad Laboratory is a DNA test report which clearly exonerated the petitioner by stating that the samples collected from the petitioner's factory are buffalo and chicken meat.

14. Learned counsel for the petitioner submits that as in the case of ***Munna*** (*supra*), without prejudice to the facts that the petitioner has not carried out the business of selling prohibited meat, the petitioner is willing to give an undertaking that the petitioner shall not carry on business of selling prohibited cow meat.

15. A Coordinate Bench of this Court in *Munna* (Supra) has, inter alia, held as under:-

“6. Howsoever grave the conduct of the petitioner may be, the law does not permit deprivation of the petitioner of his property for the reason thereof. The counsel for the respondent MCD has been unable to show any law where under the property even if used / allowed to be used for the prohibited sale of cow meat can be sealed permanently. Even under the Delhi Agricultural Cattle Preservation Act, 1994, such punishment of sealing / deprivation of the property is not provided for. Needless to state, the petitioner without sanction of law cannot be deprived of his property. This Court is therefore of the considered opinion that the sealing of the shop of the petitioner at Zafrabad, Delhi cannot be sustained.

7. However, before directing the respondent MCD to de-seal the said shop, it is deemed expedient to give an opportunity to the respondent MCD to if so desirous, apply to the Court where the petitioner is being prosecuted for an order for continuing sealing of the shop, if found necessary for the said prosecution.

8. In view of the above, the writ petition is allowed with the following directions:

- (i) The respondent MCD is accorded liberty to obtain the order for continuing with the sealing of the shop at Zafrabad, Delhi from the Court where the petitioner is being prosecuted.*
- (ii) However, if there is no such order on or before 27th January, 2011, the respondent MCD shall de-seal the said shop on 28th January, 2011.*

(iii) *The undertaking aforesaid of the petitioner is accepted and the petitioner is ordered to be bound with the same. Thus upon de- sealing of the shop, the petitioner shall not carry on or allow to be carried on business connected to meat / meat products from the said shop and if the shop is found to be so used, the petitioner, besides liability under other laws, shall also be liable for breach of undertaking given to this Court.”*

16. As has been held in **Munna** (*Supra*), it is clear that the law does not permit deprivation of the petitioner of his property. As in the case of **Munna** (*Supra*), the respondents, in this case, also have been unable to show a provision of law under which the premises have been sealed or could be continued to be sealed permanently. Even the Delhi Agricultural Cattle Preservation Act, 1994 does not provide for sealing/deprivation of the property.

17. Similar view has been taken by this Court by the Coordinate Bench in **AFSAR - I** (*supra*), which judgment has been AFFIRMED by the Division Bench in **AFSAR - II** (*supra*).

18. In view of the above, I am of the view that sealing of the premises of the petitioner cannot be sustained. However, before directing the de-sealing of the said premises, it is deemed expedient to give an opportunity to the respondent, if so desirous, to apply to the Court where the proceedings consequent to FIR No.165/2017, Police Station Keshav Puram dated 10.03.2017 are pending for obtaining an

order for continuing sealing of the cold storage, if found necessary, for the purposes of the said prosecution.

19. In the circumstances, the writ petition is allowed with the following directions:-

- (i) The respondents are granted liberty to obtain the order for continuing with the sealing of the cold storage at C-34/1, Lawrence Road from the Court where the prosecution consequent to FIR No.165/2017 dated 10.03.2017, P.S. Keshav Puram is pending.
- (ii) However, if no such order is obtained prior to 30.06.2017, the respondents shall de-seal the said premises on 01.07.2017.
- (iii) The petitioner shall file an undertaking that, upon desealing of the said premises, the petitioner shall not carry on or allow to be carried on any storage or sale of prohibited cow meat from the said premises and, if the premises is found to be so used, the petitioner, besides being liable under other laws, shall also be liable for breach of undertaking given to this Court.
- (iv) Pending the desealing of the premises, the petitioner would be permitted to service the cooling coils of the cold storage so as to maintain temperature. For the said

purpose, as and when request is made by the petitioner, the respondent shall desal the premises of the cold storage to permit the petitioner to service the cooling coils and, once the service is done, the premises shall be resealed by the respondents. It is clarified that the petitioner would not be permitted to take out any meat article or any good stored in the cold storage and the servicing would be carried out in the presence and under supervision of the officers of the respondent. The petitioner would be permitted to bring in service equipments and once the service is carried out, the service equipments shall be removed and the factory resealed.

20. The writ petition is, accordingly, disposed of.

21. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MAY 29, 2017
‘sn’