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

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Judgment delivered on: 21.04.2017

+ W.P.(C) 2480/2017 & CM No.10712/2017 (direction)

SUSHIL ICE FACTORY & COLD STORAGE PVT. LTD.

AND ANR.

..... Petitioners

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Kirti Uppal, Sr. Advocate with Mr. Manish Sharma, Mr. Ninad Dogra and Mr. Harsh Kumar, Advocates for respondent Nos.1 to 4..

For the Respondents : Mr. Arjun Mitra with Ms. Jaskaran Kaur, Advocates.
Mr. Kamesh Kumar, UDC, Office of SDM (North West)
Mr. Brijesh Kumar Misra, Inspector.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

21.04.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks a direction to respondents to desal the premises of the petitioner situated at C-34/2, Lawrence Road, Industrial Area and to permit the petitioner to carry out business from the said premises.

2. The petitioner operates a from the said premises at C-34/2 Lawrence Road, Industrial Area, New Delhi. The cold storage of the petitioner was sealed on 14.02.2017 by a sealing order, issued by the Sub Divisional Magistrate..

3. Learned senior counsel for the petitioner submits that the cold storage premises of the petitioner has been sealed, without assigning any reason and without giving any show cause notice. It is contended that in respect to an adjoining cold storage there was a complaint that it was storing and selling banned meat product. However, with regard to the petitioner there is no complaint or cause for sealing of the premises.

4. Learned senior 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 banned meat articles were being stored in the premises of the petitioner. Learned counsel for the petitioner submits that the petitioner was *bona fide*ly carrying on the business with regard to meat and the meat products and does not deal with any meat product, which is prohibited. He submits that the sealing order does not refer to any provision of law under which the premises have been sealed.

5. 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).

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

7. Learned counsel for the respondents 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.

8. Learned counsel for the respondents concedes that in so far as the petitioner is concerned, no complaint was received and there is also no evidence available till date to show that the premises of the petitioner was used for the purposes of storage or sale of prohibited meat articles.

9. Learned counsel for the respondents submits that two test reports of the samples drawn from the premises of the petitioner has shown negative result. He submits that a third sample has been sent to the Forensic Laboratory at Hyderabad and report is awaited.

10. 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.”*

11. 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.

12. 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*).

13. The case of the petitioner is on a much better footing. It is an

admitted position that there is no compliant against the petitioner or to show that the petitioner is storing or selling banned cow meat.

14. In view of the above, I am of the view that sealing of the premises of the petitioner cannot be sustained. Accordingly, the writ petition is allowed the respondents are directed to forthwith de-seal the premises of the petitioner at C-34/2, Lawrence Road, New Delhi.

15. It is however clarified that this order would not come in the way of a competent court taking action, *inter alia*, of sealing of the premises of the petitioner, if any evidence is found against the petitioner and prosecution launched.

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

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

SANJEEV SACHDEVA, J

APRIL 21, 2017
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