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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on : 10.3.2017*
Judgment delivered on : 15.03.2017

\+ W.P.(C) 13402/2009

RAMESH PERSHAD SETH ..... Petitioner

Through Mr. J. C. Mahendroo, Advocate

versus

MCD AND ORS ..... Respondents

Through Mr. Mukesh Gupta, Mr. Praney Jain and Mr. Chetan Gautam, Advocates

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

<u>INDERMEET KAUR, J.</u>

1 The petitioner, the proprietor of a hotel "City Hotel" (premises bearing No.3990, Ajmeri Gate, Delhi) is running this business since the year 1982. Various permissions/licences were required by the petitioner which had been obtained from the local bodies. They were being issued to him from time to time. His last licence was renewed for the period 2005-06 vide a communication dated 31.3.2005. Separate applications for renewal of his heath trade licence had also been submitted which had accordingly been issued. On 23.3.2009 the

petitioner again applied for renewal of his health trade licence. However, the same was not renewed. A demand dated 26.3.2009 was raised upon the petitioner seeking certain documents. This included the structural stability certificate of the building. These documents were furnished to the Department. Contention of the petitioner is that the area where the hotel of the petitioner is located is a "special area" falling in the walled city. A certificate had been issued by the Corporation on 4.7.1980 declaring the petitioner's property to be in local commercial area. Clause 16.2 of MPD-2021 exempts the petitioner from payment of any conversation charges; particularly those premises which lie in a commercial area. Clause 16.2(5) of MPD-2021 ensures that a status quo of such properties has to be maintained. The demand by the Department dated 13.01.2009 seeking payment of conversation/parking charges for renewal of his heath trade licence is thus illegal. It is liable to be set aside.

2 Counter affidavit of the respondent corporation is on record. His stand is evidenced by their counter affidavit as also by their additional affidavit which had been directed to be filed by them. Their stand is that the property of the petitioner (bearing No.3990, Ajmeri

Gate, Delhi) falls in a residential area; the street on which it is located has been incorporated in the list of notified roads/streets in MPD-2021 as “mixed use land”. Accordingly the petitioner is liable to pay conversion/parking charges; his property falling in “mixed use land”. It is denied that the property of the petitioner falls in a local commercial area and not in a residential area. It is clarified that the benefit of the letter dated 15.12.1980 (relied upon by the petitioner to advance his case that it is a local commercial area) is not available to him as it is in fact not a document of the Department. Learned counsel for the respondent points out that certain RTI queries have been raised by the petitioner but he was not able to substantiate his plea that this property was ever designated as a local commercial area. He is not entitled to the benefit of clause 16.2 of MPD-2021. Redevelopment of the walled city even otherwise cannot be linked to the demand of conversion charges which would be a distinct issue; the liability of the petitioner to pay these conversation charges is writ large.

3 A rejoinder has been filed by the petitioner. Contention in the rejoinder is reiterated to the effect that the property of the petitioner is

a local commercial area. Provisions of Chapter-15 of MPD-2021 would not be applicable. Chapter 16 alone would be applicable. Being a special area falling in the walled city of Chandani Chowk (City Hotel, admittedly being located at Ajmeri Gate) a status quo qua all these properties has to be maintained. The petitioner is protected.

4 On behalf of the petitioner arguments have been addressed by the learned counsel for the petitioner Mr.J.C.Mahendroo. Apart from the pleadings it has additionally been pointed out that the plea set up by the respondent that the street of the petitioner falls in a residential area is even otherwise negatived for the reason that the shop of the petitioner has two entrances and the entrance which is being used by him opens out on the commercial side. It cannot be termed as "residential". Additional argument raised by the petitioner is that the petitioner is even otherwise protected against any punitive action in terms of the Government of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (hereinafter referred to as the Special Act); submission being that a punitive action as defined under Section 2(g) of the Special Act prohibits the Department from levying

any conversation charges upon the petitioner. This moratorium extends up to 31.12.2017.

5 On behalf of the respondent arguments have been addressed by Mr.Mukesh Gupta, Additional Standing Counsel. It is pointed out that these two arguments now raised by the petitioner do not find any mention in the pleadings. Neither in the petition and nor in the rejoinder has the petitioner taken up any stand that his shop has two entrances one of which opens out on the commercial street. On the second argument, it is pointed out that the protection under the Special Act has also not been set up as a plea.

6 Arguments have been heard. Record has been perused.

7 Record shows that the petitioner has been running a hotel under his proprietorship under the name and style of City Hotel. He commenced this activity in the year 1982. Licence for running this lodging business had been issued to the petitioner every year. The licence (Annexure A-1) dated 27.01.1994 shows that the licence for running this lodging business for 8 rooms and 8 lodges has been granted to the petitioner on a yearly basis and the last renewed licence was up to 31.3.2004. The petitioner had also applied for renewal of

his health trade licence which is evident from his letter dated 23.3.2009 (Annexure R-3). He had sought renewal of his health trade licence w.e.f. 01.3.2009 up to 31.3.2010. This request was reiterated on 29.4.2009. This application was rejected on 19.6.2009 by the Health Department. It was for three reasons; running of a lodge under insanitary and unhygienic condition; non-submission of documents; non-submission of mixed land use charges, parking charges/conversion charges. The petitioner in his communication dated 06.7.2009 replied to this letter dated 19.6.2009. His contention was that since his premises have been declared as a local commercial area and not being in a residential area, no conversion charges are liable to be paid by him. These representations and counter replies continued. On 07.9.2009 the Deputy Health Officer of the City Zone sent a final letter asking the petitioner to pay his conversion/parking charges as per the provisions of MPD-2021.

8 Learned counsel for the petitioner has relied upon a document dated 15.12.1980 to advance his submission that his premises (bearing No.3990, Ajmeri Gate, Delhi) falls in a local shopping area. This document reads as under:

“MUNICIPAL COROPORATION OF DELHI
CITY ZONE

No.1548/ZAC/CZ/80 *Date. 15.12.1980*

It is to certify that Premises No.3990/VII, Chowk Ajmeri Gate, Delhi fall in Local Commercial area. No unauthorized construction has been reported in the above said premises.

Zonal Asstt. Commissioner,
City Zone

The City Hotel,
3990, Chowk Ajmeri Gate,
DELHI

9 At the outset only a typed copy of the aforenoted document had been filed. During the course of these proceedings, the petitioner had been directed to place the original document on record. Along with the reply affidavit a purported photocopy of the said document bearing illegible signatures had been placed on record. The RTI queries raised by the petitioner qua this document are also relevant. The petitioner in these RTI queries had allegedly requested information on this document. On 11.12.2012 the information given to the petitioner was that property bearing No.3967-68, falls on a declared commercial street. The property of the petitioner is property bearing No.3990.

Why the petitioner was interested in the property of another person has not been explained. It appears that the petitioner was raising useless queries; there was never a query raised by him qua this document dated 15.12.1980. His queries were restricted to the submission that out of two departments i.e. Building Department or the Health Department who could levy conversion charges upon the petitioner. It is also relevant to note that all along the petitioner has been pleading his case stating that his property falls in a local commercial area based on a communication dated 15.12.1980 and the typed copy of the document which had been placed on record also bore the date of 15.12.1980. In the rejoinder the date suddenly changed and from 15.12.1980 to becomes 15.7.1980. The date of 15.7.1980 appears in para 5 of rejoinder. It was along with this rejoinder that a true photocopy of this document has been filed. This document is far from legible. It however depicts the date as 15.7.1980. It definitely cannot be read as a document dated 15.12.1980. The date of 15.12.1980 has been relied upon the list of dates. Relevant would it be to note that in the body of the petition this document nowhere finds mention. It is only mentioned as a document dated 15.12.1980 in the list of dates. In the rejoinder filed by the petitioner 15.12.1980 becomes 15.7.1980. At the cost of repetition, a typed document along with this petition has a date of 15.12.1980 but the photocopy of the so-called original of the said document has a date of 15.7.1980. This is the reason why in the rejoinder date of 15.7.1980 has been relied upon. Again at the cost of repetition, it is noted that in the entire RTI queries raised by the petitioner he has never asked or queried either about document dated 15.7.1980 or 15.12.1980. In response learned counsel for respondent vehemently submits that this document has not been issued by the Department and there is no authenticity qua this document. This Court endorses this submission. This Court also notes that this is the only document relied upon by the petitioner to advance his submission that his property falls in a local commercial area. The authenticity of document dated 15.7.1980/15.12.1980 being dubious and in doubt, this Court is not inclined to accept that document. In the absence of this document, there is nothing on record to show that the property of the petitioner falls in local commercial area. This document is rejected.

10 Chapter 15 of MPD-2021 relates to "mixed land use". Mixed land use is applicable for residential areas. Annexure-B filed by the respondent giving list of commercial streets, mixed used streets, pedestrian shopping streets etc (pursuant to MPD-2021) at serial no.23 shows that "Ajmeri Gate Road from Ajmeri Gate Park to Houz Quazi Chowk, Shop No.4904 to 3982" is a mixed use street. Admittedly the shop of the petitioner (3990) falls within this list of shop numbers. The petitioner having failed to espouse his case that his property falls in a local commercial area and the respondent on the other hand having placed on record the list of mixed use streets which includes the location of the property of the petitioner, this Court is of the firm view that the property of the petitioner falls within the mixed land use. W.e.f. from the date of promulgation of MPD-2021 (07.02.2007) the property of the petitioner falling in Ajmeri Gate Road from Ajmeri Gate Park to Houz Quazi Chowk has thus become a mixed land use.

11 The mixed use regulations are contained in Chapter 15. Clause 15.9 (vi) is relevant. They read as under:

"In respect of residential premises already under mixed use on 7.2.2007 in Special area, the owner/allottee/occupier of the plotted

development shall be required to declare such mixed use by filling up a form in this respect and depositing it with local body concerned and pay one time registration charges and conversion charges without penalty on or before 30.6.2009 at the rate to be notified with the approval of the Government from time to time."

12 This sub-clause specifies that in respect of residential premises falling in a "Special Area" (as per the case of the petitioner being in the walled city, he is in special area) after the street has been declared as a mixed land use, conversion charges are liable to be paid by such a party. Provisions of Chapter 16 which deal with the land use plan and particularly clause 16.2(5) (relied upon by the petitioner) do not come to the aid of the petitioner. Relevant would it be to extract Bye-Law 16.2(5). It reads as under:

"Re-development Plan and Schemes for the Special Area should be prepared by the local body within three years of approval of the MPD 2021. In this Plan, the Metropolitan City Centres as referred in 5.3, Chapter 5.0 Trade and Commerce, shall be delineated based on survey. Till such time, status quo shall be maintained."

13 This clause only specifies that on redevelopment plan, a scheme for special area should be prepared by the local bodies within three

years of approval of the MPD-2021; till such a time status quo has to be maintained. This status quo as is envisaged in Chapter 16 does not prohibit or prevent the Corporation from making demand of parking/conversion charges upon the party. Even presuming that benefit of clause 16.2(5) can be given to the petitioner, this Court is of the view that conversion charges sought to be levied by the Department on the petitioner would not be a hurdle even if this provision kept in mind. The clarification made by the Department in the additional affidavit is also relevant. This clarification is to the effect that in minutes of the meeting held under the Chairmanship of the Vice-Chairman, DDA on 26.6.2007, the DDA had intimated to the respondent Corporation that the properties on notified streets qualify for payment of conversion charges as per the mixed use regulation prescribed in the MPD-2021; the preparation of the redevelopment plan/scheme may not be linked with the commercial activities at this stage. A copy of the aforenoted communication dated 10.8.2007 addressed by the DDA to the Corporation is also a part of the record.

14 This Court is thus of the view that the property of the petitioner falling under a residential area Chapter 15 of MPD 2021 is applicable.

Under Clause 15.09 (vi) conversation/parking charges are to be paid by the petitioner. A status quo qua a property (in terms of Clause 16.2 (5)) MPD 2021 would not prevent the Corporation from the levy of such a demand. This would be wholly unrelated.

15 The submission of the petitioner that his property actually has two sides one of which opens out on the commercial street is an oral argument. It has not been pleaded either in the main petition or in the rejoinder. This submission cannot be taken note of. The second submission of the learned counsel for the petitioner that he is protected under the Special Act and no punitive action can be taken is also a submission noted to be rejected. The definition of "punitive action" as contained in Section 2(g) of the Special Act reads herein as under:

(g) "punitive action" means action taken by a local authority under the relevant law against unauthorised development and shall include demolition, sealing of premises and displacement of persons or their business establishment from their existing location, whether in pursuance of court orders or otherwise;"

16 The levy of conversion charges/parking charges which are mandated under the statutory enactment of MPD-2021 will not come

within the definition of a "punitive action". This is clear from the definition enumerated supra.

17 This Court notes that in the course of these proceedings, the petitioner had been granted interim relief for the interregnum period on deposit of a sum which has since been deposited and is lying with the Registry of this Court. This was vide order dated 20.9.2011. This interim order is made absolute. The petitioner has no case. His liability to pay conversion/parking charges cannot be linked with the redevelopment plan of the walled city even presuming that he falls under the Special Area of the walled city.

18 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 15th, 2017
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