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

Date of Decision: August 28, 2017

+ **LPA 290/2017**

RAMESH PERSHAD SETH Appellant
Through: Mr. J. C. Mahindro, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR
.....Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

S. RAVINDRA BHAT, J. (OPEN COURT)

C.M. 18398/17 (for substitution)

Allowed subject to all just exceptions.

LPA 290/2017 & C.Ms.14910/17 (stay)

1. The appeal is made in respect of order dated 15th March, 2017 rejecting appellant's writ petition. The petitioner/appellant had questioned the attempt on the part of Municipal Corporation of Delhi (MCD) to recover the conversion/parking charges for the renewal of Health Trade Licence. The undisputed facts which led to filing of this appeal are that the petitioner/appellant is the proprietor of City Hotel, an establishment carried on at premises No.3990, Ajmeri Gate, Delhi. He claimed to be aggrieved by the demand made by MCD for deposit of

conversion/parking charges. It was contended that the Hotel falls in the commercial area. To say so, the petitioner/appellant had relied upon Corporation Certificate dated 4th July, 1980 as well as another letter dated 15th July, 1980 (which appellant's counsel contends to be actually of 15th September, 1980, but according to learned Single Judge was under cloud because of the conflict in dates appearing in various documents). Broadly, appellant's contention was that the changed Master Plan Delhi (MPD 2021) did not in any manner affect the nature of the premises which continued to be commercial. The learned Single Judge declined the relief after consideration of MPD 2021 as well as other documents appearing on the record.

2. Learned counsel for appellant reiterated submissions made in support of ground and stated that firstly, mere notification of the area as a Special Area or a Mixed Land Use Zone, *per se* did not take away the fact that the establishment was commercial and open to the commercial area and, therefore, was part of the commercial area. According to learned counsel for appellant, this meant that parking/conversion charges sought were unjustified since they are based upon the understanding that the premises is in a residential area. It was also contended that other hotel establishments functioning in the same area do not have to pay the charges that are demanded in the present case.

3. The learned Single Judge observed after considering all the materials on record including the letter dated 15th July, 1980 as well as the MPD 2021 that the submissions with respect to the City Hotel falling in the commercial area are untenable. The observations of the learned Single Judge in this regard are as follow: -

“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.

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."

4. The Court is of the opinion that there is no infirmity in the reasoning and the order of learned Single Judge. Appeal is, therefore, dismissed alongwith pending application.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

AUGUST 28, 2017

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