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

+ W.P.(C) 4674/2017

DCM LIMITED

..... Petitioner

Through Mr. Arvind Nigam, Sr. Advocate with
Mr. Gaurav Mitra, Mr. Pratik Malik,
Mr. Vaibhav Mishra, Mr. Dheeraj,
Mr. Akshay and Mr. Mikhi Sharda,
Advocates

versus

NORTH DELHI MUNICIPAL
CORPORATION & ANR

..... Respondents

Through Mr. Kapil Dutta, Advocate for North
DMC
Mr. Dhanish Relan and Ms. Akshita
Manocha, Advocates for DDA

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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26.05.2017

In the first round of litigation, petitioner had sought direction to respondent-*North Delhi Municipal Corporation* (hereinafter referred to as North-DMC) to avail of the benefits under the Master Plan Delhi-2021. A Coordinate Bench of this Court vide order of 6th January 2017 had directed respondent to decide petitioner's representation of 22nd January 2016 seeking conversion of petitioner's flatted factory complex into commercial complex within six weeks.

In the second round of litigation, petitioner lays limited challenge to the order of 20th April, 2017 vide which petitioner's prayer has been

substantially granted but with a rider. The rider put is as under:-

"....but no orders to this effect are being passed as the above said case of DCM Flatted Factory Complex has been under the consideration of Monitoring Committee constituted by Hon'ble Supreme Court of India in W.P.(C) no.4677/1985 titled M.C.Mehta V/s. UOI & Ors. and in terms of Hon'ble Supreme Court orders dated 03.01.2012 in the said case, no orders to this effect can be passed."

Learned Senior Counsel for petitioner submits that the rider put in the order of 20th April, 2017 is unwarranted as Supreme Court in *M.C.Mehta vs. Union of India & Ors.* (2013) 16 SCC 336 has infact confined the powers of the Monitoring Committee to recommend to the authorities concerned to prefer writ petition before the High Court for assailing the orders passed in respect of sealing of premises. So it is submitted by learned Senior Counsel for petitioner that reference in order of 20th April, 2017 of Monitoring Committee assertion that flatted factory complex cannot be converted into commercial use, is beyond the jurisdiction of the Monitoring Committee. It is submitted on behalf of petitioner that Supreme Court in *M.C.Mehta's* case (supra), has remitted back the matters to the concerned Tribunal with limited liberty to the Monitoring Committee to point out cases where there is any non-confirming use.

Upon notice, learned counsel for respondents submit that it could not be ascertained whether there was any non-confirming use. Time was sought to obtain instructions in this regard but it is pointless to grant any time to the respondents as had it been so, it would have been reflected in the speaking

order of 20th April, 2017. All that has been said in the aforesaid order is that due to the Monitoring Committee's letter of 10th January 2017, orders for conversion of petitioner's factory complex into commercial complex formally cannot be passed. Although, in substance respondents agreed that petitioner is entitled to said conversion.

After hearing learned counsel for the parties and on perusal of material on record, this Court finds that Supreme Court in *M.C.Mehta* (supra) has clearly confined the power of said Monitoring Committee only to recommend to the authorities concerned to have recourse to law against sealing orders and if any non-confirming use is found, then to recommend to the authorities concerned to take recourse to law as available.

A Co-ordinate Bench of this Court while dealing with the powers of the said Monitoring Committee in a case of sealing of premises in *Babu Ram Singla vs. East Delhi Municipal Corporation & Ors.* (W.P.(C) 4345/2015 decided on 13th January, 2017) has ruled that the Apex Court has granted only recommendatory powers to the said Monitoring Committee i.e. to recommend to the Corporation to file a petition in the High Court against the order of de-sealing and the said Monitoring Committee does not have any power to issue any mandatory direction.

In the considered opinion of this Court, the Monitoring Committee's communication of 10th January 2017 as quoted in the order of 20th April, 2017, is in form of mandatory direction to prohibit the conversion of flatted factory complex into commercial complex, which is unwarranted as instant case is neither of sealing/de-sealing, nor of non-confirming use of subject premises.

Consequently, the aforementioned rider put in the order of 20th April, 2017

is made inoperative. Accordingly, the order of 20th April, 2017 is made operative to grant the permission to change the user of petitioner's flatted factory complex into commercial complex. As a consequence thereof, Notice of 12th May, 2017 annexed as Annexure P-28 is set aside.

This petition is accordingly disposed of.

Copy of this order be given DASTI to learned counsel for the parties.

(SUNIL GAUR)
JUDGE

MAY 26, 2017

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