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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6386/2015 & C.M. No.11639/2015

SOUTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through Mr.Jagdish Sagar, Advocate for
SDMC.

versus

GIAN GUPTA AND ORS

..... Respondents

Through Mr.Sanjay Kumar, Sr. Advocate with
Mr. Nitin and Ms.Manvi Gola, Advs
for respondent no.1.
Mr.Chanchal Kumar, Advocate for
DDA/R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.01.2017**

The petitioner is the South Delhi Municipal Corporation (SDMC). It is aggrieved by the order dated 29.01.2015 passed by the Appellate Tribunal of the Municipal Corporation of Delhi (ATMCD) wherein the ATMCD had directed de-sealing of the property. It had relied upon the various reports filed by the SDMC before it had arrived at a conclusion that this is a fit case where de-sealing of the property should be ordered. While passing the impugned order, the Tribunal was of the view that the alleged illegal construction had been raised by the non-applicant/respondent No. 1 between the period from 2002 to 2007-2008 which is adequately protected under the Delhi Laws (Special Provisions) Act, 2014 (hereinafter referred to as the Special Act) as all constructions up to 01.06.2014 were protected

from any punitive action. An affidavit to the effect had to be furnished by the non-applicant/respondent No. 1 undertaking that he would use the said premises only for those activities which are permissible under the Master Plan and will not raise any unauthorized construction in the same; pursuant thereto, the Corporation had been directed to de-seal the property.

The properties in question are three properties i.e. a Reebok Showroom located in khasra No. 390/2/2, a petrol pump under the name and style of 'Food Service Station' in khasra No. 406/2, 407/2/2 and guest house under the name and style 'West End' as also a restaurant 'Country Style' located in khasra No.403/1, 404/, 414 & 415 of the Revenue Estate of village Ranjpuri, New Delhi (hereinafter referred to as the demised premises).

Learned counsel for the petitioner, at the outset, submits that the order passed by the ATMCD is illegal and a wrong order and is liable to be set aside for the reason that the Monitoring Committee in its various reports had directed that the property should be re-sealed; the Monitoring Committee had got inspected the property and had noted the illegal and unauthorized constructions being raised by the non-applicant/respondent No. 1; this repeated raising of the illegal and unauthorized construction by respondent No. 1 was a clear mis-user of the property. These reports of the Monitoring Committee have not been considered by the ATMCD in the correct perspective. Learned counsel for the petitioner additionally points out that the protection afforded under the Special Act is only applicable to an

unauthorized colony where regularization is permitted and not to those khasras (forming part of an unauthorized colony) but which are not the subject matter of regularization. On this count, learned counsel for the petitioner submits that the Reebok Showroom located in khasra No. 390/2/2, the petrol pump located in khasra Nos.406/2 & 407/2/2 as also a portion of the guest house (West End) and the restaurant (Country Style) located in khasra No. 403/1 & 404 are not the subject matter of regularization before the Corporation and as such they cannot be granted the benefit of the Special Act; only a part of the guest house and restaurant which fall in khasra No. 414 & 415 being the subject matter of regularization can alone stand protected under the Special Act. This aspect has also not been considered by the ATMCD.

These arguments have been refuted by respondent No. 1. His submission is that the ATMCD has passed a reasoned order after examining all the reports of the Monitoring Committee as also the stand of the Corporation; the Corporation is merely making a parrot like recitation of the stand adopted by the Monitoring Committee; in its earlier affidavit filed before the ATMCD, it had made a positive statement that there was no unauthorized construction being carried out by respondent No. 1 and he was entitled to a de-sealing; the petitioner Corporation is now going back to its own stand which is not permitted to do so. For this proposition, learned counsel for respondent No. 1 has drawn attention to the status reports which have been filed by the Municipal Corporation before the ATMCD. On the

second aspect, learned counsel for respondent No. 1 submits that the colony where the demised premises are located is admittedly an unauthorized colony and being unauthorized it is adequately protected under the Special Act. The impugned order suffers from no infirmity.

Arguments have been heard.

Record shows that the ATMCD had passed a detailed order noting all the submissions and counter submissions of the parties. It is on record and in fact not disputed that respondent No. 1 is the owner and in possession of the demised premises which is situated in Revenue Estate of village Rangpuri. This property was first sealed by the Corporation on 09.08.2007. This was under the directions of respondent No. 2 (Monitoring Committee); it was de-sealed on 15.02.2008. This order was passed by the Corporation on an affidavit filed by respondent No. 1 that the property falls in an unauthorized colony to be regularized; the demised premises falling in Rangpuri extension, Block-A is entitled to be regularized. Record further evidenced that this property was inspected on various subsequent dates which inspections are dated 25.04.2008, 30.04.2008 and 10.12.2009. Attention has been drawn to these inspection reports (pages 116, 204 & 222 of the paper book). Portions of these inspection reports have been highlighted by the petitioner. These inspection reports show that the Monitoring Committee at the time of inspection had noted that respondent No. 1 has made certain unauthorized construction and after the cut off date i.e. 08.02.2007, has still made this unauthorized construction. All these reports are

premised on the same fact finding. This Court also notes that after each inspection, the properties were re-sealed; after the inspection dated 25.04.2008, the property was re-sealed on 26.04.2008. After the inspection dated 30.04.2008, the property was again re-sealed on 31.04.2008. Pursuant to the last inspection dated 10.12.2009, the property was again re-sealed on 15.12.2009. Learned counsel for the petitioner to support his argument has also placed reliance upon an application which had purportedly been filed by respondent No. 1 before the Apex Court (IA No.2448/2009 in W.P. (C) No.4667/1985 M.C. Mehta Vs. Union of India) wherein certain annexures had been appended along with his application. Learned counsel for the petitioner submits that the annexure at page 152 of the paper book reflects the khasras which were to be regularized but the demised premises fall in other khasras (other than those mentioned at page 152 of the paper book) and are not the subject matter of regularization which establish his submission that this property is not protected under the Special Act. Per contra, on this score, learned counsel for respondent No. 1 has placed reliance upon annexure A-4 (page 54 of the paper book) where Rangpuri Extension, Block A finds mention at Serial No. 997 which is a list of unauthorized colonies drawn up by the Government of NCT of Delhi, Urban Development Department.

The stand of the Municipal Corporation in its various status reports including the report dated 11.03.2014 filed before the ATMCD has been highlighted. This report reads herein as under:-

“The prima facie premises are protected under Act from sealing as of now provided there has been no unauthorized construction which have been taken place February, 2007 however Monitoring Committee is pressing for sealing of premises.”

This stand of the Corporation clearly shows that even as per the Corporation, up to 11.03.2014 (date of filing of the status report), there was no unauthorized construction which had taken place in the demised premises after February, 2007. The fact that the property where the demised premises is located is Rangpuri Extension, Block A Village Rangpuri is an admitted fact. The list of colonies which were unauthorized prepared by the Government of NCT of Delhi, Ministry of Urban Development shows that at serial No. 997, Rangpuri Extension Block A is an unauthorized colony. The Corporation in its report before the ATMCD had also in para 13 (page 503 of the paper book) stated that the property in question is covered under the provisions of Delhi Laws (Special Provisions) Act and this fact has been confirmed by the Senior Town Planner vide his letter dated 08.09.2009 a copy of which had also been placed on record of the ATMCD. The subsequent letter of the Town Planner dated 24.11.2014 also reconfirmed this position. The report of the Corporation filed before the ATMCD had in fact concluded that since the property is protected under the Special Act falling in an unauthorized colony and which protection has been extended up to 31.12.2014, no enforcement action can be taken against this disputed property.

All these facts were brought to the fore; they were brought to the notice of the ATMCD who had considered all these facts in the correct perspective. The impugned order had noted that the Special Laws (Act of 2011) which was in force up to 31.12.2014 has been extended up to 31.12.2017. The constructions carried out up to 01.06.2014 being in an unauthorized colony were protected from punitive action. The impugned order had correctly noted that since the disputed property (which even as per the inspections reports of the Monitoring Committee) had raised unauthorized construction from 2002 to 2007-2008 are protected under the Special Act of 2014 as the cut off date has been enlarged up to 01.06.2014. This being the situation, the ATMCD had rightly concluded that no enforcement action can be taken against the disputed property. On the undertaking of respondent No. 1 that he will pay all necessary charges to the MCD regularly; will not violate his undertaking which is to the effect that he will not carry out any unauthorized construction in the demised premises, the Department had been directed to de-seal the property.

This Court has been informed that as on date the property stands de-sealed. The contentions in the writ petition also disclose that it was largely at the asking of the Monitoring Committee that this petition has been preferred by the Department assailing the order passed by the ATMCD. This Court does not find any infirmity in the order passed by the ATMCD. It is a reasoned order; it is based on the stand of the Department itself which has been repeated not once but time and again before the ATMCD which was to the effect that no

unauthorized construction was being carried out by respondent No. 1. The reports of the Monitoring Committee on inspection had noted that certain unauthorized construction were carried out by respondent No. 1 up to 2007-2008 but period of this unauthorized construction having been enlarged up to 01.06.2014, the ATMCD rightly concluded that no enforcement action can be taken against such properties. The permission to grant user of this property to respondent No. 1 subject to the conditions to be complied with by respondent No. 1 had accordingly been granted which discretion has been exercised by the Court fairly and judicially; nothing in the order calls for any interference.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 19, 2017

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