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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9740/2017 & CM No. 39669/2017**

M/S MGS VAULTS PVT. LTD. Petitioner

Through: Mr P.N. Sharma, Advocate.

versus

GOVT. OF DELHI & ORS Respondents

Through: Mr Varun Nischal, Advocate for R-1,
2 and 4.

Tushar Sannu, Advocate for R-3.s

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.11.2017**

1. Issue notice. The learned counsel for the respondents accepts notice. The petitioner has filed the present petition, *inter alia*, praying that a writ of prohibition be issued restraining the respondents from taking any action in pursuance of the letter dated 21.11.2016 (hereafter 'impugned letter') issued by respondent no. 2 (Sub Divisional Magistrate, Preet Vihar).
2. The petitioner is carrying on its business in a basement located at E-1, Preet Vihar, Delhi-110092. By the impugned letter, respondent no. 2 has directed the DCP (East), Patparganj, Delhi to take action against the petitioner on the complaint filed by one Mr Anand Murti with regard to running the business unauthorisedly in a residential area.
3. This Court finds it difficult to understand the jurisdiction exercised by respondent no. 2 in issuing this letter. The learned counsel appearing for respondent nos. 2 and 4 also states that he had sought a clarification in this regard; but has not received any instructions from the respondents. The question whether basement of the premises is being used unauthorisedly and

contrary to building by-laws is a matter within the jurisdiction of East Delhi Municipal Corporation (respondent no. 3) and is not a matter that is required to be adjudicated or considered by respondent no. 2. Unless respondent no. 3 seeks assistance in this regard respondent no.2 may not have any role to play. There may be other aspects which may be required to be considered by respondent no. 2 and / or Police Authorities such as the traffic arrangement etc. However, if any decision is required to be taken with regard to the same, the SDM is required to give a prior notice to the persons concerned and thereafter, take an informed decision. In the present case, the petitioner seems to have made several representations after receipt of the letter dated 21.11.2016 and it claims that none of the letters to have been answered.

4. In the aforesaid circumstances, the impugned letter dated 21.11.2016 is set aside. In the event, respondent no. 2 or Police Authorities desire to take any action, they shall do so after giving the petitioner due notice and after affording the petitioner an opportunity to be heard. Needless to mention that the petitioner would be at liberty to apply at that stage.

5. Similarly, if respondent no. 3 seeks to take any action against the petitioner for misuse of the basement in question, respondent no.3 is required to give a prior notice and afford the petitioner an opportunity to be heard before taking any coercive action against the petitioner for use of the basement for commercial purposes.

5. The petition and application disposed with the aforesaid observations.

VIBHU BAKHRU, J

NOVEMBER 03, 2017/cks