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

Date of Decision: 24.04.2018

+ **W.P.(C) No.1010/2018 & C.M. No.4291/2018**

SMT ARVINDER KAUR BEDI AND ANR. Petitioner
Through Ms.Shobhana Takiar, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL
AND ORS. Respondents
Through Mr.Sriharsha Peechara, Adv.
for NDMC.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The Petitioners, who were licensees of Shop Nos. 36 & 37, Gole Market, New Delhi from 17th November, 1998 have filed the present petition seeking quashing of order dated 29th November, 2017, vide which the aforesaid shops have been sealed. The Petitioners also seek quashing of order dated 20th December, 2017, vide which the license in favour of the Petitioners was cancelled.

2. Learned counsel for the Petitioners points out that the Petitioners' licenses were being renewed from time to time and the last renewal granted to the petitioners had expired on 31st

March, 2013. She submits that the Respondents had thereafter carried out an inspection wherein certain violations, which were common to the majority of the shops in the market, were found. She contends that after the inspection, the Petitioners were singled out by the Respondents at the behest of some employees and were issued a show cause notice and, despite their detailed representation, only their shops were sealed on 17th June, 2015 due to some extraneous reasons,.

3. Learned counsel for the Petitioners further submits that, pursuant to a Resolution dated 27th June, 2015, the Respondent No.1 directed de-sealing of the shops vide its order dated 22nd of September, 2015 and a fresh policy relating to renewal of licenses of the NDMC shops etc., was issued vide circular dated 16th August, 2016. Pursuant to the aforesaid policy, the Petitioners had applied for renewal of the licenses in respect of the aforesaid two shops, and also for change of trade to permit the petitioners to run a restaurant there. The Petitioners had also sought an amalgamation of both their shops.

4. Ms.Takiar submits that while the Respondent No. 1 renewed the licenses of about 200 shops in the same market, in terms of its new policy dated 16th August, 2016, it did not consider the Petitioner's aforesaid application. It is at this stage that the Petitioners had approached this Court vide Writ Petition (C) No.1192/2017, wherein the Petitioners had sought a direction to the Respondent No. 1 to renew their licenses, permit amalgamation of their 2 shops and allow their request for

change of trade. The aforesaid writ petition was disposed of by this Court vide its order dated 18th July, 2017, by recording that the Respondent No. 1 would consider the Petitioners' aforesaid request after they remove the deficiencies pointed out in the inspection report dated 29th March, 2017, which report was drawn up pursuant to an inspection conducted by the Respondent No. 1 after receiving the Petitioner's request. The said deficiencies have been duly noted in the order dated 18th July, 2017, and are reproduced hereinbelow:-

“(i) The loft which is at height of 6’10” has resulted in shops having height of 6’10”, existing in violation of bye-laws and is non-habitable. The minimum habitable height required is 9’0” for the entire premises.

(ii) The clubbing of shops has to be regularised as per policy dated 16.08.2016.

(iii) The parapet wall shall be reduced to the permissible height i.e. 1.5 mtr. Or 5 feet from the terrace now existing.

(iv) Staircase constructed has to be removed.”

5. Since it was the Petitioner's case that they had duly met the Condition Nos. 1, 3 & 4 aforementioned and the only deficiency was with regard to Condition No. 2, this Court, while allowing WP (C) No. 1192/2017 with a direction to the Respondents to re-consider the Petitioner's case, had granted

permission to the Respondents to conduct a fresh inspection of the shops in question.

6. On the other hand, Mr. Peechara, learned counsel for the Respondents, submits that pursuant to this Court's order dated 18.07.2017, a fresh inspection of the two shops was carried out, wherein it was found that, as against the minimum habitable height of 9 ft. required for the entire premises, the height of the Petitioners' shops was found to be lesser in some places. He, therefore, submits that the Respondent No. 1 had rightly not considered the Petitioners' request for renewal of their licenses and other consequential prayers. He also submits that, on a further inspection, it was found that the Petitioners had illegally and without permission of the Respondents, even sublet the premises. In these circumstances, he submits, the Respondent No. 1 had rightly passed the order dated 29th November, 2017, for sealing of the two shops.

7. Having heard the learned counsels for the parties, I find that, aggrieved by the Respondent No.1's inaction in not taking steps to renew the Petitioners' licenses, the petitioners had approached this Court on 27.11.2017 by way of C.M. No. 43448/2017 in WP (C) No. 1192/2017, which petition stood disposed of vide order dated 18.07.2017. It is the contention of the learned counsel for the Petitioners that, immediately upon filing of the said application, the Respondent No. 1 malafidely took steps to seal the shops, which allegation is vehemently denied by the learned counsel for the Respondents. Upon filing

of the said application, this Court had vide its order dated 8th January, 2018, appointed a Local Commissioner to inspect the two shops, pursuant to which a report dated 31st January, 2018 was filed by the Local Commissioner. The Local Commissioner, after inspecting the two shops in the presence of the parties, came to the conclusion that, though the height of the shops was found to be less than 9 ft. at some locations, there was no construction of any kind made by the Petitioners themselves. This position, that the shops were constructed by the Respondent No. 1 itself and handed over to the licensees, is not denied by the Respondents. It may also be noted that the Local Commissioner had visited the two shops in the presence of the officers of the Respondents, and did not find subletting of any kind. Since none of the parties have filed any objection to the Local Commissioner's inspection report, the Court is inclined to accept the said report as unrebutted.

8. Thus, the admitted position is that the Respondent No. 1 had constructed the shops as they currently stand and had then handed them over to the Petitioners. In my considered opinion, once it is admitted that this deficiency of the height of the shops being less than 9 feet at some places, is not at all attributable to the Petitioners, the Respondents cannot refuse to renew the Petitioners' licenses on the ground that the said shops have a height of less than 9 ft. at some places. For the aforesaid reason, the Respondent No. 1's order dated 29th November, 2017, whereby the Petitioners' shops were sealed, cannot be

sustained and the same is, accordingly, quashed. For the same reasons, the order dated 20th December, 2017 cancelling the Petitioners' licenses is also quashed.

9. The Respondents are now directed to immediately de-seal the shops No.36 and 37, Gole Market, New Delhi and hand over the possession thereof to the Petitioners within a period of one week from today. The Respondents are also directed to process the Petitioners' application for renewal of the licenses and other ancillary prayers, including amalgamation and change of use as per their policy, within 8 weeks.

10. It is made clear that the ground, that the height of the shop is less than 9 ft. at some places, shall not be treated as a bar or deficiency for considering the Petitioners' case for renewal of their licenses positively.

11. The petition is disposed of in the aforesaid terms.

12. Copy of this order be given **DASTI** under signatures of Court Master.

(REKHA PALLI)
JUDGE

APRIL 24, 2018/aa.f