

#120

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.10.2018.

CONT. CAS (C) 779/2018

BACCHU SINGH

..... Petitioner

versus

SANTOSH KUMAR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ajay Kr. Thakur and Mr. Kanwal Deep Bhath, Advocates.

For the Respondent : Mr. Rizwan and Ms. Priyanka Goel, Advocates for respondent Nos.1 and 2.

Ms. Puja Kalra, Advocate for respondent No. 3/NDMC.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present contempt petition instituted on behalf of the petitioner/contemnor under Section 12 of the Contempt of Courts Act, 1971, essentially seeks a direction to punish the respondents for non-compliance of the order dated 9th January, 2015, passed by this Court in writ petition being W.P.(C) No.192/2015, titled as “*Bacchu Singh vs. Commissioner of Industries & Ors.*”(hereinafter referred to as the ‘said order’).

2. The relevant portion of the said order dated 9th January, 2015, is extracted hereinbelow, for the sake of felicity:

“The prayers made by the petitioner to be permitted to run the business from the said property cannot be granted as, admittedly, the said business cannot be run from the non conforming area. Insofar as, the petitioner’s complaint regarding recommencement of other similar business is concerned, it is directed that the respondents shall examine the same and take necessary action in accordance with law within a period of eight weeks from today.”

3. A perusal of the said order reflects that, this Court had rejected the petition filed on behalf of the petitioner, seeking permission to run his business, on account of the circumstance that, the same was being run in a non-confirming area. However, in view of the petitioner’s complaint, regarding re-commencement of other similar business, it was directed that the respondents shall examine the same and take necessary action, in accordance with law, within a period of eight weeks from the date of the said order.

4. It is the petitioner’s submission that, despite passage of more than three years and nine months, the respondents have not examined the issue, in relation to the re-commencement of similar businesses.

5. It is an admitted position that, the present petition has been instituted, after a passage of over three years and nine months, from the date on which, the W.P.(C) No. 192/2015, was disposed of, vide the said order dated 9th January, 2015.

6. Learned counsel appearing on behalf of the petitioner states that, he had instituted another writ petition being W.P.(C) No.9122/2018, praying as follows:-

“A. Issue writ in the nature of mandamus and of like nature to take the necessary action in accordance with the law, respondents may be directed to allow the petitioner to run his business from the above said property i.e. B-4/3, Model Town-I, Delhi-09, as being done by others.”

7. The said W.P.(C) No. 9122/2018, came to be dismissed by a learned Single Judge of this Court on 31st August, 2018, whilst observing as follows:-

“3. The petitioner has filed a petition being W.P.(C) 192/2015 seeking similar relief. The said petition was dismissed by an order dated 09.01.2015 for the reason that there was no dispute that the petitioner’s shop is located in a non-conforming area and, therefore, cannot be used for non-conforming industries.

4. *The petitioner claims that there are other units operating in the area against whom no such action has been taken and therefore, the petitioner should also be placed in the same position. This contention is unmerited merely because action has not been taken against other units that are operating*

illegally does not entitle the petitioner to operate unlawfully (See: Secretary, Jaipur Development Authority v. Daulat Mal Jain: 1997(1) SCC 35).

5. *Insofar as that other units operating from the same locality is concerned, this Court had by an order dated 09.01.2015 passed in W.P.(C) 192/2015 directed the respondents to examine the same and take necessary action in accordance with law within a period of eight weeks from that date. The petitioner states that the said order has not been complied with. Be that as it may, the relief as sought for by the petitioner regarding permission to recommence his business cannot be granted for the reasons as stated above and in the order dated 09.01.2015.*

6. *The petition is, accordingly, dismissed.”*

8. Learned counsel appearing on behalf of the petitioner states that, he is aggrieved by the circumstance that, other units are operating from the subject area against whom, no action, in accordance with law, has been taken by the respondents.

9. The submission made on behalf of the petitioner cannot be countenanced, in view of the circumstance that, the same was rejected as

being unmerited by this Court on 31st August, 2018, in the second round of proceedings between the parties, as aforementioned. Even otherwise, the petition is bereft of any cogent particulars in support of the allegation.

10. In **Gursharan Singh & Ors. vs. NDMC & Ors.**, reported as [1996 (2) SCC 459], the Hon'ble Supreme Court whilst enunciating that, the concept of equality as envisaged under Article 14 of the Constitution is a positive concept, which cannot be enforced in a negative manner, observed as follows:-

“Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

11. In this behalf, it is trite to state that, there can be no negative equality. In the event, the petitioner is unable to discharge the burden of proving his claim to be just and legal, the judicial process cannot be abused to perpetuate the illegalities. Therefore, neither is there any violation of this Court's order dated 9th January, 2015, on the part of the respondents nor can the same be

characterized as wilfull or deliberate. Resultantly, the present contempt petition is devoid of any merit.

12. Even otherwise, the present petition is barred by limitation, in view of the mandate of the provisions of Section 20 of the Contempt of Courts Act, 1971.

13. The petition is, therefore, devoid of merit and is accordingly dismissed.

OCTOBER 08, 2018
RS

SIDDHARTH MRIDUL
(JUDGE)



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