

\$~2

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

+ W.P.(C) 9585/2018

SITA RAM GUPTA

..... Petitioner

Through Mr.Satinder S. Gulati, Adv. with
Ms.Kamaldeep Gulati, Adv.

versus

JOINT CHIEF CONTROLLER OF EXPLOSIVES
& ORS

..... Respondents

Through Mr.Anil Soni, CGSC with
Mr.Abhinav Tyagi, Adv. for R-1.
Mr.Pramod Kumar, Adv. for R-2.
Insp. Narender SI Khiloni Licensing
Unit.
Mr.Yeeshu Jain, Standing counsel for
L&B Deptt./R-3.
Ms.Puja Kalra, Adv. for NDMC/R-4

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

04.10.2018

C.M. No.37351/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 9585/2018

3. The petitioner has filed the present petition, *inter alia*, praying as under:

“Issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no. 1 to grant permission for endorsement of

revised plan of shop no. 10104, Rani Jhansi Road, Delhi for possession and sale of License No. E/NC/DL/24/107(E45119) to petitioner as per law immediately and/or in time bound manner, since no 'NOC' is required under the law and as per Explosive Rules, 2008"

4. The petitioner claims that he has a valid license for sale and storage of firecrackers, which is endorsed in respect of a property bearing no. 10104, Rani Jhansi Road, Filmistan Cinema, Delhi upto the maximum quantity of 1500 kgs. It is also asserted that the said license is valid till 31.03.2019. It is further stated that the petitioner is holding a license for sale and storage of firecrackers since the year 1988.

5. The petitioner claims that part of his property (bearing no. 10104, Rani Jhansi Road, Filmistan Cinema, Delhi) was acquired by the Government of NCT of Delhi for the construction of Grade Separator at Rani Jhansi Road, Delhi. The demarcation of the acquired property in question was done by the Land Acquisition Collector and ADM (Central), Delhi on 04.12.2017 and, thereafter, a part of the building was demolished. He states that he continues to be in possession of the remaining portion of the said property. It is also asserted that he has got some minor repairs done on the portion left after demolition and has also installed the shutters for its safety. The petitioner states that the licence in question was for the front part of the said property but as the same was acquired by the GNCT, Delhi he has shifted to the rear side of the said property (which is now the front portion).

6. In view of the material change in the property in question, the petitioner applied to the Joint Chief Controller of Explosive, Faridabad for

endorsement of the licence in respect of the revised plan of shop no.10104, Rani Jhansi Road, Delhi for possession and sale of fireworks.

7. The petitioner's grievance is that respondent no.1 (Joint Chief Controller of Explosives) is not processing the petitioner's request and is insisting on a No Objection Certificate (NOC) from the concerned authorities.

8. Mr Gulati, the learned counsel appearing for the petitioner submits that since there is no change in the constitution of the licensee (the petitioner) fresh NOCs are not required. He referred to Rule 102 of the Explosives Rules, 2008 in support of his contention.

9. Rule 102 of the Explosives Rules, 2008 expressly provides for obtaining a No Objection Certificate (NOC). The relevant extract of the said Rule is set out below:

“102. No objection certificate before construction.—

(1) After approval under rule 101, the person desiring to obtain a license for manufacture, possession for sale or use of explosives shall obtain a no objection certificate from the District Magistrate or Director General of Mines Safety, as the case may be, before commencing construction of the premises.

(2) Certificate referred to in sub-rule (1) shall not be required if—

xxxx

xxxx

xxxx

xxxx

(c) any other amendment in the existing license is carried out which does not warrant any fresh enquiry for grant of no objection certificate.”

10. The petitioner's contention that there is no requirement of the NOCs

as there is no change in the constitution of the license is unmerited. A plain reading of the Rule 102(2)(c) of the Explosives Rules, 2008 indicates that a NOC is not required for amendment in the existing license, which does not warrant any fresh enquiry for grant a NOC.

11. In the present case, the property in question has been altered materially. Admittedly, a substantial portion of the property bearing no.10104, Rani Jhansi Road, Delhi has been acquired and has been demolished. In this view, the insistence on the part of respondent no.1 for a NOC from the concerned authorities, cannot be faulted.

12. The learned counsel appearing for respondent no.3 (Land Acquisition Controller – LAC) also states that the petitioner's assertion that only a part of the property in question has been demolished, is incorrect. He submits that the entire property in question has been demolished. He also handed over a communication issued by the petitioner including a legal notice, wherein this fact has been asserted. He states that in these circumstances, there is no question of the LAC submitting a NOC since the LAC is now in possession of the entire property.

13. The petitioner has also handed over a letter dated 01.10.2016 sent by North Delhi Municipal Corporation addressed to ADM/LAC, Central, pointing out that an area measuring 72.85 sq. meters from the properties bearing no.10103 to 10105, were acquired. The same was demarcated and were handed over after demolition as per the demarcation provided by the LAC office. The said letter also indicates that the balance area of 23.99 sq. meters still remains, the ownership of which has not been commented upon.

14. The photographs annexed with the present petition also indicate that

entire property has not been completely demolished and the part of the said property still remains standing. Further, the petitioner claims to be in possession of the same, and no material is placed on record which would lead this Court to believe otherwise.

15. The Deputy Chief Fire Officer has also issued a letter to the Additional Commissioner of Police (Licensing authority) communicating its no objection for grant of license for storage and fire crackers.

16. In view of the aforesaid circumstances, this Court consider it apposite to direct respondent no.1 to process the petitioner's application within a period of seven days after verifying the communications already issued, in accordance with law.

17. Insofar as the ownership of the premises is concerned, the same seems to be a contentious issue, which cannot be examined in these proceedings.

18. It is clarified that if the petitioner's application for endorsement of license in question is granted by respondent no.1, the same will not be considered as indicating that the petitioner any right or title in respect of the said property.

19. The petition is disposed of with the aforesaid observations.

20. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

OCTOBER 04, 2018

ab