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

+ W.P.(C) 7754/2017 & CM. Nos. 31997/2016 and 2296/2018

SILVER SPOON RESTAURANTS & HOTELS
PVT LTD

..... Petitioner

Through: Mr. Anurag Ahluwalia and
Mr. Prashant Kumar Umrao, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION
AND ANR

.... Respondents

Through: Mr. Ajjay Aroraa and Mr. Kapil
Dutta, Advs. for SDMC.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **28.02.2018**

1. Mr. Karan Rajpurohit, Advocate appears in the matter and states, he along with Mr. Lalit Gupta, Adv. were initially engaged by the petitioners. As the petitioners have engaged Mr. Prashant Kumar Umrao as a new counsel, they may be discharged. Ordered accordingly.
2. The present petition has been filed with the following prayers:-

“In the circumstances as aforesaid, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(a) Pass / Issue an appropriate writ(s) / order(s) / direction(s) in the nature of Writ of Certiorari or any other appropriate writ thereby quashing / setting aside the Impugned Revocation-Cum-Closure notice dated 17.08.2017, being No.DHO/SZ/2017/D-892, issued by the Respondent

Authority and consequently direct Respondent Authority for revalidation of the Health Trade License, dated 23.06.2015, bearing No. HTLCMSZ0365431, valid till 31.03.2018, issued by the Respondent Authority, to the Petitioner for operation of the eating house situated at 30B, 2nd Floor, Hauz Khas Village, New Delhi, operating under the name and style of “Moon Shine Cafe & Bar”, a unit of Silver Spoon Restaurants & Hotels Pvt. Ltd.;

Pass any other and further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. The facts as noted from the writ petition are, on May 26, 2015 a Health trade License was issued to the petitioner for operating an eating house at 30 B, Second Floor, Hauz Khas Village, New Delhi in the name and style of Moonshine Cafe & Bar. The same was valid upto March 01, 2018. It is the case of the petitioner that Archaeological Survey of India has allowed the construction till 14.45 meter height. It is also averred by the petitioner that it acquired an order from the Delhi Pollution Control Board as well. On July 26, 2017, a show cause notice was issued to the petitioner alleging that the petitioner is running the trade of eating house for more than 48 seats under most insanitary and unhygienic conditions. The petitioner was called upon to explain the position within three days of the receipt of the notice.

4. A reply to the show cause notice was given on July 27, 2017. In the reply, it was stated that the eating house does not have more than 48 seats. It is also averred in the writ petition that a further show cause notice was issued on August 01, 2017 stating that the eating house has more than 48

seats and is being operated in most insanitary and unhygienic conditions and the building in which the petitioner is running the eating house is more than 15 meters in height and requires fire safety certificate from the Department. The petitioner was called upon to show cause why the license be not revoked. It appears, on August 01, 2017 a reply to the show cause notice was given by the petitioner. In the reply, it was stated that the petitioner is running the eating house legitimately. It is also stated, even if there are any irregularities, the petitioner is ready to take corrective measures. It is also stated that the building is less than 15 meters in height and restaurant has 48 seats. Pursuant thereto, the impugned communication dated August 17, 2017 has been issued wherein the following has been stated:-

“No.DHO/SZ/2017/D-892

Dated: 17/8/2017

Revocation cum Closure notice

Whereas you have been granted health trade license for the trade of Eating House with 48 seats in the name & style of M/s Moonshine situated at 30 B, 2nd Floor Hauz Khas Village New Delhi.

Whereas your Eating House premises was inspected by the area public health inspector on 16/8/17 and you have been found running the eating house with more than 48 seats and under most insanitary and unhygienic conditions. It is a serious violation of terms & condition of health trade license.

Whereas you were issued a show cause notice also vide no. DHO/SZ/2017/D-653 dated 26/7/2017 but on inspection you were found running the eating house under similar condition without any improvement.

Therefore, your health trade license for the above said eating house is hereby revoked and you are directed to close the trade of eating house within 48 hrs from the receipt of this letter, failing which further legal action will be taken as per DMC act including sealing of your premises.”

5. I may state here, a counter affidavit has been filed by the respondent SDMC wherein the following has been stated:-

“5. That considering the above reliefs as sought by the petitioner, at the outset it is stated that as per record the petitioner has obtained the Health Trade License bearing No.HTLCMSZ0365431 dated 23.06.2015 for operation of eating house situated at 30B, 2nd floor, Hauz Khas New Delhi under the name and stile of “Moon Shine Cafe & Bar” a unit of M/s Silver Spoon Restaurants & Hotels Pvt. Ltd.

6. That the said eating house was inspected by the concerned area Health Inspector on 25/07/2017 and it was found that the said eating house is running under insanitary and unhygienic condition and also with more than permitted capacity of 48 seats which is violation of terms and conditions of Health Trade License so obtained as per the provisions of DMC Act. Consequently a Show Cause Notice bearing No.DHO/SZ/2017/D-653 dated 26/07/2017 has been issued, copy of the same is already annexed as Annexure-6 along with writ petition.

7. That it is further submitted that the petitioner submitted his reply in response to the aforesaid show cause notice on 27/07/2017 along with an affidavit stating therein that they are “using only 48 seats of M/s Moon Shine Cafe & Bar” at 30-B, 2nd Floor, Hauz Khas Village New Delhi. The copy of reply in this regard is annexed as Annexure-8 along with the writ petition.

8. That further as per record subsequently upon noticing the facts that the said eating house is being run from the building of more than 15 meter height a show cause notice bearing No. DHO/SZ/2017/D-711 dated 01.08.2017 was also sent, the copy of the said show cause notice is already annexed along with the writ petition as Annexure-9.

11. That it is also pertinent to point out that two PILs bearing WP (C) No. 1393/2013 TITLED AS Pankaj Sharma VS SDMC & Ors and WP(C) No. 258/2017, Anuja Kapoor VS UOI & Ors. in respect of the restaurants/eating houses/commercial units running in village Hauz Khas area also pending disposal before the Hon'ble Division Bench-I of this Hon'ble High Court and the same are now listed on 07/02/2018, for consideration and examination of the issues as formulated and observed in the order dated 11/09/2017. The copy of the order dated 11/09/2017 is annexed herewith as **Annexure R-1A.**

12. That it is also pertinent to point out that the petitioner herein has not come with clean hands. The violations of the terms and conditions as carried out by the petitioner can also be observed from the website of the restaurant/eating house in question. However, it is pointed out that on perusing and observing from the same it goes without saying that it is an admitted fact on the part of the petitioner especially regarding running of the said eating house with more than permitted seats. The downloaded copy of the website page containing the said details in this regard is annexed herewith as **Annexure-R-1/B.**

13. That it is also very relevant to state here that the answering respondent is taking action uniformly in respect of all the restaurants/eating house falling/situated in the area in question i.e Village Hauz Khas, for violation of the terms and conditions of the Health Trade Licenses as issued and there is no discrimination in this regard.”

6. A rejoinder has been filed by the petitioner to the counter affidavit.
7. During the pendency of the writ petition, this court on January 30, 2018, has inter-alia passed the following order:-

“Mr. Ajjay Aroraa, learned counsel appearing for the respondents / SDMC states, without prejudice to the rights

and contentions of the respondents in the present proceedings, the respondents are ready and willing to re-inspect the building in which the petitioner is located within a week from today, when the representative of the petitioner may also be present. Upon re-inspection, the respondent shall file a report in this court within a week thereafter. This submission of Mr. Arora is acceptable to Mr. Anurag Ahluwalia, learned counsel appearing for the petitioner.

Accordingly, I fix the date of inspection as February 5, 2018 at 11 AM. The concerned Deputy Commissioner of the respondent no.1 shall ensure that the inspection takes place on the date and time fixed. Report of the inspection be filed within a week thereafter. It goes without saying that the petitioner shall be at liberty to rely upon such documents as available with the petitioner in support of its case. List on February 21, 2018.

A copy of this order be given dasti to both the parties under the Signatures of the Court Master.”

8. Pursuant thereto, the SDMC has filed a status report, wherein in paras 3 and 4, the following has been stated:-

“3. That in compliance of the aforesaid order a joint inspection has been conducted by the area public health inspector, area JE (Bldg) and representatives of the petitioner herein in respect of the subject property Moon Shine Restaurant Cafe and Bar (a Unit of Silver Spoon Restaurants Pvt. Ltd) situated at premises at 30-A, Second floor, Hauz Khas village New Delhi on 05.01.2018.

4. That during the said inspection the following has been notice.

- a) Seating capacity of 44 seats found.*
- b) Kitchen was found in dusty condition.*
- c) Height of the building was found more than 15 mtrs.”*

9. A rejoinder to the status report has been filed by the petitioner

wherein, in paras 10, 11 and 12, the following has been stated:-

“10. It is evident from the said inspection report that Impugned Revocation-Cum-Closure notice is premises on objections which no longer hold ground as the seating capacity is 44 as allowed upto 48 seats.

11. Further the kitchen is in duty conditions the same can be cleaned and rectified. It is further submitted that the since the restaurant has been closed down by the Respondent SDMC since August 2018 hence it is obvious the dust must have accumulated in the Restaurant, however the same can be cleaned and rectified.

12. Moreover the last objection taken by the SDMC in the inspection report regarding height of the building is more than 15 meters is not sustainable as the Impugned Revocation-cum-closure notice does not utter a word regarding the height of the Building. However, it is clarified that the Petitioner is located on the 2nd Floor of the Building in Hauz Khas Village and the Height of the Petitioner Restaurant is only 12 meters, it is submitted that in the same building the Another Restaurant is running in the name and style of M/s Rabbit Hole located on 3rd floor and 4th floor and the said restaurant was issued similar revocation-cum-closure was quashed by this Hon’ble Court on 29/08/2017 and the said restaurant is running at present.”

10. Mr. Ahluwalia, learned counsel for the petitioner would submit that the initial notice dated July 26, 2017 issued by the respondents was only confined to the number of seats and the unhygienic conditions. According to him, the height was a non issue in the said notice. The second notice, which was issued on August 01, 2017, even though had a height factor, the same was replied to by stating that the building is less than 15 meters in height. That apart, it is his submission, the height of more than 15 meters

could not be attributed to the petitioner herein. Even otherwise, it is his submission that the building consist of five floors including the ground floor and if the building is more than 15 meters then the petitioner cannot be singled out on that ground. According to him, the owners of one of the restaurant running at the fourth floor had approached this Court by way of a Writ Petition being W.P.(C) No. 7593/2017 in which case this Court had allowed the petition in favour of the said restaurant owner, and the restaurant is since running without any impediment. He seeks a similar benefit.

11. On the other hand, Mr. Aroraa, learned counsel for the respondent would submit that the notice dated August 01, 2017 does reflect, the height of the building is more than 15 meters, which is not permissible and the licence has been rightly revoked. He also states, the petitioner cannot seek a negative equality by referring to the other restaurants operating in the same building. In other words, he states, in the case of other restaurants also the bar of height of 15 meters shall be applicable.

12. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the respondents are justified in revoking the license and closing the restaurant in terms of the impugned communication dated August 17, 2017. The answer to this question has to be in the affirmative. There is no dispute that the height of the building is more than 15 meters, as is clear from the report filed by the respondents. The plea of Mr. Ahluwalia that there are other restaurants running from the same building, even though the height is more than 15 meters, is without any merit as the petitioner cannot claim any negative equality. If there is a violation of building byelaw / permission granted by the Archaeological

Survey of India, the same would be an impediment for everyone to run a restaurant from that building, as they are similarly placed like the petitioner herein. Surely, the respondents cannot close their eyes and allow the illegality to be perpetuated by the other restaurants in the same building. The respondents are required to take action in that regard.

13. The respondents are justified in revoking the license and issuing a closure notice. The petition is without merit. The same is dismissed.

14. A copy of this order be sent to the respondent No. 1.

CM. Nos. 31997/2016 and 2296/2018

In view of the orders passed in the writ petition, the applications are dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 28, 2018/ak