

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: February 15, 2018

Judgment delivered on: March 05, 2018

+ W.P.(C) 8507/2017

SUBODH DALAL

..... Petitioner

Through: Mr. Mayank Mehandru and
Ms. Charu Tandon, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ANR.

..... Respondents

Through: Ms. Namrata Mukim, Adv. for
NDMC with Mr. Yashpal, PHI,
Keshowpuram, for R1/NDMC

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner seeking quashing of order dated September 19, 2017 passed by Deputy Health Officer, North Delhi Municipal Corporation thereby rejecting the application of the petitioner dated December 19, 2016 for grant of Health Trade License and has directed for closure of the *Spa* of the petitioner situated at A 2/15, Princess Road, Model Town I, Delhi.

2. The facts leadings to the filing of the present petition are, the petitioner is running and operating the *Spa* in the name of '*Spa Life Wellness*, which is a chain of *Spa*'s in Delhi as well as

in various other parts of India. For adopting and maintaining standardized Quality Management System the *Spa* of the petitioner has been granted with ISO 9001:2015 Certificate for its various *Spa*. Considering the prospects of running and operating a *Spa* in the area of Model Town, the petitioner approached the owners of the property situated at Ground Floor of property bearing No. A-2/15, Princess Road, Model Town Phase-I, Delhi, who were offering to let out their property. The petitioner made enquiry about the suitability of the property from the owners for the purpose of setting up and operating the *Spa*, upon which the owners of the property made enquiry from the office of the respondent and obtained confirmation that the said property can be used for the said purpose. On July 08, 2016 one of the co-owner of the said property filed a RTI application with the respondent seeking information whether the said property can be used for operating *Spa* and the charges payable, if any for the said purpose. On July 18, 2016, on the basis of further confirmation from the officials of the respondent, the petitioner deposited an amount of Rs.29,416/- towards charges payable for the purpose of running a *Spa* against due acknowledgment. On July 28, 2016, the petitioner entered into a registered Lease Agreement with the owners of the said property for a term of nine years for the purpose of running a *Spa*.

3. It is the case of the petitioner, the respondent in its response dated August 01, 2016 to RTI application confirmed that subject to the general condition in para 15.4 and additional conditions given in para 15.7.3 Day *Spa* shall be permitted in the

residential plot abutting road of minimum ROW prescribed in 15.7.2 whether or not the road is notified as Mixed-Street use. The respondents further confirmed that the said property can be used for running and operating a *Spa* subject to deposit of Rs.29,416/-, which stood already deposited by the petitioner. Thereafter, the petitioner commenced the work of fit-outs, interior and other related work in order to set up a *Spa* by investing huge amount of over Rs.30,00,000/-. During the set up work, the petitioner vide its letter dated October 29, 2016 even informed the police department about opening of *Spa* in the said property.

4. It is the case of the petitioner, while he was at the initial stage of setting up *Spa* from the said property and for obtaining the licenses, permissions, approvals etc the petitioner was shocked to receive a Closure Notice dated December 17, 2016 stating that the petitioner is running and operating a *Spa* without Municipal Health Trade License and under insanitary & unhygienic conditions. Petitioner was directed to close the business within seven days from receipt of the notice. It is the stand of the petitioner, the said closure notice was issued without first issuing show cause notice to the petitioner. Furthermore, before issuing the said notice neither any official from the office of the respondent visited the said property nor any challan was issued for operating the *Spa* and the same was issued in absolutely vague, evasive and arbitrary manner.

5. It is the case of the petitioner that vide reply dated December 19, 2016 the petitioner protested to the said notice.

Simultaneously, the petitioner also filed an application with the respondent for grant of Health Trade License along with all requisite documents and fees. However, to the shock of the petitioner, the respondent issued letter dated January 24, 2017 stating that the application of the petitioner for grant of Health Trade License has been rejected for the reason that the closure notice dated December 17, 2016 has already been issued to the petitioner. No reasonable ground was given for rejection of application of the petitioner. Aggrieved by the orders, the petitioner preferred W.P.(C) No. 1019/2017 before this Court, which granted stay over the orders of the respondents. At the assurance of the respondents to reconsider the application of the petitioner on merit, this Court disposed off the writ petition with the directions to the respondent to pass a detailed and speaking order deciding the application of the petitioner within 15 days. The petitioner in terms of the said order, removed all the deficiencies as pointed out by the respondents and filed a reply dated September 07, 2017 along with the requisite documents. Subsequently, the petitioner also appeared for personal hearing on September 12, 2017 and submitted additional clarifications. The petitioner also paid in advance the conversion charges for the year 2017-2018 to the respondent. It is the case of the petitioner that despite the order passed by this Court the respondent in a mechanical manner and by way of a non-speaking order dated September 19, 2017 rejected the application of the petitioner for grant of Health Trade License only on the ground that the *Spa* was not operating as on February 07, 2007, which is under

challenge in this writ petition.

6. The respondent has filed a counter affidavit wherein it is their stand that the petitioner is doing business of *Spa* in the name & style of M/s *Spa* Life Wellness in the property without having a valid Municipal Health Trade License. On receiving a complaint from Lake Area Resident Association, prosecution u/s 397/417 of the DMC Act has been taken and a challan has been issued. It is the case of the respondent that since the petitioner has neither stopped the commercial activities even after issuance of challan nor obtained the required Health Trade License, a closure notice was served upon the petitioner on December 15, 2016 with the direction to close the said *Spa* within seven days of receipt of the closure notice. On receipt of closure notice, the petitioner has filed an application for grant of Health Trade License, which was processed and a deficiency letter dated December 26, 2016 was issued with the direction to submit/furnish some documents including the proof regarding running the trade prior to February 07, 2007. Since, the petitioner failed to furnish any reply/document/proof, the application of the petitioner was rejected on January 16, 2017 under order of the Competent Authority and vide letter dated January 24, 2017, the petitioner was directed to close the trade within three days of receipt of the letter. It is the stand of the respondent in the counter affidavit, subsequently, the petitioner challenged the closure order dated January 24, 2017 by filing W.P.(C) No. 1019/2017 before this Court, which was disposed off with the directions to the respondents to pass a detailed and

speaking order deciding the application of the petitioner within 15 days. Pursuant to the said order, the petitioner filed his reply on September 08, 2017 along with documents and a receipt of Rs.250/- and made a request for personal hearing, which was granted to him on September 12, 2017. It is the stand of the respondent, as per MPD 2021 Princess Road from Mall Road to Tagore Park Road only is identified as Mixed Land use Road whereas the property in question is situated much beyond the Tagore Park Road. Therefore, the property in question is not on the Mixed Land use Road, but on the residential road in “D” category. Further, clause 15.7.1 MPD 2021 provides that subject to the general condition in para 15.4 and additional conditions given in para 15.7.3, the Wellness Centers including Day Spas/Weight Loss Centres/Ayurvedic Centres offering Ayurvedic treatment/Saloons offering fitness & aesthetic medical services shall also be permitted in the residential plots abutting road of minimum ROW prescribed in 15.7.2 irrespective of whether the road is notified as Mixed-Street use or not. But it is further subjected to the condition that the same should have been operating as on February 07, 2007. It is the stand of the respondent, the petitioner has not submitted any document/proof to show that the trade in the premises was operating as on February 07, 2007, which is a mandatory requirement to grant the License to *Spa* operating in a residential area. Therefore, the application of the petitioner was rejected vide speaking/reasoned order dated September 19, 2017 and the petitioner was directed to close down the Trade/Business within five days in compliance of

the direction given by this Court vide order dated September 05, 2017 in W.P.(C) No. 1019/2017. It is the stand in the counter affidavit that the present petition filed by the petitioner is totally devoid of merits and is abuse of process of law and be dismissed.

7. The petitioner has filed rejoinder affidavit wherein he has reiterated the facts as mentioned in the writ petition.

8. Mr. Mayank Mehandru, learned counsel for the petitioner would state, the orders passed by the respondent are in contravention to the provisions of Delhi Municipal Corporation Act and Master Plan of Delhi 2021. He would state, the respondent has wrongly placed reliance upon clause 15.7.1 to say that the activities of the *Spa* are permissible from the said property only subject to the condition that the same was operating on February 07, 2007. According to him, the provisions of Chapter 15 of the MPD 2021 which deals with Mixed Use Regulations has to be read in its entirety and the same cannot be read either in isolation or selectively. He placed reliance on clause 15.7.1 to contend that it provides an additional right to carry out activities of commercial nature in the premises which are purely residential in nature and have not been granted the status of mixed land use. He would also refer to clause 15.7.3 which provides for additional conditions which has an overriding effect on the general conditions including clause 15.7.1. The said clause categorically permits the running of a Wellness Centre including Day *Spa*, in the premises under the notified roads as well as the residential premises, in the categories C & D colonies followed by categories E, F & G colonies. He states, under the

said clause there is no such restriction of a particular date for commencement of the activities for categories C, D, E, F & G.

9. He would state, the condition of operation upto a particular date as applicable to category A & B will not be applicable in the present case as it is not in dispute that the property of the petitioner is situated in a colony notified under category 'D' by the Municipal Corporation and size of the plot is far more than 100 sqm and is also situated on a 24 meter ROW which is far more than the prescribed criterion under the said clause. He draws the attention of the Court to clause 15.3.2 to show that different criterions of permissible commercial usage have been prescribed for different categories of colonies. The criterion of permissibility for operating a wellness center for those operational upto a particular dated i.e February 07, 2007 is prescribed specifically only for the colonies under A & B Categories, wherein it is prescribed that no new banks, fitness centre, wellness centre and NGOs will be permissible. However, under the said clause separate permissibility criterion has been provided for the Category C & D colonies, which will be applicable in the present case as the property is situated in category D. The said permissibility criteria does not place any such restriction of operation upto a particular date and does not restrict opening of new centres. He would state, the impugned order has been passed arbitrarily, out of mala fide intent, with ulterior motive and under the influence of some competitors of the petitioner as the respondent has rejected the application of the petitioner for Trade License while several *Spas* are being

functional in the vicinity and neighbouring properties. It is the submission of the learned counsel for the petitioner that the hearings provided by the respondent were sham and merely an eyewash. The respondent has rejected the application of the petitioner for grant of license despite the fact that the petitioner has complied with all the rules and regulations and has submitted all the requisite documents.

10. On the other hand, learned counsel for the respondent would reiterate the stand taken in the counter affidavit.

11. Having heard the learned counsel for the parties, the issue, which falls for consideration is in very narrow compass i.e whether the petitioner is required to have a Health Trade License in respect of property No. A 2/15, Princess Road, Model Town I, Delhi. There is no dispute that the property in question is not on mixed land use road but on residential road. The case of the respondent is that the activities of *Spa* are permissible from the said property only subject to the condition that the same was operating as on February 07, 2007, which according to the respondent is not the case herein.

12. The case of the petitioner is that the provisions of Chapter 15 of the MPD 2021 which deals with Mixed Use Regulations has to be read in its entirety and the same cannot be read either in isolation or selectively. Clause 15.7.1, provides an additional right to carry out activities of commercial nature in the premises which are purely residential in nature and have not been granted the status of mixed land use. Clause 15.7.3 provides for additional conditions which have overriding effect on the general

conditions including clause 15.7.1. The said clause categorically permits the running of a Wellness Centre including Day Spa, in the premises under the notified roads as well as in the residential premises, in the C & D colonies. The condition of operation upto a particular date as applicable to category A & B will not be applicable to the case of the petitioner as it is not in dispute that the property of the petitioner is situated in a colony notified under category 'D' by the Municipal Corporation and size of the plot is far more than 100 sqm and is also situated on a 24 meter ROW. In other words, the stipulation of date February 07, 2007 shall be applicable only to colonies under category A and B.

13. To answer the issue, which has arisen for consideration, it is necessary to reproduce the provisions of Clause 15.3.2, 15.4, 15.7.1, 15.7.2, 15.7.3 and 15.7.4.

“15.3.2 THE EXTENT OF MIXED USE PERMISSIBLE IN VARIOUS CATEGORIES OF COLONIES IS FURTHER CLARIFIED AS FOLLOWS:

1. In colonies falling in categories A and B:

No commercial activities will be permissible in the colonies of A & B categories except the following:

- *Professional activity, subject to conditions given in para 15.8, mixed use and commercial activity up to one plot depth, in plots abutting Master Plan roads that are notified as mixed use streets, and commercial streets respectively, since such roads are not internal to the colonies (provided that the request of the RWA concerned shall not be necessary for notifying the Master Plan roads abutting the colonies, as mixed use streets on commercial streets).*
- *[[“Other activity” restricted to guest houses,*

nursing homes and pre-primary schools, as defined in para 15.7.1, subject to conditions contained in para 15.7, in plots abutting roads of minimum 18m ROW in regular plotted development, since these activities are in the nature of 'Public and Semi-Public' facilities. New banks and fitness centres, wellness centres and NGOs will not be permissible. Banks which existed as on 7.9.2006, fitness centres existed as on 12.8.2008, wellness centres and NGOs which existed as on 7.2.2007, (as defined in para 15.7.1)], in accordance with notifications issued in this regard from time to time, and are in plots abutting roads of minimum 18 m ROW, on the date of notification, shall however, continue.]

15.3.2(2) In colonies falling in categories C & D:

- *Mixed use in the form of Retail shops shall continue to be permissible as per conditions in para 15.6, in plots abutting notified mixed use streets.*
- *"Other activity" in terms of para 15.7 shall be permissible in plots abutting roads of minimum 18m ROW in regular plotted development, 13.5m ROW in rehabilitation colonies and 9m ROW in Walled City, regularized –unauthorized colonies, resettlement colonies, Special Areas, and urban villages, subject to conditions in para 15.7.*
- *Notification of mixed use streets in future, of minimum 18 m ROW in regular residential plotted development, 9 m ROW in rehabilitation colonies and any road in regularized- unauthorized colonies, resettlement colonies, Walled City, Special Area and urban villages in terms of para 15.3.3 shall be subject to consultation with RWAs concerned in terms of para 15.10.*

- *Mixed use shall be permissible in pedestrianized shopping streets as per para 15.3.3.*
- *Professional activities shall be permissible as per conditions laid down in para 15.8*

15.4 GENERAL TERMS AND CONDITIONS GOVERNING MIXED USE

In terms of the conditions prescribed for different categories of colonies, in para 15.3.2, and provided that the plot abuts a notified mixed use street (in the case of retail shops) or a road of prescribed minimum ROW (in the case of other mixed use activities), mixed use shall be permitted, subject to the following general terms and conditions:

In residential plotted development

i) Where there is only one dwelling unit in a residential plot, only one type of mixed use (i.e. retail shop as per para 15.6 or professional activity or one of the other activities listed in para 15.7) shall be permissible in that unit.

ii) Where there are more than one dwelling units in a residential plot, each of the dwelling units will be permitted to have only type of mixed use activity (either retail shop as per para 15.6. or professional activity or any one of the other activities listed in para 15.7).

15.7.1 Subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, the following public and semi-public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified as mixed use street:

a. Pre-primary school (including nursery / Montessori school, creche.)

b.

i) Nursing home

ii) Clinic, Dispensary, Pathology lab and Diagnostic center.

iii) Wellness Centers including Day Spas / Weight Loss Centres / Ayurvedic Centres offering Ayurvedic treatment / Salons offering fitness & aesthetic medical services and operating as on 7.2.2007.

c. Guest house (including lodging houses) irrespective of number of rooms.

d. Bank

e. Fitness Centre (including gymnasium, yoga / meditation centre) [as existed on 12.8.2008.]

f. Coaching centres / tuition centres other than those imparting structured courses leading directly to the award of a degree or diploma or conducting classes such as a regular school.

g. Non-profit making Non-Governmental Organizations (NGOs) existing as on 7.2.2007 and registered as such under Section 12A read with Section 12AA(1)(b) of the Income Tax Act, 1961.

h. Vocational Training Centre (ITI / Polytechnic / Vocational Training Institute / Management Institute / Teacher Training Institute for the AICTE / NCTE approved courses (diploma level) as per AICTE / NCTE Norms.

15.7.2 The minimum ROW of a street or stretch of road on which the above-mentioned other activities are permissible is as follows:

In A & B Colonies: 18 m ROW in regular plotted development;*

*Notes: Banks¹ [***] shall however, not be permissible, except those already operating as on*

07.09.06.

In C & D colonies: 18 m ROW in regular residential plotted development, 13.5 m ROW in rehabilitation colonies and 9 m ROW in regularized unauthorized colonies, resettlement colonies, Walled City, special area and urban villages; and in pedestrian shopping streets (of less than 6 m ROW).

In E, F &G Colonies: 13.5 m ROW in regular plotted development, 9 m ROW in rehabilitation colonies and 6m ROW in Walled City, regularized unauthorized colonies, resettlement colonies, Special areas, and urban villages and in pedestrian shopping streets (of less than 6m ROW).

²*[Note: Coaching centres / tuition centres shall also be allowed to operate on a minimum ROW of 9m unless lesser ROW is specified, in all colonies planned and developed prior to 1962 including A and B category colonies.]*

³*15.7.3 [The above mentioned public and semi-public activities shall be subject to the following overriding conditions on the general conditions prescribed in preceding paras:]*

*i) Subject to the specific conditions mentioned in succeeding paras, the minimum size** of the plot on which these activities shall be permissible, on streets of prescribed minimum ROW, shall be 200 sqm in regular plotted development, 75 sqm in rehabilitation colonies, regularized -unauthorized colonies, resettlement colonies, Walled City, Special Area & urban villages subject to the following specific conditions.*

⁴*ii) [Banks shall be permissible on maximum 2/3rd of FAR subject to 600 sqm while guest house, nursing homes, Wellness Centres including Day Spas / Weight Loss Centres / Ayurvedic Centres offering Ayurvedic treatment/salons offering fitness & aesthetic medical services will be permissible*

upto 3/4th of the floor area.]

⁵iii) Nursing Homes, dispensaries, clinics, Wellness Centres including Day Spas/Weight Loss Centers/ Ayurvedic Centres offering Ayurvedic treatment/ Salons offering fitness & aesthetic medical services, Multidisciplinary Clinics for persons with Learning Disabilities (facilities for care of the elderly and disabled shall be permissible under this category) and pathology labs shall be permissible: on minimum plot size of 100 sqm in regular plotted development on 13.5 m ROW in C & D colonies and 9 m ROW in E, F & G colonies. ⁷ However, the minimum plot size shall be 50 sqm for clinics, dispensaries and pathology labs shall be permissible: on minimum plot size of 100 sqm in regular plotted development on 13.5 m ROW in C & D colonies and 9 m ROW in E, F & G colonies. However, the minimum plot size shall be 50 sqm for clinics, dispensaries and pathology labs running in these colonies and also in E, F and G category colonies. In Walled City, Walled city extension, villages and unauthorized-regularized colonies, conditions of plot size and minimum ROW shall not be applicable.

iv) Nursing Homes, ⁶[Wellness Centres including Day Spas / Weight Loss Centres/Ayurvedic Centres offering Ayurvedic treatment / Salons offering fitness & aesthetic medical services] operating in plots abutting Master Plan roads and Zonal Plan roads shall be permissible up to 100% of built up area and the limit on the size of the plot would not apply.

v) Guest Houses operating in plots abutting streets of prescribed minimum ROW in Special Area and in plots abutting Master plan roads and zonal plan roads shall be permissible up to 100% of built up area and the limits on the size of the plot shall not apply. Provided that except in LBZ and Civil Line

Bungalow Zone, Guest houses that were operating validly under provisions of MPD, prior to 7.9.2006 would continue to the extent as was permissible at that time.

vi) ³*[Pre-primary school (other than those on plots abutting commercial streets) shall be restricted only to the ground floor upto the permissible ground coverage. Fitness Centre (including Gymnasium, Yoga / Meditation Centre), (other than those on plots abutting commercial streets) is permitted on all floors. It is also permitted in the basement subject to relevant provisions of Building Bye Laws, structural safety norms and fire safety clearance. In case the use of basement leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government.]*

vii) ⁴*[Coaching centres and tuition centres referred to in para 15.7.1 (f) including computer coaching and language coaching centres shall be permissible upto 2/3rd of the maximum permissible FAR of the plot size subject to a maximum of 500 sqm built area and basement. There shall be no restriction on the size of the plot. Use of basement shall be subject to clearance from the fire authorities and other statutory bodies as per the relevant provisions of MPD 2021 and Unified Building Bye-Laws, 1983, amended from time to time. In case the use of basement for coaching centres and tuition centres including computer coaching and language coaching activity leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government. Other existing coaching/tuition centres may be allowed to continue till end of May, 2008 and shift to conforming locations by then. The tuition centres for school children only, shall also*

be permissible in the ground floor dwelling of any group housing on a maximum floor area of 100 sqm or 50% of the floor area of the flat, whichever is less.]

viii) The above mentioned activities shall also be subject to any other specific terms and conditions, as may be prescribed in the relevant statutes / acts applicable to them.

ix) It shall be the responsibility of the plot allottee / owner to make arrangements for parking so that the parking does not encroach / spill over on public land.

⁵x)[NGOs as referred to in Clause (g) of Sub-para 15.7.1, if not registered as yet, should get themselves registered within one year from the date of Notification. Activities of NGOs will be allowed to continue only from that part of the premises which was in use as on 7.2.2007 without permitting any further increase subject to the condition that it is less than 3/4th of the floor area.]

⁶xi) The activity given in Para 15.7.1 (h) shall be permitted on individual residential plots of size 1000 sq.m. and above.

*Note: **Variation of $\pm 5\%$ in plot size may be disregarded.*

15.7.4 BANQUET HALL

Banquet Hall shall also be permissible in industrial and commercial areas including notified commercial streets under Mixed Use Regulations. Development control norms in respect of ground coverage, FAR, height and basement shall be applicable as per master plan norms for the specific land use for that premises till specific regulations are notified for this purpose.”

14. Having noted the provisions of MPD-2021 on which the

counsel for the parties have placed reliance in support of their case / submissions, it has to be seen whether the provisions require the activities of *Spa*, shall be permitted in the property, subject to the condition that the same are operating as on February 7, 2007 is confined to category 'A' and 'B' colonies only and not to category D colony. There is no dispute that *Spa* has been operating since 2016, which is on a 40-meter residential road. The cut-off date of February 7, 2007 is in clause 15.7.1 (b) (iii). The clause 15.7.1 stipulates, subject to general conditions in clause 15.4 and additional conditions in clause 15.7.3, the activities of day *Spa* (in the case in hand) shall also be permitted in residential plots abutting roads of minimum ROW prescribed in clause 15.7.2, whether or not the road is notified as mixed use street. The clause 15.7.1 does not limit its operation to 'A' and 'B' categories of colonies. In other words, clause 15.7.1 does not make any distinction between categories 'A', 'B', 'C', 'D', 'E' and 'F' colonies. The general conditions as per Clause 15.4 stipulates, if there is one dwelling unit or more than one dwelling units, only one of the activities listed in Para 15.7 shall be permitted. Similarly, clause 15.7.3 prescribe the additional conditions shall override the general conditions and the same relates to the size of the plots and the extent of construction. So there is nothing in clauses 15.4 and 15.7.3 which has a bearing on the cut-off date dated February 7, 2007 in clause 15.7.1 (b) (iii). It necessarily follows the activity of Day *Spa* is allowed, whether or not the road is notified as Mixed-Street use; on a minimum plot size of 100 Sq. Mtrs and if the said said activity was

operating as on February 7, 2007.

15. This position also emerges from a reading of clauses 15.3.2 (1) and 15.3.2(2) which relates to colonies falling in categories A; B and C; D respectively. The clause 15.3.2(1) which relates to categories A and B colonies specifically refers to wellness centres as existed as on February 07, 2007. Similarly, clause 15.3.2(2) also refers to “*other activity*” being permissible in terms of clause 15.7, which surely includes clause 15.7.1, which limits the applicability of day *Spa*’s to those operating as on February 07, 2007.

16. In so far as the reliance placed by the learned counsel for the petitioner on the reply dated August 1, 2016 to the RTI application dated July 18, 2016 is concerned, the said reply has to be read in the context of information sought by the applicant therein. The information sought was on the following two queries:

- “(i) *What is the total area used under misuse and what is the total deposited amount?*
- “(ii) *A Spa is running in residential premises. Is it as per Building bye-laws and MPD-2021.*

The answer to the query no.2 was the following:

“As per MPD-2021; subject to the General Conditions in Para 15.4 and addition conditions given in Para 15.7.3 Day Spa shall be permitted in residential plots abutting roads of minimum ROW prescribed in 15.7.2 whether or not the road is notified as mixed use street.”

17. The aforesaid would not help the case of the petitioner. The information given refers to the provisions of Clause 15.4, Clause 15.7.3, Clause 15.7.2 of MPD-2021 only and not to clause 15.7.1,

which is of relevance. This court having noted the provisions of MPD-2021 and held that in terms of Clause of 15.7.1 only those *Spas*, which were in operation on February 7, 2007 could have been given the valid licence and it is not the case of the petitioner that it is operating the *Spa* w.e.f the date prior to February 7, 2007, the application of the petitioner for grant of licence was rightly rejected. The plea of parity is also unsustainable in the absence of sufficient pleadings.

I do not see any merit in the petition, the petition is dismissed.

CM No. 35041/2017 (for stay)

In view of the order passed in the writ petition, the application is dismissed as infructuous.

MARCH 05, 2018/ak

V. KAMESWAR RAO, J