

\$~34

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

+ W.P.(C) No. 1271/2019

SH. SHIV SHANKAR GUPTA

..... Petitioner

Through: Mr. Sushant Kumar, Mr. Aditya
Singh & Mr. Devendra Sharma,
Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Ashutosh Ghade & Mr. Nikhil
Goel, Advs. for SDMC.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **06.02.2019**

CM APPL. No. 5690/2019 (for exemption)

Allowed, subject to just exceptions.

Application stands disposed of.

W.P.(C) No. 1271/2019 & CM APPL. No. 5689/2019 (for interim relief)

The petitioner impugns order dated 26.11.2018 made by the Appellate Tribunal MCD in appeal No. 667/2018 in which the petitioner had challenged sealing action taken by respondent/SDMC against petitioner's shop bearing No. 1853-C/10, Govind Puri Extension, Kalkaji, New Delhi for misuse of the property.

It is the petitioner's contention that he had obtained conversion of user for the property under a scheme available with the respondent; and had paid the requisite conversion charge for obtaining such change of user.

The petitioner states that upon such conversion being granted, it is

permissible under Master Plan for Delhi-2021 to undertake commercial activities from the subject property; and accordingly the petitioner is well within his rights to run a mineral water bottling plant from the subject property.

Issue notice.

Learned counsel for respondent/SDMC is present on advance copy and accepts notice.

Counsel for respondent/SDMC points out that, as is evident from the record, the petitioner has already availed his statutory remedy under the law by way of Appeal No. 667/2018 filed before the Appellate Tribunal MCD; and that by impugned order dated 26.11.2018 the tribunal has in fact observed as under:

“Respondent is directed to calculate misuse/penalty charges and to clarify for what purpose property can be used and whether the property is existed in regularized colony, unauthorised colony or village abadi area etc.”

Furthermore, the record also shows that subsequent to passing of order dated 26.11.2018, the petitioner moved an application for recall of order dated 26.11.2018 on the ground that the respondent/SDMC had filed a false status report with regard to misuse of the subject property, since, the petitioner contended before the Tribunal, he had already paid conversion charges and was therefore not liable to pay any misuse charges/penalty for use of the subject property for commercial purposes. The said application was disposed of by the Tribunal with the following observations:

“The appellant is always at liberty to file objections to the status report as well as calculation of misuse/penalty charges, if any, by the respondent as directed in the order dated 26.11.2018.

The said liberty is granted to the appellant. The application is dismissed as withdrawn.

Adjourned for date already fixed i.e. 02.07.2019”

From the above, it is evident that the petitioner has already availed his alternate, efficacious, statutory remedy by filing an appeal before the ATMCD ; which Tribunal is seized of the matter and has placed the matter for final arguments on 02.07.2019.

In view of the above, there is no justification or reason to entertain this petition.

The petition, as also the application, are accordingly dismissed.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 06, 2019/uj