IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: September 19, 2019

\+ W.P.(C) 1761/2019, CM Nos. 8131/2019, 22730/2019 & 29135/2019

SH. CHETAN BAGGA ..... Petitioner

Through: Mr. M.S. Bammi, Mr. Nitesh Kumar and Mr. Ravi Dedha, Advs alongwith petitioner in person.

versus

THE COMMISSIONER SOUTH DELHI MUNICIPAL CORPORATION AND ANR. ..... Respondents

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

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ directing the respondents no.1 and 2 to withdraw the said sealing notice dated 25.01.2019 vide no. D-01-EE(B)-II/WZ/2019 or in alternate to quash the said sealing notice dated 25.01.2019; and / or

(b) Issue a writ of mandamus or any other appropriate writ directing the respondent no. 1 and 2 to allow the petitioner to deposit one time conversion and other consequential charges and to accept the same from petitioner.

(c) Pass any other or further order (s) as this Hon'ble Court may deem fit, just and proper in the given facts and circumstances of the present case."

2. It is the case of the petitioner that the father of the petitioner namely Kishan Kishore Bagga is the absolute owner of property bearing House No. 36, Chander Nagar, New Delhi – 110058. The ground floor of the property has been converted into two shops ad-measuring 20 sq. meters each. The property is located in non-notified road as per Master Plan of Delhi– 2021, but shops up to 20 sq. meters are permissible on non-notified road, provided the shops are being used for the purposes / business listed in Clause 15.6.3 of Master Plan of Delhi – 2021.

3. That with the intent to start a poultry business at the above mentioned shops, the petitioner along with his father in the first week of January, 2019 visited the Office of respondent no.2 to deposit the conversion charges along with consequential charges, if any.

4. It is the case of the petitioner, when he and his father visited the Office of respondent no.2 for depositing the conversion charges for running two shops, the Junior Engineer concerned initially refused to accept the payment, but on persuasion accepted the same and the petitioner was permitted to start the poultry shops on January 22, 2019. It is averred that on February 15, 2019 at around 11.30 am respondent no.2 sent an official to the shops of the petitioner and pasted one notice dated January 25, 2019 under Section 345 (a) of the DMC Act, 1957 calling upon the petitioner to deposit the conversion and other necessary charges within 48 Hrs., otherwise, the premises shall be sealed without any further notice, which according to the petitioner is completely in derogation to the provisions of the Delhi Municipal Act, 1957 and the ambit and spirit of the Master Plan of Delhi-2021.

5. Counter-affidavit has been filed by the respondents, wherein it is stated that on a complaint received by the Corporation, the site was

inspected by the officials of the Building Department on December 31, 2018 and during the inspection it was noticed that the ground floor of the property being No.36, Chander Nagar, Delhi is being used for commercial purposes for bulk storage and distribution of eggs. The ground floor of the said property has been divided into three parts, i.e., godown in the front having an area less than 20 meters and its rear portion is having a big hall with store. The property is being used for commercial purposes and not for residential. Thereafter, a show-cause notice under Section 345(a) of the DMC Act dated January 25, 2019 was issued to the petitioner against misuse of the property. No reply was received from the petitioner. Therefore the sealing order was passed on February 13, 2019.

6. It is their case that the petitioner is misleading the Court inasmuch as on the pretext of seeking permission for poultry business from the respondent / SDMC, the petitioner wants to get regularized the wholesale business of eggs from shops, which he is already running at the premises in question. Even the conversion charges of ₹82,760/- deposited by the father of the petitioner are also wrong because the egg business is not permissible as per Clause 15.6.3 of the Master Plan of Delhi – 2021.

7. Even though no rejoinder has been filed by the petitioner, an additional affidavit has been filed by the respondents wherein the respondents have additionally stated that the petitioner Chetan Bagga had applied for trade license but the same was rejected on May 31, 2019 by the Health Department after inspection of the property where the commercial activity of bulk storage of eggs was noticed by them, as well as on the basis of sealing orders passed by the Building Department of

the Corporation on account of misuse. According to the respondents, the petitioner had applied online for two general trade licenses for two shops in general branch of the Corporation. The Licensing Inspector visited the property on April 26, 2019 and noticed one shop in the name and style of "M/s. Chetan Bagga for Sale and Storage of Eggs and Kiryana Items" and other shop in the name and style of "Big Saver Bazar for Sale and Storage of Eggs and Kiryana Items". According to the respondents multiple licenses to a single owner at same premises are not allowed and therefore the general branch recommended for rejection of the same. A reference is given to a complaint and a writ petition filed by one Tarun Sood before this Court. Be that as it may, the sealing order dated February 13, 2019 was executed on June 06, 2019 by the respondent SDMC after the rejection of the trade license by the Health Department on May 31, 2019.

8. Response to the additional affidavit has been filed by the petitioner, wherein the petitioner has denied the contents of the additional affidavit filed on behalf of the respondents.

9. During the course of submissions, the endeavour of the learned counsel for the petitioner has been to contend that the petitioner is running Kiryana shops including the selling of the eggs from the two shops at ground floor, which is a permissible activity. He would submit that it is in furtherance to this permissible activity that he had sought trade license through online which was granted by the Corporation. Unfortunately, the respondents with ulterior motive are taking a plea that the activity of selling eggs on wholesale basis is impermissible from the shops in question. He states, the petitioner being a law abiding citizen is within its right to carry out permissible activity in terms of MPD-2021.

10. On the other hand, Mr. Ajjay Aroraa, learned counsel appearing for the respondents submitted that the petitioner is carrying wholesale business in eggs since the year 2001, which is impermissible. According to him even the conversion charges were also not paid by the petitioner and for that reason in the year 2007, petitioner was informed in writing to close down the activity. The petitioner through online obtained trade license for carrying out the activities in January, 2019, whereas the conversion charges were required to be paid from 2001 or at least from 2007. Unfortunately, registration and conversion charges have been paid w.e.f January, 2019 and not from the year 2001 or 2007. He justified the issuance of the impugned notice on the ground of non-payment of conversion charges by the petitioner. According to him, the impugned notice dated January 25, 2019 is justified in the facts. He justified the sealing order dated February 13, 2019, as the license procured by him, through online, was reconsidered and after an inspection carried out on April 26, 2019, it was decided to cancel the license on May 31, 2019, as according to him, the wholesale business of eggs is not permissible. That apart, a single property owner should not have multiple licenses.

11. Having heard the learned counsel for the parties, there is no dispute that the property in question can be used for non-residential purposes to the extent of an area not exceeding 20 sqm. The show cause notice was issued to the petitioner for using the property in violation of permissible sanctioned use and Master Plan 2021 and without depositing the conversion and parking charges as applicable. The petitioner had, through online application, deposited an amount of ₹82,760/- in the month of January, 2019 as one time conversion charges for two shops of 20 sqm each at the ground floor of the property. The objection of the

respondent Corporation is, the petitioner has been using the same since 2001 or at least from 2007.

12. That apart, it is their objection that two properties of 20 sqm each cannot be converted by the petitioner at the ground floor level for usage as non-residential purposes. Further, the objection of the respondents is, that the same property cannot be used for wholesale business of poultry. The only defence of the petitioner is, that the said property can be used for poultry purposes. Whether the property can be used for the wholesale poultry purposes or not, is a disputed fact; the same has to be decided on the basis of interpretation of the provisions of MPD-2021 more specifically clause 15.6.3. The respondents in none of their communications to the petitioner, have dealt with the aforesaid aspects including whether the petitioner had converted the property from 2001 or 2007 and whether he is required to pay the conversion charges from that date / year; and also whether the petitioner could have converted the property at ground floor into two shops. In other words, the conversion is as per Master Plan or not. Appropriate for the respondents is, to deal with the said aspects after inviting a reply from the petitioner, for which purposes, the respondents shall issue a notice stating therein (i) the steps which the petitioner had to take but not taken for conversion of the ground floor of the property in a non-residential use i.e shop(s); (ii) which activity the petitioner can carry from the shop(s) and license if any, is required; (iii) what would be the area of coverage; (iv) conversion into how many shop(s); (v) from which date the conversion has been effected in the past and the charges leviable. The notice shall be issued within two weeks of receipt of this order. The petitioner shall give reply to notice, within two weeks thereafter. The respondents shall consider

the same and pass appropriate orders within four weeks thereafter. If the petitioner is satisfied by the order to be passed, he shall act in accordance with the same. If aggrieved, the petitioner is at liberty to challenge the same in accordance with law. Till such time, the respondents take a decision as above, the parties shall maintain status quo as existing today. Writ petition is disposed of. No costs.

CM Nos. 8131/2019, 22730/2019 & 29135/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

SEPTEMBER 19, 2019/*jg*