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

+ **W.P.(C) 7387/2019**

BELA SETHI

..... Petitioner

Through: Mr Raman Duggal, Ms Aayushi Gupta and Mr A. K. Panwar, Advocates.

versus

COMMISSIONER OF POLICE, DELHI & ORS Respondents

Through: Mr Gautam Narayan, ASC, GNCTD for Mr Ramesh Singh, Standing Counsel for GNCTD with Mr Ishaan Agarwal and Ms Shivani Vij and Ms Dacchita Shahi, Advocates for R-1 and R-2.

Mr Payal Jain, Advocate for R-3 and R-4.

Insp. Sushil Kumar, ASI Lal Bahadur, Licensing Unit/R-1 and R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.07.2019

CM No.30792/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 7387/2019 & CM No. 30793/2019

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 25.06.2019 passed by the Joint Commissioner of Police (Licensing) (Responden no. 2) cancelling the Lodging license granted to the petitioner in respect of the premises located at 7885/2, Plot No. 3,

Arakashan Road, Pahar Ganj, New Delhi-110055 (hereafter 'the property'). A plain reading of the impugned order indicates that the petitioner's licence has been cancelled as she had falsely represented herself to be the absolute owner of the property. Even according to the petitioner, she owns only 60% of the undivided share in the property and the remaining 40% is owned by respondent nos.3 to 5.

3. Admittedly, there are disputes pending between the petitioner and respondent nos.3 to 5 and the said respondents have also initiated proceedings against the petitioner in respect of the said property, including seeking cancellation of the mutation of the property in favour of the petitioner. The said respondents have also filed a writ petition being W.P.(C) 1719/2019 captioned '*Santosh Batra & Ors. v. North Delhi Municipal Corporation & Ors.*', *inter alia*, praying that that mutation granted in favour of the petitioner be cancelled. The said respondents have also prayed that other licences granted to the petitioner in respect of the property be cancelled.

4. Mr Duggal, learned counsel appearing for the petitioner has assailed the impugned order on, essentially, two fronts. First, he contends that the impugned order is without jurisdiction. He states that the matters considered by respondent no.1 for cancelling the licence are outside the scope of the relevant regulations – Regulations for Keeping Places for Public Entertainment in the Union Territory of Delhi, 1980. In particular, he has referred to Regulation 37 of the said Regulations and contended that the Commissioner of Police or any officer authorized by him in this behalf may cancel a licence, if after such enquiry it is found that the licensee is not a suitable person for continuing to hold the licence. He submits that in the

present case, there is no finding that the petitioner is not a suitable person to hold the licence. He also referred to Regulation 4(c), which defines the expression 'suitable person' and submits that there can be no dispute that the petitioner is a suitable person who had been granted the said licence.

5. Second, he states that the impugned order is also in violation of the principles of natural justice. He submits that the show cause notice dated 30.05.2018 issued by the respondents had not raised any allegation with regard to the petitioner furnishing incorrect particulars in her application. He submits that in this view, the respondents could not cancel the licences on the ground that the petitioner had not made a correct disclosure in her application.

6. Mr Duggal, further submits that the only ground stated in the show cause notice was that the mutation in favour of the petitioner has been cancelled. He states that the said mutation had been restored pursuant to orders passed in a writ petition preferred by the petitioner and therefore, the ground for cancellation as stated in the show cause notice, would not survive.

7. Mr Gautam Narayan, learned counsel appearing for respondent nos.1 and 2 countered the aforesaid submissions. He states that the licence was initially issued to the petitioner on 12.09.2010. At the material time, the petitioner claimed that she was the owner of the property. He states that thereafter, the licence was renewed from time to time on the petitioner furnishing an affidavit. He has handed over a copy of the affidavit affirmed by the petitioner and has also produced the relevant files containing the said affidavits in original. Paragraph 2 of the format of the affidavit is relevant and reads as under:-

“2. That I am the Owner/Co-owner/Tenant/Partner/Director of the Hotel/Guest House/Motel/Hostel and other Co-owner/Landlords/Directors have consented for obtaining license in my name (Documents to be attached in the form of affidavit on stamp paper of Rs.10/-).”

8. He pointed out that the applicant is required to affirm whether he/she is the Owner/Co-owner/Partner/Director of the Hotel/Motel. He states that the petitioner had obtained renewal of licences by falsely affirming that she was a Owner and therefore, the decision of the respondents to cancel the same cannot be faulted. He also submits that the petitioner has an alternative remedy by an appeal under Regulation 39 of the aforesaid Regulations.

9. In response to the aforesaid submission, Mr Duggal states that the petitioner acquired only 60% of the said property in question and had not acquired the balance 40%. He states that the said share was acquired from Smt. Satwant Kaur and at the material time, she was holding the licence to run the lodging house from the said premises.

10. It is seen that the petition does not disclose any of the said facts. The petition only states that in March, 2008, Late Smt. Satwant Kaur sold all her rights in the said property and since then the petitioner is the ‘*sole proprietor/occupier of the said hotel property.*’ The petitioner has also averred that 40% of the undivided share of the hotel property was sold to respondent nos.3 to 5. However, they were not put in possession.

11. Although the petitioner has admitted in the petition that she is an owner to the extent of 60% undivided share in the property. The impression sought to be given in the petition is that the petitioner had acquired the entire

ownership of the property in question and thereafter, 40% undivided share had been sold to the respondents nos. 3 to 5.

12. It is an admitted case of the petitioner that she had applied for the licence claiming herself to be the owner of the premises and not a co-owner of the said premises. It is also affirmed in the affidavit submitted by the petitioner from time to time that she was the owner of the premises. It is relevant to refer to Paragraph 2 of the format of the affidavit required to be submitted by the applicant, as set out hereinabove, which was admittedly submitted by the petitioner.

13. It is seen that that the deponent is also required to affirm that the deponent/applicant had obtained consent from other co-owners. However, no such assertion was made by the petitioner in the affidavit. It is apparent from the above that the petitioner had submitted a false affidavit to the respondent authorities. Mr Duggal contends to the contrary by referring to Section 2(37) of the Delhi Municipal Corporation Act, 1957 which defines the term 'owner'. The said definition is an inclusive definition couched in wider terms. He contends that in terms of said definition any person owning any interest in a property is an 'owner'.

14. The said contention is bereft of any merit. The petitioner had not affirmed an affidavit claiming to be one of the owners but had, in fact, affirmed on affidavit that she was the owner of the property. She was fully aware of the assertion made by her. The petitioner also had the option to affirm that she was a co-owner of the property, in terms of the format of the affidavit to be submitted. However, she had intentionally not affirmed her to be a co-owner but an owner and thereby avoided being called upon to furnish consent from other owners. This court is in no manner of doubt that

the petitioner had furnished a false affidavit.

15. In view of the above, this Court is unable to find any fault with the impugned order cancelling the petitioner's licence, which was clearly obtained on the basis of the false assertion.

16. The contention that the impugned order passed by the respondents is without jurisdiction is also unmerited. The question whether a person is a suitable person or not a suitable person would only require to be addressed once a valid application has been filed. In the present case, the petitioner's application was incorrect and was liable to be rejected at the outset. It could not have been entertained on account of containing a false affirmation.

17. It is relevant to note that the impugned order expressly states that "*the Lincensee is at liberty to apply afresh for grant of lodging licence with true disclosure of information and proper documentation*"

18. The contention that the petitioner was not issued any show cause notice and the order has been passed without following the principles of natural justice is also unpersuasive. The show cause notice clearly indicates that the action for cancelation was proposed as it had come to the notice of the respondents that the petitioner was not the absolute owner of the property and 40% of share of the property had been sold to other co-owners. Thus, the allegation that the petitioner had not made a true disclosure was clearly brought to the notice of the petitioner. It is correct that the show cause notice did not specifically state that the petitioner had filed a false affidavit. However, a meaningful reading of the show cause notice would clearly indicate that one of the allegations was the petitioner had wrongly obtained the licence by claiming herself would be the absolute owner, which was found to be incorrect.

19. Remedy under Article 226 of the Constitution of India is a discretionary remedy. There is little doubt that the petitioner had falsely affirmed an affidavit filed with the respondent authorities. In the circumstance, this court is of the view that exercise of discretion in favour of the petitioner is not warranted. The petition is, accordingly, dismissed.

20. The respondent authorities are also not precluded from initiating appropriate criminal action against the petitioner for furnishing a false affidavit.

21. Order *dasti* under signatures of the court master.

VIBHU BAKHRU, J

JULY 11, 2019
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