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

% Judgment delivered on: 28th July, 2021

+ W.P.(C) 10509/2020 & CM APPLN. 33228/2020 & 10649/2021

MANOJ KUMAR GUPTA Petitioner

versus

EAST DELHI MUNICIPAL
CORPORATION & ANR. Respondents

+ W.P.(C) 579/2021 & CM APPLN. 1495/2021, 10578/2021, 11911-
12/2021, 19523-25/2021 & 21745-47/2021

MANOJ KUMAR GUPTA Petitioner

versus

EAST DELHI MUNICIPAL
CORPORATION & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mohit Kumar, Advocate

For the Respondents : Mr. Jai Sahai Endlaw, Advocate for R-1 - EDMC.

Mr. Harjeet Narang, Advocate for the Intervenor No. 2
Sanjay Kumar Gupta

Mr. Deepanshu Choithani and Ms. Madhuri Khubwani,
Advocates for Intervenor – Praveen Kr. Gupta

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CM APPLN. 11911/2021 (Impleadment)&& CM APPLN. 21745/2021 (Impleadment) in W.P.(C) 579/2021

1. The hearing was conducted through video conferencing.
2. These are the application filed on behalf of the mother of the petitioner seeking intervention. It is contended by the mother that the subject property is owned by her and earlier an agreement to sell dated 19.11.2010 was executed in favour of her three sons including the petitioner and thereafter she was forced to execute a new agreement to sell dated 14.03.2014 only in favour of the petitioner. She submits that a complaint has been filed with the police and a suit for declaration has also been filed.
3. Issue notice. Notice is accepted by learned counsel for the parties. For the reasons stated in the application and without prejudice to the rights and contentions of the parties application if allowed, applicant is impleaded as a respondent. Let amended Memo of parties be filed within one week.

W.P.(C) 10509/2020& W.P.(C) 579/2021

4. Petitioner, in W.P.(C) 10509/2020, impugns speaking order dated 08.12.2020 whereby the Health Trade Licence of the petitioner has been cancelled. Petitioner, in W.P. (C) 579/2021, impugns the sealing order dated 18.12.2020 and consequent sealing of the premises of the petitioner being a confectionary store situated at L-4A, Ground Floor, Dilshad Garden, Delhi.

5. The sealing order dated 18.12.2020 is consequential to the speaking order dated 08.12.2020 and the consequent cancellation of the Health Trade Licence by letter dated 15.12.2020.

6. The speaking order dated 08.12.2020 is based primarily on two grounds; one is with regard to the dispute between the petitioner and his brothers with regard to the ownership of the property and complaints being filed by the three brothers against each other in respect of various properties and dragging the officers of the respondent-Corporation in their inter-se personal dispute.

7. The other ground for cancellation is the condition of the property and the alleged breach of conditions of the Health Trade Licence granted to the petitioner. The impugned order records various grounds alleging breach by the petitioner of the Health Trade Licence, inter-alia, using /operating beyond the permissible 20 sq. mtrs. stipulated by the Health Trade Licence and the overall unhygienic conditions.

8. Impugned order requires the petitioner to re-apply for the licence after removing deficiencies and after obtaining no objection certificate from the other two brothers whose names are mentioned in the agreement to sell executed on 22.11.2010.

9. Since the impugned order had recorded that the brothers were making complaints against properties of each other consequent to which properties of each other brothers had been sealed and said order had been premised on the complaint from one of the brothers, this Court deemed it

expedient to implead the brothers in these proceedings.

10. Efforts were made to resolve the inter-se dispute between the brothers and they were even referred to mediation. However, no settlement could be arrived at.

11. The contention of the brothers as well as mother is that earlier an agreement to sell dated 19.11.2010 registered on 22.11.2010 was executed, whereby the mother had agreed to sell the property to the petitioner and his brothers jointly and said agreement to sell recorded that the entire sale consideration had been paid to the mother in advance.

12. Further it is contended that subsequently another agreement dated 14.03.2018 has been got registered by the petitioner whereby it is alleged that mother has agreed to sell the said property solely to the petitioner.

13. The contention of learned counsel appearing for the brothers as well as the mother is that once an agreement to sell has been executed in the year 2010 and the entire sale consideration paid, the subsequent agreement to sell would be void and inoperative.

14. It is, on these grounds, it is alleged that civil proceedings are pending inter-se the parties. It is contended that petitioner by concealing the original agreement to sell had obtained the subject Health Trade Licence.

15. The impugned order dated 08.12.2020 also bases the cancellation on the same premise.

16. It is not in dispute by the brothers and the mother that the petitioner was one of the purchasers as per the agreement to sell dated 19.11.2010. Though counsel for the petitioner contends that the petitioner is the owner of the entire property, however, what is not in dispute is that petitioner is at least owner of one-third of the property.

17. It is also not in dispute that the petitioner has been carrying on the business from the subject premises to the exclusion of the other brothers and the mother. Though the case of the brothers is that originally all three of them used to carry on business together from the subject premises and subsequently because of the dispute raised by the petitioner they had to move out of the said premises at a later point of time.

18. Even if the brothers had been jointly carrying on the business with the petitioner, admittedly, at the time when the subject Health Trade Licence was obtained, it was petitioner alone who was in possession of the property and carrying on the business to the exclusion of other brothers and the mother. It is this Health Trade Licence which has been cancelled by the municipal authorities on the basis of complaint filed by the brothers.

19. The impugned order itself records that the municipal authorities are issuing Health Trade Licence on online basis as part of *ease of doing business* and also for ensuring transparency and as per the portal anyone who applies and submits documents like – electricity bill or water bill as proof of their possession can automatically receive licence certificate from the online portal.

20. Since it is not in dispute that the petitioner is in possession of the property and has some interest in the property i.e. one-third as per the admitted agreement to sell dated 19.11.2010 registered on 22.11.2010. The admission recorded herein is the admission of the brothers and the mother and not the admission of the petitioner.

21. In so far as the dispute with regard to the title is concerned, the same is already subject matter of civil proceedings and accordingly any observation contained herein would be without prejudice to the rights and contentions of the parties in those proceedings.

22. In so far as the present impugned order is concerned, since the stand of the municipal authority itself is that what is examined by them, while granting a trade licence, is the possession of the applicant and in this case since the petitioner is admittedly in possession of the subject property, said requirement of the municipal authority is duly satisfied.

23. With regard to the other objections raised by the municipal authority i.e. use of excess area than permitted by the health trade licence and breach of the licence condition, it is undertaken by the petitioner that petitioner shall duly comply with the requirement of the municipal authority to their satisfaction.

24. To this effect an order dated 23.03.2021 has been placed on record by learned counsel appearing for the respondent-Corporation which order records the compliances to be done by the petitioner. Said condition are:

- 1.1. *Petitioner will run the trade as per clause no. 15.4 of MPD-2021 stating that in group housing only professional activity and small shops in terms of para 15.6.3 shall be permissible. Retail shops specifically provided for the lay out plan of group housing would be permissible. [However, the entire ground floor of DDA flats on mixed use/commercial use area/stretches/roads is allowed for mixed use/commercial use [as notified vide S.O. 2034, dt. 12.08.2008 whereas w.e.f. 25.09.2013, only one retail shop of maximum size of 20 sqm. is permitted and rest of the area may be used for professional activity]. No amalgamation of two or more DDA flats shall be allowed.*
- 1.2. *Petitioner will not use adjoining property no. L-3A, GF, L-3B, FF, L-5B, FF, L-6B FF, L-3C SF, L-6C SF which are in possession of petitioner and previously used for health trade activities (if de-sealed).*
- 1.3. *Petitioner will not use the passage/stairs from L-4A, GF to above/other premises.*
- 1.4. *Petitioners will not do encroachment on public land.*
- 1.5. *Petitioner will maintain hygiene and sanitation of the trade shop.*
- 1.6. *Petitioner will follow all the rules of Health Trade Licence.*

25. Learned counsel for the petitioner submits that one of the conditions sought to be imposed is that petitioner shall not use the adjoining properties in possession of the petitioner as mentioned in clause 1.2 herein above. He submits that petitioner shall be approaching the municipal authorities for grant of an appropriate licence for use of the said premises, if permissible in

law and shall use the said premises after an inspection by the officers of the municipal authorities and strictly in accordance with the permission, if granted by the municipal authorities.

26. In view of the above, the impugned speaking order dated 08.12.2020 to the extent of requiring the petitioner to obtain a NOC from his brother is set aside. Further, subject to petitioner filing an affidavit of undertaking with the municipal authorities that he shall comply with the terms and conditions from 1.1 to 1.6 as mentioned in the order dated 23.03.2021 passed by the municipal authorities, the application of the petitioner for grant of health trade licence shall be considered expeditiously by the respondent and in case of compliance by the petitioner of the said conditions and after due satisfaction, the health trade licence shall be granted to the petitioner.

27. Once the health trade licence is granted, the respondent shall de-seal the subject premises in accordance with law.

28. It is clarified that the observations in this order are solely for the purposes of deciding the issue at hand i.e. speaking order and the sealing order and would not have any bearing on the inter-se dispute between the brothers and the mother in respect of the said property.

29. The petitions are disposed of in the above terms.

CM APPLN. 19523/2021 in W.P. (C) 579/2021

30. In view of the subsequent affidavit filed by the petitioner affirming

the averments of the petition, I do not deem it expedient to proceed against the petitioner under Section 340 Cr. P.C.

31. The application is disposed of.

32. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

JULY 28, 2021
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SANJEEV SACHDEVA, J



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