

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th March, 2021
+ **W.P.(C) 3012/2021 & CM APPLs. 9115/2021, 9116/2021**
RAJ MUKESH Petitioner
Through: Mr. Ashish Dholakia with Mr. Vipul
Kumar Sharma and Mr. Akash
Panwar, Advocates.

versus

**SUB-DIVISIONAL MAGISTRATE, KANJHAWALA, GOVT. OF
NCT DELHI-110081 & ORS.** Respondents
Through: Ms. Sakshi Popli Advocate for
Respondent No.2-DPCC.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the “Sealing memo” dated 20th August, 2019, that has been issued by the Sub Divisional Magistrate against the Petitioner’s property, in view of the directions given by the Delhi Pollution Control Committee (*hereinafter*, “DPCC”).
3. The Petitioner, claims to be the owner of property bearing no. Khasra No. 142 (plot no. 842), Village Kanjhawala, Delhi-110081. He had entered into a rent agreement on 20th February, 2019 with one Mr. Ravi Kant for use of two rooms in the said property, for residential purposes. The Petitioner’s grievance in this petition is that a sealing memo has been issued on 28th August, 2019, and a show cause notice has been issued against him on 21st December, 2020 vide which it has been recorded that the DPCC has

imposed an amount of Rs. 2,00,000/- upon the Petitioner. Another notice has also been issued in the name of one Mr. Mukesh for a sum of Rs. 20,00,000/-, on the same date. The Petitioner's name is Mr. Raj Mukesh. The two notices which have been issued, are thus wrongly addressed to Mr. Rajesh and Mr. Mukesh.

4. The case of the Petitioner is that the SDM is now seeking to recover the said amount. Moreover, no hearing has been afforded to the Petitioner by the DPCC, prior to imposition of the penalty which is now sought to be recovered. The Petitioner has made several representations to the SDM, as also the DPCC, informing them that he had not stored any hazardous material in the said property, and shall not create any nuisance in the said locality.

5. Mr. Dholakia, Id. Counsel for the Petitioner, submits that the premises was given out on rent for a period of 10 months to a tenant, who may have stored some material leading up to the sealing of premises. However notice of termination has already been issued to the said tenant.

6. Considering the overall facts and circumstances of this case, the following directions are issued:

- i. The representatives of DPCC, along with representatives of SDM shall visit the premises of the Petitioner on 22nd March, 2021 for inspection. They shall inform the Petitioner on his mobile no. 9211132129 as to the time that they would be visiting.
- ii. At the said time, the premises shall be de-sealed and after taking photographs and samples of any materials that may have been stored there, the tenant would be permitted to remove all

his material, so that the Petitioner can make lawful use of his premises. If the tenant is not available, then the Petitioner may, under intimation to the tenant, either store the material in some other location or dispose it of, subject to maintaining accounts of sale.

iii. Insofar as the notice imposing the penalty is concerned, the DPCC shall hear the Petitioner and pass a speaking order.

7. The Petitioner would be free to make use of the premises in accordance with law, and any remedies which the Petitioner wishes to avail of, against the order to be passed by the DPCC, are kept open. Further, the order of the DPCC, which is finally passed, shall not be given effect for a period of two weeks after being passed, for the Petitioner to be able to avail of his remedies in accordance with law.

8. With these observations, the present petition, along with all pending applications is disposed of. The contentions of all the parties are left open, as this Court has not examined the matter on merits.

PRATHIBA M. SINGH
JUDGE

MARCH 8, 2021
dj/ak