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

% Judgment delivered on: 16.11.2021

+ W.P.(C) 10425/2021

SUKHESH CHAND GUPTA ..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Brij Bhushan Gupta, Senior Advocate with Mr. Jai Sahai Endlaw, Mr. Achal Gupta and Mr. Ashutosh Rana, Advocates, Advocate.

For the Respondent: Ms. Sakshi Popli, Standing Counsel, NDMC with Mr. Ramji Ram, Assistant Engineer.
Mr. Ateev Mathur and Ms. Jagriti Ahuja, Advocates for HDFC Advocate.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.

2. Petitioner seeks quashing of order dated 26.07.2021 whereby the respondent - New Delhi Municipal Council (NDMC for short) has sealed shops Nos. 43, 44-45 and 46 located within Plot No.1, Bengali Market, New Delhi. Petitioner further seeks a direction to respondent

No.1 to de-seal the subject premises.

3. The case of the petitioner is that petitioner is the owner of entire plot No.1, Bengali Market of which, subject four shops are a part. As per the petitioner the four shops were separated from each other with wooden partitions in front portion and with permanent wall partition at the rear portion.

4. It is contended that the Shop No.46 was under the illegal occupation of the sons of Mr. Gulzari Lal and Mr. Gulzari Lal was in possession of the subject premises as a tenant since the year 1970s. It is submitted that the possession of shop No. 46 was obtained from the legal heirs of Mr. Gulzari Lal through orders of the Court after prolonged litigation.

5. It is contended that petitioner has let out the subject four shops to HDFC Bank for the purposes of opening a branch. It is contended that HDFC Bank requested the petitioner to carry out certain additions and alterations in the subject premises by their letter dated 03.12.2020. Along with the letter they had given the proposed interior layout as well as the existing site plan of the subject shops.

6. Petitioner by its letter dated 04.12.2020 requested the NDMC to allow renovation/fit-out work in the said shops. Along with the said request letter dated 04.12.2020, copy of the letter of HDFC Bank dated 03.12.2020 along with the existing site plan and proposed

interior layout plan of the premises was forwarded to the NDMC.

7. In the letter dated 04.12.2020 even though a request was made to NDMC to allow renovation/fit out work, it was stated that as per the understanding of the petitioner, proposed work was permissible under law.

8. By Letter dated 29.12.2020, Respondent NDMC informed the Petitioner that for the repair/renovation/fit-out work limited to the extent as stipulated in clause 2.0.1(d) of Unified Building Bye Laws (UBBL-2016), no notice and building permit was required. Petitioner was requested not to carry out any work beyond clause 2.0.1(d) of the Unified Building Bye-Laws without obtaining prior approval of NDMC.

9. Petitioner thereafter by letter dated 30.03.2021, referring to the letter of NDMC dated 29.12.2020 sought a clarification as to whether erection/re-erection/removal of any wooden/glass door/window/partition at the given points were allowed as per clause 2.01(d) of UBBL, 2016.

10. In response to the said letter NDMC by its letter dated 01.04.2021 reproduced clause 2.01(d) and stated that no permission was required for carrying out construction activities within the ambit of 2.01(d).

11. As per the petitioner, petitioner thereafter commenced the repair/renovation/fit out work.

12. A work stop notice was issued by the NDMC on 12.07.2021 stating that petitioner was carrying out unauthorised construction work without prior sanction of the Chairperson, NDMC. Reference was drawn in the said order dated 12.07.2021 to Schedule A and the same is extracted as under:-

> "*1. Removed internal walls and carrying out repair/renovation work i.e. falls ceiling work, painting work, frame work, wooden work etc at premises No.43, 44-45 & 46 at Plot No.1, Bengali Market, New Delhi, unauthorisedly without prior approval of NDMC.*"

13. In response to the said work stop notice, petitioner specifically stated that no construction work was being carried out in the subject property and only interior renovation work was being done in terms of the permission which was sought from the NDMC.

14. Subsequently on 26.07.2021 the impugned sealing order has been passed.

15. The impugned sealing order reiterates Schedule A i.e. "*Removed internal walls and carrying out repair/renovation work i.e. falls ceiling work, painting work, frame work, wooden work etc at premises No.43, 44-45 & 46 at Plot No.1, Bengali Market, New Delhi,*

unauthorisedly without prior approval of NDMC."

16. The impugned sealing order records that inspection of the premises was carried out on 13.07.2021 and records that the owner/occupier of the premises had merged the three shops and violated the standard plan and provisions of MPD-2021 and carried out construction activities beyond the ambit of 2.01(d) of Building Bye Laws, 2016 without the prior permission of NDMC. The premises were sealed on 26.07.2021 itself.

17. Petitioner contends that petitioner has not carried out any construction activity contrary to the Unified Building Bye Laws or the permission which was sought from the NDMC.

18. Learned senior counsel for the petitioner submits that petitioner has not removed any load bearing walls allegedly separating the shops. He submits that in between the shops there was only a partition wall which was in one instance 3 inches and the other 6 inches and were not load bearing walls.

19. Learned senior counsel further submits that no construction/repair/renovation work contrary to the building bye-laws or clause 2.01(d) of the building bye-laws has been undertaken by the petitioner or the tenant and as such the action of sealing of the subject premises is illegal.

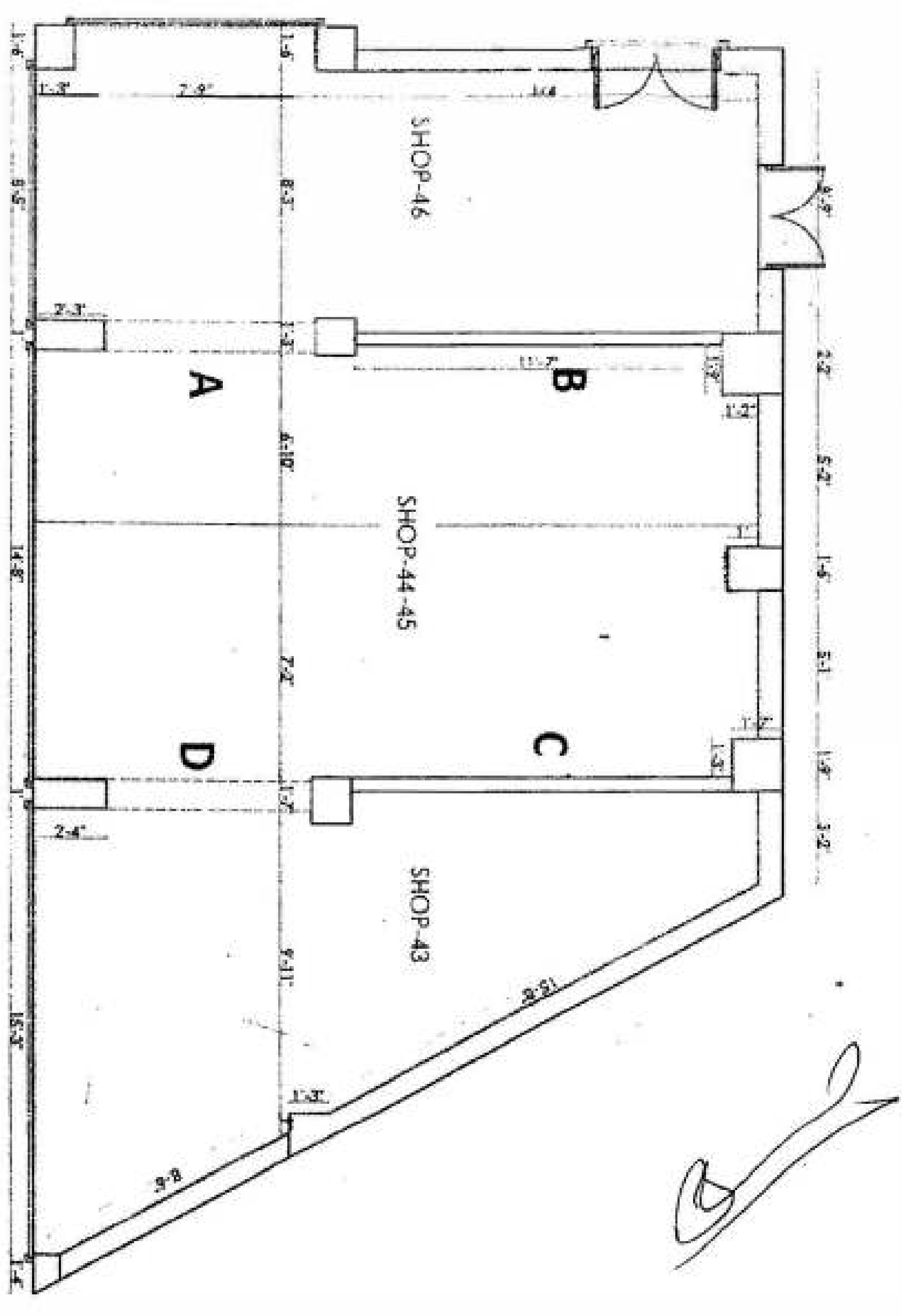
20. Status report has been filed by NDMC contending that petitioner has carried out modification/alteration in the subject property by removing load bearing walls and as such prior permission under Section 239 of the NDMC Act, 1994 was required.

21. It is further contended by learned counsel for the NDMC that petitioner has merged the four shops into one which is not permissible under the NDMC Act. It is further contended that petitioner has also violated the sanctioned building plan of the subject property.

22. Status report encloses an inspection report carried out of the subject property on 05.10.2021. The inspection report also contends that petitioner has carried out alterations to the load bearing walls by removing them at various places. Photographs have been annexed with the inspection report, however, none of the photographs indicate as to the load bearing wall which has been allegedly removed from the shops.

23. Even the inspection report does not state as to whether there were ever any load bearing walls existing and if so when they were removed.

24. At this stage it would be expedient to extract the site plan which was annexed by HDFC Bank along with its letter dated 03.12.2020 and which was also forwarded to NDMC by the Petitioner.


SHOP-46
SHOP-44-45
SHOP-43
A
B
C
D

25. It is an admitted position that action was initiated by the NDMC on a complaint which was received in the form of a letter from Mr. H.P. Gupta who is the son of Mr.Gulzari Lal. It may be noted that Mr. H.P. Gupta was evicted from the subject premises after prolonged litigation and under orders of the Court. Mr. Gupta had given a letter on 05.07.2021 to the Chairman, NDMC alleging illegal construction in the shop. A CD has also been annexed with the letter.

26. This Court had directed the NDMC to produce the CD containing the video clip allegedly sent by Mr.H.P.Gupta. The video clip was uploaded on the email of the Court Master during the course of hearing and same has been viewed.

27. From the video clip it is evident that at point B as shown in the Site plan there was an almirah in shop no. 46. The video clip fortifies the fact that at point B there was no load bearing wall. The dimensions as mentioned in the Site plan suggest that the width of the wall at point B was about 3 inches and the wall at point C about 6 inches.

28. Mr. Ramji Ram, the Assistant Engineering for the Respondents, submits that for a wall to be a load bearing wall the minimum width of the wall has to be at least 9 inches in width.

29. Since the walls at point B and C were less than 9 inches, they cannot be termed as load bearing walls. It may also be noticed from the Site plan that the Wall B on two sides was flanked by a column of

width of 1 feet 3 inches and 2 feet 2 inches and the columns flanking Wall C is 1 feet 7 inches and 1 feet 9 inches. The Site plan also shows that there are several columns supporting the structure.

30. No material has been placed on record by the NDMC to show that there were ever any load bearing wall existing at Point B and C.

31. Petitioner has also filed a structural audit report with regard to the report of health assessment of the subject shops. The structural audit report, concludes that the structure is supported on concrete encased MS columns, concrete encased beams/lintels (at door openings) and supported by walls all around the periphery. The report also concludes that the structure is safe and stable for sustaining the current loading conditions as per latest relevant BIS codes.

32. Though the impugned order records that the owner/occupier has merged the three shops and violated the standard plan and provisions of MPD – 2021, however, learned counsel for the respondent candidly submits that she has not been provided any standard plan or building plan by the Respondents.

33. Mr. Ramji Ram, Assistant Engineer during the hearing confirmed that sanction plan/standard plan is not available in their records and no comparison was done with the same to ascertain as to whether the renovation is in violation of the standard plan or the sanctioned building plan.

34. Learned counsel for the respondent relies on Section 239(1)(d) of the NDMC Act to contend that petitioner has breached the provisions of the Act and accordingly prior permission of the Commissioner was necessary.

35. Section 239 (1) (b) & (d) of the NDMC Act *inter-alia* reads as under:-

> *239. Applications for additions to, or repairs of, buildings.*
>
> *(1) Every person who intends to execute any of the following works, that is to say,--*
>
> *(a)* ******
>
> *(b) to make any alteration or repairs to a building involving the removal or re-erection of any external or partly wall thereof or of any wall which supports the roof thereof to an extent exceeding one-half of such wall above the plinth level, such half to be measured in superficial metres;*
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> *******
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> *(d) to make any alteration in a building involving—*
>
> *(i) the sub- division of any room in such building so as to convert the same into two or more separate rooms; or*
>
> *(ii) the conversion of any passage or space in such building into a room or rooms;*
>
> *(e)* ******

shall apply for sanction by giving notice in writing of his intention to the Chairperson in such form and containing such information as may be prescribed by bye- laws made in this behalf.

36. Section 239 (1) (d) of the NDMC Act provides that in case any person intends to make any alteration in the building involving sub division of any room in such building so as to convert the same into two or more separate rooms or converts any passage or space in such building into a room or rooms he shall apply for sanction by giving notice in writing of his intention to the Chairperson.

37. It is not the case of the NDMC that petitioner is seeking to make any sub division of any room in the building or converting any passage or space into a room. On the other hand the contention of the respondent NDMC is that two rooms have been merged into one which is clearly not covered by Section 239 (1)(d). Accordingly, reliance placed by learned counsel on the said provision is misplaced.

38. On the other hand reference may be had to Section 239(1)(b) of the NDMC Act which provides that if a person intends to make any alteration or repairs to a building involving the removal or re-erection of any external or party *(sic)* wall thereof or of any wall which supports the roof thereof to an extent exceeding one-half of such wall above the plinth level, requires prior permission of the Chairperson.

39. As noticed above, there is no material available on the records of the NDMC that the walls at points B and C were load bearing walls on the other hand the site plan (extracted above) and the video clip shows that the same were only partition walls. Partition walls have been defined clause 1.4.81 of the Unified Building Bye Laws as *"1.4.81 Partition: An interior non-load bearing wall, one storey or part storey in height."*

40. Further, no provision of the Unified Building Bye Laws - 2016, MPD 2021 or the NDMC Act has been pointed out by learned counsel for the Respondents to show that the removal of internal partition walls, which are not load bearing, cannot be done without the prior permission of the chairperson NDMC.

41. In view of the above, the impugned order dated 26.07.2021 directing sealing of the subject premises and the consequential sealing thereof cannot be sustained.

42. Accordingly impugned order dated 26.07.2021 is quashed. Respondents are directed to forthwith de-seal the subject premises. Petition is allowed in the above terms.

43. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

NOVEMBER 16, 2021/rk **SANJEEV SACHDEVA, J.**