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

% *Date of Decision: 22nd November, 2021*

+ **LPA 437/2021**

DR SHUBHAMKAR MISHRA & ANR. Appellants
Through Mr. Rakesh Khanna, Senior Advocate
with Mr. Arnav Vachher, Mr. Dhiraj, Mr. Ashutosh
Dubey, Mr. Abhishek Chauhan and Mr. Arun
Nagar, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. Respondents
Through Mr. Abhinav Bajaj and Mr. Sankalp
Bhatt, Advocates for R-1 & R-2.
Mr. Anupam Srivastava, Additional Standing
Counsel for GNCTD with Ms. Sarita Pandey,
Advocate for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 40908/2021 (Exemption) & 40907/2021 (lengthy synopsis and list of dates)

Allowed, subject to all just exceptions.

Applications stand disposed of.

LPA 437/2021 & CM APPL. 40906/2021 (Stay)

Issue notice.

Mr. Abhinav Bajaj, learned counsel accepts notice on behalf of
Respondent No. 1 and 2.

Mr. Anupam Srivastava, learned Additional Standing Counsel accepts notice on behalf of Respondent No. 3.

Assailing the impugned orders dated 27.10.2021 and 10.11.2021 passed by the learned Single Judge in W.P.(C) 12082/2021, learned Senior Counsel for the Appellants submits that the learned Single Judge has erred in declining to grant interim relief to the Appellants during the pendency of the writ petition. It is submitted that the Appellants are brothers and joint owners of basement and Flat Nos.G-1 and G-2, Ground Floor, Plot No.2, Factory Road, Ring Road, Safdarjung, New Delhi and had purchased the same in 2014 after paying the entire sale consideration. Plot No.2 measures approximately 1430.424 sq. meters and is comprised of a basement with three floors on the front portion as well as construction in the back portion of the plot. Appellants have been using the basement of Flat Nos.G-1 and G-2 for the purpose of running a Diagnostic Centre.

It is further submitted by the learned Senior Counsel that MPD-2021 allows mixed land use on residential plots in a residential area, which are abutting 18 metres ROW Road and Appellants have applied for conversion of land use from residential to commercial, with Respondents No.1 and 2, way-back on 19.02.2016. However, the application is still pending consideration.

It is further submitted that by virtue of para 15.7 of MPD-2021, it is permissible to run/operate a Diagnostic Centre, and attention of the Court is drawn to para 15.7 of MPD-2021, which reads as follows:-

"15.7 other Activity

15.7.1 Subject to the general conditions given in para 15.4 and additional conditions given in para 15.7.3, the following public

and semi-public activities shall also be permitted in the residential plots abutting roads of minimum ROW prescribed in 15.7.2, whether or not the road is notified as mixed use street:

a. Pre-primary school (including nursery / Montessori school, creche.)

b.

i) Nursing home

ii) Clinic, Dispensary, Pathology lab and Diagnostic center.

iii) Wellness Centers including Day Spas/Weight Loss Centres/Ayurvedic Centres offering Ayurvedic treatment / Salons offering fitness & aesthetic medical services and operating as on 7.2.2007.”

The contention is that despite the fact that a Diagnostic Centre is a permissible activity under the MPD-2021, yet acting contrary thereto, Respondents No.1 and 2 have issued a show cause notice and sealing order. Attention of the Court is also drawn to a letter dated 05.11.2020 written by the Deputy Director (PLG) MP&DC, Delhi Development Authority to the Chief Architect, NDMC, stating therein that Diagnostic Centre is a permissible activity as per Chapter-15 Mixed Use Regulations, more particularly, para 15.7 therein. It is argued that while on one hand, the application for conversion has not been decided for the last five years, on the other hand, the Appellants are sought to be dislodged from the Diagnostic Centre. Learned Single Judge has issued notice in the writ petition but has not granted an interim relief and if the Diagnostic Centre is sealed pursuant to the sealing order dated 05.04.2021, irreparable harm shall be caused to the Appellants and the writ petition shall be rendered infructuous.

We have heard the learned Senior Counsel for the Appellants and learned counsels for the Respondents.

Perusal of Annexure A-15 to the memo of this appeal, which is a letter dated 05.11.2020, addressed to the concerned Department of the NDMC by DDA as well as para 15.7 “Other Activity”, more particularly, para 15.7.1 b(ii), as aforementioned and the fact that the application made by the Appellants for conversion of land use is pending for nearly five years with Respondents No.1 and 2, we are of the view that Appellants have made out a *prima facie* case for grant of interim relief. Balance of convenience is also in favour of the Appellants and irreparable harm shall be caused in case the interim relief is not granted to the Appellants.

We accordingly restrain Respondents No.1 and 2 from sealing the basement of the subject property, wherein the Diagnostic Centre is being run by the Appellants and direct that *status quo* be maintained both with regard to possession and running of the Diagnostic Centre. The interim order is subject to deposit of Rs.25 Lakhs with Respondent No.1, by the Appellants, within a period of one week from today, which the learned Senior Counsel has offered to deposit, on instructions from the Appellants, without prejudice to the rights and contentions of the Appellants.

It is made clear that the deposit of the said amount shall be without prejudice to the rights and contentions of the parties to the writ petition. The deposit shall not be construed as admission of any fact or liability by the Appellants and likewise acceptance of the deposit shall not be treated as admission of any fact or waiver of any rights by the Respondents.

Needless to state that the writ petition shall be decided by the learned Single Judge, on its own merits, in accordance with law, without being influenced by any observations made by this Court. It is made clear that this Court has not expressed any opinion on the merits of the case.

Interim order granted by this Court shall operate till the next date of hearing before the learned Single Judge in the writ petition. It is open to the Appellants to move an appropriate application before the learned Single Judge for extension of the interim order. It is also open to the Respondents to approach the learned Single Judge for vacation/variation of the interim order, in accordance with law.

Since the writ petition is pending before the learned Single Judge, we see no reason to keep the present appeal pending and the same is accordingly disposed of along with the pending application.

CHIEF JUSTICE

JYOTI SINGH, J

NOVEMBER 22, 2021/sn