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

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Judgment delivered on: 25.03.2022

+ W.P(C) 3397/2022

RINKU GUPTA & ANR

..... Petitioners

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Kirti Uppal, Senior Advocate with Ms. Riya Gulati, Advocate.

For the Respondent: Mr. Vipul Ganda, Addl. Standing Counsel with Mr. Aditya Vikram Singh, Asst. Standing Counsel.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners who are allottees of shop Nos.9B and 9C under the AIIMS subway seek a direction to the respondents for clubbing of the two shops in terms of policy dated 16.08.2016.

2. Learned senior counsel for the petitioner submits that petitioner No.1 is allottee of Shop No.9B and petitioner No.2 is allottee of shop No.9C under a special category.

3. Learned counsel submits that an application was filed as far back as on 31.10.2019 seeking permission of the NDMC for clubbing of the two shops. He submits that the said application has remained pending and has



not been decided however, by letter dated 09.12.2021 it has been stated that the policy is under review and as such the case would be considered at an appropriate stage.

4. Learned senior counsel for the petitioner submits that the clubbing of the shop has become necessary in view of the present prevailing pandemic and also for the reason that the businesses have suffered a major setback.

5. Learned senior counsel for the petitioner under instructions submits that in case on a review of policy there is no right of clubbing, petitioners undertake to restore the said shops to their original position.

6. Learned senior counsel submits that petitioners have already furnished a structural stability certificate of a structural engineer registered with the Corporation as per their requirement. He submits that petitioners have paid the outstanding amounts of Rs.42,40,434/- and Rs. 25,09,646/- and as on date there are no outstanding dues.

7. Learned counsel for the respondent disputes the averments in the petition, however, states that the policy is under review and the application would be considered on merits on finalisation of the policy.

8. The policy of NDMC dated 16.08.2016 which as on date is in force with regard to the clubbing stipulates as under:-

“Clubbing of Units:

- (i) *All cases before issuing this circular i.e. 16.8.2016 shall be governed as per the Council's resolutions application as on that date.*



- (ii) *Clubbing of stalls and kiosks would not be allowed. Any commercial premise on the right of way is a stall/kiosk.*
- (iii) *clubbing of two or more adjoining units (i.e. shops in markets) be allowed subject to the condition that:*
 - (a) *Technical feasibility and structural safety allows the same;*
 - (b) *Licence fee of each unit involved in the clubbing shall be enhanced by 30%;*
 - (c) *Prior permission from NDMC is obtained;*
 - (d) *Date of expiry of the clubbed unit shall be the date of expiry of unit, whose licence period will expire first;*
 - (e) *The original shape/structure of the units shall be restore in case clubbing is undone;*
 - (f) *If a unit involved in such clubbing is given under special considerations such as member of specific group, then such characteristic shall be maintained on such clubbing.*
 - (g) *A joint license deed shall be executed with licensees, whose units are Involved in such clubbing.”*

9. With regard to the technical feasibility and structural safety a structural stability certificate has already been filed of the Structural Engineer. With regard to the condition for enhancement of license fee is concerned, petitioners would be liable to enhance the license fee by 30% as stipulated in the policy.

10. Petitioners also undertake that they shall be bound by the conditions (d) & (e) and the date of expiry of clubbed unit be taken as the date of



expiry of the unit whose license expires first and further in case the clubbing is to be undone the original shape and structure of the unit shall be restored.

11. Further it is undertaken that the characteristic of the unit allotted under the special category shall be maintained as petitioner No.2 is the original allottee and belongs to the special category.

12. The mere fact that the policy is under review is no ground to refuse to consider the application of the petitioners particularly when the Petitioners are undertaking that in case of review and unclubbing they shall restore the shops.

13. In view of the above, this petition is allowed. Petitioners are permitted to club the two units subject to enhancement of the license fee by 30% and further maintaining the structural stability. The petitioners are bound down by their undertaking given to the Court and in case of review of policy and the condition of clubbing being deleted from the policy, petitioners shall restore the respective units to their original shape and structure. This would of course be subject to the right to impugn the new policy if so aggrieved.

14. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J.

MARCH 25, 2022/rk