

\$~41

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

% *Decided on: February 22, 2023*

+ W.P.(C) 2318/2023 and CM APPL. 8782/2023

SMT. SAROJ DEVI & ORS. Petitioners

Through: Mr. Ayush Gupta, Adv.
(M.9818402326, email:
ayush@guptalegal.in)

versus

MUNICIPAL CORPORATION OF DELHI
& ORS. Respondents

Through: Mr. Mukesh Gupta, Standing
Counsel for MCD
Mr. Tushar Sannu, Standing
Counsel with Mr. Azad Bansala
and Mr. Devvrat Tiwari,
Advocates for R-2 & 3

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

CM APPL. 8783/2023

1. The present is an application under Section 151 CPC seeking exemption from filing clear copies of annexures.
2. Application is allowed, subject to just exceptions.
3. Application stands disposed of.

W.P.(C) 2318/2023 & CM APPL. 8782/2023

4. The present writ petition has been filed with prayer for setting aside the impugned order/warrant of attachment of property dated

02.02.2023 issued by Sub Divisional Magistrate (SDM), Rohini. There is prayer for direction to the respondent no.3 to de-seal the properties of the petitioners viz (i) property bearing no. 105, Pocket-27, Sector-24, Rohini, Delhi, (ii) property bearing no. 104, Pocket-27, Sector-24, Rohini, Delhi and (iii) property bearing no. 118, Pocket-4 & 5, Sector-23, Rohini, Delhi.

5. It is the case of the petitioners that petitioners no. 1 & 2 are the joint owners of the aforesaid properties.

6. The same have been illegally sealed by the SDM, Rohini/respondent no.3 herein by resorting to proceedings under Section 139 of the Delhi Land Reforms Act, 1954 (DLR Act). Further, warrant of attachment of property dated 02.02.2023 have been issued by virtue of which the properties of the petitioners have been sealed.

7. It is submitted that the petitioners are running guest house and lodging house in their respective properties with valid Municipal Health Trade Licence issued from the office of respondent no.1 i.e. Municipal Corporation of Delhi. Further, the petitioners have also obtained necessary licenses from the Delhi Pollution Control Committee qua their respective properties, which have also been attached along with the present writ petition.

8. It is further submitted that the petitioners have applied for grant of licenses from the office of DCP licensing qua their respective properties which is pending consideration with the competent authority. It is also submitted that the licenses already obtained and applied by the petitioners were much prior in time to the date on

which properties of the petitioners have been sealed by the respondent no.3 on 06.02.2023.

9. It is submitted that in pending criminal proceedings, the learned Additional Sessions Judge (POCSO), North-West District, Rohini Court in the matter pertaining to anticipatory bail application, issued various directions to the SDM, Rohini to appear in person and file report with respect to actions against the guest house/lodging house operating in the area in question. Thus, it is submitted that without issuance of any show cause notice and without adhering to the Principles of Natural Justice and without verifying the fact that the subject properties are running with valid licenses, the impugned order dated 02.02.2023 has been issued, pursuant to which the properties of the petitioners have been sealed.

10. It is further submitted that the area in question i.e. Rohini, is an urbanised area, wherein the provisions of the DLR Act will not be applicable.

11. Issue notice. Notice is accepted by learned counsels appearing for the respondents.

12. At the outset, Mr. Mukesh Gupta, learned standing counsel appearing for respondent no.1 submits that there is a Circular by the Delhi Police that in cases whether licenses have been applied for and the application is pending, then in that eventuality a property will not be sealed. He draws the attention of this Court to the circular which has been attached as annexure P-16 to the present petition.

13. Learned standing counsel further submits that the department has verified the documents and that the petitioners have valid Trade

Health License duly issued by the MCD.

14. Mr. Tushar Sannu, learned counsel appearing for respondent no.2 and 3 submits that as per verification, the land in question stands urbanised. He further submits that the action has been taken by the concerned SDM, since there were directions from the Court of learned Additional Sessions Judge during the course of hearing an anticipatory bail petition.

15. I have heard learned counsels for the parties.

16. Perusal of the record shows that no show cause notice as such was issued to the petitioners before the action for sealing was taken by respondent no.3. Further, it is to be noted that there is a clear admission that the land in question already stands urbanised. If that be the case, then clearly any action by the respondent no.3 pursuant to the DLR Act, would be *non est* as the DLR Act as such would not be applicable to the area in question.

17. Law in this regard is very clear that once an area has been urbanised, then the Delhi Land Reforms Act, ceases to have any applicability to such areas. This Court in the case of ***M/s Mahajan Industries Pvt. Ltd. vs. Gaon Sabha Chattarpur, 2023 SCC OnLine Del 23*** has categorically held as follows:

“10. Once notification has come to be issued under the Delhi Municipal Corporation Act, 1957 and Delhi Development Act, 1957, then the land in question becomes urbanised. Thus, any proceedings under the DLR Act, 1954 as such would not be maintainable as Delhi Land Revenue Act, 1954 and Delhi Land Reforms Act, 1954 will cease to have any effect or applicability with respect to such lands.”

18. In view of the aforesaid situation, it is clear that the impugned order dated 02.02.2023 issued by the SDM, Rohini is without any jurisdiction and any authority. The learned SDM as well as the learned Court of Additional Sessions Judge have over stepped their authority in directing the action which has been taken by the learned SDM for sealing the properties of the petitioners.

19. In that view of the matter, the impugned order dated 02.02.2023 issued by the SDM (Rohini), District North-West, Kanjawala, Delhi is set aside qua the properties of the petitioners, which are reflected at serial no.1, 2 & 3 of the impugned order dated 02.02.2023.

20. Since the order dated 02.02.2023 has been declared as *non est* and has been set aside, it is directed that the properties of the petitioners that have been sealed by the respondent on 06.02.2023 shall be de-sealed expeditiously preferably within seven working days from today.

21. With the aforesaid, the present writ petition is allowed and accordingly disposed of.

MINI PUSHKARNA, J
FEBRUARY 22, 2023/tp