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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3224/2023, CM APPL. 12653/2023 & CM APPL.**
15917/2024

KAMLESH KUMAR SINDHWANIPetitioner

Through: **Mr. Sandeep Singh Nainwal, Mr.**
Rajat Sharma, Advocates

versus

DELHI POLLUTION CONTROL COMMITTEE AND ANR

.....Respondents

Through: **Ms. Sakshi Popli, Advocate for**
DPCC
Mr. Kunal Rawat, Ms. Dolly Verma,
Ms. Ekta, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
03.12.2024

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1. The present petition assails order dated 20th February, 2023, passed by Respondent No. 1, Delhi Pollution Control Committee,¹ whereby the Petitioner's industrial unit M/s Jeans Dyeing & Washing Unit situated at premises bearing No. 80, Pocket-G, Sector-4, Bawana Industrial Area, New Delhi-110039,² was sealed and an Environmental Damage Compensation³ of INR 47,00,000/- was imposed on the Petitioner.

2. A brief background leading to the filing of the present petition is as

¹ "DPCC"

² "the premises in question"/ "the industrial unit"



follows:

2.1. Petitioner, the owner of the property in question, executed a Rent Agreement dated 7th February, 2019 with Mr. Arun Kumar Jain, Respondent No. 2, in respect of the aforesaid premises. The said Rent Agreement was executed for industrial use and the tenancy was subsequently extended for a period of six years valid till 31st December, 2024.

2.2. On 31st July, 2019, the National Green Tribunal, Principal Bench, New Delhi in O.A. No. 620/2019,⁴ issued directions to Joint Committee of Central Pollution Control Board, DPCC and concerned District Magistrates to furnish an action taken report within a period of one month from the date of the order with respect to alleged polluting activities being carried out by red category industries located in Bawana Industrial Area, Mayapuri Industrial Area, Uttam Nagar and Khyala.

2.3. In compliance with the afore-noted order, on 23rd August, 2019, DPCC conducted an inspection of the premises in question, however, the industrial unit was found locked from outside. It was also reported that the industrial unit was operating without a valid Consent to Establish/Operate and consequently, on 17th September, 2019, DPCC issued a closure direction under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 including the imposition of EDC of INR 47,00,000/- against M/s Jeans Dyeing & Washing Unit.

2.4. Mr. Arun Kumar Jain submitted a representation to DPCC on 2nd September, 2019 for removal of plant and machinery from the property in question. The said representation was disposed of through letter dated 27th

³ “EDC”

⁴ titled as *Varun v. Delhi Pollution Control Committee*



February, 2020 directing him to deposit the EDC amount and prohibiting him to establish/operate any new unit in the property in question without a valid Consent to Establish/Operate.

2.5. Pursuant to the Court's directions in W.P.(C) 10231/2019 filed by the Petitioner, a show cause notice was issued to M/s Jeans Dyeing & Washing on 11th June, 2020 calling upon them to answer as to why the EDC amount should not be imposed.

2.6. Thereafter, the Petitioner issued representation dated 8th September, 2022 seeking review/recall of the directions issued against M/s Jeans Dyeing & Washing. Additionally, the Petitioner filed W.P.(C) 13516/2022 stating that he was unaware that his tenant has violated environmental norms and has undertaken industrial activity in the property in question without a Consent to Establish/Operate. This Court, through order dated 31st October, 2022 directed DPCC to take a final decision on Petitioner's representation dated 8th September, 2022 for de-sealing of the property in question, within one month from date of the order.

2.7. Subsequently, DPCC passed the impugned order dated 20th February, 2023 and confirmed the EDC awarded through order dated 17th September, 2019 to be in terms of the EDC Compensation Policy dated 20th May, 2019. It was observed that M/s Jeans Dyeing & Washing Unit was operating without obtaining valid consent from DPCC for dyeing activity and without mandatory pollution control measures.

2.8. In this background, the Petitioner has invoked the jurisdiction of this Court seeking de-sealing of the property in question and to quash the EDC amount imposed on them.

3. Mr. Sandeep Singh Nainwal, counsel for Petitioner, contends that the



provisions of Water (Prevention and Control of Pollution) Act, 1974, does not entitle DPCC to seal the industrial unit. He place reliance on the decision of this Court in *Sunita Aggarwal v. Delhi Pollution Control Committee & Anr.*⁵ It is further urged that no opportunity of hearing was provided to the Petitioner prior to the sealing and imposition of EDC and the show cause notice was given subsequent to the action taken by DPCC. Further, the impugned decision did not consider the Rent Agreement and GST Certificate of Mr. Arun Kumar Jain before passing the impugned order, thus, the same is liable to be set aside.

4. Contrarily, Respondents No. 1 and 2 have filed their respective counter affidavits. Ms. Sakshi Popli, Counsel representing DPCC, questions the authenticity of the Rent Agreement submitted by the Petitioner as it shows to be executed on 7th February, 2019, although the tenancy was shown to be commencing from 1st January, 2019. It is further pointed out that the Rent Agreement was neither registered nor notarized hence, cannot be considered in favour of the Petitioner. She also emphasizes that the sealing has been carried out consequent to deficiencies observed by the inspecting team and in case the premises were to be de-sealed, then Mr. Arun Kumar Jain must give an undertaking to the Court that he shall pay the EDC amount imposed under the order dated 17th September, 2019. Further, it is argued that when Mr. Jain applied for Consent to Establish, he showed himself to be the owner of the property.

5. Mr. Arun Kumar Jain, present in person, admits his relationship of landlord and tenant with the Petitioner. He further states that he was carrying out the business from the premises in question in the name and style of M/s

⁵ W.P.(C) 15585/2022 decided on 5th December, 2022.



Jai Feb Care Unit. He asserts that he was carrying out his business operations from the premises with a valid Consent to Establish dated 29th March, 2019 issued under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 in the Orange category. The sealing action was carried out without providing an opportunity of hearing and therefore, is violative of the principles of natural justice. He further submits that various equipment and other machinery were installed in the premises in question. However, on 3rd September, 2019, he was informed that there was a theft of the machinery and equipment at the premises in question and an FIR to that effect was lodged at Police Station, Bawana.

6. The Court has considered the facts and grounds raised by the parties. The Consent to Establish Order dated 29th March, 2019 issued by DPCC has been annexed with the counter affidavit of Mr. Arun Kumar Jain, which depicts that the Consent to Establish order was issued to M/s Jai Feb Care. Additionally, the common application for consent submitted to DPCC has also been enclosed wherein the Mr. Jain has been named as the proprietor and the name and address of industrial unit is mentioned as M/s Jai Feb Care. The said application also mentions the status of the unit as “Owned Premises” and the name of the owner is mentioned as Mr. Sandeep Sindhvani, who is the son of the Petitioner. This *prima facie* establishes that the offences, as highlighted by DPCC in the impugned order, were being carried out by Mr. Arun Kumar Jain, the tenant of the premises.

7. During the present proceedings, taking note of the fact that Mr. Jain had also filed W.P. (C) 15198/2024 contending that the valuable equipment was lying on the premises, the Court on 28th October, 2024, issued following



directions:

- “1. The present petition impugns orders dated 17th September, 2019 and 20th February, 2024 passed by Respondent No. 1, Delhi Pollution Control Committee, whereby the Petitioner’s industrial unit M/s Jeans Dyeing & Washing Unit situated at No. 80, Pocket-G, Sector-4, Bawana Industrial Area, New Delhi-110039, was sealed and an Environmental Damage Compensation of INR 47,00,000/- was imposed on the Petitioner. The impugned orders were passed under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.*
- 2. The Petitioner’s premises bearing No. 80, Pocket-G, Sector-4, Bawana Industrial Area, New Delhi-110039 has been leased out to Mr. Arun Kumar Jain, Respondent No. 2, under Rent Agreement dated 7th February, 2019. At the said premises, Respondent No. 2 is conducting business in the name and style of Jai Feb Care.*
- 3. The Petitioner states that he was unaware that his tenant was carrying out polluting activity and recovery of damages, if any, ought to be made from Respondent No. 2 and not from him. By sealing of the property, the Petitioner has been deprived of enjoying of his own property for no fault of his. Moreover, he points out that Respondent No. 2 has not been paying rent to him since the sealing of the premises.*
- 4. During the course of arguments, Mr. Jain alleges that subsequent to the sealing action, on 2nd September, 2019, some of his equipment and machinery lying at the premises in question, have been stolen.*
- 5. In such circumstances, in order to resolve the issue, certain clarity is required, for which the following directions are issued:*
 - a. The Petitioner is directed to produce the original title documents of the premises in question to establish his ownership.*
 - b. DPCC is directed to conduct an inspection of the premises after descaling the property and submit a report to the Court of the equipment lying therein. For this purpose, they are permitted to take photographs of the premises in question and furnish the same to the Court along with the report. At the time of inspection, both Mr. Sandeep Sindhwani, son of the Petitioner and Mr. Arun Kumar Jain shall remain present at the premises in question.*
 - c. Pursuant to the completion of the inspection, the premises in question shall be re-sealed.*
 - d. The above-noted inspection shall be conducted within two weeks from today and report thereof shall be furnished to Court before the next date of hearing.*
 - e. Mr. Sandeep Sindhwani, son of the Petitioner and Mr. Arun Kumar Jain shall remain present in person before the Court on the next date of hearing.*



6. List on 3rd December, 2024.”

8. In compliance of the said directions, DPCC filed a status report dated 21st November, 2024, indicating that the re-inspection was conducted in the presence of Mr. Sandeep Sindhwani, son of Mr. Kamlesh Kumar Sindhwani, Mr. Arun Kumar Jain and the DPCC officials. It was noted that the premises were found to be vacant and no equipment was found. This implies that presently, the sealing is only of the premises in question.

9. This brings us to the issue of whether DPCC had the power of sealing the premises in question under the Water (Prevention and Control of Pollution) Act, 1974. This issue was dealt with by this Court in *Sunita Aggarwal v. Delhi Pollution Control Committee & Anr.*⁶ In the said decision, placing reliance on another decision of this Court in *Gopi Nath Private Limited v. Department of Environment, GNCTD*,⁷ it was observed that the closure of any industrial unit or other activity alleged to be polluting in nature only results in discontinuance of the objectionable activity but the use of the premises for non-polluting activities cannot be stopped and therefore, sealing of the premises can have an adverse impact.

10. As regards the doubt expressed by Ms. Popli regarding Petitioner's title over the property, the Petitioner has produced original title documents including Agreement to Sell, General Power of Attorney, Special Power of Attorney, Indemnity Bond, Deed of Will, etc. All these documents are in the name of Mr. Kamlesh Kumar Sindhwani, the Petitioner herein. The documents are perused and returned.

11. In light of the foregoing, the landlord is being deprived from use and

⁶ W.P.(C) 15585/2022 decided on 5th December, 2022.



enjoyment of the premises in question due to the tenant's offending activities. Thus, having regard to the afore-noted decisions of this Court, the petition is disposed of with the following directions:

- i. DPCC is directed to de-seal the premises of the Petitioner within a period of one week from today. Mr. Kunal Rawat, counsel for Mr. Jain, states that he has no objection if after de-sealing of the premises, the same be restored to the landlord. Accordingly, it is directed that the Petitioner shall be handed over the possession of the premises in question.
 - ii. In view of the de-sealing of the premises, the electricity, water and other basic amenities shall be restored to the premises in question, subject to clearances of the outstanding dues, if any.
 - iii. DPCC shall be at liberty to proceed in accordance with law against the tenant, Mr. Arun Kumar Jain, for recovery of the EDC imposed upon the tenant under the orders dated 17th September, 2019 and 20th February, 2023.
12. With the above directions, the present petition, along with pending application(s), if any, is disposed of.

SANJEEV NARULA, J

DECEMBER 3, 2024/ab

⁷ 1998 (45) DRJ 284