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

\+ W.P.(C) 2807/2024, CM APPL. 11458/2024, CM APPL. 37977/2024

HARSARAN NIWAS RESIDENCE WELFARE ASSOCIATION & ANR. .....Petitioners

Through: Mr. Vikalp Sharma and Mr. Lokesh Patodia, Advocates.

versus

STATE OF NCT OF DELHI & ORS. .....Respondents

Through: Mr. Udit Malik, ASC, GNCTD with Mr. Avinash Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **09.07.2024**

1. The present writ petition seeks a mandamus to the Respondents to take immediate action of closing/shifting of a proposed wine/beer shop No. 1/1114, situated at Harsaran Niwas, Railway Road, Shahdara, Delhi-32. The Petitioner contends that the said shop is in violation of Rule 51 (1) of the Delhi Excise Rules, 2010[1], since there is a temple situated within 100 mts. from the location where the proposed wine/beer shop is situated.

2. It is further argued that the Respondents have failed to take the aforenoted circumstances into consideration before granting permission for opening a wine/beer shop in the area.

[1] "Excise Rules, 2010"

3. Considering the above, on 27th February, 2024 the Court directed the Respondents to carry out a fresh inspection and submit a status report within four weeks. In terms of the above directions, a status report has been filed on behalf of Respondent No. 2/ Commissioner (Excise, Entertainment & Luxury Tax), Government of NCT of Delhi.

4. The said report states that there are two temples which are within the traversable distance of the proposed site for Liquor vend, the details of which are as under:

Sr No.	Particular	Total carpet area informed by team of SDM (Shahdara)
1	Temple at 90 mtrs	272 Sq ft
2	Temple at 80 mtrs	182 Sq ft

5. Respondents contend that the proposed Liquor vend is in conformity with the Excise Rules, 2010, since the temple cited by the Petitioner at serial No. 1 above has a covered area of 272 sq. ft. which is less than 400 sq. ft., and thus does not fall under the ambit of definition of a 'religious place', as mentioned in Explanation II under Rule 51(1) of the Excise Rules, 2010, which is as follows:

> ***"51. Condition dealing with licensed premises***
> ***(1) No retail vend of Indian Liquor, Foreign Liquor or Country Liquor shall be located within one hundred meters from the following, namely:—***
> *(a) major educational institutions;*
> ***(b) religious places****;*
> *(c) hospitals with fifty beds and above:*
>
> *PROVIDED that the condition mentioned in clause (c) above shall not apply for retail vend of liquor for consumption "on" the premises:*
>
> *PROVIDED FURTHER that the condition of hundred meters shall apply for the licences granted after the commencement of these rules:*

PROVIDED ALSO that if any major educational institution, religious place or hospital with fifty beds or above comes into existence subsequent to the establishment of the retail vend of Indian Liquor, Foreign Liquor or Country Liquor, the aforesaid distance restrictions shall not apply.

Explanation: For the purpose of clause (a) above major educational institutions would mean middle and higher secondary schools, colleges and other institutions of higher learning recognized by the Government.

Explanation II: For the purpose of clause (b) above, a religious place would imply a religious place having a pucca structure with a covered area of more than 400 square feet.

Explanation III: The measurement of distance shall be the shortest traversable distance, from the mid point of the actual main entrance/door of the premises proposed for licence to mid point of the actual main door /entrance of the building of the places mentioned in clauses (a), and (c) above."

6. Counsel for the Petitioners, on the other hand, controverts the above contention and places reliance on the submissions made in CM Appl. 37977/2024, wherein the Petitioners have filed a photograph and site plan of the said temple. They contend that the total area of the temple is actually 890.44 sq. ft. and therefore the proposed Liquor vent is in violation of Rule 51(1) of the Excise Rules, 2010.

7. The Court has considered the above contentions. The pictures of the aforementioned temple indicate that there is a tin shed structure located at the entrance. The same does not form part of the temple structure and does not constitute a '*pucca*' structure. As such, as per Explanation II of Rule 51(1) of the Excise Rules, 2010, the said tin structure cannot be included in the measurement of the total covered area.

8. Further, the Petitioner has not been able to satisfy the Court as to the ownership details of the temple or the appropriate authorization/permission granted for construction of the said temple structure. The Respondent's

counsel submits that they are not aware as to how the temple structure came about. It is pointed out that the structure has been constructed around a '*peepal*' tree, however, there is no sanction for construction thereof. There is thus no defined or approved covered area.

9. Considering the above submissions, as well as the report furnished by Respondent No. 2, the Court is not inclined to entertain the present petition.

10. Accordingly, the present writ petition is dismissed.

SANJEEV NARULA, J

JULY 9, 2024
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