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

+ **W.P.(C) 10886/2024 & CM APPL 44868/2024**

RAKESH KUMARPetitioner

Through: **Mr. Suraj Prakash Sharma, Adv.**

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: **Mr. Mukesh Gupta, SC with Mr. Shashi Gupta and Mr. Arnav Gupta, Advs.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

09.08.2024

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1. This petition seeks to challenge the impugned order dated 31.07.2024 passed by the office of the Deputy Commissioner, Rohini, Zone, whereby, House No. F-249, Aman Vihar, Kirari Suleman Nagar, Delhi, is sought to be sealed in the exercise of the power under Section 349 of the Delhi Municipal Corporation Act, 1957 (DMC Act, 1957).

2. Learned counsel appearing on behalf of the petitioner submits that the impugned order is wholly without jurisdiction inasmuch as the Corporation is not empowered under Section 345A of the DMC Act, 1957 to direct for sealing of any property which is found to be misused. He further submits that the impugned action was triggered on the basis of the communication which came to be issued by the Office of the Deputy Commissioner of



Police, ANTF (Crime Branch) old Kotwali Building, Darya Ganj, Delhi-110002 dated 02.05.2024, whereby, the Commissioner of the Corporation was requested to take suitable action against drug traffickers. He submits that the list of drug traffickers with proper addresses who are said to be involved in trafficking commercial quantities of drugs under the NDPS Act, 1985, during the year 2023, was annexed in the said complaint. According to him, if the entry at SI. No.15 is perused, the same would indicate that the quantity for which the offence has been registered is of intermediate quantity as the petitioner was allegedly found to be in possession of 150 gram of heroin. He, therefore, submits that on the basis of the communication dated 02.05.2024, no action ought to have been taken against the petitioner who admittedly was not in possession of the commercial quantity of the contraband article. He further, submits that the guilt of the petitioner has not yet been proved and the petitioner has already been granted bail by the court of competent jurisdiction. According to him, unless the culpability of the petitioner is proved, the petitioner should not be punished on the basis of surmises and conjunctures.

3. Learned counsel for the petitioner also placed reliance on the decision passed by this Court in the case of ***Rajjo Devi v. Municipal Corporation of Delhi***².

4. This Court, on 07.08.2024, called upon the respondent to file a short affidavit with respect to the assertions made in the instant writ petition.

5. Learned counsel who appears on behalf of the Corporation has filed the Status Report and has taken the following stand:-

“6. That thereafter after following due process of law and following

² W.P.(C) 8583/2023



principal of natural justice, a demolition order in the present matter was passed on 20.06.2024. Since the property in question was found to be old and residentially occupied, accordingly, protection has been accorded to the same under National Capital Territory of Delhi Laws (Special Provisions) II Act validity from 01.01.2024 to 31.12.2026.

7. That since the property was being found misuses in violation of section 347 of the DMC Act, 1957 and MPD-2021, a show cause notice u/s 345-A/347 of the DMC Act, 1957 for violation of provisions of MPD-2021 was issued to Sh. Rakesh Kumar (Petitioner) vide letter No. DC/RZ/EE(B)-II/RZ/2024/D-16 dt. 31.05.2024 Copy of the show cause notice dated 31.05.2024 Is annexed herewith as Annexure-R.I/2.

8. That in response to the show cause notice reply was received from the petitioner, however, the same was found to be not satisfactory and thereafter after following due process of law, sealing order U Is 345-AI347 of the DMC Act, 1957 was passed vide No.59 IEE(B)-IIIRZI2024 dt.29.07 .2024 by the Deputy Commissioner, Rohini Zone, MCD and in continuation of the same, a vacation notice was issued to the petitioner vide letter No.AE(B)IRZI2024 I 583 dt.31.07.2024 to vacate the subject property which was also sent to the concerned SHO, PS AmanVihar, Delhi and also pasted at the site on 31.07.2024. That thereafter, sealing programme of the subject property was fixed for 02.08.2024 but on this date the subject property could not be sealed as the same could not be vacated from the petitioner on that date. Copy of the sealing order dated 29.07.2024 is annexed herewith as Annexure-R.I/3.

9. That the plea taken by the Petitioner in the petition that the MCD does not have the power to seal the property in case of "Misuse" under the provisions of DMC Act, 1957 is wrong, incorrect and misconceived. It is submitted that vide judgment dated 16.02.2006 passed in the case of M.C. Mehta Vs. Union of India &Ors., W.P.C. No.4677 /1985[With IA Nos.1816 & 1860 in WP (C) No.4677 /1985, C.A.Nos.5413 & 8694 of 2002, SLP(C) Nos.23145, 23220, 23896, 23934 of 2002, 7128/2004, 23139/2002 & C.A.Nos.608- 611 /2003], the Hon'ble Supreme Court of India have categorically held/ decided that the MCD has the power to seal the property in case of "Misuse" under the provisions of the DMC Act, 1957 as amended upto- date and directed the MCD to take action of sealing in respect of the properties where "Misuse" is found. It is submitted that the Hon'ble Apex Court held that "In view of the clear language of Section 345A, we are also unable to sustain the view of the High Court that action under Section 345A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345A can be taken only when there exists an order of demolition under Section 343,



or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345A that action can be taken even before or after an order is made under those provisions. It is clear from a conjoint reading of the definition of the expression 'to erect a building' in Section 331 and Section 345A that conversion of user would come within the purview of the expression to erect a building. In this respect useful reference can also be made to Building Bye-Laws for the Union Territory of Delhi, 1983, in particular Bye-Law Nos. 2.17 and 2.85, defining the expressions 'Conversion' and 'To Erect' respectively, which read as under: "2.17 Conversion The change of an occupancy to another occupancy or change in building structure or part thereof resulting into change of space or use requiring additional occupancy certificates.

2.85 To Erect.To erect a building means:

(a)To erect a new building on any site whether previously built upon or not; (b) To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and (c) Conversion from one occupancy to another." Having regard to these definitions if a Building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of use would come within the ambit of the expression 'to re-erect' and, consequently, within the ambit of the definition of the expression 'to erect a building'. In view of the aforesaid, reversing the impugned judgment of the High Court, we hold that under Section 345A of the DMC Act, the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises".

It is submitted that the said pronouncement of law by the Hon'ble Apex Court is the settled position of law and, thus, the action being taken by the MCD is as per law under the provisions of the DMC Act, 1957. In view thereof, the present writ petition filed by the Petitioner has got no merits/substance and is liable to be dismissed.

It is, therefore, prayed that the present petition may kindly be dismissed with costs."

6. Learned counsel for the Corporation submits that the stand taken by the Corporation primarily hinges on the provisions of Section 345A of the DMC Act, 1957 which empowers the Corporation to take an action in case the building in question is found to be misused.

7. Learned counsel for the Corporation has placed reliance on the case of



*M.C. Mehta v. Union of India*³ and submits that notwithstanding the fact that whether the petitioner was in possession of the intermediate quantity of contraband article or not, the Corporation is well within its power to take action in case the Corporation finds that the premises in question are put to use which is not prescribed under the concerned bye-laws and building plan. He, therefore, submits that in the instant case, the contraband article has been seized from the premises of the petitioner which is the subject matter of the instant writ petition and therefore, the Corporation is well within its jurisdiction to take the necessary action, as contemplated under the provisions of the Section 345A of DMC Act, 1957.

8. I have considered the submissions made by learned counsel for the parties and perused the record.

9. The impugned notice dated 31.07.2024 states that the concerned premises have been found to have been used for drug trafficking activity. This fact is also evident from the FIR which has been placed on record by the petitioner himself, which reveals that the contraband article has been seized from the premises in question.

10. It is thus seen that the seizure of the contraband article from the premises in question has not been disputed.

11. The Supreme Court in the case of *M.C. Mehta (supra)* while dealing with the question as to whether a Corporation under the DMC Act, 1957 has powers to seal the premises in case of its misuse has held that in view of the provisions under Section 345A of the DMC Act, 1957, the Commissioner of Corporation is empowered to exercise power of sealing in case of misuse of any premises. The relevant extracts of the said decision read as under:-

³ (2006) 3 SCC 399.



“35. In the impugned judgment, while dealing with the provisions of the layout plan, it was observed that the provisions for user “are only regulatory in nature”. While dealing with the user, the High Court observed that “the power, whereby and whereunder the basic human rights or the fundamental rights conferred upon a person is taken away, must be specifically conferred by a statute”. The provisions of user may be regulatory but all the same, they are mandatory and binding. In fact, almost all the planning provisions are regulatory. The violations of the regulatory provisions on massive scale can result in plans becoming merely scraps of paper. That is the ground reality in the capital of the country. None has any right, human or fundamental, to violate the law with immunity and claim any right to use a building for a purpose other than authorised. Further, the words “unless the context otherwise requires” in Section 331 of the DMC Act are of no consequence for determining the point in issue as the context herein does not provide otherwise for the present purposes. It does not provide that the power of sealing under Section 345-A cannot be exercised in case of misuser. In view of the clear language of Section 345-A, we are also unable to sustain the view of the High Court that action under Section 345-A can be taken only when there exists order of demolition under Section 343 or an order under sub-section (1) of Section 344. The conclusion of the High Court that action under Section 345-A can be taken only when there exists an order of demolition under Section 343, or on passing of an order under sub-section (1) of Section 344, and in no other contingency cannot be accepted in view of the clear provision of Section 345-A that action can be taken even before or after an order is made under those provisions.

36. It is clear from a conjoint reading of the definition of the expression “to erect a building” in Section 331 and Section 345-A that conversion of user would come within the purview of the expression “to erect a building”. In this respect useful reference can also be made to Building Bye-laws for the Union Territory of Delhi, 1983, in particular Bye-laws 2.17 and 2.85, defining the expressions “conversion” and “to erect” respectively, which read as under:

“2.17. Conversion.—The change of an occupancy to another occupancy or change in building structure or part thereof resulting into change of space or use requiring additional occupancy certificates.

2.85. To erect.—To erect a building means:

(a) to erect a new building on any site whether previously built upon or not;

(b) to re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and



(c) conversion from one occupancy to another.”

37. Having regard to these definitions if a building/structure not originally constructed for use as a shop, is put to use as a shop, such conversion of use would come within the ambit of the expression “to re-erect” and, consequently, within the ambit of the definition of the expression “to erect a building”.

38. In view of the aforesaid, reversing the impugned judgment of the High Court, we hold that under Section 345-A of the DMC Act, the Commissioner of MCD is empowered to exercise power of sealing in case of misuser of any premises.”

12. In view of the aforesaid legal position, the Court is unable to accept the submission made by the petitioner that the Corporation is not legally empowered to seal the premises even in case of its misuse.

13. So far as the decision relied upon by learned counsel for the petitioner in the case of **Rajjo Devi** (*supra*) is concerned, the Court in its interim order in paragraphs Nos. 4 and 5 has taken the following position:-

4. Mr. Aggarwal, learned counsel for the petitioner submitted that there is no provision in the DMC Act which permits sealing of premises on the ground that illegal activities were being carried out therein. He has also referred, in this context to an order, passed by a coordinate Single Bench of this court in Afsar v. Commissioner (MCD), in which the premises in question were sealed on the ground that illegal meat trade was being carried out therein. The Coordinate Bench, in para 4 of the decision, has observed thus:

*4. The review petition came up first before this Court on 10th May, 2011 when it was enquired from the counsel for the respondent MCD review applicant as to how the power of sealing affecting the Constitutional Rights of the property owner can be conferred by administrative instructions, as aforesaid. Attention of the counsel was also invited to the Full Bench judgment of this Court in **Bajaj Departmental Stores v. MCD** subsequently considered in **M.C. Mehta v. Union of India** by the Apex Court, where in the absence of a statutory provision, DDA was held to be not empowered/entitled to seal the property for misuse.*

5. As such, prima facie, the decision in M.C. Mehta1, too, cannot be used



to seal residential premises on grounds which are not envisaged in the DMC Act

14. The paragraph No.5 of the said interim order would indicate that the same is a *prima facie* opinion expressed by the Coordinate Bench of this Court and since the same is not the final decision, the view which is being taken by this Court is fortified by the Supreme Court decision in ***M.C. Mehta*** (*supra*). Therefore, the interim order relied upon by learned counsel for the respondent will not have any binding effect.

15. Furthermore, with respect to the argument that the petitioner is still facing trial and has been enlarged on bail is concerned, the same would not have any bearing on the action which is contemplated by the Corporation as the said action does not depend upon the culpability of the petitioner in the pending trial.

16. The Court, therefore, does not find any merit to entertain the instant petition. The same is, accordingly, dismissed alongwith the pending application.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 9, 2024

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