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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11844/2024 & CM APPL. 49309/2024**
SH ROHIT CHAUHANPetitioner
Through: Mr. Parveen Kumar, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondents
Through: Mr. Manu Chaturvedi, SC, MCD
with Ms. Devika Singh Roy
Chowdhury, Adv.
Ms.Sapna Chauhan, Adv. for
DDA.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **28.08.2024**

CM APPL. 49310/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 11844/2024 & CM APPL. 49309/2024

3. The petitioner in the instant writ petition challenges the circular dated 21.07.2014 issued by erstwhile South/North Delhi Municipal Corporation, Town Planning Department and the show cause notice issued to the petitioner dated 01.07.2024.

4. Learned counsel appearing for the petitioner raised various objections with respect to the circular dated 21.07.2014. He submit that on 05.08.2024 in pursuance to the show cause notice, he attended the hearing before the competent authority where he was handed over the said circular then only for first time came to know about the same. He,



therefore, submits that the cut off date in the said circular i.e. 08.02.2007 is illegal and erroneous. He has pointed out various dates and events from the synopsis to indicate that as to how the aforesaid cut off date is adversely affecting his constitutional rights. He further submits that in the instant case, the property in question is divided among two brothers on 13.01.2020 and he, therefore, submits that cut off date in the instant case which states that no subdivision should be carried out after 08.02.2007 is wholly illegal and contrary to law. He has also submitted that unless the circular dated 21.07.2014 is held to be illegal and improper, there is no useful purpose of attending the further hearing before the competent authority, as the competent authority is bent upon to take the line as per circular dated 21.07.2014.

5. *Per contra*, learned counsel appearing for the respondent-Corporation, on advance instructions, opposes the aforesaid submissions and submits that in pursuance to the show cause notice dated 01.07.2024, the petitioner appeared before the competent authority on 05.08.2024. He further submits that on 05.08.2024, the petitioner sought time to place on record certain documents and accordingly, the date of hearing is fixed as 03.09.2024. Learned counsel, therefore, submits that, at this stage, the petition is premature and if, at all, the respondent-Corporation passes any direction which is adverse to the petitioner, the petitioner shall be at liberty to take up necessary proceedings in terms of Section 347B (h) of the Delhi Municipal Corporation Act, 1957 [**“Act”**] before the Appellate Tribunal-Municipal Corporation of Delhi.

6. I have considered the submissions made by learned counsel appearing for the parties and have also perused the record.

7. It is seen that *vide* circular dated 21.07.2014, the respondent-



Corporation appears to have issued certain instructions with respect to sanction of building plan in village abadi (rural and urban). Circular dated 21.07.2014 further clarifies that for getting a sanction of building plan in village abadi, the owner shall obtain *lal dora* certificate stating that the property in question falls within the *lal dora* area. It further clarifies that *vide* earlier circular dated 18.01.2013 in case of village abadis (*lal dora* and extended *lal dora*), the single entity of the plot shall be given as existing on the date of application with an affidavit from the owner/ applicant stating that no subdivision has been carried out after 08.02.2007. With respect to correctness of size, shape, area and the single entity of the plot, the owner is required to give an affidavit along with application.

8. The show cause notice which came to be issued to the petitioner on 01.07.2024 records that the sanction of building plan was obtained by the petitioner by suppression, concealment and misrepresentation of material facts. It further states that the onus for genuineness and correctness of the ownership and other allied documents/ information etc. submitted by the petitioner at the time of the sanction of the building plan rests on the petitioner. It, therefore, requires the petitioner to explain as to why the sanction of building plan should not be revoked under Section 338 of the Act. It is also an admitted position that the petitioner did appear before the respondent-Corporation and has presented a detailed representation.

9. With respect to the submissions made by the petitioner that the circular is illegal and improper and without jurisdiction is concerned, the Court is unable to accept the aforesaid submissions. The petitioner applied for plan to be sanctioned by the respondent-Corporation and the same appears to have been sanctioned under the Saral Scheme. It is



expected from the citizen to be aware of all applicable rules and regulations and the submissions made by learned counsel appearing for the petitioner that he has only come to know about the said circular on 05.08.2024, is unacceptable. It is also to be noted that if the petitioner had any grievance or any misunderstanding about any of the fact regarding applicable rules and regulations, the relevant information ought to have been obtained by the petitioner at the given point of time.

10. The said circular is not the statutory one, the same appears to be administrative in nature to regulate the sanction of building plan in village abadis (rural and urban). The sub-division of the property, if decided to be not permissible after a cut off date in a particular area, the Court under the writ jurisdiction perhaps cannot interfere into the administrative exercise by the respondent-Corporation, which may have been undertaken considering the overall topography and other significant factors of that particular area.

11. Even otherwise, the petitioner is well within his rights to assert the applicability of the aforesaid circular under the facts of the present case before the respondent-Corporation and the Court does not have any doubt that if the petitioner asserts the aforesaid claim, the same would not be considered by the respondent-Corporation appropriately and in accordance with law.

12. At this juncture, it is pertinent to delineate the scope of writ jurisdiction when the challenge to the show cause notice was raised. In *Siemens Ltd. v. State of Maharashtra*¹, a challenge was made to a show cause notice on the ground that it has been issued with pre-meditated mind and the Supreme Court while accepting the said

¹ (2006) 13 SCALE 297.



contention ruled as following:-

“8. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma (1987) 2 SCR 444, Special Director v. Mohd. Ghulam Ghouse, (2004) 164 ELT 141 (SC) and Union of India v. Kunisetty Satyanarayana (2006) 12 SCC 28 : AIR 2007 SC 906 but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard v. Union of India (1988) 1 LLJ 162 SC]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

9. The said principle has been followed by this Court in V.C. Banaras Hindu University v. Shrikant (2006) 11 SCC 42 : AIR 2006 SC 2304, stating:

The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

In K.I. Shephard and Ors. etc. etc. v. Union of India, (1988) 1 LLJ 162 SC, this Court held:

...It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose.

[See also Shri Shekhar Ghosh v. Union of India (2007) 1 SCC 331 and Rajesh Kumar v. D.C.I.T. Rajesh Kumar, (2006) 287 ITR 91 (SC)]

10. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.”

13. The Supreme Court **ORYX Fisheries Private Ltd. v. Union of**



India², has held as under:-

“28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.”

14. The Supreme Court in the case of ***Union of India v. VICCO Laboratories***³, also held that at the stage of issuance of show cause notice, the Court should be mindful while entertaining the writ petition.

The relevant observations of the Supreme Court read as follows:-

*“31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. **Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner.** Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”*

² (2010) 13 SCC 427.

³ (2007) 13 SCC 270.



15. Similarly, in *Union of India v. Coastal Container Transporters Assn.*⁴, the Supreme Court has held as under:

“30. On the other hand, we find force in the contention of the learned Senior Counsel, Shri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of the Constitution of India at the stage of show-cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show-cause notice, but it is settled by a number of decisions of this Court, where writ petitions can be entertained at the show-cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. The High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court.”

16. Therefore, on the conspectus of the judicial pronouncements as enshrined above it can be concluded that the Court under Article 226 of the Constitution of India may be reluctant to interfere at the stage of issuance of show cause notice unless certain contingencies are met. Those contingencies are: (i) if the show cause notice itself is shown to be issued *sans* jurisdiction; or (ii) if the same has been issued on the edifice of the premeditated mind or (iii) if the same has been by the incompetent authority or principles of natural justice was not adhered in the decision making process.

17. Under the aforesaid facts and circumstances of the case, the Court is unable to categorise the aforesaid show cause notice, in any of the contingencies as has been noted by the Supreme Court in the various decisions as quoted above.

18. In view of aforesaid, the Court, at this stage, is not inclined to interfere into the circular dated 21.07.2014 and show cause notice

⁴ (2019) 20 SCC 446.



01.07.2024. However, the petitioner shall be at liberty to assert before the Corporation that the circular in question may not have any application under the facts of the case, besides taking all other objections in accordance with law.

19. Accordingly, the petition, alongwith pending applications, stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 28, 2024p