

Dhanwant Singh Vs. Mcd

Dhanwant Singh Vs. Mcd

SooperKanoon Citation : sooperkanoon.com/687340

Court : Delhi

Decided On : Feb-03-2005

Reported in : 118(2005)DLT199; 2005(80)DRJ618

Judge : S. Ravindra Bhat, J.

Acts : Municipal Corporation Act - Sections 421; [Constitution of India](#) - Article 226

Appeal No. : WP (C) No. 18073/2004 and CMS 923 and 1378/2005

Appellant : Dhanwant Singh

Respondent : Mcd

Advocate for Def. : Anoop Bagai, ; Chetan Dutt and ; Pooja Kalra, Advs.

Advocate for Pet/Ap. : N.N. Aggarwal,; Uttam Datt and; Sanjeev Sachdeva, Advs

Judgement :

S. Ravindra Bhat, J.

Issue Rule.

1. With the consent of the parties, the matter is taken-up for final disposal.
2. This petition is directed against an order/action sealing of premises taken by the respondent Municipal Corporation of Delhi (hereafter called 'the MCD'). The

petitioner is the owner and occupier of several portions of property bearing No. C-14, Rajouri Garden, New Delhi (hereafter referred to as 'the suit premises'). It is averred that the suit premises were purchased by the petitioner in 1998. The property is built on a 400 square yard plot.

3. Sometime in the year 2000 the MCD took action by way of partially demolishing the suit premises on account of unauthorised construction. The petitioner avers that in February 2001, it secured a license under Section 421 of the Municipal Corporation Act (hereafter called 'the Act') for running eating house in respect of the ground and first floor of the suit premises. It is also claimed that the license was further renewed and is in existence till 31st December, 2005.

4. On an earlier occasion, sometime in 2001, the suit premises were sealed. The petitioner, feeling aggrieved carried out the matter in appeal. The Appellate Tribunal by its order dated 4th March, 2002 remanded the issue for consideration to the MCD.

5. In the above background, it is alleged that without giving any further notice and an opportunity of hearing to the petitioner, the MCD threatened action in respect of the suit premises. The petitioner avers that he is carrying on activities of eating house in the name and style of 'Gola Bawa Palace'.

6. Notice was issued in the petition and on 22nd November, 2004 it was recorded on behalf of the petitioner that the suit premises would be brought within the revised building norms notified by the MCD. A status quo was passed on 23rd November, 2004.

7. By an elaborate order on 01.12.2004, the Court again recorded the petitioner's statement that he would remove all non-compoundable deviations and rectify compoundable deviations so as to bring the construction within the sanctioned rectified plans. The petitioner was required to present himself before the Deputy Commissioner, West Zone on 8th December, 2004. These are matters of record; forming parts of directions made in these proceedings on 1st December, 2004.

8. The next order of some significance, is the one, made on 10th December, 2004. It records the statement of counsel for the petitioner that non-compoundable deviations in the areas and possession of the petitioner would be demolished within a period of one month. The Court's notice was brought to another fact, viz. that some of the areas were not in possession of the petitioner, and were in the possession of the tenants. The issue as to what action was to be taken in respect of the non-compoundable deviations in the occupation of the tenants was left open for decision after removal of the non-compoundable deviations by the petitioner in respect of the areas in his possession. There is no averment in the writ petition to the effect that the building is being used for the purposes of banquet hall. However, having regard to the materials on record, the same appears to have been taken into consideration and the order of 10th December, 2004 inter alias reads as follows:

' Petitioner would not effect any further booking for conducting business of running a Banquet Hall in the premises. Petitioner undertakes to supply photocopy of his booking register to Sh. Vijay Kadyan or his representative.'

9. Two applications have been moved. One namely CM No. 923/2005 is by the MCD seeking modification of the earlier order of 10th December, 2004 to restrain the petitioner from misusing the suit premises as a Banquet Hall and to permit the MCD to seal the suit premises in question due to existence of the unauthorised construction on the suit premises. The second application being CM No. 1378/2005 is by the petitioner. It seeks extension of time for compliance of the order dated 10th December, 2004 passed by the Court enabling removal of non-compoundable deviations in the suit premises under the petitioner's possession.

10. The MCD has filed two short counter affidavits. In the first one, dated 10th December, 2004, it was averred that the property had been inspected on 7th December, 2004 when it was noticed that the rectification did not tally with the construction of the site. It was accordingly stated that the deficiencies were rectified in the plan. The affidavit also states that the petitioner was informed about the permissible area, sanctioned area, existing area and excess covered area etc. The compoundable and non-compoundable deviations were also marked in

separate colours. The affidavit records that in compliance with the directions of the Court (dated 1st December, 2004), the Deputy Commissioner, West Zone had passed an order on 8th December, 2004. It was also mentioned that the petitioner was present during the hearing and had expressed his willingness to bring the property in conformity with the sanctioned building plan and/or in permissible limit within compoundable limits according to the building bye-laws within three days. A statement to the effect that the petitioner would not use the suit premises in violation of the provisions of law and/or for the purposes other than those for which the building plans were sanctioned, too were recorded. The proceedings / order of the Deputy Commissioner were filed along with the affidavit. It would be relevant to notice the material portions of that order which are extracted below:

'Sh. Dhanwant Singh Bawa was further informed that the excess covered area beyond sanctioned but within permissible limit/compoundable limit cannot be compounded as this area is of temporary nature and is in set-back at GF. A number of shops are existing at site in side setback within are also not permissible. He was also informed that the existing structure at GF,FF and SF is not as per sanctioned bldg. Plan dt. 1.11.61. He was also informed that the Rectification Plan showing existing/proposed and excess are in the said property does not tall at site. He was also informed that the some of the portions that he proposes to erect/as shown in his Rectification Plan are not permissible and has been advised not to construct such portions and the same are marked as `X'. In case, he still wishes to undertake such proposed construction, he shall have to get his existing bldg. Plan re-sanctioned/modified from the Bldg. Deptt.(HQs.), MCD.

The copy of the Rectification Plan, as discussed and informed to the petitioner during the proceedings, has been given to him and he has been asked to take required actions for rectification/converting the property in conformity with sanction bldg. Plan &/or in conformity with the permissible limits within compoundable limits in accordance with the BBLs within a period of three days from henceforth. Sh. Dhanwant Singh has shown his willingness to this effect and made a statement that he shall not use the property in violation of provision of law &/or for the purpose other that the building plan has been sanctioned.'

11. The petitioner signed all these proceedings and agreed to abide by the statement so recorded. The petitioner's endorsement to that effect appear in his own hand at the last page of the order. He also acknowledged receipt of a copy of the rectified plans.

12. Mr. N.N. Aggarwal, learned counsel submitted that the petitioner took steps to remove non-compoundable areas/constructions in his possession. However, due to the fact that bookings had been made earlier in the suit premises, he could not carry out the demolition within the time permitted by the Court. The petitioner has annexed about 25 sheets said to be extracted from his booking register in support of the submission that the premises have been booked up to May 2005.

13. Mr. Aggarwal, submits that the prayer in these proceedings would be confined to extension of time for carrying out the required demolition/rectification in the suit premises to bring it in accordance with the sanctioned plan and the bye-laws, and that till that is effected, the existing user as a Banquet Hall be permitted in view of the commitment of the petitioner on account of the bookings so made. It is further submitted by the learned counsel for the petitioner that these two reliefs are essential. The second relief, it is submitted has to be viewed from a humanitarian angle having regard to the nature of the functions the suit premises is put to use to, namely, marriages and other social/or religious ceremonies.

14. Mr. Anoop Bagai, learned counsel on behalf of the MCD submitted that the action against various Banquet Halls in Rajouri Garden, were initiated on account of a Civil Writ Petition No. 6631/2000 (Federation of Presidents Welfare Association, Rajouri Garden and Ors. v. Government of NCT of Delhi and Ors.). In those proceedings, a Division Bench of this Court has issued directions from time to time and is actively monitoring the issue. Learned counsel submits that it was in this background that the action came to be initiated after consideration of the history of unauthorised construction as well as the unauthorised user of the premises as a Banquet Hall. It is pointed that prior to the impugned action, there were instances when the suit premises were subjected to action by way of demolition notice.

15. Learned counsel for the respondent/MCD has relied upon the statement made by the petitioner himself before the Deputy Commissioner, West Zone on 8th December, 2004. He submits that in view of this as well as in view of the repeated directions passed by the Court in these proceedings, there is no question of granting any relief. The unauthorised construction have to go and the use of the property as Banquet Hall has to cease.

16. I have considered the submissions of the parties. At the outset, it must be noticed that under Article 226 of the Constitution when a litigant seeks relief the Court exercises a discretionary jurisdiction. Necessarily, discretion is based on equitable consideration. Undoubtedly, various issues as to the existence, service of sealing orders, grant or absence of pre-decisional hearing etc. have been urged by the petitioner in support of his claim that the action of the MCD is not sustainable. Nevertheless, one cannot be unmindful of the background as well as the factual matrix which present itself in this petition. The following facts emerge from the record:

(i)The petitioner acquired the property in the year 1998;

(ii)the property is situated in a residential locality; it is on a 400 square yards plot;

(iii) prior to the year 2004, the petitioner had faced action in respect of the unauthorised construction on at least two occasions by the MCD;

(iv) a number of properties in Rajouri Garden area (within C-Block itself) are under the active scrutiny of a Division Bench of this Court for both unauthorised constructions as well as misuse as Banquet Hall. The petitioner's property is one such, which has been proceeded against by the MCD on both accounts. The petitioner states that he has a valid license to run a eating house and that this license is valid till 31st March, 2005. Nevertheless, such user in the property is not permissible in law;

(v) the action/complaint against the petitioner was taken on 22nd September, 2004. Although the petitioner states that he was not given a copy of the order, that action has been challenged on various grounds;

(vi) during the course of these proceedings, on account of orders passed from time to time, the petitioner was required to bring the construction on the suit premises in conformity with the bye-laws and the rectified sanctioned plan. There are not less than four orders to this effect commencing from 22nd November, 2004.

(vii) pursuant to the order dated 1st December, 2004, the petitioner appeared before the Deputy Commissioner. He was informed about the various portions of unauthorised construction in the suit premises. He made a statement that the premises would be used only in accordance with law;

(viii) the order dated 10th December, 2004 granted four weeks time to the petitioner to carry out demolition in respect of non-compoundable deviations in the areas under his possession. A direction was also issued that the petitioner would not effect any further booking for conducting the business of running a Banquet Hall in the premises. That order is final.

17. In view of this background and having regard to the equitable nature of the jurisdiction of this Court, the request made by the counsel for the petitioner for permission to use the suit premises for a limited period, as Banquet Hall, in view of humanitarian considerations, to my mind, cannot be countenanced. The record discloses that the petitioner knew about the action taken by the respondent in September 2004. Without going into the issue of the exact date of knowledge of such order or proceeding, it may be noticed that the petition, presented sometime in November 2004 itself cites the order dated 22nd September, 2004. The reasonable inference therefore to be drawn is that within a few days of the passing of that order or at least sometime in early October, the petitioner became aware of it. One cannot also be oblivious of the fact that continuous action is being taken in the same area where the adjacent properties carrying on the same business activity have been dealt with. If the documents, namely, the extracts of the register are examined they disclose an entirely different picture. Bookings appear to have been made continuously in October, November and December right up to 9th December, 2004. These facts speak volume about the petitioner's intentions. The less said, therefore the better.

18. The request for permitting the petitioner to continue with the activity of Banquet Hall, has to be viewed from another angle. There is no dispute about the fact that an undertaking was furnished to the MCD on 8th December, 2004. That undertaking is that the petitioner would not use the suit premises for any purpose other than what is permitted by law. It has not been submitted that the activity of a Banquet Hall of the nature carried on by the petitioner is one permissible in law in the suit premises. The submission made however is that a license exists for the purpose of running an eating house and the said license has been issued by the MCD. I am of the view that the petitioner cannot escape the rigors of his undertaking. The clear understanding even at the stage of passing of the order dated 10th December, 2004 was that no bookings were to be effected for running a Banquet Hall in the premises. therefore, the reliance placed upon the license would not further the case of the petitioner. The real question is not whether the license exists or is valid but whether the premises in question can be used for the purpose it has been put to, regardless of the label as a Banquet Hall/eating house.

19. In view of the above, I am not inclined to accede to the request for permitting the petitioner to carry on the activity of the Banquet Hall/eating house or any such purposes even for a short time.

20. That brings me to the second request, namely, extension of time or grant of further time to bring the construction on the suit premises in conformity with the rectified sanctioned plan within compoundable limits and the removal of the non-compoundable areas. In this regard, although time had been granted on two separate occasions, I feel that some more time can be granted. I, therefore, record submission of Mr. Aggarwal, learned counsel for the petitioner that the premises would be brought within the permissible limits as per the rectified sanctioned plan and that the excess coverage would be removed in respect of the areas under his occupation within a period of two weeks from today. An undertaking to that end would also be lodged in court as well as furnished to the MCD. Having regard to the facts noticed above, I also direct the petitioner to include, in his undertaking a stipulation that he would not use the premises as a Banquet Hall or for any such purpose and that the same would be used only in accordance with law. The undertaking shall be furnished with a period of one

week.

21. The aspect which remains is with regard to misuse and unauthorised construction of the portions said to be in the occupation of tenants. It may be noticed that the action is proposed on the building as a whole and the owner as per the Act is the petitioner; notice had been given to him. It is open to the MCD to take action in respect of the other portions of the building in accordance with law and ensure that the use of the building as well as the construction on the suit property is in accordance with law.

22. With the above directions, the writ petition and the applications are disposed of.

23. Order dusty.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com