

Devyani International Limited. Vs . Mcd.

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Court : Delhi

Decided On : Apr-05-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Section 345-A ;

Appeal No. : W.P.(C) 2284/2011 & CM No.4877/2011.

Appellant : Devyani International Limited.

Respondent : Mcd.

Advocate for Def. : Mr. Ajay Arora; Mr. Kapil Dutta, Advs.

Advocate for Pet/Ap. : Mr. Ravi Gupta; Mr. Rishi Kapoor, Advs.

Judgement :

1. The petition impugns the sealing action on 30 th March, 2011 by the respondent MCD of the portion of the ground floor of property No.J-12/38, Rajouri Garden, New Delhi-110 027 in the tenancy of the petitioner. Prior thereto, the respondent MCD had served a notice dated 23 rd March, 2011 W.P.(C)2284/2011 Page 1 of 6 under Section 345-A of the [Delhi Municipal Corporation Act, 1957](#) calling upon the owner / occupant to stop the misuse and to bring the premises within the permitted use as per the Master Plan Delhi 2021 failing which, it was threatened that the premises will be sealed without further notice. It is the case of the petitioner that though the petitioner as well as the landlord of the petitioner filed affidavits with the respondent MCD to the effect that the misuse had been stopped and the use of

the property was in accordance with the MPD-2021 but nevertheless the sealing was effected without even considering whether there was any misuse or not.

2. The counsel for the respondent MCD appearing on advance notice however contends that after the undertaking / affidavits were filed as aforesaid, the premises were again inspected and finding the misuse, the action for sealing was undertaken.

3. The senior counsel for the petitioner relies upon the order dated 3rd February, 2011 of this Court in W.P.(C) No.651/2011 titled M/s Unique Innovation Pvt. Ltd. v. MCD observing that pursuant to the notice, an order of sealing has to be made. It is urged that no such order was made in the present case.

4. It is also the contention of the petitioner that though a restaurant may not be permitted in the said premises but a takeaway is permitted to be operated therefrom. The petitioner in this regard relies upon Clause 15.6.3. of the Mixed Use Regulations under the MPD-2021 where small shops of maximum 20 sq. mtrs. are permitted on residential plots and the businesses permitted to be carried on from the said small shops include the business of sweet shop / tea stall without sitting arrangement. It is urged that the petitioner is thus entitled to operate pizza take away in the name and style of Pizza Hut therefrom.

5. The counsel for the respondent MCD however contends that since the property aforesaid is situated on a mixed land use street, Clause 15.6.1. and not Clause 15.6.3. would be attracted. It is contended that Clause 15.6.3 applies to respondent properties but once the residential property is situated on a mixed land use street, it has to be governed by the Regulations as applicable on the said street. It is contended that under the Clause 15.6.2., a takeaway joint is also not permitted on a mixed land use street when it entails the activity of cooking as is inherent in a takeaway joint and as the petitioner is admittedly carrying on.

6. It is also contended that Clause 15.6.3. would in any case be not applicable since the area in possession of the petitioner is more than 20 sq. mtrs.

7. Needless to state that all the aforesaid questions have not been gone into by the respondent MCD and there is no decision on the aforesaid rival contentions.

8. It is therefore deemed expedient to direct that the writ petition be treated as a representation of the petitioner to the respondent MCD and to direct the respondent MCD to dispose of the same on or before 15 th April, 2011, including the aforesaid contentions.

9. The senior counsel for the petitioner seeks temporary de-sealing till then.

10. The counsel for the respondent MCD opposes.

11. However, considering that the business was already being carried on by the petitioner therefrom and which has been interrupted owing to the sealing action aforesaid and in the event of the petitioner succeeding, the losses to the petitioner would be irreparable, it is deemed expedient to in the meanwhile direct de-sealing of the property forthwith on the condition that the petitioner will not allow any sitting activity therein and shall maintain status quo and shall not cause any impediment as to re-sealing, if any, of the property pursuant to the decision to be taken by the respondent MCD as aforesaid.

12. The counsel for the respondent MCD has also contended that the petitioner has not even paid the parking charges required to be paid under the Mixed Land Use Regulations.

13. It is directed that if at all it is the decision of the respondent MCD that activity be it of restaurant or of a takeaway, with such restrictions as may be imposed, is permitted in the property, the petitioner in the decision aforesaid be also intimated the charges, if any payable therefor and only if the petitioner fails to pay the same would the respondent MCD be entitled to re- seal the property. The petition is disposed of. No order as to costs. Dasti under signature of Court Master.

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