

Decided On: 03.02.2012 Vs. Commissioner Mcd and anr

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SooperKanoon Citation : sooperkanoon.com/924487

Court : Delhi

Decided On : Feb-03-2012

Appellant : Decided On: 03.02.2012

Respondent : Commissioner Mcd and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 3718/2011 Decided on: 03.02.2012 IN THE MATTER OF MOHD. IQBAL Petitioner Through: Mr. Sanobar Ali Qureshi, Advocate versus COMMISSIONER MCD and ANR. Respondents Through: Mr. Anurag Sharma, Advocate, with Dr.Prahlad Kumar, Deputy Director, MCD CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J. (ORAL).

1. The present petition is filed by the petitioner praying inter alia for issuance of directions to the respondents to de-seal the ground floor of the property bearing No.D-13, Street No.4, Noore Elahi, Maujpur, Delhi..

2. The brief facts of the case as set out in the petition are that on 13.10.2001, the petitioner was granted a meat trade licence by the respondents, which was renewed till 31.3.2006. An inspection of the shop of the petitioner was conducted on 7.5.2010. In the course of the inspection, it was discovered that the petitioner had been unauthorizedly selling banned cow meat from the premises. As a result, the shop was sealed by the respondent/MCD. Consequently, an FIR No.236/10 was registered with PS Bhajanpura and the matter is stated to be pending trial. In

the course of the trial, the petitioner, who was arrested by the W.P.(C) 3718/2011 *Page 1 of 7* police, was released on bail. Thereafter, he submitted an application dated 22.9.2010 to the respondents/MCD requesting them to de-seal the said shop and submitted an undertaking that he would not indulge in unauthorized/illegal slaughtering of any animal in the premises and that he would sell only buffalo meat from the aforesaid premises with a proper licence. It is the grievance of the petitioner that despite furnishing the aforesaid undertaking and Indemnity Bond, the respondent/MCD is not de-sealing his shop..

3. Notice was issued on the present petition on 27.5.2011, whereafter a counter affidavit has been filed by the respondents/MCD, wherein MCD has taken a stand that the premises of the petitioner cannot be de-sealed by it due to the pendency of the criminal case filed against him and further, an apprehension has been expressed that in case the shop is de-sealed, the petitioner may again indulge in illegal selling/slaughtering of cow..

4. On 30.8.2011, learned counsel for the petitioner had pointed out that on identical facts as existing in the present case, a co-ordinate Bench of this Court had passed orders on 6.4.2011 in WP(C) No.2300/2011 entitled, "Afsar and Ors. Vs. The Commissioner MCD and Anr.", wherein it was observed as below: "3. The only controversy being legal i.e. whether the respondent MCD has any power to seal the premises W.P.(C) 3718/2011 *Page 2 of 7* even if finds the petitioners to be carrying on activities constituting offences under the aforesaid provisions of law, no need to issue any formal notice or call for reply has been felt and the counsels have been finally heard on the writ petition..

4. A perusal of the aforesaid provisions of law under which the petitioners are being prosecuted does not show any such power. No such power is found in any other provision of the Delhi Municipal Corporation Act, 1957 also. Though Section 11 of The Delhi Agricultural Cattle Preservation Act, 1994 provides for seizure of cattle and vehicles but does not provide for seizure/sealing of premises from where activities in contravention of the Act are being carried out. This Court in the past, after giving opportunity to the respondent MCD to approach the prosecution court for an order of sealing, has directed de-sealing. There is no reason to not

follow the same orders in the present petition also..

5. Similarly here, since the offence for which the petitioners are being prosecuted is stated to have been committed in the premises aforesaid, it is deemed expedient to grant an opportunity to the respondent MCD to, if found entitled to by the Court where the petitioners are being prosecuted, obtain the order for keeping the property sealed as a case property. The counsel for the petitioners of course contends that pursuant to the similar order in other writ petitions, the respondent MCD, though had applied to the Court where the prosecution is pending but was unsuccessful in satisfying the Court of any right to keep the property sealed..

6. Accordingly, it is directed that unless there is any order from prosecution court on or before 30th April, 2011 to keep the property sealed, the respondent MCD to de-seal the property of the petitioners at 1600 hours on 2nd May, 2011. The petitioners on their part through their counsel undertake to this Court to, in future without obtaining any license from the respondent MCD not use the said property for the purpose of meat trade. The petition is disposed of with no order as to costs." W.P.(C) 3718/2011 Page 3 of 7.

5. The aforesaid order passed by the learned Single Judge was challenged by the respondent/MCD in an intra-court appeal, registered as LPA No.652/2011 entitled " Municipal Corporation of Delhi Vs. Afsar and Ors.". Vide order dated 3.11.2011, the aforesaid appeal was disposed of on the following lines:- "3. The view taken by the learned Single Judge while disposing of the review application that the property cannot be indefinitely sealed is correct in view of the fact that the respondents have expressed a willingness to file undertakings before the Commissioner MCD that they would not misuse the premises in question and would strictly use the same for a residential purpose..

4. We note that the Corporation has now, vide office order dated 2.9.2011 revised a policy pertaining to grant of license to meat shops which includes the power to prevent violation of the statute and the policy..

5. We need not deal with the said policy inasmuch as the respondents are willing to undertake as per para 3 above and thus we dispose of the appeal observing

that the view taken by the learned Single Judge with respect to the power to seal vested in the Commissioner MCD is incorrect. But, we maintain the mandamus issued by the learned Single Judge with a modification that the same would be obeyed upon the respondents and if there are any other co-owners of the subject property, undertakings be filed recording that they would not use the subject premises for any commercial use save and except after obtaining a license from the Commissioner MCD and till then would use the subject premises for residential use and no other. Upon the undertakings being filed, within a week thereof the premises would be de-sealed. It is made clear that if respondents violate the undertaking, the Commissioner MCD would be fully justified in re- sealing the premises in question." W.P.(C) 3718/2011 Page 4 of 7.

6. Learned counsel for the respondent/MCD states on instructions that the criminal case filed against the petitioner is still pending and under the Revised Policy For Grant of Licence to the Meat Shops, circulated by the Department of Veterinary Services on 02.09.2011, Rule 13 of the "General Terms and Conditions" stipulates that the premises/meat shop that has been sealed on the ground of illegal slaughtering of animals/slaughtering of cow or its progeny or sale of meat of cow or its progeny shall remain sealed till the outcome of the decision/orders of the court..

7. This aspect of the matter was taken into consideration in WP(C) No.2300/2011, wherein it was clearly observed that the provisions of law relied upon by the respondent/MCD do not show any power vested in the MCD to seize/seal premises from where activities in contravention of the Delhi Agricultural Cattle Preservation Act, 1994 are being carried out. The aforesaid findings of the learned Single Judge have been upheld by the Division Bench in its order dated 3.11.2011 wherein it was reiterated that the view taken by the learned Single Judge that a property cannot be indefinitely sealed, is correct. Learned counsel for the respondent/MCD states that the decision of the learned Single Judge as also that of the Division Bench was limited to the facts of the said case as the petitioners therein had undertaken that they would not misuse their premises and would strictly use the same for residential purpose. He W.P.(C) 3718/2011 Page 5 of 7 submits that the petitioner herein has not furnished any affidavit/undertaking to the

effect that he shall use the premises only for residential purposes..

8. The aforesaid submission of the respondents has to be considered in the light of the observation of the Division Bench in the aforesaid decision, wherein the respondents therein were directed to file undertakings to the effect that they would not use their premises for any commercial use save and except after obtaining a licence from the Commissioner MCD and till then the subject premises would be put to residential use and for no other purpose. Learned counsel for the petitioner states that the petitioner is ready and willing to furnish an undertaking to the respondent/MCD on the same lines as directed in the aforesaid case. In view of the aforesaid submission, the present petition is disposed of with the following directions:- (a) The petitioner shall furnish an undertaking in the Court within one week with a copy to the respondents/MCD that he shall not use the subject premises for any commercial purpose except after obtaining a licence from the Commissioner, MCD. He shall further undertake that till an appropriate licence is obtained from the Commissioner, MCD, the said premises shall be used solely for residential purposes. W.P.(C) 3718/2011 *Page 6 of 7* (b) The respondent/MCD shall de-seal the premises of the petitioner, within two days from the date of receipt of the aforesaid undertaking. (c) In case of breach of the undertaking given by the petitioner, the respondents/MCD shall be entitled to re-seal the premises in question. (d) A copy of this order shall be placed before the Commissioner, MCD with a direction that Rule 13 of the Revised Policy for grant of Licence to the Meat Shops circulated by the Department of Veterinary Services, MCD, vide office order dated 2.9.2011, be adequately amended in the light of the order dated 3.11.2011 passed by the Division Bench in LPA No.652/2011 so that in future, parties similarly placed as the petitioner, are not made to approach the Court for orders which ought to have been passed by MCD's Veterinary Department itself..

9. The petition is disposed of, while leaving the parties to bear their own costs. (HIMA KOHLI) FEBRUARY 03, 2012 JUDGE mk W.P.(C) 3718/2011 Page 7 of 7