

Dalip Kumar Dhingra and Others Vs MCD

Court: Delhi High Court

Date of Decision: July 14, 2010

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Amita Gupta and Parveen Kumar, for the Appellant; Maninder Acharya and Vikas Sethi, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The petitioners by this writ petition impugn the notice dated 21st June, 2010 of the respondent MCD demanding

from the petitioners the ad-hoc conversion charges, one time parking charges, additional FAR charges with respect to the basement and first floor

and above of their shops situated in Defence Colony Market, New Delhi. It is inter alia the contention of the petitioners that the first floor of the

said shops though meant initially for residential purposes were converted into commercial long prior to coming into force of the MPD-2021, in

accordance with which the aforesaid charges are being demanded.

2. It is recorded in the demand letters impugned in this petition that the same were being issued as per the directions of the Monitoring Committee

appointed by the Supreme Court.

3. The writ petition came up before this Court first on 9th July, 2010 when attention of the Counsel for the petitioners was drawn to the order

dated 11th October, 2007 of the Division Bench of this Court in WP(C) No. 7109/2007 laying down as under:

There is, in our opinion, considerable merit in the submission made by Mr. Paul. If the sealing of the premises has taken place on account of the

direction issued by the Apex Court, any relief by way of de-sealing of the same can also be given by the said Court alone or by an agency

nominated by the said Court, which in the instant case happens to be the Monitoring Committee appointed by their lordships. So also whether or

not there is any misuse is a matter which the Monitoring Committee has to examine and in case it is found that there is none, it may be in a position

to direct the de-sealing or make a report to that effect to the Supreme Court. In either eventuality, intervention by the High Court in the ongoing

process of sealing and de-sealing which is being monitored by the Supreme Court is not, in our opinion, indicted. The petitioner has an effective

remedy available to him before the Monitoring Committee and even if one were to say that the said remedy is not as efficacious as the writ petition

before this Court, judicial discipline demands that we keep off the proceedings which are directly under the supervision of the Supreme Court.

It was thus put to the Counsel for the petitioners as to how this petition before this Court was maintainable. The Counsel for the petitioner on that

date sought time to consider.

4. The petitioners have filed CM No. 9125/2010 setting out the reasons as to why inspite of above order of Division Bench, this petition lies. It is

the contention of the petitioners that the Supreme Court in M.C. Mehta's case was concerned with illegal industrial or commercial activity in

residential premises and had appointed the Monitoring Committee for the said purposes only. It is contended that the Supreme Court was not

concerned with and the Monitoring Committee was not appointed for cases as the present one. It is further contended that the Division Bench also

in the order (supra) was concerned with commercial use of residential property and had made the observations (supra) in the aforesaid context. It

is urged that the Monitoring Committee cannot be granted extra constitutional status and if this Court is of the opinion that the action of the MCD

of demanding the charges from the petitioners is wrong, has jurisdiction to interfere in the matter.

5. The contentions of the Counsel for the petitioners tantamount to the Monitoring Committee exceeding its brief. The Monitoring Committee

having been appointed by the Supreme Court, in my view the grievance against the illegal directions, if any, issued by the Monitoring Committee

would lie before the Supreme Court only or by way of representation to the Monitoring Committee as directed by the Division Bench of this

Court.

6. Moreover, the observations aforesaid of the Division Bench of this Court are general in nature and if at all it is the contention of the petitioners

that their cases do not fall within the ambit of the said observations, the remedy of the petitioners for clarification lies before the Division Bench only

and judicial propriety demands that this Court follows the said directions/guidelines laid down by the Division Bench.

7. Resultantly, the petition is held to be not maintainable and is dismissed. However, it is clarified that this Court has not expressed any opinion on

the merits of the case of the petitioners and the dismissal of this petition shall not come in the way of the petitioners agitating their grievances before

the appropriate forum.

No order as to costs.

Dasti.