

(2010) 07 DEL CK 0406

Delhi High Court

Case No: Writ Petition (C) 4469 of 2010, C.M. No"s. 8879 of 2010 and 9125 of 2010

Dalip Kumar Dhingra and Others

APPELLANT

Vs

MCD

RESPONDENT

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.