

(2019) 09 DEL CK 0369

In the Delhi High Court

Case No : Civil Writ Petition No. 12166, 12179, 12180, 12226, 12227, 12228, 12229, 12230, 12231, 12232 Of 2018

Marusha Engineers & Developers Pvt Ltd And Anr

APPELLANT

Vs

Delhi Development Authority & Ors

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0369

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Geeta Luthra, Prateek Yadav, Chandra Shekhar Goswami, Karunesh Tandon, Arti Bansal, Ashutosh Nandan Atrey, Ayush Singh Rajora, Sumit Agarwal, Sangita Rai, Nidhi Raman, Kushagra Pandey, Mohd. Umar Iqbal Khan, Mohd. Irsad, Kaustubh Anshuraj, Rudraksha Singh Rajpurohit, Anand V. Khatri, Mrinalini Sen, Tanmay Yadav

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. This batch of writ petitions seeks to challenge the order dated 30.10.2018 passed by the Deputy Director (Building), C and I, Delhi Development Authority.
2. The petitioners, who are wine shop owners, are aggrieved by the aforesaid order as the rear entrance of their wine shops has been ordered to be closed.
3. To be noted, these wine shops are located in Cross River Mall, CBD, on ground and the rear side of the mall, which is, situated in Shahdara, Delhi (hereafter referred to as "wine shops").
4. Ms. Geeta Luthra, learned senior counsel, who appears on behalf of the petitioners, says that each of the petitioners had applied to the DDA and obtained a regularization certificate for opening a rear entrance in their respective wine shops. By way of an example, Ms. Luthra has referred to Annexure P-5 which is a regularization certificate dated 07.09.2016, issued to

the owner i.e. respondent no.3 and has been filed in W.P.(C)No.12180/2018.

5. It is not disputed by learned counsel for the respondents that each of the petitioners have such a regularization certificate issued in their favour.

6. The record shows that these writ petitions came up for hearing before my predecessor on 13.11.2018. On that date, a short order was passed and the matter was posted for preliminary hearing on the next date i.e. 14.11.2018.

7. On 14.11.2018, the learned single judge issued notice in the captioned writ petitions and listed the matter for further proceedings on 19.12.2018. 7.1 However, on that very date, the interim applications were disposed of when the petitioners pressed for stay of the order dated 30.10.2018.

8. The learned single judge via a detailed order rejected the interim applications. Since the petitioners were aggrieved, they preferred appeals with the Division Bench. The Division Bench vide order dated 20.11.2018 dismissed the appeals, inter alia, with the following observations in paragraph 3.

"3. In rejecting the prayer for interim relief on such consideration, in our considered view, the learned Writ Court has not committed any error. Even though the learned senior counsel for the appellants tried to demonstrate before us through the photographs and site plan approved by the competent authority that the back entrance is approved under the site plan and is part of the sanction granted, we find that the learned Writ Court has reproduced in para 7 the entire order impugned dated 30.10.2018, thereafter the approval as granted by the Delhi Development Authority's Building Section on 07.09.2016 in para 9 and recorded a prima facie opinion that neither the letter extracted, i.e. 07.09.2016 nor the sanction plan available at Pg.61 of the paper book in LPA 463/2018, creates a vested right in favour of the petitioners to permit access to their customers through the rear entrance of the shop. It was found that there are three entrances to the shop and even if on security consideration one entrance is closed, two more entrances are available for accessing the shops and after taking note of all these factors, a prima facie assessment is made and the prayer for interim relief rejected. In our considered view, the learned Writ Court in doing so has not committed any error or illegality so grave in nature that interference at this interlocutory stage when the writ petitions are pending for consideration on merit is called for."

9. Ms. Luthra, who appears on behalf of the petitioners, says that the order passed by the learned single judge on 14.11.2018 which was carried in appeal dealt with the situation as to whether or not interim relief ought to be granted to the petitioners.

10. According to the learned Senior counsel, the writ petitions being alive, this court is required to decide as to whether or not the prayer made in the writ petitions ought to be allowed.

11. On the other hand, learned counsel for the DDA says that the impugned

decision, which is assailed in the writ petition, was taken based on a report received by the DDA from the office of Deputy Commissioner of Police, Shahdara District. Learned counsel says that because of the security concerns expressed by the police, the DDA took the impugned decision to order the petitioners to close the rear entrance of their respective wine shops. 11.1 Learned Counsel also drew my attention to the fact that the impugned decision was extended even to those shops which do not deal with liquor. In this behalf Haldiram Eating House and McDonalds Restaurant were cited as examples.

12. Learned counsel, who appears for the police authorities, submits that their input to the DDA was based on representations made to it by the Federation of Indraprastha Extn.-II Housing Societies (hereafter referred to as "Federation"). In this behalf, my attention has been drawn to Annexure R-2 appended at page 8 of the counter affidavit filed on behalf of the police i.e. respondent no.2 in W.P. (C)No.12180/2018. For the sake of convenience, the relevant portion of the representation made by the Federation is extracted hereafter :

"November 10, 2018

Mrs. Meghna Yadav,

Deputy Commissioner of Police (Shahdara)

Bholanath Nagar

DELHI 110032

Dear Madam,

You will please recollect that the nuisance, created by the existence of large number of Wine Shops in Cross River Mall and LSCs has been a subject matter of discussion for a long time. The issue has been repeatedly raised in the meetings of the District Shahdara Advisory Committee meetings as also Federation level Bhagidari meeting with the Police. The Societies have stressed that these wine shops are a source of great nuisance as not only the crime has increased, the ladies are hesitant to go to the markets because of drinking in the open. There is also parking problem. The matter was last raised by the Societies in the Federation level Bhagidari meeting held on 27th October 2018 as also in the last District Level Advisory Committee meeting.

We shall be grateful if the question of closure of these shops is raised at the appropriate level.

Yours sincerely,

(S.R. SANGAR)

Secretary General"

13. A careful reading of the representation made by the Federation would show that the residents living near the CBD, Cross River Mall are concerned by the

nuisance caused on account of the very existence of the large number of wine shops in the said mall.

14. It appears that the police in order to address this situation and nuisance caused thereby which led to criminal incidents had requested the DDA to close the rear entrance of the concerned wine shops. There is no empirical material placed before me which would demonstrate that the mere closure of the rear entrance has reduced the nuisance of drinking by consumers in and about the areas proximate to the wine shops.

15. Learned counsel for the police says that the ingress and egress through wine shops is also a security hazard.

15.1 Apart from the letter of the Federation, no material has been placed before me to show that the ingress and egress from the rear entrance has potentiality of a security risk. While this may be an aspect which the DDA may have to examine, but that, can only occur if relevant inputs are placed before the DDA.

16. Ms. Luthra makes, in my view, a valid submission which is that there has been a breach of principles of natural justice inasmuch as no show cause notice was issued prior to the DDA taking the impugned decision to close the rear entrance qua the concerned wine shops.

17. Thus, having regard to the submissions made by Ms. Luthra as well as learned counsel for the respondents, in my view, the best way forward would be to grant the petitioners at least a post-facto hearing. The reason I have taken recourse to this route is on account of the fact that the Federation is not before me. The Federation would, in my view, have a stake in the decision that the DDA will ultimately take in the matter.

18. Therefore, having regard to the aforesaid, the DDA is directed to hear the petitioners in view of the fact that their livelihood, according to Ms. Luthra, has got gravely impacted. The DDA will also hear the representatives of the police and the Federation. The material that the police has in its possession with regard to security concerns will be shared with the DDA and put to the petitioners unless it is classified information.

19. The petitioners will be given an opportunity to file their written submissions and also the leeway to make oral submissions before the concerned officer of the DDA. It would be open to the petitioners to suggest ways and means to prevent untoward incidents, which may cause nuisance or a security hazard. The police authorities would be at liberty to examine the suggestions, if any, put forth by the Petitioners and work on them, if found feasible.

20. Thereafter, the DDA will pass an order as to whether or not it wishes to continue with the impugned decision which is incorporated in its order dated 30.10.2018. This exercise will be completed by the DDA as early as possible, though not later than six weeks from the date of receipt of a copy of the order.

22. In case, the order passed by the DDA is adverse to the interest of the petitioners, the petitioners will have the liberty to take recourse of an appropriate remedy, albeit, as per law.

23. It is made clear that pending the hearing, the status quo with regard to the closure of the rear entrance will continue to operate.

24. The captioned writ petitions are disposed of in the aforesaid terms.

25. Dasti.