
(2002) 09 DEL CK 0043

In the Delhi High Court

Case No : S. No. 2082 of 2000 and is No. 9501 of 2000

Sanjay Jain and Another

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 31A, 343, 344, 345A, 347

Citation : (2002) 101 DLT 223

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Ravi Gupta, for the Appellant; Shiv Kumar, for the Respondent

Judgement

S.K. Agarwal, J.—By this suit, plaintiffs have prayed for decree of permanent injunction against the defendant-MCD, restraining them its officers, servants, agents, representatives, employees from taking any action of demolition and/or sealing of any nature whatsoever in regard to the property No. D-2, NDSE, Part-II, New Delhi (hereinafter "suit property") and from disturbing and interfering in the peaceful use and enjoyment of the plaintiff in the suit property. It is inter alia pleaded that the Deputy Commissioner, Central Zone of MCD, served a show cause notice u/s 345-A read with Section 347/343/344(h) of the DMC Act, for unauthorized construction/misuse of the suit property, stating that it is being commercially used, in the name and style of "BIG JOB" at basement, ground floor, first floor and IInd Floor against the sanctioned use and building bye laws after making unauthorised construction. The defendants MCD filed written statement pleading that defendants accepted Rs. 13,67,440/- from the plaintiffs towards regularisation charges. The premises were being misused for commercial activities, contrary to the DMC Act and building bye laws and Master Plan, Commissioner is empowered to stop the misuser, by sealing the premises and thus the notice was in accordance with the law. And that the notice was issue without any mala fides. It was also denied that the notice was illegal, ultra virus on any ground, as alleged in the suit. The sealing order dated 14.9.2000 was

passed regarding basement and other floors. And no sealing ordered in respect of the ground floor, first floor and second floor was issued, since plaintiff had obtained municipal license in respect of those floors. Learned counsel for parties submit that by a recent Full bench decision of this court in *Bajaj Departmental Stores v. MCD and Ors.* 2002 V AD. (Delhi) 985 , after taking into consideration various provisions of the Municipal Corporation Act, that commissioner has no power for sealing of the premises for misuse. It was held:-

"For the reasons afore-mentioned, we are of the opinion that the Commissioner cannot exercise its power of sealing of property for misuser of the premises u/s 345A of the DMC Act and Section 31A of the DDA Act. The question thus referred to the full Bench is answered accordingly."

2. Learned counsel for plaintiffs submits that mainly in the suit the order of sealing the possession of the property in dispute passed by Commissioner of MCD is under challenge. No other issue is raised.

3. In view of the above settled position of law, the notice sealing the basement is not sustainable and the suit is decreed accordingly. Needless to say that any observation made herein would not prevent the authorities concerned to take any further action in accordance with law.

4. Suit and all pending I.As. stand disposed of.