

(2019) 05 DEL CK 0295

In the Delhi High Court

Case No : Civil Writ Petition No. 7173 Of 2017, Civil Miscellaneous Application
No. 29766 Of 2017, 2172 Of 2018

Saurabh Puri

APPELLANT

Vs

Drugs Controller Drugs Controller Department

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 65A, 66(2)

Citation : (2019) 05 DEL CK 0295

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rajat Mathur, Bhavya Goyal, Naushad Ahmed Khan, Zahid Hanief,
Manisha Chauhan

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition impugning an order dated 26.07.2019 passed by the Appellate Authority (Lieutenant Governor of Delhi), rejecting the petitioner's appeal against an order dated 06.07.2017 passed by the Licensing Authority (the respondent).

2. By the said order dated 06.07.2017, the petitioner's license to operate a chemist shop was revoked on the ground that the premises, used by the petitioner for carrying on the said business, did not qualify for mixed land use under Clause 15.4 and 15.6.3 of the Master Plan for Delhi, 2021 (MPD-2021).

3. The controversy involved in the present case arises in the context of the following facts.

4. On 27.03.2017, the petitioner applied for a licence to sell drugs and operate a pharmacy from the premises bearing no. J-1/376, Ground Floor, DDA Flats, Kalkaji, New Delhi-110019 (hereafter 'the premises in question').

5. The petitioner furnished an affidavit affirming that the premises in question qualified for a mixed land use, under Clause 15.6.3 of the MPD-2021.

6. The petitioner's application was accepted and, on 07.04.2017, the respondents issued a licence to operate a pharmacy at the premises in question (Shop No.1 J-1, /376, Ground Floor, DDA Flats, Kalkaji, New Delhi-110019). The petitioner commenced its operations from the said shop immediately on that date. It is stated by the petitioner that the said premises was taken on lease from the owner for a period of 9 years.

7. Sometime, in April-May, 2017, a complaint was made against the petitioner, inter alia, stating that the premises in question being used by the petitioner did not qualify for mixed use in terms of Clause 15.4 of the MPD-2021.

8. On 09.05.2017, the respondent issues a Memorandum under Rule 65A of the Drugs and Cosmetics Rules, 1945, directing the petitioner to clarify whether the premises in question were located at "mixed use/commercial use areas/stretches/roads". The petitioner responded to the same by a letter dated 23.05.2017, enclosing therewith a clarification issued by the DDA on 18.05.2017. Thereafter, on 06.06.2017, the petitioner appeared before the Licensing Authority.

9. The petitioner's contentions were considered and the respondent passed an order dated 06.07.2017, rejecting the licences issued in favour of the petitioner. The said order is also impugned in the present petition.

10. Aggrieved by the same, the petitioner preferred an appeal under Rule 66(2) of the Drugs and Cosmetics Rules, 1945, which was dismissed by an order dated 26.07.2017.

Reasons and Conclusion

11. It is not in dispute that the shop is located in a group housing complex. The petitioner has assailed the impugned order on two fronts. First, it is stated that a maximum area of 20 sq. mtr. on the ground floor of a flat is permissible to be used as a pharmacy. The petitioner relies on Clauses 15.4 and 15.6.3 of the MPD-2021 in support of his contentions. Second, it is contended that there are four other chemist shops located in the area and the petitioner's case cannot be treated any different from those chemists.

12. In view of the above, the first and foremost question to be examined is whether the petitioner can use the ground floor of a flat in a residential group housing complex for carrying on the business of a chemist/pharmacy.

13. The petitioner relies on Clause 15.6.3 of MPD-2021, which is set out below: -

"15.6.3 [Small shops of maximum 20 sqm area each, restricted to maximum permissible number of DUs in the plot or four numbers, whichever is less, trading in or dealing with the following specified 24 items / activities are allowed on ground floor only in residential plot, excluding A & B category of colonies. However, small shops of maximum 20 sqm area each, restricted to maximum

permissible number of dwelling units in the plot or four in number, whichever is less, trading in or dealing with specified items / activities existing as on 7.2.2007 may continue on ground floor only in a residential plot in A & B category of colonies but in future only one small shop of 20 sqm area shall be allowed on ground floor in a residential plot in A & B category of colonies.]

- i) Vegetables / fruits / flowers
- ii) Bakery items / Confectionary items;
- iii) Kirana / General store;
- iv) Dairy product;
- v) Stationery / Books / Gifts / Book binding;
- vi) Photostat / Fax / STD / PCO;
- vii) Cyber café / Call phone booths;
- viii) LPG booking office / Showroom without LPG cylinders;
- ix) Atta Chakki;
- x) Meat / Poultry and Fish shop;
- xi) Pan shop;
- xii) Barber shop / Hair dressing saloon / Beauty parlour;
- xiii) Laundry / Dry cleaning / ironing;
- xiv) Sweet shop / Tea stall without sitting arrangement;
- xv) Chemist shop / Clinic / Dispensary / Pathology lab;
- xvi) Optical shop;
- xvii) Tailoring shop;
- xviii) Electrical / Electronic repair shop; and
- xix) Photo studio;
- xx) Cable TV / DTH Operation;
- xxi) Hosiery / Readymade Garments / Cloth shop;
- xxii) ATM
- xxiii) Cycle Repair Shop
- xxiv) Ration shop & Kerosene Shop under PDS.

Any other item / activity that may be notified by the Central Government."

14. It is clear from the above, that small shops of an area, of a maximum 20 sq.

mtr., can be operated from ground floor of flats in residential plots in A and B category colonies. However, Clause 15.6.3 is to be read in conjunction with Clause 15.4 of the MPD-2021, which provides for the general terms and conditions governing mixed use. Clause 15.4 of the MPD-2021 The said clause is set out below: -

"15.4 GENERAL TERMS AND CONDITIONS GOVERNING MIXED USE

In terms of the conditions prescribed for different categories of colonies, in para 15.3.2, and provided that the plot abuts a notified mixed use street (in the case of retail shops) or a road of prescribed minimum ROW (in the case of other mixed use activities), mixed use shall be permitted, subject to the following general terms and conditions:

In residential plotted development

- (i) Where there is only one dwelling unit in a residential plot, only one type of mixed use (i.e. retail shop as per para 15.6 or professional activity or one of the other activities listed in para 15.7) shall be permissible in that unit.
- (ii) Where there are more than one dwelling units in a residential plot, each of the dwelling units will be permitted to have only type of mixed use activity (either retail shop as per para 15.6. or professional activity or any one of the other activities listed in para 15.7).

In group housing

Only professional activity and small shops in terms of para 15.6.3 shall be permissible. Retail shops specifically provided for in the lay out plan of group housing would be permissible. 1[However, the entire ground floor of DDA flats on mixed use / commercial use area / stretches / roads is allowed for mixed use / commercial use. No amalgamation of two or more DDA flats shall be allowed.]

Other terms and conditions

- (i) No encroachment shall be permitted on the streets or public land.
- (ii) Development control norms as applicable for the particular residential use will continue to be applicable, even if the plot / dwelling unit is put to mixed use.
- (iii) If the notified street is a Master Plan road, and if a service road is available or provided for by local bodies, then, the mixed use premises should be approached from such service road and not directly from the main carriageway.
- (iv) In plotted development, front setback should not have boundary wall, so that it can be used for additional parking.
- (v) Parking @ 2.0 ECS per 100 sqm built up area shall be provided within the premises. [Residents/traders organizations/private parties shall be responsible for their own private parking facilities]. This condition shall apply even if residential premises are used only for professional activity.

(vi) Common parking areas would be earmarked on notified mixed use streets taking into account the additional load on traffic and parking consequent upon notification of the street under Mixed Use Policy. If no parking space is available, land/ plot on the said street may be made available by [the concerned traders/ establishments and public shared parking facilities provided before approval/ notification of the said building/project/street as mixed use.]

(vii) Issues related to mixed use streets for which conversion charges have already been levied by local needs to be addressed by the concerned local body.]"

15. It is, at once, clear from the above that insofar as group housing colonies are concerned, the user under Clause 15.6.3 is permitted provided that the premises are located on a mixed use, commercial use area/stretches/roads on which mixed use and commercial use is permissible. Admittedly, the premises in question is not located on a road of prescribed minimum ROW or in a mixed use/ commercial use area. The premises in question is a residential flat located in a group housing colony. In view of the above, the decision that the premises in question do not qualify for mixed use cannot be faulted.

16. At this stage, it is also relevant to refer to the affidavit furnished by the petitioner alongwith his application. The said affidavit is set out below:

"1. That I am the Director of M/s RADHIKA PHARMACY having its regd. office at J-1/376, DDA FLATS, KALKAJI DELHI -110019.

2. That I have applied for the grant of licence for retail sale of drugs/chemist shop at the premises situated at J-1/376, DDA FLATS, KALKAJI DELHI.

3. That the premises where licence has been applied qualify for use as Small Shop under Mixed land use regulations. Clause 15.6.3 for Master Plan for Delhi, Drug Control Department may cancel licence of my firm without any prior notice.

4. That in conversion charges towards the mixed land use, as applicable in respect of the premises under reference, have been deposited vide receipt no.34343 dated 03/10/2016 to Municipal Corporation of Delhi for the Period of one year from 03/10/2016 to 02/10/2017 and I further undertake to pay mixed land charges from time to time as applicable.

5. That in future if it is found that the premises of my firm do not qualify for use as small shops for mixed land use regulations, under clause 15.6.3, of Master Plan for Delhi, Drug Control Department may cancel licence of my firm without any prior notice.

6. That in future if it is found that I have violated any/or MPD_2021, Drug Control Department may cancel licence of my firm without any prior notice.

7. That if any misrepresentation is observed in this affidavit, or in any of the documents submitted by me along with my application for the grant of licence referred to above Drug Control Department may cancel licences of my firm without any prior notice."

17. It is clear from the above that the petitioner had applied for a license on the premise that the flat in question could be used as a "Chemist shop", in terms of Clause 15.6.3 of the MPD-2021. The said assumption is, plainly, erroneous as Clause 15.6.3 cannot be read in isolation and has to be read in conjunction with Clause 15.4 of MPD-2021.

18. Since this Court is of the view that the premises in question does not qualify for mixed use, no interference with the impugned order is warranted.

19. Insofar as the petitioner's contention that there are four other shops in the area and the petitioner's case must be considered in parity with those shops is concerned, the respondent has clarified the same. It is affirmed on behalf of the respondent that two of the cases cited by the petitioner are covered under Clause 15.6.3 of the MPD-2021, as the said shops fall within the mixed use category and are not located in a group housing complex. Insofar as the third case is concerned (namely, Shree Hans Medical Store), it is stated that the same is located in a village area and MDP-2021 provisions are not applicable in that case. However, learned counsel appearing for the respondent states that a renewal of licence would not be granted in the said case as well, unless the concerned person is able to satisfy the authorities about the permissible use of the said premises.

20. The petitioner has also cited the case of Bareja Sons, J-1/416, DDA Flats, Kalkaji, New Delhi. Admittedly, the said shop is located in a group housing complex. It is affirmed by the petitioner that the licence was granted to the said shop on 25.03.1985, which was prior to implementation of MPD-2021. Mr Khan, learned counsel appearing for the respondent states that notwithstanding that the licence had been granted prior to implementation of the MPD-2021, the respondent shall not renew the licence unless it is satisfied that it is permissible to carry out the business from the said premises.

21. In view of the above, this Court is unable to accept that there is any hostile discrimination against the petitioner.

22. In view of the above, the petition is dismissed as unmerited. The pending applications are also disposed of.