

(2001) 08 DEL CK 0244
In the Delhi High Court
Case No : CW No. 4614 of 2001

Smt. Phool Rani

APPELLANT

Vs

New Delhi Municipal Council and others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Citation : (2001) 93 DLT 55 : (2001) 60 DRJ 480

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. B.J. Nayar, for the Appellant; Mr. Sandeep Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Rule.

2. With the consent of the parties the writ petition is taken up for disposal.

3. The Petitioner has filed this writ petition seeking a mandamus to be issued to respondents for permitting the change of trade to the petitioner in respect of ship No.3, Mohan Singh Place, Connaught Place, New Delhi.

4. The petitioner happens to be a licensee at the current rate of Rs.625/- per month with stipulated increase of 5% per annum. Learned counsel for the Petitioner submits that the petitioner was carrying on the trade of handicrafts and old garments, which has become unprofitable. Hence he applied for change of use. The license permits change of trade to be allowed by the respondents. The petitioner accordingly, submitted an application on 12.6.2001 for grant of license for manufacturing, preparation and sale of articles of food and cold dirks. The said application is still pending. The respondents, in the meantime issued a final show cause notice dated 17.7.2001 wherein it is stated that the petitioner was running a Dhaba-cum-restaurant, preparing and selling food articles in the premises without permission. Another ground taken was that the space under the stir case, which is allowed to be used only for storage purposes, was being

used for preparation of food articles etc. Petitioner was called upon to stop the above usage failing which allotment of shop was to be cancelled.

5. Mr.Nayar submits that such change of trade has been permitted by the respondents in several other cases within the same building particulars of which are given in para 15 of the writ petition. He states that petitioner is being denied change of trade arbitrarily and for extraneous reasons.

6. Learned counsel for respondent Mr.Sandeep Aggarwal submits that petitioner has been violating the license condition by cooking food in the space under the staircase, which is meant only for storage. It is further stated that there is violation in as much as no change of trade had been permitted to the petitioner, never the less he was running a Dhaba-cum-restaurant.

7. Mr.Nayar states that he has taken instructions from the petitioner and undertakes that the petitioner would not use the space under the staircase for manufacturing or cooking purpose. It shall be used only for storage. Learned counsel further states on instructions that the petitioner shall no prepare or cook any eatables or food in the premises. The petitioner would only be selling packed food stuffs and cold drinks across the counter, and a license for a restaurant where food articles are cooked, prepared and served is not required. The petitioner would be carrying out the trade only of selling pre-cooked food, packed material and cold drinks. Mr.Nayar states that he would apply for change of trade within two weeks from today. Mr. Sandeep Aggarwal states that such an application on being received would be duly considered and disposed of within four weeks of receipt in accordance with prevailing instructions and policy. In view of the undertaking given by the petitioner not to use the space under the stair case for cooking purposes and not to carry out the change in trade, prior to its sanction, the respondents will not proceed further with the show cause notice as given. It case, it is found at any subsequent stage that the petitioner had either failed to apply for the change of trade or the same is not permitted, respondent shall be free to take such action as warranted in case of any breach of the conditions of the license. The petition is disposed of in the above terms.