

# Dhaba Estd 1986 Delhi vs New Delhi Municipal Council on 19 November, 2020

**Author: Najmi Waziri**

**Bench: Najmi Waziri**

KAMLESH KUMAR

20.11.2020 22:52

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 8978/2020 & CM APPL. 28987/2020  
DHABA ESTD 1986 DELHI

..... Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai  
Niyazi and Ms. Kumud Nijhawan,  
Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr. Anil Grover, SC with Mr. Tamim  
Qadri and Ms. Noopur Singhal,  
Advocates.

CORAM:  
HON'BLE MR. JUSTICE NAJMI WAZIRI  
ORDER

% 19.11.2020 The hearing was conducted through video conferencing.

1. The learned counsel for the petitioner states that the petitioner has a No Objection Certificate ('NOC') from the Fire Department, GNCTD, for running the restaurant from the New Delhi Municipal Council ('NDMC') premises; the application was routed through the NDMC. It also has the GST registration, FSSAI registration, a clearance from the DPCC regarding pollution and requisite permission from the Labour Department. Permission from the Delhi Police is awaited because the Health Licence is yet to be issued. Once the latter is issued, the Delhi Police is likely to issue the licence to the petitioner to operate.

2. If a restaurant with seating capacity of more than 50 persons is to be set up a prior clearance from the Fire Department is requisite. This and other clearances have been granted to the petitioner. The building in which the restaurant is housed is not unauthorised. The Health Licence would essentially require inspection by the Inspector concerned apropos the hygiene conditions in the restaurant. However, ostensibly, the health licence has not been issued for the petitioner's premises because sanctioned plan apropos the building is not available. It is not in dispute that the building has been in existence much before NDMC came into existence. Possibly, at that time, many

buildings in Connaught Place did not have a sanctioned building plan or the same are currently not available.

3. According to the petitioner, the L&DO itself admits that the sanctioned building plan of the petitioner's building, like many other structures in Connaught Place, is not available. The NDMC is the successor in interest of the L&DO. Once the L&DO itself admits that the sanctioned building plans were not in existence or not available, surely, the NDMC cannot insist upon production of a non-existent document. It would be akin to searching for nothingness in the void.

4. The learned counsel for the petitioner submits that an application from for grant of a Health Licence itself makes sufficient leeway for properties of the present nature; the applicant has an option to provide a site plan or a sanctioned building plan, in the column for submission of documents, it says 'site plan/sanctioned plan'.

5. The petitioner submits that his building has been categorised as a 'heritage property'. Requisite permission was sought from the Heritage Conservation Committee of the NDMC. The layout plan provided by the petitioner was duly considered and permission was given by the said Committee to carry-out renovations. It is argued that, once a Heritage Committee has itself looked into the matter and did not insist upon the sanctioned plan, the Council cannot now ask for a document which did not ever exist or is not readily available. The Heritage Conservation Committee was mindful that the heritage value of the building should be maintained, and it has so ensured while granting the permission to renovate the said premises.

6. The petitioner seeks to be treated on a par with the other property owners such as the CPWD which has been granted permission to run a restaurant in the NDMC area, despite the non-availability of a sanctioned building plan. In particular, reference is made to Serial no. 11 of the Minutes of the High Empowered Committee Meeting of the NDMC (Health Licencing Department) held on 03.12.2018 and 07.12.2018. CPWD was granted a Health Licence and allowed to run a restaurant in Connaught Place, despite non-availability/non- submission of a sanctioned building plan of its premises. It is argued that there cannot be any special equities in favour of CPWD vis-à-vis private citizens. Reference is also made to the directions of this Court in the order dated 06.08.2020 passed in W.P. (C) 5038/2020, which has been quoted in the previous order. The relevant portion of the said order reads as under:

"...

At this stage, Mr. Grover submits that Respondent No. 1 be given liberty to inspect the premises with respect to Hygiene and other conditions. Although inspecting premises is the Statutory Duty of the NDMC and no permission/liberty is required from the Court, nonetheless, it is clarified that in the meantime, if the NDMC wants to inspect the premises, it is open for the NDMC to do so. Mr. Niyazi submits that since this is the duty of the NDMC and they are bound to do it, he can have no objection to such Inspection."

7. In view of the above, the petitioner too shall be treated similarly by the NDMC as the CPWD and the petitioner in the aforementioned writ petition. The premise shall be inspected to ascertain its conditions of hygiene and other similar requirements.

8. At this stage, the learned Standing Counsel for the NDMC submits that there is confusion apropos the application made by the petitioner. Albeit, the property is shown in the New Delhi Municipal Council area, the municipal authority is shown as North Delhi Municipal Corporation.

9. The said error is evident and the North Delhi Municipal Corporation would have no jurisdiction. It is the New Delhi Municipal Council which would have jurisdiction on the property and it should accordingly treat the petitioner's application for grant of health licence. Rs. 1,000/- as licence fee shall be deposited by the petitioner with the New Delhi Municipal Council within a week from today.

10. The learned counsel for the petitioner submits that the application was made on the MHA portal where default options were limited; therefore, for it to show North Delhi Municipal Corporation is a technical error, which cannot be levelled or apportioned to the applicant.

11. The learned Standing Counsel for the NDMC further submits that since the restaurant was started without a health licence and a notice was issued, to which the reply furnished by the petitioner is under consideration.

12. The petitioner states that it shall file a fresh hard copy of its application, along with all documents and the requisite application fee, before the New Delhi Municipal Council within a week from today. The same shall be looked into by the Council within 2 weeks thereof. The petitioner may be heard, if it is so required, through counsel and through video-conferencing or in a physical hearing, if the parties so desire. The decision of the Council shall be communicated to the petitioner within 8 weeks from today.

13. Interim orders to continue.

14. Renotify on 28.04.2021.

15. Reply and rejoinder, if so instructed, may be filed before the next date.

16. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J NOVEMBER 19, 2020 AB