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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on :15.07.2015

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Judgment Pronounced on : 19.08.2015

+ **W.P.(C) 6568/2015 & CM No.11963/2015**

PAARDARSHITA PUBLIC WELFARE
FOUNDATION (NGO)

..... Petitioner

Through: Mr.Harkishan Das Nijhawan (in person)
versus

COMMISSIONER SOUTH DELHI MUNICIPAL
CORPORATION AND ORS.

..... Respondents

Through: Mr.Gaurang Kanth along with Ms.Biji Rajesh and Mr.Rajeev Yadav, Advs. for EDMC. Mr.Raman Duggal, Standing Counsel with Ms.Aayushi Gupta, Advs. for GNCTD. Mr.Ajay Arora, Adv. for SDMC. Mr. Rahul Gupta, Advocate with Mr. Shekhar Gupta and Mr. Umang Gupta, Adv. for respondent/Indian Medical Association. Mr.Dhamesh Relan along with Mr.Arush Bhandari, Advs. for R- 5/DDA. Mr.Anil Grover along with Ms.Divya Jain, Advs. for NDMC. Mr. B. Mohapatra, Adv. for R-4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J

1. The present Public Interest Litigation is filed by the petitioner who is said to be a society registered under the Societies Registration Act. The

petitioner prays for a writ of mandamus or directions to the respondents to immediately stop all kinds of hazardous activities in the residential areas of Delhi which are in the shape and style of illegal and unauthorized diagnostic centers, medical facilities, path labs, nursing homes and similar kind of other institutions in view of the recent judgment of the Hon'ble Supreme Court in the case of **Anirudh Kumar vs. Municipal Corporation of Delhi and Ors.** Civil Appeal No.8284/2013 dated 20.03.2015. Based on this judgment, it is averred that action needs to be taken against all entities which are disobeying and violating the orders of the Supreme Court.

2. It is the contention of the petitioner that the respondents have failed to take any action against the said illegal and unauthorized nursing homes, path labs, diagnostic centers and such other kinds of institutions functioning in the residential areas of Delhi.

3. Reference is made to several complaints to various authorities whereby the petitioner claims to have sought and requested for action against the illegal functioning of nursing homes, path labs, diagnostic centers etc. in the residential areas of Delhi.

4. We have heard learned counsel for the parties and perused the record.

5. The genesis of the petition is the judgment of the Supreme Court in the case of **Anirudh Kumar vs. Municipal Corporation of Delhi and Ors.(supra)**. We may look at the said judgment. That was a case which was filed by the appellant therein seeking a writ for quashing of the Regularization Certificate issued to the respondents therein who were running a pathological lab from the basement, ground floor, mezzanine floor and first floor of a building in a Haus Khas, New Delhi. The pathological lab was started in the year 1995 from the basement and ground

floor of the building. In 2005-06 after the purchase of the first floor of the premises by the owner of the path lab, the activities of the lab spread to the mezzanine floor and the first floor. Heavy equipments were installed; about 50 people were employed, 25 air conditioners, two Diesel Generator sets, kerosene oil tanks, gas cylinders and electric panels had been installed.

6. The appellant in that case filed a writ petition in the year 2004 alleging violation of Master Plan of Delhi by the owner of the lab. During the pendency of the writ petition, MCD granted a Regularization Certificate to the lab. Hence, the appellant therein withdrew the writ petition and filed a fresh writ petition where quashing of Regularization Certificate was prayed for. The writ petition was dismissed by the Single Judge. The appeal was also dismissed by the Division Bench of this Court. The Supreme Court, however, in the facts and circumstances of the case held that the grant of Regularization Certificate to the respondents/owners of the path lab under the Mixed Use Regulation of MPD 2021 giving retrospective effect, to run a pathological lab in the guise of a nursing home in a residential area falling in the category 'A' and 'B', is not sustainable in law and liable to be set aside.

7. Regarding the issue of breach of various environmental laws, the Supreme Court further held that on the facts of the case and the evidence on record that the respondents/owners were running the pathological lab in the concerned building in violation of the said law. Hence, the Supreme Court allowed the appeal and set aside the Regularization Certificate issued to the respondents/owners. The respondents/owners were also directed to close down their establishment.

8. The judgment gives no directions to all the path labs, nursing homes

etc. as is sought to be urged.

9. It is clear from the reading of the judgment of the Supreme Court that it is based on the facts of the case. The Supreme Court, in the facts of the case including the location of the concerned lab concluded that the Regularization Certificate granted to the concerned lab was illegal. Relevant portion of the judgment reads as follows:-

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.... From a careful reading of the aforesaid extracted portions of the Master Plan 2021 and upon which reliance has been placed by Mr. H. P. Rawal, learned senior counsel on behalf of the appellant and Mr. K. K. Venugopal and Ms. Indu Malhotra, learned senior counsel on behalf of the respondents, we have to hold that the grant of Regularisation Certificate under Mixed Use Regulations of the MPD 2021 giving retrospective effect enabling respondent-owners to run a Pathological Lab in the guise of a Nursing Home in the residential area falling in categories “A” and “B” is not sustainable in law and liable to be set aside. Further, in view of the facts of the case on hand, the relevant provisions of MPD 2021 and the evidence on record, we have to hold that the writ appeal filed by the appellant has been wrongly dismissed by the Division Bench of the High Court without examining the legality and validity of the issuance of the Regularisation Certificate on 11.07.2006 allegedly under the MPD 2021 which was still at the proposal stage at that time and the said Plan came into effect only on 07.02.2007, enabling the respondent-owners to use the premises for commercial activity which in our view is prohibited in the residential plot of the building under the various Clauses of the Master Plan 2021 extracted above”.

....

.....Therefore, in view of the relevant provisions of law referred to supra, the facts of the case and the evidence on record, we have to hold that the running of the Pathological Lab by the respondent-owners in the concerned building is in violation of law.”

.....

For the reasons stated supra, the appeal is allowed and the impugned judgments and orders of both the learned Single Judge and Division of the High Court are hereby set aside and Regularisation Certificate is quashed and rule is issued. Further, directions are issued to the respondents MCD and DPCC to see that the unlawful activities of the respondent-owners are stopped as per our directions. The respondent-owners are directed to close down their establishment of running 'Dr. Dang's Diagnostic Centre' within four weeks from the date of receipt of the copy of this Judgment by shifting the same to alternative premises and submitting the compliance report for the perusal of this Court. If the respondent-owners do not comply with the above directions of this Court within four weeks, the MCD is directed to take necessary prompt steps for sealing or closing down of all the activities undertaken by them in the premises of concerned building and submit the compliance report for the perusal of this Court. All the I.A.s are disposed of accordingly. No costs."

10. Hence directions were issued to close down the diagnostic centre of the respondent in that case. There are no other directions. Needless to add that the ratio of the said judgment would bind the respondent.

11. Other than relying on the judgment of the Supreme Court, there is no other material averment in the petition. We see no merits in the writ petition and the same is dismissed.

**(JAYANT NATH)
JUDGE**

CHIEF JUSTICE

AUGUST 19, 2015

raj/an