

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

+ **Date of Decision : 12.11.2008**

% **W.P.(C) 4630/2008**

H.K.CHOUDHARY Petitioner
Through: Mr. Sandeep Sethi, Sr. Advocate
with Mr. Rahul Sharma, Advocate

versus

N.D.M.C. & ANR. Respondents
Through: Mr. Arvind Sah, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J. (Oral)

1. By way of this writ petition the petitioner impugns the order of sealing passed under Section 250 of the New Delhi Municipal Council Act, 1994 by the respondent on 27.06.2008 in respect of the petitioner's premises i.e. Choudhary Guests House situated at H-35/3, Connaught Place, New Delhi. The impugned order reads as follows:-

"Whereas the undersigned is satisfied that the following unauthorized construction has been carried out at Premises No. Choudhary Guest House, H-35/3, Connaught Place, New Delhi,

1. Constructed multi storeyed structure i.e. Ground Floor, 1st Floor, IInd Floor & Porta cabin at Trace Floor in an area m.a. 2,644 sq. ft. (area $\frac{3}{4}$ of a circle) made of brick work and RCC slab and bifurcated the whole structure into small chambers by running Guest House, Shops, Courier Services, Photostat Shops etc. in the Premises No.H-35/3, Connaught Place, unauthorizedly without prior approval of NDMC.

And whereas it has become necessary for the purpose of carrying out the provisions of the New Delhi Municipal Council Act 1994 for preventing any dispute to the nature and extent of such erection of work. I, the undersigned by virtue of the powers vested in me under section 250 of the above said Act, hereby authorized Sh. Brij Kumar, AE(UC) under NDMC (Sealing of unauthorized construction) Rules read with Section 250 of the NDMC Act, 1994 and direct him to seal the such premises as per rules. The said Sh. Brij Kumar, AE(UC) is also hereby authorized to break or open the lock or open or caused to be opened any door, gate or any barrier in case the said premises are found to be locked or inaccessible and after completion of Sealing action to inform in writing the Area Police Station and the undersigned.”

2. The submission of learned senior counsel for the petitioner, Mr. Sethi, is that the impugned order is vague, inasmuch as, while alleging the raising of unauthorized construction the order does not state as and when the so called unauthorized construction was raised, and which portion of the construction, according to the respondent, is unauthorized. He also refers to the show cause notice issued by the respondent which preceded the issuance of the impugned order. The relevant part of the show cause notice reads as follows:-

“It has come to the notice of the New Delhi Municipal Council during the survey of the area as per direction of Monitoring Committee in the matter of Kalyan Sanstha

Social Welfare Organization Vs. U.O.I. & ORS. CW No.4582 of 2003 that you have begun, or carrying on, or have completed the construction as described in Schedule "A" given below at Premises No.H-35/3 Connaught Place, New Delhi without obtaining the approval from the Chairperson, NDMC as required under provisions of the New Delhi Municipal Council Act, 1994 and the Byelaws made thereunder:"

xx xx xx xx xx xx

"You are hereby required to show cause within ten days of the receipt of this notice as to why order for sealing of the aforesaid unauthorized construction and/or the premises in which such unauthorized construction is being carried on/has been completed be not made. In case you fail to show the cause within the aforesaid time or the cause shown is not to the satisfaction of the Chairperson, NDMC or any other officer authorized by him/her in this behalf, the order of sealing of the unauthorized construction aforesaid and/or the premises in which such unauthorized construction is being carried on/has been completed, shall be made without any further notice. This is being monitored by the Court Commissioner and Monitoring Committee appointed by the Hon'ble High Court of Delhi."

3. Mr. Sethi submits that the property of the petitioner has been in existence since prior to the year 1992. He refers to the 'No Objection Certificate' issued by the fire service department dated 28.12.1992, which shows the existence of a guest house with 7 rooms- three rooms on the ground floor and four on the first floor, along with two staircases. This position was reiterated by the fire department on 07.06.2000 when the fire clearance was renewed. It is argued that the petitioner had filed a suit in the year 1971 against the Delhi Waqf Board, since the property in question was being claimed by the Delhi Waqf Board. In the said suit the petitioner succeeded vide judgment

and decree dated 05.04.1980, and the petitioner was recognized as being in possession of an area of 4024 sq. ft. situated in H-Block, Connaught Circus, where the petitioner has his residence consisting of two rooms, kitchen, bath, WC, two verandah with open area bounded with the boundary walls of 3 ft. height.

4. The petitioner also points out that the respondent itself had conducted an inspection and prepared a report in respect of the premises in question. The inspection report prepared in December 2005 records that the petitioner has constructed a four storeyed building without prior approval of the NDMC. It further records that a three storeyed building including one cabin measuring 6 ft. X 6 ft. on the terrace is found to be running a guest house without the health licence. However, the party furnished a copy of a stay order passed by this Court for running of a guest house. It further records that in the three storeyed structure, the petitioner is running a paying guest house in three floors and partly the same has been rented out at ground floor and first floor, respectively. During inspection no construction activity was noticed. The report further records that from the documents furnished, it seems that the construction is old and no fresh construction activity was carried out by the occupants of the premises.

5. Mr. Sethi submits that the construction is old, raised even prior to coming into force of the New Delhi Municipal Council Act, 1994 and when the Punjab Municipal Act was in force. Even if it were to be

assumed that the construction originally raised was without obtaining a prior sanction, the construction is saved by Section 195 of the Punjab Municipal Act as no notice of demolition was issued within six months of the raising of the said construction. He relies on “**Municipal Corporation of Delhi v. Smt. Surjit Kaur**” AIR 1973 DELHI 198 (V 60 C 58) (DB) and “**Jor Bagh Association (Regd.) & Ors. v. Union of India & Ors.**” AIR 2004 DELHI 389. He submits that the entire premises could, therefore, not been sealed by the respondent.

6. Mr. Sah, learned counsel on behalf of the respondent NDMC, argues that Section 195 of the Punjab Municipal Act cannot be invoked by the petitioner even if it were to be assumed, without any admission on the part of the respondent, that the premises was originally constructed at the time when the same was governed by Punjab Municipal Act and no notice of demolition was issued to the petitioner by the New Delhi Municipal Committee within six months of the construction being raised. He submits that it cannot be said that the building was completed, since no notice of completion was given by the petitioner as provided for in the Bye Law 7.5.2 of the Unified Building Bye Laws, 1983. In support of his submission, he relies on a Division Bench judgment of this Court in “**Raghubir Singh & Ors. v. Municipal Corporation of Delhi & Anr.**” 22 (1982) DLT 235

7. From the documents placed on record by the petitioner referred to above, there can be no manner of doubt that there was some construction in existence even when the area in question was

governed by the Punjab Municipal Act. No doubt, the status of construction as recorded at different points of time does suggest that there have been variations from time to time. However, it cannot be said that the entire construction has come into being after the enactment of the New Delhi Municipal Council Act, 1994. That being the position, it becomes necessary to examine whether the giving of a notice of completion by the petitioner was necessary for the petitioner to become entitled to protection of the construction raised by him prior to 1994 (when the Punjab Municipal Corporation Act was in force in the area in question). In **Surjit Kaur** (supra) the respondent had built a building in 1957 without a sanction. The Municipal Corporation of Delhi served a notice of demolition of the premises. The respondent preferred a suit for permanent injunction against the threatened demolition. In Second Appeal that came before the Court the question arose whether the MCD was entitled in law to issue a notice of demolition. The Punjab Municipal Act, 1911 was applicable in the area in question until the Delhi Municipal Corporation Act, 1957 came into force on 9.4.1958. The Corporation placed reliance on Section 343 of the Delhi Municipal Corporation Act to urge that the Corporation could issue a notice of demolition at any time after the completion of the building, without limitation of time. The Court examined the rights and obligations inherited by the MCD from the earlier existing municipal committee, which was governed by the Punjab Municipal Act, and held that the MCD would be bound by a liability incurred by the erstwhile

Municipality by virtue of Section 516 of the DMC Act. The Court examined Section 195 of the Punjab Municipal Act, 1911 which reads as follows:

“195. Penalty for disobedience:-

Should a building be begun, erected or re-erected-

- (a) without sanction as required by Section 189(1); or
- (b) without notice as required by section 189(2); or
- (c) when sanction has been refused;

the [committee] may by notice delivered to that owner within six months from the completion of the building, require the building to be altered or demolished as it may deem necessary within the period specified in such notice; and should it be begun or erected,

- (d) in contravention of the terms of any sanction granted; or
- (e) when the sanction has lapsed; or
- (f) in contravention of any bye-law made under section 190; or in the case of a building of which the erection has been deemed to be sanctioned under section 193(4), if it contravenes any scheme sanctioned under section 192;

the [committee] may by notice to be delivered to the owner within six months from the completion of the building require the building to be altered in such manner as it may deem necessary, within the period specified in such notice:

Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable:

Provided also that the committee shall require a building to be demolished or altered so far as is necessary to avoid contravention of a building scheme drawn up under section 192:

[Provided further that if any notice is issued by the Executive Officer under this section on the ground

that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made under section 190 the person to whom the notice is issued may, within fifteen days from the date of service of such notice, appeal to the committee, and subject to the provisions of sections 225, 232 and 236, the decision of the committee shall be final.”

The Court while interpreting the aforesaid provision held:

“Admittedly, the building in question was erected without the requisite sanction and, therefore, if the Punjab Act had continued to apply, the Municipality would have been entitled to require the respondent to demolish the said building. The first appellate Court has not given any finding as to the exact date or time when the building was constructed by the respondent other than saying that it was constructed in 1957. Taking the last day of the year 1957 to be the day when the building was constructed, the Municipality, if it had continued, could have served the notice of demolition under the aforesaid section by or before June 30, 1958.”

In paragraphs 6 and 7, the Court further held:

6. It is no doubt true that a liability was incurred by the respondent under Section 195 of the Punjab Act to demolish the building upon a notice being delivered to her but this liability would have been incurred only if a notice had been delivered to her within six months from the completion of the building and that is the extent of the liability incurred by her. The liability was conditional upon a notice being delivered to her within six months from the completion of the building and it cannot be said to be a liability incurred without any limit of time. The Corporation cannot take advantage of the fact that in Section 343 of the Corporation Act, there is no limit of time for the service of a notice of demolition because the Corporation can enforce only such liabilities which have been incurred under the Punjab Act and to determine the extent and nature of the liability, the provisions of the Punjab Act will have to be looked into notwithstanding its repeal. The provisions contained in Sections 336, 343, 344 of the Corporation Act are by

their language, of prospective operation and the appellant Corporation cannot rely upon these provisions to issue a notice of demolition after the expiry of six months from the completion of the building as was done in the present case in the year 1960.

7. It may be that a period of six months had not expired between the completion of the building and the coming into force of the Corporation Act. If the Corporation wanted to exercise the power of demolition by reason of Cl. (b) of sub-section (2) of Section 516 of the Corporation Act, they ought to have acted within six months from the completion of the building and having failed to do so, they had no right to take action after the expiry of six months. Upon the expiry of six months from the completion of the building, no liability remained upon the respondent to have the building demolished as the liability ceased to remain a liability upon the expiry of this period."

8. The aforesaid reasoning adopted by the Division Bench in relation to the provisions of the Delhi Municipal Corporation Act in my view would apply with equal force to the provisions of the New Delhi Municipal Council Act. Neither Section 250 nor any other provision of the NDMC Act have retrospective operation. The aforesaid decision of the Division Bench of this Court in **Surjit Kaur** (supra) has been followed by this Court in **Jor Bagh Association (Regd.) & Ors.**(supra).

9. In **Raghubir Singh** (supra), the Court was examining whether the communications sent by the petitioner could be considered as a notice under Section 333 (i.e. a notice communicating the intention to erect a building in the form, and containing such information as may be prescribed by bye-laws) of the DMC Act. The Court rejected that

argument of the petitioner and held that since the consequences of a deemed sanction are serious, before sanction is deemed there must be a strict compliance of the procedural requirements.

10. However, Section 195 of the Punjab Municipal Act in terms applies to a case where a building is erected "without notice as required by Section 189(2)", which is similar to Section 333 of the DMC Act. Therefore, to apply the same reasoning, as the one adopted by the Court in **Raghubir Singh** (supra), while interpreting Section 195 of the Punjab Municipal Act would be doing violence to the plain and simple meaning of clause (b) of Section 195. Consequently, construction raised by the petitioner prior to the coming into force of the NDMC Act, 1994 in respect of which notice of demolition was not issued within six months of the completion of the erection would be saved and cannot be demolished or sealed by the respondent council by virtue of Section 195 of the Punjab Municipal Act read with Section 416(2)(b) of the NDMC Act.

11. For the aforesaid reasons, I reject the submission of Mr. Sah founded upon the decision in **Raghubir Singh** (supra). The show cause notice issued to the petitioner and the impugned order passed thereon unfortunately appear to be rather vague. Neither or them state as to what part of the existing construction the petitioner has raised after the coming into force of the New Delhi Municipal Corporation Act and is not saved by Section 195 of the Punjab Municipal Act. I, therefore quash the impugned order of sealing passed by the respondent NDMC.

However, the respondent is permitted to issue a fresh show cause notice specifically stating as to which part of the construction the petitioner has raised after the enforcement of the NDMC Act, 1994 without a prior sanction which, according to the respondent, is liable to be sealed or demolished. The petition stands disposed off in the aforesaid terms.

VIPIN SANGHI, J.

November 12, 2008

rsk/aj