

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

+ W.P.(C) 8556/2007

SHARAN KAUR Petitioner
Through Mr. A K Mishra, Adv.

versus

MCD & ORS Respondent
Through Mr. Anoop Bagai, Adv. with Mr. Devender
Nautiyal, Adv. for MCD

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
09.04.2008

1. The application for grant of sanction of building plans has been rejected by MCD vide their letter dated 11th January, 2008 and the said order is appealable under section 347A of the Delhi Municipal Corporation Act, 1957. Learned counsel for the petitioner submits that the present case is one of deemed sanction under section 337 of the Delhi Municipal Corporation Act, 1957 and therefore, the present writ petition should not be dismissed on the ground of alternative remedy. In support, learned counsel for the petitioner has relied upon decision of Single Judge of this court in "Smt. Savitri Devi Vs. MCD" civil writ no.1449/1973 decided on 20th December, 1974. He states that this decision has been followed

in the case of "Pritam Singh Makin Vs. MCD" civil writ no.1649/2000 decided on 11.2.2003.

2. I have examined the said decisions. Decision in the case of Pritam Singh Makin (Supra) records that the earlier decision in the case of Savitri Devi (Supra) opines that if a building plan is not rejected nor accepted within the statutory period of 60 days, it would be deemed to have been sanctioned.
3. Learned counsel for the respondent/MCD has brought to my notice a Division Bench decision of this court in "Raghubir Singh and Others" reported in AIR 1982 Delhi 550 in which reference was made under section 337 of the Delhi Municipal Corporation Act, 1957 and it was observed that deem sanction has serious implications and if the Corporation is to be tied down to Section 337, it is necessary for the party to substantially comply with provisions of Section 333, before any benefit can be taken.
4. In the present case, on 10th May, 2007, MCD had informed the petitioner that the application filed by the petitioner cannot be treated as per law and would not be entertained, until the petitioner files on record ownership documents, and clears the question of division of plot. It was also stated that the documents as submitted that were not signed by architect and the owner. It is clear from the above letter that building

plans submitted by the petitioner as on 30.3.2007 did not comply with the statutory requirement of section 333 of the Delhi Municipal Corporation Act, 1957. The said section requires that an applicant can apply for sanction of building plans or give notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by the bye-laws made in this behalf. It also stipulates that such notice must be accompanied by documents and plans as may be prescribed. In view of the lapses pointed out in the letter dated 10.5.2007, it cannot be said that the petitioner had made substantial compliance with section 333 of the Delhi Municipal Corporation Act, 1957. I do not think in the present case, the petitioner is entitled to benefit of deem sanction.

5. Learned counsel for the petitioner, however, submitted that the letter dated 10.5.2007 written by MCD was received by the petitioner on 8th August, 2007 and thereafter the petitioner made a representation and submitted the necessary documents on 22nd August, 2007. To my mind this aspect will not make any difference for the judgment of the Division Bench in the case of Raghbir Singh (Supra) makes it clear that to take benefit of deem sanction section 337(1), the condition precedent is substantial compliance with the provisions of section 333 of the Delhi Municipal Corporation Act, 1957. The effect is that an application for

sanction of building plans is deemed to be received only after substantial compliance is made with section 333 of the Delhi Municipal Corporation Act, 1957 and till compliance is made, application is not treated to be filed. Till substantial compliance is made and the application complies with section 333 of the Delhi Municipal Corporation Act, 1957, time period mentioned in section 337 does not begin and start.

The writ petition is accordingly disposed of.

However, it will be open to the petitioner to challenge order of rejection dated 11.1.2008 in accordance with law or file civil suit against other co-owners of the property. This court has only decided issue of deem sanction and gives liberty to the petitioner to raise other contentions before an appropriate forum/civil court as per law.

SANJIV KHANNA,J

APRIL 09, 2008
vld