

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

+ W.P.(C) 7301/2007 & CM No. 13871/2007

AMAR SINGH

..... Petitioner

Through Mr. R.K. Saini & Mr. Nikhil Bhalla,
Advocates.

versus

MCD & ANR

..... Respondents

Through Ms. Smita Shankar, Advocate for MCD.
Mr. Mahip Datta, Advocate for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 25.03.2008

1. Petitioner herein has entered into an agreement to purchase a shop measuring 4x18 feet, which is part of shop No. 27, Municipal Market, Mandelia Road, Kamla Nagar, Delhi.

2. Mr. Hansraj had originally purchased entire shop on 4th August, 1968 in a public auction and a lease deed dated 18th May, 1971 was executed in his favour. Subsequently, the shop in question was sold to one Smt. Shanti Devi except for the portion, which was agreed to be sold to the petitioner vide agreement to sell dated 29th August, 1967. The petitioner had filed a suit for specific performance against Smt. Shanti Devi and has a decree for specific performance dated 24th September, 1994 in his favour.

3. MCD has, however, refused to accept the said decree and acknowledge the petitioner as owner of shop measuring 4x18 feet and has refused to give permission to Smt. Shanti Devi to execute the sale deed for part or portion of the shop in favour of the petitioner.

4. MCD in their counter affidavit has relied upon Clauses 2 and 6 of the lease deed dated 18th May, 1971, which for the sake of convenience are reproduced below:-

“ The lessee shall not deviate in any manner from the plan nor alter the size of the plot whether by sub-

division, amalgamation or otherwise, without prior approval of the lesser(sic).

Whenever, the title of the lessee is transferred in any manner, whatsoever, the transfer(sic) and the transferee shall, within three months of the transfer, give notice of such transfer in writing to the lesser (sic).”

5. The contention of MCD is that sub-division of the plot is permissible under Clause 2 but sub-division of the building or the super structure on the plot is not permissible. The second contention of the MCD is that no prior permission was obtained or information regarding transfer was given to MCD.

6. The stand taken by the MCD cannot be accepted. What was sold to Mr. Hansraj was a built up shop and Clause 2 of the lease deed permits sub-division and amalgamation of the plot with prior permission. The lease nowhere stipulates that sub-division or amalgamation of the super structure or the building is not permissible or requires prior permission. For sub-division of the plot, prior permission is required but there is no restriction as far as super structures are concerned. There is no bar in the lease deed for division of the super structure. In case the original lessee was not entitled to sub divide or amalgamate the super structure, then such restriction should have been incorporated in the lease deed itself.

7. A better and more reasonable manner of reading Clause 2 would be that plot includes super structure and building. Therefore, sub-division or amalgamation of super structure is permitted with permission of MCD. It may be relevant to state here that what was sold to Mr. Hansraj was the shop including the plot. Thus, the stand of MCD that plot can be sub-divided but the superstructure cannot be sub-divided cannot be accepted.

8. The second contention of the MCD that no prior permission was obtained, cannot be sustained. Permission can be granted retrospectively. In our case transfer of immovable property in law requires execution of a registered document of title and the said event has not happened. The stand taken by the MCD, therefore, cannot be accepted.

9. It is accordingly directed that the MCD will re-examine the claim made by the petitioner for sub-division of the shop for the purpose of execution of the sale deed for the portion measuring 4x18 feet in favour of the petitioner by the respondent No. 2 within a period of six weeks from today.

The writ petition is disposed of.

SANJIV KHANNA, J.

MARCH 25, 2008

VKR/vld