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

+ W.P.(C) 17633-38/2006

KALPNA GUPTA & ORS Petitioners
Through: Mr. Sunil Bansal with Mr. Ajay
Monga, Advocates

versus

D.D.A. & ORS. Respondents
Through: Mr. Manoj K. Singh with Mr.
Rupesh K. Gupta and Mr. Pradyuman,
Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
% **08.05.2009**

1. This is second round of litigation. The petitioner along with several others had filed writ petition in this Court, which were disposed of by the learned Single Judge vide judgment dated 01.05.2006.

2. The petitioners herein have purchased shops from the respondent No. 3, the builder, in a Commercial Complex constructed on Plot No. 37-38, Wazirpur Industrial Scheme (Ashok Vihar Phase-I,

New Delhi).

3. At the time when the plots were sold by DDA, the control drawings furnished stipulated "*control is only elevations; inner adjustment is the choice of the owners.*"

4. Respondent No. 3 thereupon after purchasing the plot submitted and obtained requisite sanction for construction of Basement, Ground Floor, Mezzanine Floor, Ist, IInd and IIIrd Floors.

5. Respondent No. 3 deviated from the sanction obtained and as against 13 shops and 2 toilets, 15 shops and one toilet was constructed on the Ground Floor as per the completion drawings submitted with the DDA. DDA on 19.08.1992 had granted approval to the completion drawings and approved the structure with 15 shops and one toilet on the Ground Floor. However, the actual factual position was different and after obtaining completion certificate, respondent no.3 made alterations and additions without sanction and 15 shops were converted into 31 shops on the Ground Floor and site of toilet on ground floor was relocated.

6. DDA on 15.10.1993 issued show cause notices u/s 31(1) and 31(A) of the Delhi Development Act, 1957 that structural changes/alterations had been made after obtaining completion

certificate. Orders for sealing and demolition were passed on 06.07.1994 in respect of excess area of Mezzanine Floor and demolition of internal partitions of shops.

7. The Order was challenged in an appeal before the Appellate Tribunal. The matter was remanded to the Delhi Development Authority by the Appellate Tribunal to examine whether the changes were compoundable or not under the Appendix Q of the Unified Building Bye-Laws, 1983. The said order was passed on 23.09.1994, directing the respondent No. 3 herein to appear before the Joint Director, DDA on 30.09.1994.

8. DDA thereafter did not take steps for nearly a decade and in the year 2004 decided to seal the extra and unauthorized shops on the Ground Floor. This action/order was challenged by the petitioners along with other shop owners in the writ petitions which were disposed of by order dated 01.05.2006.

9. In the judgment dated 01.05.2006, learned Single Judge noticed that DDA in the control drawings had allowed an internal arrangement to the choice of the builder but this, the Court observed does not mean that the builder was free for all times. The Development Control norms specified by the Development Code

under the Delhi Master Plan in vague have to be adhered to. The Development Code was also referred to and it requires adherence to the Building Bye-Laws. It was observed that the respondent No. 3 had initially obtained sanction for 13 shops on the Ground Floor and the final completion/approval was obtained for 15 shops. The Court made reference to the Bye-Laws 6.4.1 (J), 2.3 and 2.17 of the Building Bye-Laws, 1983. The said clauses read as under:

“Bye-law 6.4.1(j)

Erection or re-erection of internal partitions provided the same are within the purview of the Bye-Laws.

2.3. Alteration – A change from one occupancy to another or a structural change, such as an addition to the are or height, or the removal of part of a building, or any other change to the structure, such as the construction of, cutting into, or removal of any wall, partition, column, being, joist, floor or other support, or a change to or closing of any required means of ingress or egress or a change to the fixtures of equipment.

XXXXXXX

Bye-law 2.17

2.17 Conversion- The change of an occupancy to another occupancy or change in building structure or part thereof resulting into change of space of use requiring additional occupancy certificates. ”

10. Learned Single Judge after analyzing the aforesaid provisions

observed as under:

"19. A room can be divided by raising internal partition in such a way that various cabins thus constructed can be put to independent use, for example, a big hall can be divided to create a space for reception, store and office but with a single occupancy having a common exit and entry point. Such construction of internal partitions would fall within Bye-Law 6.4.1 (j). But where internal partitions have the effect of increasing number of occupancies i.e. independent rooms with independent means of entry and exit, Bye-Law 2.3 & 2.17 would be attracted and in view of Bye-law 3.5 read with Bye-Law 6.4 such a re-partition would require a sanction.

20. What has happened in the instant case is that as against 15 shops having independent means of access, 31 shops each having an independent means of access were constructed when DDA booked the structure. Indeed, the learned Appellate Tribunal has opined, and correctly so, that the offending restructuring of the building require a prior sanction. "

11. However, the Court did not permit immediate demolition of the excess shops in spite of the aforesaid Order, making the following observations:

"28. Admittedly, respondent No. 2 has not got the changes compounded under Appendix Q to the Unified Building Bye-Laws 1983. In spite of the remand by the Appellate Tribunal MCD, respondent no. 2 remained negligent and to a large extent received a helping hand from the officers of DDA who took their own sweet time and consumed 10 years in taking some decision which was not brought to my notice, decision being evident from the threatened sealing action of the shops which resulted in the present writ petitions being filed. As

noted above, matter was remanded for fresh adjudication in the year 1994. DDA took no consequential action till the year 2004. In the meanwhile, respondent no. 2 very conveniently sold the shops to the petitioners, leaving them at the mercy of officers of DDA. Even petitioners have to shoulder part of the blame for the reason they did not bother to check the sanctioned and the completion building plans when they purchased the shops.

29. Since rights of petitioners have intervened and since petitioners have, to a large extent remedied the situation by re-grouping themselves, and as of today as against 31 shops which were constructed only 20 exist, the situation brings me back to the situation which existed when the Appellate Tribunal took the decision in the year 1994. The matter requires re-examination by DDA to consider whether compounding can be effected under Appendix Q to the Unified Building Bye-Laws, 1983. "

12. Respondent No. 1-DDA thereafter examined the matter and refused to regularize any extra shops under Appendix Q of the Building Bye Laws. It also appears that the number of shops has also been reduced from 31 to 21/20 because of amalgamation etc.

13. By Order dated 30.10.2006 passed by Director (Building), DDA rejected the request for regularizing the additional extra shops. The operative portion of the Order reads as under:

"5. Order

In the light of the orders of Hon'ble High Court of Delhi, above facts of the case and hearings I declare the following:

- (a) At the time of issuance of completion certificate on 19.08.1992 provision of compoundable items has already been obtained by the respondent no. 2. At present no part of the structure can be regularized and compounded under Appendix Q to the Unified Building Bye Laws 1983 and MPD 2001 provisions stated in para 4.6. After issue of completion certificate respondent no. 2 carried out unauthorized deviations on his own. At this stage, there is no option but to restore the building in conformity with the approved completion plan.”

14. It is therefore clear that the respondent-DDA has pursuant to the Order passed by the learned Single Judge examined whether any of the additional shops can be regularized and approved under Appendix Q of the Building Bye Law, 1983 and Master Plan and has come to the conclusion that the additional shops cannot be regularized. While doing so, learned counsel for respondent No. 2 has relied upon the findings and the ratio in the judgment of the learned Single Judge dated 01.05.2006.

15. Learned counsel for the petitioner, on the other hand, had drawn my attention to paragraph 4.3 in the Order dated 30.10.2006 which read as under:

“During hearing the petitioners informed that the completion-cum-occupancy certificate of this building was issued on 19.08.1992. Therefore the decision of the Technical Committee of DDA dt. 26.09.1995 was not applicable on them and the provision of minimum width and area of shop i.e. 2.4 mt and 6 sqm. is not applicable

to them. As such shop no.s P-8, 9, 10, 11, 14, 16 and 19 are not permissible and can not be regularized.”

16. He has also drawn my attention to the observations by the learned Single Judge in the Order dated 01.05.2006 which read as under:

“25. Ms. Anusuya Salwan, Learned counsel for DDA conceded that DDA was offering for sale shops having a covered area of less than 6 sq. Mtrs. Material placed on record by the petitioners and respondent no. 2 shows that in the month of November, 2001 DDA offered for sale shop no. 38 Community Shopping Centre, Pocket 4, Sector D, Vasant Kunj having a plinth area of 4.85 sq.mtrs. Similarly, in the Community Shopping Centre in Sector 2, Pocket HAP, Dwarka Phase II, Shop Nos. 30, 31, 32 & 33 admeasuring 4.59 sq. mtrs. 4.84 sq. mtrs., 4.84 sq. mtrs. & 5.22 sq. mtrs. Respectively as also shop No. 38 admeasuring 3.24 sq. mtrs. On the ground floor were offered for sale. Similarly, Shop No. C-2 in the Local Shopping Centre Block D, Pocket Q, Shalimar Bagh having plinth area of 3.35 sq. mtrs. Was offered for sale. Further, completion plan dated 7.12.2005 issued to M/s Raghav Buildwell Pvt. Ltd. in respect of a Shopping Complex at the Community Centre at Karkarduma, Delhi shows approval of DDA for shops having a plinth area of 5.65 sq. mtrs.

26. It is obvious that DDA is not uniformly enforcing its resolution passed by the Technical Committee of DDA on 26.9.1995 to adopt the 6 sq. mtrs. Norms prescribed under the Regulations framed by the Bombay Municipality. Besides, DDA has placed no material to show that the said policy decision was notified to the public. Indeed, a Government Policy which affects the rights of the citizens requires to be notified to the citizens.

27. As noted above, as of today 20 shops exist. Only 5 have an area less than 6 sq. mtrs., minimum being 5.22 sq. mtrs."

17. I do not find merit in the contention of the petitioner. Learned Single Judge in paragraphs 25 to 27 quoted above has held that the resolution passed by the Technical Committee on 26.09.1995 prescribing minimum limit/norms for shops of 6 sq. mts. cannot be applied to the present case. The observations made in paragraph 4.3 do not form the basis of the operative or reasoning portion of the Order passed by the Director (Building), DDA. The operative or the reasoning portion of the order dated 30.10.2006 passed by Director (Building) DDA has been quoted above. The said operative portion does not refer to the fact that the 5 shops are less than 6 square metres and therefore should be demolished. The reason given is entirely different and is in conformity with the order passed by the learned Single Judge on 01.05.2006 interpreting clauses 6.41(J), 2.3 and 2.15 of the Building Bye-Laws, 1983. Extra or additional shops cannot be regularized under Appendix Q because of specific bar. The judgment dated 01.05.2006 is binding on me, issues decided and interpretation of clauses 6.4.1(j), 2.3 and 2.17 of the Building Bye

Laws cannot be reexamined again. Thus, I do not find any merit in the present writ petition challenging order dated 30.10.2006.

However before any final action of demolition, sealing, etc. is taken, the respondent DDA will examine whether the petitioners are entitled to any relaxation or benefit under Master Plan of Delhi 2021. Petitioners are also at liberty to make a representation to the DDA on this aspect making specific reference to new Master Plan within four weeks. The petitioners can also examine, whether they can modify, amalgamate and make changes in the number of shops, and apply to DDA for amendment/modification/new sanction/completion certificate. Any such representation/application made will be considered as per law. No coercive action will be taken if any application/representation is pending. The petitioners are also at liberty to initiate proper action against respondent No. 3 the builder if so advised.

The writ petition is accordingly disposed of.

SANJIV KHANNA, J.

MAY 08, 2009
Bsr/P