

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P. (C) 9620/2009

Reserved on : 07.10.2009
Pronounced on: 23.10.2009

SUNIL TANEJA AND ANR.

..... Petitioners

Through: Mr. R. K. Saini, Advocate.

versus

MCD AND ANR.

..... Respondents

Through: Mr. Ajay Arora and Mr. Kapil Dutta, Advocate for MCD.
Mr. T.K. Ganju, Sr. Advocate with Mr. I.D. Tyagi, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

*

1. The petitioner, in these writ proceedings, claims directions to de-seal the property, being I-124, Lajpat Nagar-I (hereafter "the suit property") and that the respondents Municipal Corporation of Delhi (MCD) should permit him to carry out rectification work in the building.

2. The petitioner claims to be owner of the suit property; by virtue of a registered sale deed, dated 30th April, 2008. He states that the previous owners of the suit property had entered into a collaboration agreement with one Rajiv Chawla, on 18.02.2005, whereby the first floor of the property was to be given to him (Rajiv

Chawla). That transaction did not fructify; and a suit was filed by the owners, seeking declaration against the said agreement was unenforceable. The suit was disposed of on 28.04.2008, on the basis of Shri Chawla's statement that he would not interfere with the peaceful possession of the suit property. The petitioners say that they became aware about some unauthorized construction, after they purchased the suit property, and that a letter was issued on 08.08.2006 seeking de-sealing of the property, where the former owners were given the chance to submit a rectification plan, and comply with the bye laws, in carrying on building activity in accordance with bye laws. The former owners, however, did not avail the opportunity.

3. The petitioners mention having asked the MCD to de-seal the property to which a response, dated 29.05.2009 was received, intimating about approval of the de-sealing of the demised premises for 15 days to carry on rectification work. The suit property was therefore, de-sealed; however, in the first week of June, the petitioners received a legal notice, asking them to desist from rectifying the construction, since the one Suresh Gulati had filed a suit, before this court, seeking specific performance of an alleged agreement, in respect of the suit property, entered into with Shri Rajiv Chawla. The petitioners immediately represented to MCD stating that the said Shri Gulati had no connection with the suit property. The petitioner says that despite mentioning all facts, the MCD re-sealed the suit property, which is arbitrary and contrary to law as well as principles of natural justice. It is alleged that a de-sealing order, once issued, cannot be superseded, except where the occupier has suppressed material facts, or new developments about the property come to light, which have not happened in this case. The petitioner contends that the pendency of the suit to which he is not a party cannot authorize the MCD to seal the property.

4. During the pendency of these proceedings, the petitioner sought impleadment in the suit filed by Capt. Gulati. These developments were brought to the notice of the

court, by an application. An order in this writ petition dated 14th July, 2009 was appealed against before the Division Bench; the latter directed the writ petition to be listed along with the civil suit, for appropriate orders.

5. The petitioner and MCD, as well as Capt. Gulati, were heard, in this writ petition, when it was listed along with CS (OS) 2257/2008 (which seeks a decree for specific performance). The plaintiff in the suit, Capt. Gulati, sought to implead the present petitioner, as a party defendant, in the light of the facts disclosed by the other defendants in the suit. The Court has, today, allowed the request for amendment to the suit, to incorporate the claim for cancellation of the sale deed, executed in favour of the Petitioner.

6. The petitioner had denied being a necessary, or proper party to the suit, claiming to be an innocent and *bona fide* purchaser of the property, by virtue of a registered sale deed, of 30-4-2008. Having acquired title for valuable consideration, they said that they could not be dragged into litigation over a cause of action to which they are admittedly not concerned. This court has today by a separate order, in the said suit, allowed the plaintiff's request to implead the present petitioner, and also permitted the latter (the writ petitioner) to go ahead and rectify the construction in the suit property, in the following terms:

"....The court is of opinion that the plaintiff's request to implead the proposed defendants, and amend the suit has to be accepted. The proposed defendants are impleaded as Defendant Nos. 5 and 6. Also, the overall conspectus of facts require that the subsisting injunction against the Defendants 1-4 should be confirmed. As far as the newly added defendants are concerned, the court is of opinion that interests of justice require that they should not part with possession, or create any third party rights, ;in respect of the property, No. I-124, Lajpat Nagar-1, New Delhi, till further orders. It is, however, clarified that the newly added defendants are free to take steps by moving the MCD to get the premises de-sealed, and for that purpose, carry out rectifications, to ensure that the building is brought in accordance with the building bye-laws. Such rectifications

shall however, be without prejudice to the plaintiff's rights in the suit, and the defendants shall not claim any equities in this regard."

7. The present writ petition, too, has to be disposed of in a similar manner. The petitioner is free to carry out the rectification of construction on the suit property, to bring it in line with the sanctioned plan, the building bye laws and other provisions of law. To facilitate this, the MCD shall remove the seals in the premises; however, the petitioner shall furnish an appropriate undertaking affidavit, to comply with the terms of the bye laws, and carry out rectification of the constructions strictly in accordance with the sanctioned plan, and in accordance with law, within two weeks.

8. The writ petition and CM 7672-73/2009 are disposed of in the above terms.

October 23, 2009

(S.RAVINDRA BHAT)
JUDGE