

*** HIGH COURT OF DELHI : NEW DELHI**

+ LPA No. 866 of 2004

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Decided on: April 21, 2010

Dr. (Mrs.) Kamlesh Vasudeva
W/o Capt. S. Vasudeva
Owner of Vatika Farm
(Khasra No. 275, 276, 292, 293)
Village – Satbari, Mehrauli
New Delhi.

..... Petitioner

Through: Mr.Ashish Aggarwal, Adv.

versus

1. Municipal Corporation of Delhi
Through its Commissioner
Town Hall, Chandni Chowk
Delhi-110 006.

2. Union of India
Through its Secretary
Ministry of Urban Development
New Delhi-110 001.

..... Respondents

Through: Ms.Maninder Acharya, Adv.

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

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

MADAN B. LOKUR, ACJ (ORAL)

The Appellant is aggrieved by an order dated 6th July, 2004 passed by a learned Single Judge in WP (C) No. 7859/2004.

2. The Appellant is a bhumidar of land measuring 17 bighas in Village Satbari, Tehsil Mehrauli, New Delhi. Construction of a farm house in accordance with the building norms was permissible on the said land in view of the fact that it falls within the rural area of Delhi.

3. The Appellant accordingly constructed a farm house as a residential unit after obtaining necessary sanction for this purpose. During the course of construction, the Appellant made some deviations but these were found to be compoundable and after charging the compounding fees, they were regularized. Thereafter, the Appellant

made further construction but without any sanctions. Additionally, the further construction was found to be non-compoundable.

4. In a different context, a Committee was set up under the Chairmanship of Professor V.K. Malhotra in respect of some issues relating to town planning and as a result of its report, the Master Plan for Delhi was amended and a notification was issued on 23rd July, 1998 increasing the coverage and maximum height permissible for farm houses. This was followed by a further notification which notified a levy for regularization of the additional floor area ratio at Rs.450/- per sq. meter.

5. The Corporation issued public notices from time to time inviting applications from owners of farm houses for regularizing the excess construction that they had made on payment of regularization charges. In this regard, a scheme was also floated by the Corporation on 1st February, 1999 which was in pursuance of an announcement made by the Corporation in the press on 6th December, 1998. The Amnesty Scheme was initially valid for a period of three months but was extended from time to time by various public notices. The Amnesty Scheme

provided that the owner or builder of a property should submit copies of the existing structure along with all necessary documents indicating, inter alia, the portion proposed to be got regularized as per the relaxed norms issued on 23rd July, 1998. It was postulated in the Amnesty Scheme that after an application is received for availing its benefits, a notice would be issued to the applicant advising him of the increased floor area ratio and the charges applicable.

6. As already mentioned above, the Amnesty Scheme was extended from time to time. On 9th February, 2000 the Appellant submitted an application to the Corporation seeking regularization of the excess construction made. In the application dated 9th February, 2000 the Appellant submitted three sets of drawings indicating the portion proposed to be got regularized as per the required norms. The Appellant also submitted a demand draft of Rs.20,000/- towards advance payment and stated in the letter that the balance would be paid on hearing from the Corporation.

7. Since the Appellant did not hear anything from the Corporation for quite some time in respect of its application, a writ petition was filed

in this Court sometime in May 2004 which led to the passing of the impugned order.

8. The learned Single Judge has noted in the impugned order that the Appellant was fully aware of the excess construction and was required to pay the compounding charges at Rs.450/- per sq. meter, as postulated in the Amnesty Scheme. Since this was not done, the application submitted by the Appellant for regularization of the excess construction was liable to be rejected. It was further noted that the relaxed norms which were brought into force on 23rd July, 1998 were subsequently withdrawn on 7th August, 2000. Therefore, the learned Single Judge concluded that the rights of the Appellant remained inchoate and did not get crystallized and the Appellant could not claim to have any right to have its building plans regularized in terms of the Amnesty Scheme.

9. In our opinion, the learned Single Judge erred in law in taking the view expressed in the impugned judgment and order.

10. The fact of the matter is that the Appellant had made an application in terms of the Amnesty Scheme. The Corporation was

under an obligation to deal with the application on merits regardless of whether the relaxed norms were withdrawn or not. The Corporation could not keep the application pending indefinitely without taking a decision thereon.

11. Learned counsel for the Appellant cited *M/s Shamsunder Sales Corporation and another v. Commissioner of Income Tax, Karnataka-III and another, 1991 Supp (2) SCC 674* wherein it has been held that when an application is filed under the Income Tax Act under an amnesty scheme, it has to be considered on its merits and disposed of in terms of the scheme.

12. In so far as the present case is concerned, as we have already noted, there is no decision taken by the Corporation on the application made by the Appellant on 9th February, 2000.

13. Under the circumstances, we set aside the impugned order passed by the learned Single Judge and direct the Respondents to consider the application filed by the Appellant on 9th February, 2000 on merits and to take a decision one way or the other in accordance with the Amnesty

Scheme that was in force as on the date of the application. A decision be taken by the Corporation in this regard within a period of three months from today.

14. At this stage, learned counsel for the Corporation has put in appearance. She says that she was busy in some other Court and requests that she may be heard in the matter. Accordingly, we have heard her.

15. Learned counsel for the Corporation has relied upon ***Howrah Municipal Corporation v. Ganges Rope Co. Ltd., (2004) 1 SCC 663***. It is contended, on the basis of the aforesaid decision, that if a building plan is to be sanctioned, the law in force as on the date of sanction is relevant. She sought to apply the same principle to an application made under the Amnesty Scheme such as the one that we are concerned with. In this context, learned counsel also relied upon ***Calcutta Municipal Corporation v. Anil Rattan Banerjee, 1995 AIR SC 659*** to the same effect.

16. In our opinion, the contention of learned counsel for the Corporation is totally misconceived.

17. The reason for this is that Amnesty Scheme such as the one that we are concerned with is on a completely different footing from sanctioning of building plans. Insofar as the sanctioning of building plans is concerned, there is no doubt about the fact that the law applicable as on the date of consideration or sanction of the plan is crucial. However, so far as the Amnesty Scheme is concerned, the date on which the application is made under the Amnesty Scheme is relevant. If an application under an amnesty scheme is filed within time, it has to be considered in terms of the scheme.

18. A right of consideration that enures to an applicant under an amnesty scheme enures because of the scheme and not otherwise. Therefore, if this right of consideration is sought to be taken away, then the principles of promissory estoppel would prohibit the State from taking any adverse steps against the applicant merely on the basis of lapsing of the scheme.

19. Learned counsel sought to contend that effectively what is sought to be achieved by the Appellant is to obtain a fresh sanction or a revised sanction of the building plans, which were not in conformity with the existing building bye-laws. This is not so. All that the Appellant is seeking is a regularization of deviations committed by the Appellant on the payment of the applicable fee. This is a case where the Appellant has admittedly committed an “offence” and she is given the liberty under the Amnesty Scheme to compound that offence by paying a charge demanded by the Corporation and upon payment of that charge, the “offence” of unauthorized construction is compounded and the building is regularized in accordance with the law. This is, therefore, not a case of a revised sanction or a fresh sanction being granted on the compounding of an offence. The result of the compounding would be regularization of the deviations made by the Appellant at the time of construction.

20. It is then submitted by learned counsel for the Corporation that the Amnesty Scheme came about as a result of some modifications in the building bye-laws on 23rd July, 1998. It is submitted that since this amendment stood withdrawn subsequently, the very basis of the

Amnesty Scheme had disappeared and the Appellant could not take advantage of the Amnesty Scheme. In our opinion, this contention is misconceived. The whole purpose of the Amnesty Scheme was to grant an entitlement to an applicant, who has committed deviations in the construction of a building, to set right the deviations by paying a compounding fee and any other charge that may be levied by the Corporation. Therefore, it is not as if the very basis of the Amnesty Scheme has been taken away. The Amnesty Scheme remains valid till it lapses after a period of time.

21. There is no doubt that in this case the Appellant had applied within the time prescribed by the Amnesty Scheme but it is only when the application was not considered by the Corporation that a writ petition was filed. The inaction by the Corporation has created a rather piquant situation so far as the Appellant is concerned vis-à-vis several other persons who have taken the benefit of the Amnesty Scheme. Non-consideration of the case of the Appellant has put her on a lower pedestal as against other persons whose applications were considered by the Corporation during the pendency of the Amnesty Scheme and whose deviations were compounded. The Corporation cannot artificially place

two similar categories of persons, both of whom have made deviations in the construction of the building, into two separate compartments – one compartment consisting of those persons whose applications are considered within time and another compartment consisting of those persons whose applications are considered after the Amnesty Scheme lapses. What is important is the date on which both these similarly placed persons put in their applications. If they have put in their applications during the pendency of the Amnesty Scheme, they are both required to be treated similarly and not in a different manner. It is for this reason that we have directed the Corporation, as mentioned above, to consider the application of the Appellant as on the date on which it was filed, that is, on 9th February, 2000 when the Amnesty Scheme was very much in operation.

22. The appeal is allowed on the above terms. The impugned order dated 6th July, 2004 passed in WP (C) No. 7859/2004 is set aside. No costs.

23. Learned counsel for the Appellant says that an amount of Rs.1.50 lakhs is lying deposited in the Registry of this Court. In case the

application of the Appellant is accepted by the Corporation, it may apply to the Registrar General for adjusting the amount lying deposited towards the compounding charges, otherwise the amount be returned to the Appellant, with interest, if any.

ACTING CHIEF JUSTICE

APRIL 21, 2010
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MUKTA GUPTA, J