

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

Date of decision: 11th November, 2010.

+
%

W.P.(C) No.646/2009

SMT. SWARAN BHATIA

..... PETITIONER

Through: Mr. N.S. Vasisht & Mr. Vishal Singh,
Advocates

Versus

MUNICIPAL CORPORATION OF DELHI

..... RESPONDENT

Through: Mr. Suparna Srivastava & Mr. Anshum
Jain, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, being the owner of a Farm House, applied under the Amnesty Scheme introduced on 23rd July, 1998 for regularization of unauthorized construction existing in the rural areas especially in the form of Farm Houses. The respondent MCD in response to application of petitioner vide its letter dated 15th April, 1999 called upon the petitioner to furnish certain documents and fulfill other requirements and which the petitioner claims to have fulfilled. The respondent MCD vide its letter dated 21st January, 2000 called upon the petitioner to deposit a sum of ₹19,100/- as the compounding fee and which also the petitioner deposited on 27th January, 2000. A notice dated 10th February, 2001 of intended survey on 12th February, 2001 was given and which survey is also stated to have been

carried out. The present petition was filed contending that notwithstanding all the aforesaid, the respondent MCD had not released the building plan duly stamped submitted by her along with her application for regularization and seeking a direction to the respondent MCD to release the said building plan and to restrain the respondent MCD from taking any coercive action against the Farm House.

2. Notice of the petition was issued. Respondent MCD in its status report dated 13th March, 2009 stated that the application of the petitioner for regularization was rejected on 21st May, 1999 and a rejection letter dated 26th May, 1999 issued to the petitioner. However, dispatch of the letters dated 21st January, 2000 and 10th February, 2001 (supra) was admitted.

3. The petitioner denied receipt of the letter dated 26th May, 1999 of rejection.

4. This Court directed the respondent MCD to file an affidavit with proof of dispatch of the letter dated 26th May, 1999.

5. An affidavit dated 28th January, 2010 was filed stating that the record relating to proof of dispatch of the letter was not available.

6. This Court vide order dated 1st February, 2010 directed the Commissioner, MCD to file an affidavit in this regard.

7. The Commissioner, MCD filed an affidavit dated 13th April, 2010 reiterating that the records were not traceable but stated that the notice dated 26th May, 1999 was sent through UPC. The steps taken to ensure that in future the record of dispatch remains available in the files of the respondent MCD were also detailed in the said affidavit.

8. The counsels have been heard.

9. In the aforesaid scenario, the case of the respondent MCD of having rejected the regularization plan and having communicated the rejection vide order dated 26th May, 1999 cannot be believed. Moreover, the issuance of the letter dated 21st January, 2000 in reference to the application of the petitioner for regularization and which was stated to be “pending” and in which letter there was no mention whatsoever of the application having been rejected on 21st May, 1999 / 26th May, 1999 belies the case pleaded of rejection.

10. The counsel for the petitioner relies upon the judgment dated 3rd August, 2004 of this Court in W.P.(C) No.330/2003 titled as ***Gajender Singh Khurana Vs. MCD*** in which case it was held that the applicants who had applied under the said Amnesty Scheme before 7th August, 2000 when it was withdrawn, were entitled to the benefit of regularization. Section 337(1) of the Delhi Municipal Corporation Act, 1957 relating to deemed sanction was also held to be applicable in such a situation.

11. The counsel for the respondent MCD has not been able to show as to why the said judgment ought not to be followed.

12. The petition is therefore allowed to the following extent:

- (i) The respondent MCD is directed to release the plan with the stamp of regularization for the area with respect whereto regularization charges of ₹19,100/- were claimed and received from the petitioner. The said plan be released within eight weeks of today.

- (ii) The respondent MCD is also restrained from demolishing the aforesaid regularized portion of the Farm House.
- (iii) It is clarified that any excess construction over and above the portion which was regularized under the norms of the Amnesty Scheme would not be deemed to be sanctioned and the respondent MCD would be entitled to proceed thereagainst as per law.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

11th November, 2010

‘gsr’

(corrected & released on 7th December, 2010)