

10.

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

+ CRL.M.C. 1049/2007

**Date of decision: 19<sup>th</sup> April, 2010**

R.S.SEHRAWAT

..... Petitioner

Through Mr. Manish Vashisht, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through Ms. Fizani Husain, APP for the State  
along with SI Ajeet Malik, ARC, Crime Branch,  
Nehru Place, Delhi.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

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

### **ORDER**

1. Learned counsel for the petitioner has submitted that the petitioner was posted as a Junior Engineer, MCD at Lajpat Nagar from 1<sup>st</sup> December, 1995 till 4<sup>th</sup> March, 1996 and then from 22<sup>nd</sup> March, 1996 till 10<sup>th</sup> June, 1996. He submits that the petitioner was responsible for pointing out and bringing to the notice of the authorities, the unauthorized construction in property No. E-1, Lajpat Nagar-II, New Delhi. Thereafter, demolition order dated 4<sup>th</sup> January, 1996 was passed and the property was also sealed on 26<sup>th</sup> February, 1996. On 22<sup>nd</sup> April, 1996 a police complaint was registered for breaking of the seals. Thus learned Trial Court has erred in framing charge

against the petitioner.

2. The said facts and contentions were examined by the learned Additional Session Judge in his order dated 24<sup>th</sup> February, 2007. As per the charge sheet, the owner and builder of the property, who are co-accused had made 100% coverage on a plot size of 300 square yards/251.10 square meters on the ground, first and second floors. In addition, they have covered the side service lane upto the extent of 0.9 meters. The inspection report of Mr. Vishwa Mitra Kain, Retd. Chief Engineer, Indian Railways and Government approved valuer indicates that shops were constructed in the basement and ground floor. As per the bye laws the maximum FAR allowed was 160% and the use prescribed was residential. Unauthorized construction had gone on unabated even after 18<sup>th</sup> December, 1995 when it was detected for the first time as per the petitioner himself. As per the petitioner steps for sealing of the property to stop further unauthorized construction were taken only after office noting was made on 9<sup>th</sup> February, 1996. This was after it was noticed that in December, 1995 and in January, 1996 no police force was allegedly available and, therefore, the demolition order could not be implemented. The prosecution has also relied upon documents in form of agreement between the owner and the builder with regard to construction. The charge sheet records as under:-

“An inspection of the building was also got conducted by Sh. Vishwa Mitra Kain, Retd. Chief Engineer, Indian Railways and Govt. approved valuers and a detailed inspection report was submitted by him on 8.1.97 which indicated that basement floor has been constructed by 100% ground coverage of total plot size area of 300 sq.yards/251.10 sq. mtrs. While ground, 1<sup>st</sup> and 2<sup>nd</sup> floors have been constructed on 265.37 sq. mtrs. area by covering more are than even 100% as well as covering side service lane upto an extant of 0.9 mtr, hence Section 447 IPC was also added. This

report also indicates that shops have been constructed at basement and ground floor. A file regarding booking of unauthorized construction and sealing/demolition orders in respect of property No. II/E-1, Lajpat Nagar was obtained from MCD office through dak. From the perusal of this file it was revealed that unauthorized construction at the aforesaid property was detected first time on 18.12.95 by the concerned J.E. Building, Shri. R.S. Sehrawat, which was booked by him, the same day and subsequently after adopting the due procedure, a demolition order was passed by the concerned ZE Building Sh. R.K. Bhattacharya on 4.1.96 on the report of JE (Building). File was marked to officer Incharge (Building). On 9.2.96, the J.E. (Building) put up an inspection report to ZE for issuing show cause notice for sealing and subsequently on 26.2.96, the sealing order was passed by the then Addl. Commissioner, (Engineering). The building was sealed on 26.2.96. On 22.4.96, the J.E. (Building) had reported that the seals of the property were tempered with/broken and a report to this effect was sent to SHO, Lajpat Nagar by the ZE (Building) for registration of FIR and deputing a constable round the clock on 24.4.96, whereas the entry in the Building Watch Register made on 6.4.96 indicates that the work on that day was in progress. On 4.10.96, 2<sup>nd</sup> booking of FIR was made by the concerned JE(Building), Shri B.D. Sharma, regarding further un-authorised construction at the aforesaid property and subsequently a demolition order was passed by ZE (building) on 24.10.96. Similarly, 3<sup>rd</sup> booking of FIR was made on 18.11.96 by the concerned JE(building), Shri Naresh Yadav, regarding further unauthorized construction and subsequently, a demolition order was passed by the concerned ZE(building) on 9.12.96. However, cosmetic demolitions were conducted by the MCD on this property on 5.10.96 and 2..12.96(sic). Leteron(sic), the investigation of this case was marked to Inspector, Ram chander after the transfer of previous I.Os. He sought the permission of Special Court of Shri Dinesh

Dayal to conduct further investigation of this case. On inspection of case file it was revealed that the Plumber, Shri Kamal Bihari whose certificate was enclosed with the application of Building Sanction Plan submitted by the owners on 11.7.95 to MCD, had disclosed on examination that his signatures on that certificate was forged and his stamp appended on the certificate had lost from the office of Shri K.C. Thakur, architect on 23.3.95 and he had lodged a missing report to this effect in P.S. Ambedkar Nagar on 27.3.95 and he had obtained a new stamp. Hence sections 468/471 IPC were also added. The specimen signatures of Plumber were sent to F.S.L. for comparison. The expert opinion is still awaited which will be obtained and attached with the charge sheet as and when it is ready. During investigation, Inspector, Ram Chander obtained the list of J.Es/A.Es of Building Deptt. Of Central Zone who remained posted during the course of unauthorized construction carried out at the aforesaid property. The signatures of the 3 concerned J.Es (Bldg) namely R.S. Seharawat, B.D. Sharma and Naresh yadav who had booked the FIRs were obtained and got them compared from F.S.L. Malviya nagar, New Delhi and the expert opinion was obtained which reveals that the specimen signatures are similar to their signatures on FIRs and other relevant documents. Photocopies of extracts from Missal Band Register of MCD were seized through seizure memo which show the entries of all the 3 FIRs booked by the J.Es (Bldg). Sections 332/343/344/347/461 of DMC Act were also added for un-authorised construction in the aforesaid property. Statements of witnesses were recorded and the concerned J.Es. and A.Es. were interrogated. It was also revealed that the owners/builders had not even applied for C&D forms and hence no C&D forms were issued by the MCD officials. Now, the investigation has been completed and it has been revealed that the builder had no intention ab initio of constructing a structure conforming to the sanctioned plan and constructed covering more area even than that of the plot area encroaching upon the public land and

occupied the same for commercial use. The builder and owners deceived the government into issuing a building permit while they had no intention of making a residential structure in accordance with the sanctioned plans but the intention was to construct a commercial complex and also to exceed the permissible coverage. The construction in the aforesaid property had been undertaken by the builder Ashok Manchanda, who along with owners, MCD officials and other entered into a criminal conspiracy and with the abetment of MCD officials and others constructed the building for cheating the Govt. and for making wrongful gains by constructing a building other than for which the building permit was granted. The MCD officials mentioned in Column No. 2 of this charge sheet knowingly and deliberately in spite of complaints against this structure permitted this unauthorized construction to come up. The requisite complaint under the DMC Act is awaited from DC/MCD Central Zone, on receipt the same will be placed on file. The provisions of POC Act could not be substantiated against the Govt. officials of MCD, as per the opinion given by Legal expert. From the investigation conducted so far sufficient evidence against the accused persons mentioned in Column No. 2 have come on this case file and accused persons as mentioned in Column No. 2 are being charge sheeted without arrest U/s 109/120-B/198/200/217/218/418/420/447/468/471/477-A IPC and 332/343/344/347/461 of DMC Act. Hence, the charge sheet against the accused persons mentioned in Column No. 2 has been prepared on the basis of evidence recorded in the statements of witnesses mentioned in column No. 6 and is being submitted for judicial verdict.”

3. In view of the aforesaid allegations no case of discharge is made out. File notings are one aspect, which have to be taken into account but whether the file notings were actually implemented and carried forward is another

aspect, which has to be examined. The other aspect is why and for what reason the sealing order to stop unauthorized construction was not passed till February, 1996. In these circumstances, I do not think the petitioner is entitled to discharge and his prayers cannot be accepted. It is clarified that the observations made in this order are for the purpose of disposing of the present petition and will not be binding on the trial court.

The petition is accordingly dismissed.

**SANJIV KHANNA, J.**

**APRIL 19, 2010**  
**VKR/P**