

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

Date of decision: 28th October, 2010.

+
%

W.P.(C) No.1630/2010

SUDHIR KUMAR MEHRA & ANR PETITIONERS

Through: Mr. Kanchan Singh, Advocate

Versus

THE COMMISSIONER, MCD & ANR. RESPONDENTS

Through: Mr. Sanjeev Sabharwal, Advocate
along with Mr. Shabbir Ahmed, AE
(B), South Zone, MCD.
Mr. C. Mukund with Mr. Ashok Jain,
Mr. Pankaj Jain, Mr. Amit Kasera &
Ms. Firdos Wani, Advocates for R-2.

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 petition was filed seeking mandamus against respondent No.1 MCD to remove the unauthorized construction over public land adjacent to Flat No.D-3/3450, Vasant Kunj, New Delhi. The writ petition came up before this Court first on 10th March, 2010. In the petition the owner / occupier of D-3/3450 for demolition of unauthorized construction wherein the petition was filed, had not been impleaded as a party. On the oral request of the counsel for the petitioners the said owner was impleaded as

respondent No.2 and amended memo of parties permitted to be filed within seven days. This court while issuing notice of the petition, directed the respondent No.1 MCD to ensure compliance of provisions of Delhi Municipal Corporation Act, 1957 and the Building Bye-Laws and to remove the encroachments. It was however clarified that the respondent No.1 MCD in so removing the encroachment will comply with the order dated 20th November, 2009 in WP(C) No.13275/2009.

2. WP(C) No.13275/2009 was filed by the owner of D-3/3450 seeking to restrain the respondent No.1 MCD from demolishing the property. That writ petition had come up before this Court on 20th November, 2009 when the counsel for the respondent No.1 MCD stated that no action for demolition or otherwise was proposed against the property No.D-3/3450 and; that the owner viz. Smt. Sarupinder Kaur (respondent No.2 herein) shall be given notice and due process will be followed. That writ petition was disposed of with the directions that the respondent No.1 MCD shall ensure that appropriate notice to show cause in accordance with the provisions of DMC Act is issued to Smt. Sarupinder Kaur and a fair opportunity of representation be given to her before any coercive or other action is taken with respect to property No. D-3/3450, Vasant Kunj, New Delhi.

3. On 27th April, 2010, the counsel for respondent No.2 Smt. Sarupinder

Kaur appeared before this Court and complained that the petitioners had neither filed any amended memo of parties nor taken any steps for her service. It was also alleged that the respondent No.1 MCD had on 16th April, 2010 demolished the property of respondent No.2 in pursuance to the order dated 10th March, 2010 and in defiance of the order dated 20th November, 2009 in WP(C) No.13275/2009; it was further informed that the respondent No.2 had already filed a contempt case against respondent No.1 MCD in that regard. This Court, on the grievance of respondent No.2 that the petitioner had not taken any steps for service, thereby depriving her of knowing that demolition action has been directed against her property, burdened the petitioners with costs of ₹5,000/- which are stated to have been paid. The petitioners were also directed to file an affidavit stating that the petitioners were not in any kind of dispute with respondent No.2 and that the present petition had not been filed to settle any score. An affidavit to the said effect has been filed. It was further directed that the remaining demolition action with respect to property No.D-3/3450, Vasant Kunj, New Delhi as well as if any required with respect to the property of the petitioners be also taken. It is informed that thereafter on 29th April, 2010 demolition action was taken against the property of the petitioners as well as of respondent No.2.

4. Respondent No.2 preferred an intra-court appeal being LPA No.305/2010 against the orders dated 10th March, 2010 & 27th April, 2010 in

this petition. The said LPA was disposed of on 3rd August, 2010 with liberty to respondent No.2 to agitate in the writ petition the contentions that respondent No.1 MCD had neither determined whether the construction in property No.D-3/3450, Vasant Kunj, New Delhi was unauthorized or not and whether the respondent No.1 MCD had violated the applicable norms to proceed for demolition or not.

5. Respondent No.2 has filed CM No.14316/2010 for appointment of a Local Commissioner. It is stated that the construction by respondent No.2 which has been demolished pursuant to the orders in this petition was the same as construction in about 50 other houses in the locality. Appointment of Local Commissioner is sought to verify the said averment. CM No.14317/2010 has been filed seeking liberty to make and restore the structure which has been demolished.

6. The counsel for respondent No.2 has today argued on the *mala fide* of the petitioners in not serving her with the notice of the petition. However, I find that part to have been taken care of vide order dated 27th April, 2010 by imposition of costs of ₹5,000/- on the petitioners and it is now no longer open to respondent No.2 to re-agitate the same.

7. The counsel for respondent No.2 relying on the order aforesaid of the Division Bench calls upon this Court to adjudicate whether the respondent No.1 MCD had determined or not that the construction was unauthorized

and whether the respondent No.1 MCD had violated the applicable norms to proceed for demolition. I however find the same to be not the subject matter of the present petition. The question whether the directions in the order dated 29th November, 2009 in WP(C) No.12375/2009 have been complied with and abided or not is the subject matter of the contempt case which is pending adjudication. The same cannot also form the subject matter of decision in the present petition. Insofar as the direction of the Division Bench on which reliance is placed is concerned, the same merely directs this Bench to delve upon the said aspects. There is no reference to the contempt case in the order dated 3rd August, 2010 of the Division Bench. The counsel for respondent No.2 however contends that the Division Bench was fully seized of the contempt case also and the file thereof had also been called by the Division Bench. Even if that be so, what is not the subject matter of this writ petition has to be held to be so and that would be sufficient compliance that the directions of the Division Bench and respondent No.2 owing to the said directions cannot call upon this Bench to decide what is not the subject matter of this proceeding.

8. The counsel for respondent No.2 has also suggested that independent of the directions in order dated 20th November, 2009 in WP(C) No.13275/2009 also, this Court should examine as to whether the respondent No.1 MCD was entitled to so demolish the construction of Smt. Sarupinder Kaur. The counsel for the respondent No.1 MCD states that in

the reply in the appeal, all documents showing due compliance of procedure were filed. I am not inclined to hold any enquiry in this respect. I have enquired from the counsel for respondent No.2 whether she had obtained any sanction for making the construction which from the photographs appears to be of construction of an additional room on public land not even belonging to the flat of respondent No.2. The answer is in the negative. Respondent No.2 who has indulged in unauthorized construction and has violated the laws cannot claim any relief in equity before this Court.

9. The counsel for respondent No.2 lastly says that the policy of pick and choose ought not to be adopted by the respondent No.1 MCD and unauthorized construction in a single house / flat ought not to be demolished when there is rampant unauthorized construction in the other flats / houses in the locality as well. Reliance in this regard is placed on *Nirmala Jain Vs. Municipal Corporation of Delhi* MANU/DE/8934/2006.

10. I have enquired from the counsel as to why respondent No.2 has not filed an independent writ petition for the demolition of unauthorized construction in the other houses / flats. There is no reply. The counsel for the respondent No.1 MCD informs that over 50 notices of unauthorized construction have been issued in the locality and assures that the houses pointed out in the application shall also be inspected and if found to be containing any unauthorized construction, action with respect thereto will be taken.

11. I am unable to accept the argument of the counsel for respondent No.2 that whenever this Court is approached with complaint of unauthorized construction in any property, this Court rather than directing removal of unauthorized construction in that property, should convert the petition into a Public Interest Litigation and pass directions with respect to the entire locality. It is found that the Building Bye-Laws are being enforced today merely by neighbours by filing petitions as the present one and else the respondent No.1 MCD seems to be unable to check the malady of unauthorized construction. If a view is to be taken that no directions with respect to violations in any single property can be issued, it would virtually bring enforcement through the method of writ petition also to an end.

12. The only other arguments of counsel for respondent No.2 which remains is of the petitioners having filed a false affidavit before this Court of there being no disputes between petitioner and respondent No.2. It is stated that respondent No.2 had filed an FIR against the petitioners and which has not been disclosed in the affidavit. In that regard liberty is given to respondent No.2 to take action in accordance with law against the petitioners for the false affidavit if any field.

13. No further orders are needed in the writ petition. The writ petition is disposed of as satisfied and the applications of respondent no.2 are dismissed with liberty to respondent No.2 to take appropriate action for demolition of unauthorized construction alleged in other houses/flats and to

if entitled to apply to the respondent No.1 MCD for making any additions, alterations, construction in accordance with law in her flat.

No order as to costs.

Dasti under signature of the Court Master to the counsel for the parties.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th October, 2010
'gsr'