

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CONT.CAS(C) 226/2010 & CM.No.10978/2010

Date of Judgment 16 July, 2010

MANJULA PATHAK KRIPPENDORF

..... Petitioner

Through: Mr.Nagendra Rai, Sr. Advocate with
Mr.A.K. Bakshi and Mr.Ashok Kumar
Shukla, Advocates

versus

DC CENTRAL ZONE MCD

..... Respondent

Through: Mr.Ajay Arora and Mr.Kapil Dutta,
Advocates for respondent-MCD
Mr.Anjum Javed, Adv. for respondent-
Delhi Police along with S.I.Dhananjay
Gupta, P.S. Defence Colony.**CORAM:****HON'BLE MR. JUSTICE G.S.SISTANI**

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?

G.S.SISTANI, J (ORAL):

1. Petitioner is stated to be the owner of property bearing No.B-56 (Ground Floor), Defence Colony, New Delhi (hereinafter referred to as, 'the property'), by virtue of a decree granted in her favour by the High Court. The petitioner had entered into a collaboration agreement with one Vijay Dixit. The terms of the collaboration agreement could not be complied with, resulting in a dispute with the said Vijay Dixit. In the meanwhile, on account of some unauthorized construction, the MCD had sealed the entire building i.e. property bearing No.B-56, Defence Colony, New Delhi. Petitioner filed a petition [WP(C)No.16444/2006] in which this court on 10.07.2008 had passed the following order:

"WP(C)No.16444/2006.

The grievance of the petitioner is that the Ground Floor of the premises bearing No.56, Defence Colony, New

Delhi, of which the petitioner is stated to be the owner, is lying sealed BY the respondent/MCD, whereas there are large scale deviations and unauthorized constructions on the First Floor and the Second Floor of the premises, which portions were also sealed but during the pendency of this writ petition, the same have been de-sealed in an arbitrary manner by the respondent/MCD.

Mr. Sanjeev Sabharwal, learned counsel for the respondent/MCD submits that as and when the petitioner files the revised plans of the premises, her case will be considered and if compounding of additional construction is permissible, the same shall be compounded in accordance with law.

Learned counsel for the petitioner submits that the petitioner will approach the respondent/MCD and file the appropriate application for compounding.

The respondent/MCD will consider the case of the petitioner within two weeks after filing of the appropriate application for compounding and thereafter pass a speaking order after granting the petitioner one hearing. As far as the case of the First Floor and the Second Floor is concerned, the respondent/MCD will file a status report to show under what circumstances these two floors of the said property were de-sealed and also state in the status report the steps taken by the respondent/MCD against the persons who have alleged to have tampered with the seals of the First Floor and the Second Floor of the said property. The Status Report on affidavit be filled within ten days from today.

List on 26.08.2008.”

2. The petitioner is stated to have made an application to the MCD for compounding. On 26.08.2008 MCD filed a status report in the Wit Petition stating that the application of the petitioner for regularization and de-sealing of the ground floor of the property is under active consideration and six weeks time was granted to the MCD to dispose of the said application. Order dated 26.08.2008 reads as under:

“WP(C)No.16444/2006

Status report has been filed, according to which the application of the petitioner for regularization and de-sealing the property bearing No.B-56 (ground floor), Defence Colony, New Delhi, is under active consideration. Learned counsel for the respondent-MCD submits that the application of the petitioner shall be disposed of within six weeks from today.

Based on the status report filed in the Court today, learned counsel for the petitioner wishes to withdraw this writ petition, without prejudice to the rights and contentions of all the parties including the applicants. Dismissed as withdrawn."

3. In the meanwhile one Sh.Sunil Goel had also applied to the MCD for regularization/ de-sealing of the ground floor of the same property, which was rejected by the MCD on 20.08.2007 on the ground "as the ownership in his favour could not be established".
4. Learned senior counsel for the petitioner submits that the application of the petitioner for regularization was not considered within the time allowed i.e. six weeks from 26.08.2008, however, after repeated communications and requests, the MCD allowed the application for regularization in favour of the petitioner only on 22.07.2009, subject to petitioner's depositing Rs.73,379/- on account of compounding of deviations which existed at ground floor of the said property, for which application had been made and also subject to submitting an affidavit and an indemnity in favour of the MCD. Communication dated 22.07.2009 is reproduced below:

"MUNICIPAL CORPORATION OF DELHI
BUILDING DEPARTMENT
CENTRAL ZONE
LAJPAT NAGAR : NEW DELHI

No.D/199 A.E. (B)-III/ Central Zone/2009

Dated: 22/07/09

Dr.Mrs.Majula Krippendorf,
C-73, (Second Floor)
East of Kailash,
New Delhi

Sub: Regularisation of Permission Deviations/ Excess Coverage in respect of Property No.B-56 (Ground Floor), Defence Colony, New Delhi.

Sir/ Madam,

This has reference to your application submitted in connection with the above mentioned subject.

In this regard, it is informed that competent authority has approved the case subject to following compliances:

1. Depositing of an amount of Rs.73,379/- as worked out on account of compounding of compoundable deviations existing at Ground Floor of above property.
2. Submission of an Affidavit and Indemnity Bond to the effect that the M.C.D. shall be kept harmless in case of any dispute relating to the ownership of Ground Floor and the M.C.D. shall not be made a party to any dispute.

You are, therefore, requested to deposit the aforesaid compounding fee and submit the Affidavit & Indemnity Bond, as stated above, within one week's time so as to enable the Department to compound the existing compoundable deviations.

Yours faithfully,

Assistant Engineer (Bldg.) – II,
Central Zone.”

5. The petitioner is stated to have deposited the compounding fee, copy of the receipt obtained from MCD had been placed on record.
6. Sh.Nagendra Rai, learned senior counsel for the petitioner submits that despite the compounding order having been passed on 22.07.2009 and the compounding fee having been received on 31.07.2009, the MCD has failed to de-seal the property causing serious prejudice to the rights of the petitioner besides gross violations and disobedience to the orders passed by this Court.
7. Counsel for the MCD submits that the case of the petitioner for de-sealing was duly considered by the Commissioner and rejected the same by order dated 05.11.2009 on the ground that the MCD cannot turn a blind eye to the pending disputes/ suits between the parties and cannot violate any order passed by this Court. It is contended that MCD has only taken cautious approach in the matter to avoid being drawn into litigation.
8. I have heard counsel for the parties and also perused various orders

which have been passed from time to time.

9. During the course of hearing, it has emerged that no suit has been filed by Sunil Goel against the petitioner herein or the MCD. It is also not in dispute that no suit has been filed by Vijay Dixit against the petitioner or the MCD. The petitioner herein had in fact filed a suit in Delhi High Court against Vijay Dixit, which was initially dismissed but the order of dismissal has since been set aside. Counsel for parties state at the Bar that there is no interim order in favour of Vijay Dixit or in favour of Sunil Goel, restraining the MCD from de-sealing the property and handing over possession thereof to the petitioner. However, they submit that the appeal has been filed by Sunil Goel, challenging the order of rejection passed on his regularization application. Counsel for petitioner on instructions also states at Bar that there is no interim order of status quo or any other order with regard to the ground floor of property bearing No.B-56, Defence Colony, New Delhi.
10. In the order dated 05.11.2009, the Commissioner, MCD has observed as under:

“3. The applicant has filed written representations which I have consider at length. There is no doubt that the applicant is the recorded owner of the property in the Municipal Records as on date. The sanction plan of the property in dispute is also in the name of the applicant. It is also further a matter of record that the counsel for MCD had assured the Hon’ble Court that any application for regularization and de-sealing of the property bearing No.B-56, Defence Colony, would be disposed off within six weeks from the date of statement being made. The records further reveal that the property has been regularized by the department. I have given my thoughtful consideration to all these facts as also the legal opinion obtained by the department in this regard.

4. It would not be out of place to mention that there are no directions from any Court in any orders to do or not to do a particular thing in a particular manner. What has been directed by the Hon’ble Court is to take a decision in accordance with law. It has been clarified by the zonal officers that regularization was considered in

favour of the applicant because it did not require any overt act on behalf of the department to hand over possession of the property or any part thereof but the decision of de-sealing would necessarily require handing over of the possession of the ground floor of the property which might come in the way of the effective dispensation of justice by the Hon'ble Court in the pending Suit bearing No.898/1996 where the dispute with regard to possession is pending disposal and the rights are yet to be adjudicated by the Hon'ble High Court.

5. I have no doubt whatsoever in my mind that the applicant is the recorded owner of the property in Municipal records but at the same time the department cannot turn a blind eye to the pending disputes/ suits between the parties and give its own findings in respect of the matters and issues qua which the Hon'ble High Court is yet to take a decision. I am therefore of the view that the decision regarding de-sealing of the ground floor of property No.B-56, Defence Colony is kept in abeyance till the outcome of the Suit for ownership and possession is decided by the Hon'ble Court or any clarification or direction comes from the Court in this regard whichever is earlier."

11. It may be noticed that after the order dated 10.07.2008 was passed the petitioner vide letter dated 16.07.2008 had requested the MCD to de-seal the property, to enable her Architect to enter the property and take measurement for required drawings. It may also be observed that when the order of de-sealing was passed, the MCD called upon the petitioner to file an affidavit as also an indemnity bond with regard to ownership which has still since been filed. Even after the order of regularization was made there is nothing on record to show that any opposition was raised by Mr.Sunil Goel, Mr.Vijay Dixit and any other person.
12. Having regard to the fact that MCD has not been able to point out pendency of any litigation which would show that the title/ownership of the property is in dispute, especially after Commissioner, MCD had observed in para 3 of the order dated 05.11.2009 that without

doubt the petitioner is recorded owner of the property in the MCD records and the sanction plan of the property in dispute is also in the name of the petitioner. The MCD has also considered the application of the petitioner for regularization of the deviations on the ground floor of the property bearing No.B-56, Defence Colony, Delhi and allowed the same. MCD has also accepted compounding charges of Rs.73,379/- and at this stage not de-sealing the property by the MCD, cannot be accepted. Application of Sunil Goel stands rejected on the ground that he has not been able to establish ownership in his favour. I find no ground for the MCD not to de-seal the property i.e. . property bearing No.B-56 (Ground Floor), Defence Colony, New Delhi.

13. In these circumstances, the MCD is directed to de-seal the ground floor of property bearing No.B-56, Defence Colony, New Delhi on 17.07.2010 at 2:00 p.m.. Mr.Anjum Javed, advocate for Delhi Police along with S.I.Dhananjay Gupta, P.S. Defence Colony, is present in court. S.I.Dhananjay Gupta, P.S. Defence Colony, is directed to remain present at the site at the time of de-sealing.
14. It is clarified that de-sealing of ground floor of property bearing No.B-56, Defence Colony, New Delhi, will not in any way create any special equity in favour of the petitioner nor any right in favour of the petitioner with regard to any dispute, which may be pending between the petitioner and any third party. The petitioner will also not derive any advantage with regard to the fact that the property has been de-sealed in her favour in any proceedings, which may be pending in any court of law. The order shall also be subject to such other order which may be passed in the Civil proceedings between the parties.
15. In view of above order passed, counsel for the petitioner does not wish to press this contempt petition. Accordingly the contempt petition and the application stand disposed of, in above terms.

July 16, 2010
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G.S. SISTANI, J.