

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

Date of decision: 30th September, 2010.

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W.P.(C) No.4629/2007

V IJAY AGGARWAL

..... PETITIONER

Through: Petitioner in person.

Versus

COMMISSIONER, MCD & ANR.

..... RESPONDENTS

Through: Mr. Ajay Arora with Mr. Kapil Dutta &
Mr. Sarfraz Ahmed, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 impugns the letter dated 31st May, 2007 of the respondent MCD to the petitioner intimating the petitioner that his application for regularization of Second Floor of property No.4/18, East Patel Nagar, New Delhi had been rejected. The petition also seeks mandamus directing the respondent MCD to regularize the said Second Floor.

2. On the contention of the petitioner that as per the judgment of this Court in *MCD Vs. Smt. Usha Devi Sharma* 127 (2006) DLT 275 (DB), once the property is segregated into different portions and mutated accordingly, there can be no requirement of all the co-owners to sign the building plan and on further contention of the petitioner that the application for regularization had been rejected only for the reason of the same having

not been signed by the owners of the other floors of the property, notice of this petition was issued and the operation of the letter dated 31st May, 2007 stayed.

3. The respondent MCD has filed a counter affidavit in which it is stated that the property was booked on 23rd March, 2000, 6th September, 2000 and 4th December, 2000 for defective height of the basement, deviations at Ground Floor against sanctioned building plan with projection on municipal land, deviations and excess coverage on First and Second Floors and unauthorized construction of Third and Fourth Floors. It is further pleaded that the building plan of the property was sanctioned for basement, Ground, First and Second Floors only. It is also pleaded that the petitioner is the owner of First floor and is falsely claiming the same to be the Second Floor. Reliance is also placed on the judgment dated 7th December, 2007 of this Court in WP(C) No.9112/2007 titled *Nitin Sehgal Vs. MCD* laying down that there is no right to raise construction as per whim and fancy and thereafter seek regularization. It is pleaded that the basement sanctioned by the respondent MCD has been constructed as a Lower Ground Floor and owing where to the First Floor claimed by the petitioner is being described as the Second Floor. It is yet further pleaded that the said property is one of the 54 properties in Patel Nagar complaint in respect whereof regarding tampering of the seal was referred by the Monitoring Committee appointed by the High Court for taking further necessary action. It is pleaded that upon the petitioner applying for regularization, the Monitoring Committee de-sealed the property for self rectification by the petitioner but the petitioner failed to remove the deviations / projections from the property. It is contended that thus regularization cannot be considered. It is yet further pleaded that complaints were received from one Mr. Vinod Rawal claiming to be the owner of Third Floor of the property. Yet another reason given for the petitioner being not eligible for regularization is that the property No.4/18, East Patel Nagar, New Delhi had been sub-divided and the part on

which the construction claimed by the petitioner exists has been amalgamated with property No.4/17, East Patel Nagar, New Delhi. It is pleaded that upon discovery of the said facts; letter dated 14th November, 2008 was issued to the petitioner during the pendency of this petition including the said ground for rejection of the regularization application.

4. The petitioner has filed a rejoinder controverting the various pleas of the respondent MCD.

5. The aforesaid Mr. Vinod Rawal & Mrs. Seema Rawal have also filed an application being CM No.13759/2008 for impleadment as a party to this writ petition. They claim to be the owner of Third Floor of the property and contend that the petitioner by seeking regularization is seeking to appropriate to himself FAR of the share of the other floor owners also available in the property. They contend that the petitioner cannot be permitted to do so and their presence is necessary while considering the prayer of the petitioner for regularization for this reason. No formal order allowing their impleadment has been made till now. None appears for them today.

6. The petitioner appearing in person and the counsel for the respondent MCD have been heard. The petitioner has argued that the respondent MCD cannot withhold the regularization of his floor for the reason of unauthorized constructions on other floors of the property and respondent MCD is free to demolish the other unauthorized constructions. It is contended that the petitioner has removed all the unauthorized constructions on his floor. It is also contended that the plea of sub-division and amalgamation is incorrect. It is further urged that under the relaxed building norms, there is no impediment to the regularization of the Second Floor.

7. The counsel for the respondent MCD on the other hand has contended that the petition is not maintainable for the availability of the alternative

remedy of appeal before the Appellate Tribunal, MCD against the order of rejection of application for regularization. It is also argued that the projections from the property on the public land / street continue and for this reason alone no regularization is possible. It is further argued that the properties 4/18 & 4/17, East Patel Nagar, New Delhi have been amalgamated by providing a common staircase and which is not permissible.

8. Though ordinarily after a petition has remained pending in this Court for some time, this Court would be reluctant to dispose of the same on the ground of alternative remedy but the present case is found to entail disputed questions of fact which cannot be adjudicated in writ jurisdiction and which are best left to be adjudicated by the Appellate Tribunal, MCD. It is not a case of segregated property as dealt with by *Usha Devi Sharma* (supra). There are disputes raised by owners of other floors of the property and it is felt that they have a right to be heard before any direction with respect to the application of the petitioner for regularization is issued. The judgment in *Usha Devi Sharma* in para 16 thereof has held that depending on facts of each case, others likely to be affected by sanction sought, may have a right of hearing.

9. In the circumstances, while disposing of this writ petition as not maintainable for the reasons aforesaid, it is directed that upon the petitioner preferring the appeal before the Appellate Tribunal, MCD against the orders aforesaid of rejection of his application for regularization on or before 15th January, 2011, the same shall be considered on merits and without any objection as to not being preferred within the prescribed time. The petitioner to, in the said appeal besides the MCD also implead the said Mr. Vinod Rawal & Mrs. Seema Rawal who have applied for impleadment in the present petition and owners of other portions of the property.

10. With the aforesaid directions, the petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

30th September, 2010

‘gsr’

(corrected & released on 20th December, 2010)