

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

Date of decision: 6th October, 2010.

+ W.P.(C) 3632/2010 & CM No.7255/2010 (u/S 151 CPC for stay)

SUDHA TANEJA & ANR. Petitioners
Through: Mr. Jitendra Jain, Adv.

Versus

MCD AND ORS. Respondents
Through: None.

AND

+ W.P.(C) 4423/2010 & CM No.8789/2010 (u/S 151 CPC for stay)

**S.G. SHOPPING MALL WELFARE ASSOCIATION
& ORS.** Petitioners
Through: Mr. Jitendra Jain, Adv.

Versus

MCD & ORS. Respondents
Through: Mr. Nawal Kishore Jha, Addl.
Standing Counsel for R-1 MCD.
Mr. Amandeep, Adv. for Mr. Rajiv
Bansal, Adv. for R-2 DDA.

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 petitioners have not taken any steps for service of the respondent
- no.3. The counsel for the petitioners seeks an adjournment to serve the

respondent no.3. However the respondent no.2 DDA has filed a counter affidavit in W.P.(C) No.3632/2010 and in view whereof need is not felt to await the service of the private respondent no.3 and the counsel for the petitioners has been heard on the writ petition.

2. W.P.(C) No.4423/2010 has been filed by an Association of space buyers in a Mall constructed by the respondent no.3 builder/developer at Plot No.8, Community Shopping Centre, Sector 9, Rohini, Delhi. W.P.(C) No.3632/2010 has been filed by one of the space buyers. The issues involved in the two writ petitions being identical, they are being taken up together for consideration.

3. The petitioners in both the writ petitions complain of unauthorized construction by the builder/developer in the Mall and seek direction to the respondents no.1 & 2 MCD and DDA respectively to demolish the unauthorized construction by the builder/developer in the basement of the Mall and to ensure that the basement of the Mall is retained for the purposes of parking and other facilities only. In W.P.(C) No.4423/2010 filed by the Association, additional reliefs, (i) directing the builder/developer to deposit the lease money collected from the space buyers with the DDA; (ii) of directing DDA to accept the lease money directly from the space buyers; and, (iii) of directing the builder/developer to execute conveyance deed in favour of the space buyers are also claimed.

4. Vide order dated 24th May, 2010 in W.P.(C) No.3632/2010, DDA was

directed to visit the site and take appropriate action in accordance with law.

5. The counsel for DDA on 7th July, 2010 informed that on inspection it was found that the builder/developer was in fact indulging in unauthorized construction and misuse of the basement and other areas of the Mall and action in accordance with law had been initiated.

6. DDA in its counter affidavit has stated, (i) that the transfer of spaces in the Mall by the respondent no.3 builder/developer to various persons who are the members of the Association is in violation of the terms and conditions of the perpetual lease of the land in favour of the builder/developer; that prior permission for such transfers was required, which has not been obtained from the DDA; (ii) that the basement has been sanctioned for parking and services only but the builder/developer was found to have constructed a hall and rooms therein; (iii) that lobbies have been closed and converted into enclosed spaces; (iv) that the builder/developer had applied for Occupation Certificate on 1st March, 2005 but the same was not granted for lack of complete documents/details; the builder/developer has not submitted any fresh application till date; it is thus pleaded that the occupation of the Mall without Occupation Certificate itself is illegal. DDA claims to have issued show cause notices to the builder/developer including for determination of the lease.

7. MCD in its counter affidavit has stated that it has no role to play in the matter, the land being of DDA.

8. In view of the action in accordance with law having been initiated by DDA, it was put to the counsel for the petitioners as to what further orders are needed in the present writ petition.

9. The counsel for the petitioners contends that DDA during the last five years since the rejection of the application for the Occupation Certificate did not take any action against the builder/developer and allowed the builder/developer to sell the spaces in the Mall and the space buyers to occupy the same and now upon the space buyers complaining against the builder/developer, the action of DDA is intended to harm the space buyers rather than the builder/developer. It is also contended that the relief claimed by the petitioner of direction to DDA to accept the lease money from the petitioners remains to be considered.

10. However, the counsel for the petitioners is not able to show any representation made by the Association to the DDA for dealing directly with the space buyers. Though in W.P.(C) No.3632/2010 filed by one of the space buyers, there is a copy of the representation to the DDA but again only complaining of the unauthorized activities of the builder/developer.

11. Insofar as the reliefs claimed by the petitioners against the builder/developer are concerned, the same cannot be the subject matter of the writ petition and the petitioners have to approach the Civil Court for the said reliefs.

12. DDA having already initiated action with respect to the unauthorized construction complained of, no further directions save for conclusion thereof in a time bound manner are necessary in that regard. The counsel for the petitioners at this stage states that the builder/developer has encroached upon the toilet areas on the ground floor also. It is clarified that DDA would take necessary action in that respect also.

13. Insofar as the relief claimed by the petitioners of directing DDA to accept the lease money from the space buyers is concerned, it is found in a large number of cases that the builder/developer in whose name the perpetual lease stands, after completing the construction/development and sale of each and every inch of built up space, is left really with no interest or stake therein. The attempt of the builder/developer is only to reap maximum profits from the construction/development. He is thereafter not even bothered or concerned or affected even if the perpetual lease is determined/reentered. DDA even if demands any charges for regularization or for revoking the reentry, the builder/developer is not interested in paying the same; rather he is not interested in paying lease monies also. It is further found that DDA also is not known generally to take steps for getting the building vacated from the buyers of spaces from builders/developers. This is often found to lead to a stalemate with neither DDA realizing its monies nor the space buyers getting legal title to the space for which consideration has been paid by them. Though the legislature has enacted the Delhi

Apartment Ownership Act, 1986 to make such space (apartment) buyers in Malls/Multistoried Buildings owners of their respective spaces (apartments) along with proportionate rights in land but unfortunately land owning agencies such as DDA and L&DO have not devised modalities to implement the same. In the circumstances, it is deemed expedient to issue certain directions to enable the DDA to consider the said aspects.

14. It is deemed appropriate that the Association of the space buyers makes a representation to the DDA giving particulars of, (i) its members; (ii) the areas owned by each of them; (iii) as to whether all the space buyers are members of the Association or not; (iv) whether all the members are willing to take on compliance of obligations of the perpetual lease; (v) how the Association intends to comply with the terms; and such other particulars as may be necessary. The Association to, if deems proper also make a demand for substituting itself as lessee in place of the builder/developer and to take steps for obtaining Occupation Certificate with respect to the Mall.

15. DDA to consider the said representation and to pass a reasoned order thereon. DDA to while considering the said representation also consider the observations hereinabove.

16. As far as the relief claimed of execution of the conveyance deed is concerned, till the perpetual lease deed is not regularized and/or till the Occupation Certificate is not granted, the question thereof does not arise.

17. The writ petitions are therefore disposed of with the following directions:-

(i) DDA to within three months of today inspect the entire construction and to take action in accordance with law with respect to unauthorized construction in whichever portions found. This shall be without prejudice to the rights of any person to contest such action of DDA before the appropriate fora.

(ii) The petitioners are given liberty to inform DDA of any unauthorized construction and DDA to either take action with respect thereto or to communicate in writing the reasons for not taking such action.

(iii) The petitioner Association to make a representation as aforesaid to DDA within four weeks of today and the said representation be considered and decided as aforesaid by DDA within three months of receipt.

No order as to costs.

Copy of this order be given *Dasti*.

**RAJIV SAHAI ENDLAW
(JUDGE)**

6th October, 2010
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