

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

Date of decision: 4th October, 2010.

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W.P.(C) No.5126/2008

MRS. KAMLA RANI

..... PETITIONERS

Through: Mr. Neeraj Jain & Mr. Kalyan Dutt,
Advocates

Versus

MUNICIPAL CORPORATION OF DELHI & ORS... RESPONDENTS

Through: Mr. Mukesh Gupta, Advocate with
Mr. Sumit Gupta & Mr. Mahipal
Singh, Advocates

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 petitioner, claiming to be the owner of Flat No.H-307, DDA Flats MIG, Naraina Vihar, New Delhi, has filed this petition seeking direction to the respondent No.1 MCD to demolish the illegal construction raised by the respondents 3 & 4 in neighbouring Flat No.H-297 (Ground Floor) & Flat No.H-300 (First Floor). The petition came up before this Court first on 21st July, 2008 when notice was issued. On 31st July, 2008, it was noticed that as per the Status Report filed by the respondent No.1 MCD, the respondent No.1 MCD had sanctioned plans for carrying out additions and alterations in the said flats on 4th July, 2008; the Status Report also reported that the said two flats were inspected on 21st July, 2008 and the construction was found to

have been completed as per the sanctioned plan. The respondent No.1 MCD has since filed a counter affidavit reiterating the said position. The respondent No.4 has also filed an affidavit to the same effect. On 9th February, 2010, the respondent No.1 MCD was directed to file an additional affidavit indicating whether the construction undertaken was within the internal courtyard or on the public land. The respondent No.1 MCD has filed an additional affidavit stating that only the internal courtyard had been covered after getting the sanction. It was further stated that no encroachment outside the flats had been made.

2. None has appeared for the respondents 3&4 today. None has been appearing for them for the last few dates also. The counsel for the petitioner and the counsel for the respondent No.1 MCD have been heard.

3. The subject DDA Flats comprise of Ground, First, Second & Third Floor with a common staircase between the two Blocks of four floors each. The admitted position is that the flats of the respondents 3 & 4 are on the Ground and First Floor of one such Block of four floors and the flat of the petitioner is on the Third Floor of the Block having a common staircase with the Block of the respondents 3 & 4. The additional construction is in the nature of construction of an additional room covering part of the open space in front of the flat of the respondent No.3. The respondent No.4 has raised construction on the First Floor above the additional construction of the respondent No.3 on the Ground Floor. The petitioner contends that such additional construction also interferes with the light and air to her flat, particularly to balcony thereof.

4. The sanction for the said additional construction is stated to have been granted in accordance with the Office Order dated 13th August, 2003. The counsel for the petitioner however contends that the terms and conditions on

which sanction could have been granted under the said Office Order have not been complied with. The counsel for the respondent No.1 MCD responds by contending that the grievance, if any, against the sanction accorded is to be agitated in appeal before the Appellate Tribunal, MCD and not by way of present petition which was concerned only with demolition of unauthorized construction.

5. The counsel for the petitioner further contends that the respondent No.1 MCD sanctioned the construction on 4th July, 2008 notwithstanding the complaints by the petitioner since April, 2008. It is stated even as per the Office Order dated 13th August, 2003, the sanction could not have been accorded without the consent of the petitioner who shares the same staircase.

6. However, I find merit in the contention of the counsel for the respondent No.1 MCD that the present petition was concerned only with demolition of the unauthorized construction; now that it has transpired that the construction to which objection is taken by the petitioner has been sanctioned, the remedy of the petitioner is by way of the challenge to the sanction accorded by the respondent No.1 MCD. The counsel for the petitioner expresses apprehension on account of limitation. However, the same can be taken care of by providing that subject to the appeal being filed within 15 days hereof, the same shall be entertained without objection as to limitation.

7. The counsel for the petitioner has next invited attention to the photographs filed along with the rejoinder. From the same photographs, it is pointed out that even from the disputed construction, projections in the forms of shades / beams protrude in common passage. It is also shown that the respondent no.3 has raised a platform in front of the disputed

construction, thereby reducing the width of the passage to the flat of the petitioner.

8. The counsel for the respondent no.1 MCD agrees that the projections and the raised platform are unauthorized and states that the same shall be demolished within four weeks.

9. The petition is therefore disposed of with liberty to the petitioner to prefer the appeal against the order of sanction as aforesaid and with a direction to the respondent no.1 MCD to remove the projections, raised platform and other unauthorized construction, if any, beyond the sanctioned plan in the flats of the respondents 3 & 4 within four weeks failing which the concerned Executive Engineer shall be personally liable for violation of the orders of the Court.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

4th October, 2010
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