

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

Date of decision: 20th August, 2010.

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W.P.(C) 9985/2009

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SUNITI MADAN

..... Petitioner

Through: Ms. Nandita Rao, Advocate.

Versus

NDMC

.... Respondent

Through: Mr. Asuthosh Lohia, Advocate.

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 petitioner, claiming to be the owner of property bearing No.32, Khan Market, New Delhi, has preferred this petition for quashing of the notices dated 3rd June, 2009 and 30th January, 2009 of the respondent NDMC asking the petitioner to remove the staircase constructed by the petitioner on the front side of the property. The petitioner also claims the relief of restraining the respondent NDMC from demolishing the staircase and further for directing the respondent NDMC to regularize the staircase.

2. It is not in dispute that the front staircase aforesaid is unauthorized and has been constructed without obtaining any sanction from the respondent NDMC.

3. The admitted position is that the ground and first floors of the property are an old construction. The shop on the ground floor has an opening from the front (market side) as well as from the rear lane and the staircase leading to the first floor was at the rear end of the property. It is the case of the petitioner that the ground as well as the first floor had been let out to a Bank; that in or about the year 1979 two electricity junction boxes were installed in the rear lane in front of the door to the property, interfering with the access to the property from the rear lane; however since the Bank was occupying the ground as well as the first floor and could access the staircase from inside the ground floor also, the electricity junction boxes preventing access through the rear door did not interfere with the use of the staircase. The petitioner in the year 1995 applied for sanction for construction of the second floor of the property. The same was sanctioned. The access to the second floor also, as per the sanctioned plan was from the staircase aforesaid at the rear. The petitioner however, according to the respondent NDMC, in or about 1997 and according to the petitioner in 1995 itself unauthorizedly and without obtaining any sanction constructed the staircase going from the ground to the first and second floors from the front side of the property and with respect whereto this dispute has arisen.

4. The only case of the petitioner is that the respondent NDMC is not entitled to demolish the unauthorized front staircase for the reason of the rear entry to the property being blocked as aforesaid. The counsel for the petitioner contends that the electricity junction boxes have not been removed inspite of several representations; owing thereto there is no free access from the rear end of the property; that the ground floor and upper floors are now let out to separate tenants and the tenant on the ground floor cannot be expected to give access through its tenancy premises to the tenant on the upper floors; that the staircase at the rear end wherefrom only the upper floors can be accessed is not accessible from the rear door of the property for the reason aforesaid.

5. The matter had come up last on 10th August, 2010. It was the case of the respondent NDMC in its counter affidavit that the door at the rear end is not inaccessible. However since neither party had filed a site plan showing the width of the rear service lane, the dimensions of the rear door to the premises, the distance between the rear door and the rear side of the electricity junction boxes, the respondent NDMC was directed to have a site plan prepared and file the same.

6. The counsel for the respondent NDMC has today in Court handed over a site plan and which is taken on record. As per the said site plan the width of the lane/street in front of the rear door of the property of the

petitioner is 30'-0" ft.; the electricity junction boxes are at a distance of 5'-0" and 5'-6" at other end from the rear door of the property.

7. Though the counsel for the petitioner states that no advance copy of the site plan was given and states that the petitioner has not carried out the measurements herself but in view of the order dated 10th August, 2010 (supra) crystallizing the issue, no further adjournment for the said purpose can be granted. In the absence of the petitioner controverting the dimensions as disclosed in the site plan, the same are deemed to be correct. Even otherwise there is no reason for this Court to disbelieve the site plan so produced in the Court, specially when petitioner chose to proceed on vague averments of "blocking" and "inaccessibility" without giving the dimensions.

8. The counsel for the petitioner has contended that the first and the second floors of the property are commercial in nature; that with the electricity junction boxes at a distance even of 5'-6" from the rear door of the property, the said floors cannot be used for commercial purposes; that the easementary rights to the property of the petitioner are being interfered with; that it is not safe to use the rear entrance; that in the event of the electricity junction boxes catching fire or there being any other mis-happening on the first and the second floors, there would be no proper exit through the said rear door. It is also contended that the respondent NDMC had made the petitioner file an affidavit *inter alia* to the effect that the

petitioner will remove the unauthorized staircase as soon as the electricity junction boxes are removed by the respondent NDMC and the other agencies.

9. I have enquired from the counsel for the petitioner whether the petitioner, at the time of construction of the second floor, had sought sanction for the staircase from the front as now constructed. The answer is in negative. The counsel however states that the removal of the electricity junction boxes was sought at that time.

10. I am of the opinion that the petitioner having sought sanction of construction of the second floor in the year 1995 on the premise of the access thereto being from the said rear staircase is now not entitled to contend otherwise. It is not as if the electricity junction boxes have been installed after 1995. According to the petitioner also they are in existence since 1979. If the petitioner was of the opinion that the second floor would be worthless or inaccessible for the reason of the access through the rear staircase being blocked by the electricity junction boxes, the petitioner ought to have agitated the issue at that stage itself. The petitioner having not agitated the issue then and having got the second floor sanctioned by representing that the access thereto shall be from the staircase at the rear cannot now be heard to say that the second floor is inaccessible from the rear staircase.

11. I have even otherwise considered the matter. The petitioner in the petition did not give any dimensions as to distance etc. between the electricity junction boxes and the door. Reliance even now is heavily placed on photographs filed with the petition and which appear to show that the electricity junction boxes totally prevent access through the rear entrance. However the site plan and the dimensions now disclosed do not show so. A distance of 5'-0" is enough for providing egress and ingress through the rear door. Even otherwise the grievance if any of the petitioner with respect to the electricity junction boxes, if genuine, ought to have been agitated. The petitioner has not chosen to seek the relief of removal of the electricity junction boxes in this petition either and has on the contrary sought stay of demolition of unauthorized construction and which, pursuant to, the interim order in this petition, she has been enjoying for the last about one year. The reason for the petitioner seeking this relief and not the relief of removal of electricity junction boxes is not hard to fathom. The first and the second floors with access from the front market have an entirely different commercial value than the first and second floors' value with access through rear service lane. The first and the second floors with an access from the front of Khan Market which is a prime commercial market of Delhi would have a much higher letting value than with a staircase from the rear service lane. The number of footfalls and customers to the first and second floors would be far fewer with the entry from rear service lane than with the entry from the front main Khan Market.

12. The question of restraining demolition of construction admittedly unauthorized does not arise in law. On equity also, the petitioner has not made out a case.

13. As far as the argument of the respondent NDMC having made the petitioner file the affidavit is concerned, though there is no basis for the same but even if it were to be correct, there can be no estoppel against the law. The construction which is unauthorized will remain unauthorized and liable to be demolished even if any assurances were meted out by any official of the respondent NDMC to the petitioner.

14. The petition is therefore dismissed. No order as to costs.

15. The counsel for the petitioner at this stage seeks time of two months for removing the unauthorized staircase.

16. Allowed. No demolition action be taken with respect to the front staircase for a period of two months. The petitioner shall also have liberty to approach the appropriate fora for removal of the electricity junction boxes aforesaid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th August, 2010
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