

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

Date of decision: 21st September, 2010.

+ W.P.(C) No.6390/2010 & CM No.12650/2010 (for stay)

%

M/S MEHRASONS JEWELLERS PVT. LTD. Petitioner
Through: Mr. Kirti Uppal, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through: Mr. Ajay Arora & Mr.
Kapil Dutta, Advocates for MCD.

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 by this writ petition impugns the order dated 13th September, 2010 of the respondent MCD with respect to the unauthorized construction in Property No.2, Ajmal Khan Road, Karol Bagh, New Delhi.
2. The petitioner in the writ petition itself admits that it is only one of the owners of the said property; the other owner of the property has instituted a suit in the Court of the Civil Judge, Delhi against the petitioner and the MCD for direction to the MCD to stop the alleged unauthorized construction

undertaken by the petitioner in its portion of the property and to take action with respect thereto. The petitioner has not made the said other co-owner as a party to the writ petition. The counsel for the respondent MCD appearing on advance notice informs that vide order dated 6th September, 2010 in the said suit, the MCD has been directed to file an action taken report in the Civil Court on 6th October, 2010. It is contended that the petitioner has concealed the said order. The counsel for the respondent MCD further contends that the remedy, if any of the petitioner is by way of appeal before the Appellate Tribunal, MCD and not by way of this writ petition.

3. The counsel for the petitioner has urged that deviations made in the property are compoundable under Appendix-Q of the Building Bye-laws, 1983 and the petitioner has been repeatedly applying to the respondent MCD for compounding but without considering which requests, the order for demolition has been made. He states that the petitioner is seeking a direction to the respondent MCD to before taking action of demolition, process the application of the petitioner for compounding of compoundable deviations. He on behalf of the petitioner states that to obviate any controversy the petitioner till then will not carry out work of any nature whatsoever in the premises be it those which are permissible under Bye-Law 6.4.1.

4. I am of the opinion that since the Civil Court is already seized of the matter, it will not be appropriate for this Court to entertain this writ petition

(even if the other co-owner is to be made party hereto) entailing *inter alia* the same controversy as before the Civil Court in the suit filed by the other co-owner. There is also merit in the contention of the counsel for the respondent MCD that against the demolition order, the remedy of the petitioner is by way of appeal before the Appellate Tribunal, MCD.

5. The counsel for the petitioner has however expressed apprehension that his relief, for consideration of the application for compounding first may not be within the jurisdiction of the Civil Court or the Appellate Tribunal, MCD.

6. So far as the Appellate Tribunal, MCD is concerned, the counsel for the respondent MCD states that it is always open to the appellant before the Appellate Tribunal, MCD to state that the compoundable deviations, if any be compounded and that the remaining unauthorized construction, if any shall be removed/demolished. He however, states that compounding under Appendix-Q has been held in *Friends Colony Development Committee Vs. State of Orissa* AIR 2005 SC 1 to be not as a matter of right.

7. I am of the opinion that it is always open to the petitioner who is the defendant in the civil suit aforesaid, to approach the Civil Court also in this regard. It has been held by this Court in *Delhi Automobiles Ltd. Vs. Economy Sales* MANU/DE/0380/1994 that even a defendant in a suit is entitled to move an application of such a nature.

8. I have also found that though the petitioner in his letters to the

respondent MCD has been calling upon the MCD to decide on his request under Appendix-Q but has not submitted any application with site plans showing the position of construction as existing earlier and as existing now. In the absence of site plan being submitted, the respondent MCD cannot be expected to decide the application for compounding. The counsel for the petitioner states that the petitioner has been calling upon the respondent MCD to give a copy of the sanctioned plan but the same has not been supplied. In the opinion of this Court, without waiting for the sanctioned plan, the petitioner should submit the plan as aforesaid to the MCD and without which no Court/Fora would be in a position to entertain the request of the petitioner.

9. The writ petition is therefore dismissed as not maintainable with liberty to the petitioner to challenge the order of demolition before the Appellate Tribunal, MCD and to if he feels the need also make requisite application in the Civil Suit filed by the co-owner and which application if filed, shall be decided in accordance with law and the observations hereinabove contained.

No order as to costs.

Copy of this order be given *Dasti*.

**RAJIV SAHAI ENDLAW
(JUDGE)**

21st September, 2010/bs