

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

Date of decision: 29th September, 2010.

+ W.P.(C) No.12360/2009 & CM No.13162/2010 (of the petitioner for restoration of the writ petition dismissed in default on 17th September, 2010.

% **W.P.(C) No.12360/2009**

RAVI KUMAR & ORS.

.... PETITIONERS

Through: Mr. Anil K. Aggarwal, Advocate.

Versus

UNION OF INDIA & ORS.

.... RESPONDENTS

Through: Mr. Sanjeev Sabharwal with Mr. Hem Kumar, Advocates for MCD.

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 petitioners have applied for restoration of the writ petition dismissed in default on 17th September, 2010. This Court while dismissing the petition in default of appearance of the petitioners on 17th September, 2010 had also expressed a *prima facie* view of the writ petition being not maintainable. As such the counsel for the petitioners applicants has been asked to argue on the writ petition itself. The counsel for the petitioners however states that he has not received the copy of the counter affidavit filed by the respondent no.2 MCD. The counsel for the respondent no.2 MCD

states that copy of the counter affidavit was sent to the counsel for the petitioners /applicants. Without entering into the said controversy, a copy of the counter affidavit has been handed over to the counsel for the petitioners in Court. The counsel for the petitioners still states that the application for restoration may first be allowed and the writ petition adjourned for filing of a rejoinder by the petitioners applicants and for hearing. Such conduct of the petitioners is found to be intended to perpetuate the interim order obtained in the present petition. It has as such been told to the counsel for the petitioners/applicants that he shall be heard on the application for restoration of the petition also when he is ready to argue on the maintainability of the writ petition. The counsel then states that the matter may be adjourned and the earlier order restraining the respondent no.2 MCD from demolishing the properties of the petitioners be restored. However the same cannot be permitted when the petitioners are not willing to argue their own petition, without recourse even to the counter affidavit filed by the respondent no.2 MCD. The counsel for the petitioners has in the circumstances argued on the merits of the petition also.

2. The five petitioners claim to be owner of five different residential properties in Shiv Nagar Extension, New Delhi-110 058. It is their case that Shiv Nagar Extension is a regularized urban village; that the Shiv Nagar Extension Residents Welfare Association (of which petitioners are members) had filed WP(C) No.18913/2006 in this Court seeking action

against the unauthorized constructions and encroachments by the shopkeepers of the community Shopping Centre near Shiv Nagar Extension; that the said shopkeepers out of vengeance made complaints of unauthorized constructions and encroachment by certain residents of Shiv Nagar Extension; that this Court vide order dated 22nd October, 2008 in WP(C) No.18913/2006 directed MCD to demolish the unauthorized constructions by the shopkeepers as well as by the residents; that during the course of WP(C) No.18913/2006 the MCD had filed a Status Report stating therein that a survey of houses up to 175 sq. mtrs. area in Shiv Nagar Extension had been conducted and in which the encroachments made by the residents, in the form of projections on municipal land had been identified and that the said projections were regularizable; that notwithstanding the said Status Report the respondent no.2 MCD proceeded to take action for demolition of the properties of the petitioners and certain others without affording them any hearing; that the five petitioners along with six other residents filed 13 writ petitions in this Court bearing nos. WP(C) No.9725 to 9737/2009 impugning the demolition orders against their properties; that vide order dated 1st July, 2009 in the said writ petitions, it was directed that subject to regularization applications being filed within four weeks, no demolition action should be taken against the properties of the petitioners; that the petitioners thereafter filed applications for regularization but the respondent no.2 MCD vide its letters of July, 2009 asked for production of sanctioned Building Plan/Completion Plan, Structural Stability Certificate, Part Layout

Plan showing the location of the plot, complete ownership chain, area to be regularized in a plan with the portions to be demolished in yellow colour and further intimated that if the said documents/information were not submitted, the application for regularization will be rejected; that none of the petitioners submitted the said documents and the respondent no.2 MCD issued notices under Section 435 of the Delhi Municipal Corporation Act, 1957. In the said factual scenario the petitioners have contended –

- (i). that even if the application for regularization is deemed to have been rejected, since the said order is appealable within 30 days, no notice under Section 435 of the Act could have been issued for a period of 30 days; that the respondent no.2 MCD was acting in undue haste owing to contempt case having been filed for enforcement of orders of demolition passed in WP(C) No.18913/2006;
- (ii) that in view of the Status Report aforesaid that the properties are regularizable, the respondent no.2 MCD was not entitled to ask for any documents as aforesaid or to reject the applications for regularization;
- (iii) that the properties being situated in a urban regularized village, the provisions of Delhi Building Bye-Laws, 1983 are not applicable thereto;

(vi) that no hearing had been given;

(v) that the power of regularization of the said properties vests only in the Central Government and not in the Commissioner, MCD.

3. The petitioners have in the petition itself stated that another writ petition being W.P.(C) No.11712/2009 had been filed by them along with one Mr. Davinder Pal Singh in this Court challenging the notice aforesaid under Section 345 of the Act; however since in that petition documents with respect to the properties of the petitioners were not filed and documents only of the said Mr. Davinder Pal Singh were filed, the petition was treated as by Mr. Davinder Pal Singh only with liberty to the petitioners to prefer their own petitions; that the said petition of Mr. Davinder Pal Singh was disposed of vide order dated 15th September, 2009 with liberty to Mr. Davinder Pal Singh to prefer an appeal before the Appellate Tribunal, MCD. Thereafter the petitioners filed the present petition.

4. The petitioners have in the petition claimed the relief, (i) of recall of the order (supra) dated 22nd October, 2008 in WP (C) No.18913/2006 in so far as with respect to the properties of the petitioners; and, (ii) sought quashing of the notices under Section 345 of the Act; and, (iii) to restrain the respondent no.2 MCD from demolishing the properties of the petitioners.

5. This Court while dismissing the petition in default on 17th September, 2010 had observed that a writ petition does not lie for recalling of the orders in another writ petition and the remedy of the petitioners was to apply in the same writ petition the orders wherein were sought to be recalled. The counsel for the petitioner has argued that WP(C) No.18913/2006 stands disposed of and thus no application for recalling of the order could be made therein and the petitioners have for this reason preferred this petition. It is also stated that the petitioners were not party to that petition and only the Residents Welfare Association of which petitioners are members was a party to that petition.

6. Even if that be so, I am unable to hold the petition, in so far as claiming the relief of recalling of the order made in another writ petition to be maintainable. A person even if not a party, aggrieved from an order made in a proceeding ought to apply in that proceeding only, for variation of that order and not by way of a separate writ petition. It was so held by the Full Bench of this Court in *Maninder Kaur Vs. Delhi High Court* 57 (1995) DLT 288. Moreover this is not a first round of litigation. The petitioners had earlier preferred WP(C) No.9725 to 9737/2009 challenging the order of demolition and which were disposed of with liberty to the petitioners to apply for regularization. The petitioners at that time did not contend that the order dated 22nd October, 2008 in W.P.(C) No.18913/2006 should be recalled. Thus the petitioners are deemed to have given up the said plea and

the only challenge which now survives is to the order under Section 345 of the Act.

7. This Court on 17th September, 2010 had also observed that the remedy of the petitioners against the rejection of their applications for regularization was by way of an appeal thereagainst and not by way of this writ petition. In fact as aforesaid, the writ petition filed by another resident (W.P.(C) No.11712/2009) on the same grounds and through the same Advocate was disposed of with liberty to prefer an appeal. There is no reason for a different view being taken in the present petition.

8. The counsel for the petitioners has however argued that the remedy by appeal is not an efficacious remedy in the present case since the petitioners have raised the constitutional issue of the respondent no.2 MCD being not empowered to regularize the property and the power having been vested in the Central Government only. In my opinion the said question also is now no longer open to the petitioners. The petitioners in the earlier petitions challenging the order of demolition sought regularization from the respondent no.2 MCD and obtained an order from the Court restraining the respondent no.2 MCD from demolishing their properties till the consideration by MCD of their applications for regularization. The petitioners thereafter approached the respondent no.2 MCD for regularization. It is now not open to the petitioners to contend that the

respondent no.2 MCD is not the authority for regularization. Even otherwise I do not find any merit in the contention of the petitioners that the respondent no.2 MCD is not the concerned authority. Reliance by the counsel for the petitioners on *M.C. Mehta Vs. Union of India* AIR 2004 SC 4618 and on *Kalyan Sanstha Social Welfare Organization Vs. Union of India* 152 (2008) DLT 767 (DB) is misconceived.

9. In so far as the contention of the petitioners with respect to the Status Report filed by the respondent no.2 MCD in WP(C) No.18913/2206 is concerned, I may state that the same was only qua projections over municipal land. However regularization now sought is not merely of the projections but of the entire properties. The Status Report did not state that the properties are regularizable.

10. The petition is therefore not maintainable and is dismissed with liberty however to the petitioners to approach the Appellate Tribunal, MCD against the order of rejection of their applications for regularization. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

29th September, 2010
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(Corrected and released on 25th October, 2010)