

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

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Date of decision: 20th April, 2011

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WP(C) NO.180/2010

BRIJ KISHORE ANAND

..... Petitioner

Through: Ms. Manmeet Arora and Ms. Prinly Ponnann, Advocates alongwith petitioner in person.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents

Through: Mr. Anshum Jain for Ms. Suparna Srivastava, Advocate for MCD.
Ms. Fareha Ahmad Khan, Advocate for respondent no.4.
Mr. Sanjay Jain, Sr. Advocate with Mr. N.K. Anand, Mr. Arun Jha, Mr. Shivendra Pratap Singh and Mr. Dhruv Anand, Advocates for R-5.

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 is aggrieved from the rejection of the plan submitted for construction on property no.108, Anand Villa, Jaipur

Estate, 1 Nizamuddin East, New Delhi-110 013. The petitioner along with the respondents no.4 &5 (who were impleaded pursuant to the order of this Court) are the owners of this property. According to the petitioner, as per the family settlement between the petitioner, respondent no.4 and the respondent no.5, they are the owners of separate demarcated portions comprising of built up structure and open areas in the said property. The respondent no.1 MCD rejected the plan submitted by the petitioner for construction in his portion for the reason of the same having not been filed by all the three owners jointly. This Court finding that issues of sharing of FAR may be involved, impleaded respondents 4 & 5 also as parties to this petition.

2. It is the case of the petitioner that the petitioner, in the proposed construction is intending to utilize less than 1/3rd of the FAR available on the plot and thus the respondents 4 & 5 ought to have no objection. It is further contended on behalf of the petitioner that neither the respondent no.1 MCD nor the respondents 4 & 5 have disputed the aspect of FAR in their counter affidavits; rather the respondent no.4 has given an NOC to the sanction of the plan for the proposed construction as submitted by the petitioner.

3. The counsel for the respondent MCD has contended that the plot cannot be permitted to be sub-divided. However, in my opinion that question would not arise. From the site plan annexed to the Deed of family settlement (which is not disputed), it transpires that the property as existing comprises of three built up blocks, described as “Anand Villa, Side premises & Servant Block”. The petitioner claims the block described as “side premises” to have, in the family settlement fallen to his share and had applied to the MCD for permission to reconstruct the same. The property, if not divisible will remain so even with re-construction of the block of the petitioner and such reconstruction would not entitle the petitioner to contend that the property has been sub-divided.

4. The counsel for the respondent MCD has also contended that the remedy of the petitioner is by way of an appeal. However, that also does not appear to be the appropriate remedy considering that the question of FAR will have to be determined in the presence of respondents 4 & 5 who have been impleaded as parties to this petition.

5. The counsel for the petitioner has relied on –
- i. ***Kale v. Deputy Director of Consolidation*** (1976) 3 SCC 119
on the sanctity to be given by the Courts to family settlement.
 - ii. ***Madan Lal Kapur v. Subhash Lal Kapur*** 2003 (71) DRJ 732
(Short Note) on partition being presumed from the long
conduct/dealing of the parties with the properties.
 - iii. ***Smt. P.N. Wankudre v. C.S. Wankudre*** AIR 2002 Bombay 129
on partition being effected through a family arrangement.
 - iv. ***Dhan Kaur v Shamsher Singh*** AIR 2005 Punjab & Haryana
283 on memorandum of oral partition not requiring compulsory
registration.
 - v. ***Mythili Nalini v. Kowmari*** AIR 1991 Kerala 266 also on family
settlement not requiring registration.
 - vi. Judgment dated 11th March, 2003 in CWP3535/2001 of this
Court holding that once the property is segregated into different
portions in individual names of different persons and mutated
accordingly, there cannot be any requirement of all the co-
owners to sign the building plans.

vii. Judgment dated 23rd March, 2005 in WP(C)3280/2004 titled ***Smt. Usha Devi Sharma v. Commissioner, MCD*** following the above judgment.

viii. ***MCD v. Smt. Usha Devi Sharma*** 127 (2006) DLT 275 (DB) whereby the Division Bench dismissed the appeal against the above.

6. The contention of the counsel for the petitioner thus is that the property having been partitioned between the petitioner and the respondent no.4 and the respondent no.5 vide the family settlement aforesaid, the insistence by the respondent no.1 MCD on the petitioner obtaining signatures of the respondents no. 4 and 5 on the application/plan for re-constructing the portion which has fallen to the share of the petitioner alone is invalid. It is contended that the portion of the property which is sought to be reconstructed is not co-owned and already stands mutated in the name of the petitioner; there is no need for the petitioner to join the respondents no. 4 and 5 or to obtain their NOC for raising construction.

7. The senior counsel for the respondent no. 5 has contended that there has been no division or partition of the plot of land underneath the

property under the family settlement aforesaid and it is only the built up portions which have been divided; that thus the entire plot will have a common FAR and no construction at the instance of any one owner can be permitted and MCD is not entitled to deal with any one owner.

8. The judgment dated 11th March, 2003 in CWP 3535/2001 (supra) was concerned with a case where the property was segregated into different portions and mutated accordingly. Similarly, in *Usha Devi Sharma* (supra) also it was held that where a flat/ unit/ floor, in one building is owned by more than one person and entered in the municipal record in all their names, they would be owners of that flat/ unit/floor and in that circumstance signatures of all will be required on the building application. The said judgment in para 16 thereof also held that depending on facts of each case, others likely to be affected by sanction sought may have a right of hearing.

9. The petitioner in the present case relies upon the order dated 5th February, 2003 of the respondent no.1 MCD of mutation. The said order though notices the family settlement, records “as per documents and Site Plan submitted by the assessee, therefore the above stated applicants have

become the owner of the property and RV of their portions is bifurcated as mentioned below”.

10. What appears from the aforesaid is that as far as the respondent no.1 MCD is concerned, it has mutated the property in the name of the petitioner, respondent no.4 and the respondent no.5 together and has only segregated the Rateable Value of different portions of the property. The test laid down in the two judgments aforesaid of mutation having been carried out in separate names is not satisfied in the present case.

11. Even otherwise, a reading of the Deed of Family Settlement dated 20th May, 1982 shows that the guiding spirit thereof was the desire of the mother of the three parties that her children and grandchildren for all times to come live in the said property; the deed proceeds to describe the occupation and use of different portions of the property and records the mutual settlement/agreement that the portions occupied by each will be in his/her exclusive ownership; however qua the lawns, entrance gates, drive-ways and the parking facilities, the deed records that the same will be mutually and jointly shared by all the family members; it further provides the manner in which the parties agreed to, in the event of any dispute or difference in future, divide the lawns and servant quarters;

however qua entrance gate, drive-ways and parking facilities it was provided that the same shall be jointly owned unless parties mutually agreed to a peaceful and practical separation.

12. There is no plea or any document to suggest that any division of the lawns and the servant quarters was affected after the deed of family settlement aforesaid.

13. Thus, it appears that the deed of family settlement only envisaged the division/partition in future of lawns and servant quarter which at the time of family settlement were joint and for common use. The present does not appear to be a case of segregated property, as the case in *Usha Devi Sharma* was.

14. For the aforesaid reasons, the facts of the present case cannot be said to be covered by the judgments (supra). In fact, though in the plans initially submitted by the petitioner for construction, the petitioner had also shown works to be carried out with respect to the servant quarters but the petitioner thereafter submitted revised plans without showing any works to be carried out qua the servant quarters.

15. I am also of the view that the disputes which the respondent no.5 has raised as to whether the property stands divided or not cannot be

adjudicated in this writ jurisdiction and are best left to be adjudicated in the appropriate fora. As long as the said disputes exist, no mandamus as sought can be issued to the MCD to deal exclusively with the petitioner with respect to any portion of the property.

16. The petition is accordingly dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 20, 2011
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