

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2759/2011**

Decided on 09.08.2011

IN THE MATTER OF :

DEEPAK GROVER

..... Petitioner

Through: Mr. Rajiv K. Garg, Advocate with
Mr. Ashish Garg, Advocate

versus

THE COMMISSIONER OF MCD AND ORS

..... Respondents

Through: Ms.Saroj Bidawat, Advocate for R1/MCD.
Mr. Vaibhav Agnihotri and Ms. Kanika Agnihotri,
Advocates for R-4/DDA.
Mr. Rakesh Kumar Khanna, Sr. Advocate with
Ms. Jasmeet Kaur, Mr. Vishal Panwar and
Ms. Seema Rao, Advocates for R-5.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Article 226 of the Constitution of India praying *inter alia* for issuance of a writ of

mandamus to respondents No.1 to 4 to inspect the property bearing No.31/3195-96, Beadon Pura, Karol Bagh, New Delhi, where respondent No.5 has carried out illegal construction/encroachment and to take action in accordance with law.

2. Vide order dated 28.04.2011, notice was issued in the present petition. It was also directed that the Deputy Commissioner, Karol Bagh Zone would coordinate with the Monitoring Committee and undertake an inspection of the site in question within two weeks, whereafter a status report would be filed together with photographs before the next date of hearing, i.e., 31.05.2011. On 31.05.2011, appearance was entered on behalf of respondent No.5. Though a status report was not filed by the respondent/MCD on the said date, the same came to be filed on 01.06.2011. In the status report filed by the Executive Engineer, Building Department, Karol Bagh Zone, MCD, it is averred that as per the record, building plan was sanctioned in respect of the aforesaid property for a basement, ground floor, first floor, second floor and third floor. The site was got inspected on 27.05.2011 and it was found that the property consisted of a basement, ground floor, first floor, second floor, third floor and fourth floor with a projection on municipal land in the front and back portion. It was further stated that the owner/occupier had converted the ground floor portion from residential to commercial in violation of the sanctioned building plan. Further, it was found that there existed other deviations/excess coverage/unauthorized construction contrary to the

2
sanctioned building plan. The unauthorized construction was booked on 30.05.2011 and a notice to show cause was issued under Sections 343/344 of the DMC Act on the same date. It was stated that the Department intended to take further action in respect of the unauthorized construction on the premises by following due process of law.

3. Today, it is submitted by the counsel for the respondent/MCD that pursuant to the notice to show cause dated 30.05.2011 issued to the respondent No.5, a demolition order has been passed by MCD on 15.06.2011 in respect of the unauthorized construction in the property in question/encroachment on public land.

4. Learned Senior Advocate appearing for respondent No.5 states that the present petition has *mala fides* writ large on the face of it, inasmuch as the petitioner is the son of Shri Ramesh Grover, who is the elder brother of respondent No.5, and he has failed to inform the Court that his father has instituted a civil suit for possession and permanent injunction against respondent No.5 (defendant therein) entitled "Krishna Devi & Ors. vs. Jugal Kishore", which is pending in the Court of the learned ADJ, Tis Hazari Courts. Pertinently, the other plaintiffs in the said suit are the grand-mother of the petitioner, Smt. Krishna Devi and another uncle of the petitioner, Shri Raj Kumar Grover. The attention of this Court is also drawn to the prayer clause of the aforesaid plaint enclosed with the reply, wherein it has been prayed that a decree of possession be passed in favour of the plaintiffs therein and against the

8

defendant (respondent No.5) in respect of the 65 sq. yards portion on the first floor, two shops at the ground floor and 55 sq. yards portion on the second floor, forming a part of the property bearing No.31/3195-96, Beadonpura, Karol Bagh, New Delhi. A decree of permanent injunction has also been sought against the defendant therein (respondent No.5) for restraining him from creating any third party interest in the aforesaid property.

5. The body of the present petition as also the list of dates and events have been perused by this court so as to verify the authenticity of the submission of the counsel for respondent No.5 and to examine if specific averments have been made by the petitioner in the petition regarding the abovementioned pending family litigation. It is found that there is not a whisper in the present petition with regard to the pending litigation between the parties. Pertinently, in para 1 of the writ petition, the petitioner describes himself as a citizen of India and seeks a writ of mandamus to be issued to respondents No.1 to 4 to see that the building constructed by respondent No.5 is as per sanction plan and that there is no unauthorized construction/encroachment therein. If the father of the petitioner has an interest in the property in question and if his son, that is the present petitioner approaches this court praying for action to be taken against the unauthorized construction on the property in question, then it was incumbent on the petitioner to reveal all material facts to the court, including the pending civil litigation between his father and respondent

9

No.5 in respect of the property in question.

6. It is to be noted that the memo of parties in the present petition shows that the petitioner is a resident of D-2/1, Jeevan Jyoti Apartment, Pitam Pura, New Delhi. The same address is mentioned against the name of the father of the petitioner in the plaint of the aforesaid civil proceedings pending before the ADJ, Tis Hazari Courts, which means that the petitioner resides in the same house as his father. Hence, it cannot be said that the petitioner was unaware of the pending litigation between his grand-mother, his father and his uncle on the one hand and respondent No.5 on the other. It is thus evident that the petitioner has sought to use the present forum to settle his personal scores and that of his family, against respondent No.5.

7. The writ jurisdiction of this court under Article 226 of the Constitution of India is an extraordinary jurisdiction and can be exercised in favour of only such a petitioner who approaches the court with clean hands. It is settled law that in case there is a deliberate concealment or suppression of material facts on the part of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter [Refer: Prestige Lights Ltd. vs. State Bank of India (2007) 8 SCC 449].

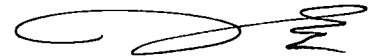
10
8. However, in the present case, as it is evident from the inspection conducted by the respondent/MCD of the property in question that unauthorized construction/encroachment exists in the subject property, hence the present petition is disposed of with directions to the respondent/MCD to take appropriate action against the same, in a time bound manner, preferably within a period of four weeks from today, by following the due process of law.

9. Further, the conduct of the petitioner in trying to mislead this court by withholding material information, which would not have come to the knowledge of this Court but for the reply filed by respondent No.5, cannot be excused. Not only has the petitioner approached the court with unclean hands, he has also tried to abuse the process of this court by indulging in spiteful litigation against his uncle, respondent No.5, overtly disguised as a petition filed with a *bona fide* intent to get unauthorized construction/encroachment removed in the subject premises. In the light of such a conduct on the part of the petitioner, he is mulcted with costs of ₹30,000/-, which shall be deposited in the following manner:-

- (a) ₹10,000/- shall be deposited with the Delhi High Court Legal Aid.
- (b) ₹10,000/- shall be deposited with the Delhi High Court Mediation and Conciliation Centre.
- (c) ₹10,000/- shall be deposited with the Advocates' Library Fund.

10. The aforesaid costs shall be deposited by the petitioner within four weeks and proof of deposit placed on record. In case costs are not deposited in the Registry within the stipulated time, Registry shall place this matter before the Court.

DASTI to the respondent/MCD.



(HIMA KOHLI)
JUDGE.

AUGUST 9, 2011
rkb

- Proof of Cost filed.
- fresh cm 16531/11 - correction of order dt.
9-8-2011 in para 8

- Disposed of matter.

28.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2759/2011

DEEPAK GROVER

..... Petitioner

Through: Mr. Rajiv K. Garg, Advocate

versus

THE COMMISSIONER OF MCD AND ORS

..... Respondents

Through: Mr. A.S. Tuisem Shimray, Advocate

for Ms. Saroj Bidawat, Advocate for R-1/MCD.

Mr. Rakesh Kr. Khanna, Sr. Advocate with

Ms. Seema Rao, Advocate for respondent No.5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

%

30.09.2011

CM 16531/2011 (by respondent No.5 for correction of the order dated 09.08.2011)

Notice.

Counsels for the non-applicant/petitioner and respondent No.1/MCD accept notice.

This application is filed by respondent No.5 praying *inter alia* for rectification of a typographical error in para 8 of the order dated 09.08.2011, by which the writ petition was disposed of. It is stated by the Senior Advocate appearing for the applicant/respondent No.5 that in the last line of para 8, the respondent/MCD was directed to remove the unauthorized construction/encroachment existing in the

W.P.(C) 2759/2011

Page 1 of 3

17
subject premises in a time bound manner, preferably within a period of four weeks from the date of passing of the order, by following the due process of law. It is submitted on behalf of respondent No.5 that when the order was dictated in open Court, the timeline given to the respondent/MCD was not "four weeks" but "four months". However, upon obtaining the copy of the order, it was found that the timeline granted to the respondent/MCD had inadvertently been typed out as "four weeks".

Counsels for the petitioner and respondent No.1/MCD do not deny the aforesaid position.

In view of the aforesaid submission made on behalf of the applicant/respondent No.5, the present application is allowed. It is directed that para 8 of the order dated 09.08.2011 shall read as below:-

"8. However, in the present case, as it is evident from the inspection conducted by the respondent/MCD of the property in question that unauthorized construction/encroachment exists in the subject property, hence the present petition is disposed of with directions to the respondent/MCD to take appropriate action against the same, in a time bound manner, preferably within a period of four months from today, by following the due process of law."

This order shall be read as part and parcel of the order dated 09.08.2011. The application is disposed of.

W.P.(C) 2759/2011

18

Proof of deposit of costs imposed upon the petitioner has been placed on record. The file be consigned to the record room.



HIMA KOHLI, J

SEPTEMBER 30, 2011
rkb

- Disposed of Case
- fresh cm 9627/12 on b/o P.S.
for Discharge
- fresh cm 9628/12 on b/o P.S.
for stay