

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 29th August, 2011

+ LPA 596/2011

GANESH PERSHAD SETH & ANR. Appellants
Through: Mr.B.B.Gupta, Mr.Arjun Mitra and
Mr.Ravjyot Ghuman, Advocates.

versus

NDMC & ORS. Respondents
Through: Mr.Pinaki Mishra, Senior Advocate
with Ms.Madhu Tewatia, Advocate
for R-1.
Mr.Ravinder Sethi, Senior Advocate
with Mr.P.R.Rajhans and Mr.Puneet
Sharma, Advocate for R-2 and R-3.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

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

PRADEEP NANDRAJOG, J.

1. Since we are concurring with the reasoning of the learned Single Judge, we reflect upon the same arguments which were advanced before the learned Single Judge as they were the ones which were repeated before us, and state our reasons for agreeing with the learned Single Judge.

2. Appellant No.1, the Karta of appellant No.2, is the son of respondent No.3. Respondent No.2 is his sister. Respondent No.4 is a company floated by respondent No.2 and respondent No.3 as also the father of respondent No.2, being the husband of respondent No.3.

3. The dispute pertains to property No.85-A, Punchkuian Road, New Delhi.

4. Appellant No.1 litigated with his parents and sister with respect to the family properties, which included property bearing No.85-A, Punchkuian Road, New Delhi. Suit No.732/1983 filed by him resulted in a compromise decree dated 2.4.1984 wherein appellant No.1 was allotted 1/3rd share therein i.e. 33% and 67% was assigned to his parents and sister. The decree divided the property by metes and bounds and as per the plan, Block-B was assigned to appellant No.1 and Block-A to his parents and sister. The plot size recorded as per compromise is 3485.60 sq.mt. and as per bye-laws then in force and as per terms of the compromise, 1/3rd permissible covered area could be utilized by appellant No.1 for raising a construction and the remainder by his parents and sister. It be highlighted that by the time the compromise was effected the building plans had already been sanctioned.

5. At the relevant time i.e. when the settlement was effected a mezzanine, equivalent to 1/3rd of the ground floor coverage could be constructed without being adjusted in the FAR.

6. The appellant No.1 and his parents and sister deviated from the sanctioned building plans and each group effected construction in excess of their respective share. The

FAR being 1, and the plot being 3485.60 sq.mt., total covered area of the building was obviously 3485.60 sq.mt. and since permissible ground coverage then was 25% of the plot area, it is apparent that 4 floors could be constructed, each having 871.40 sq.mt. covered area. Since share of appellant No.1 was 33%, he was entitled to construct on Block-B a building having covered area 1150.24 sq.mt. with coverage on the ground floor being 287.56 sq.mt. and likewise his parents could construct on their block, the remainder $\frac{2}{3}$ rd of the sanctioned area.

7. Undisputably, appellant No.1, as against ground coverage of 287.56 sq.mt. has effected construction in excess by 55.26 sq.mt. for the reason his block has ground floor coverage 342.82 sq.mt. and total covered area in the floors constructed by him is 1241.83 sq.mt. as against 1150.24 sq.mt. which he could construct as per the compromise i.e. the excess coverage is 91.59 sq.mt.

8. Notwithstanding appellant No.1 having constructed excess area and highlighting that even his parents and sister have done so, the dispute which was raised when the writ petition was filed pertained to appellant No.1 seeking sanction from NDMC to construct a mezzanine floor in his portion as the same would not have impacted the FAR for the reason the mezzanine floor could equal to $\frac{1}{3}$ rd of the ground floor coverage without FAR being impacted. Since the plot was treated as a single entity plot by NDMC, permission sought was declined inasmuch as the parents and the sister of appellant No.1 had constructed a mezzanine in their block which area was more than $\frac{2}{3}$ rd of the permissible mezzanine

area and in this way the 1/3rd mezzanine area which could be constructed by the appellant No.1 was denied to him. For facility of understanding we may note the permissible and the actual covered area in Block-A and Block-B. It reads as under:-

Plot Area	- 3485.60 sq.m.
Permissible Ground Cov.	- 871.40 sq.m @25% of Plot Area.
Sanctioned Gr.Cov.	- 852.11 sq.m.
Permissible FAR	- 3485.60 sq.m. @100 of Plot Area.
Sanctioned FAR	- 3408.44 sq.m.
Permissible Height	- 15 mtr.
Basement Permissible	- 3485.60 sq.m. @100 of Plot Area.
Basement Sanctioned	- 3102.74 sq.m.
Mezzanine Permissible	- 217.85 sq.m. @25% of ground coverage
Mezzanine Sanctioned	- Nil

The above permissibility distributed in Block 'A' and Block 'B' as per Court order dt.02.04.1984 vide decree against Suit No.732 of 1983.

Block 'A' @67%	Block 'B' @33%	Total
Ground coverge – 583.84 sq.m.	Ground Coverage – 287.56 sq.m.	871.50 sq.m.
FAR – 2335.35 sq.m.	FAR – 1150.24 sq.m.	3485.60 sq.m.
Basement – 2335.35 sq.m.	Basement – 1150.24 sq.m.	3485.60 sq.m.
Mezzanine–145.96 sq.m.	Mezzanine – 71.89 sq.m.	217.85 sq.m.

Actual Area at Site –

<u>Block 'A'</u>	<u>Block 'B'</u>
Ground Floor – 668.32 sq.m.	Ground Floor – 307.32 sq.m.
Mezzanine Floor – 298.24 sq.m.	Mezzanine Floor – 50.05 sq.m.
First Floor – 697.26 sq.m.	First Floor – 294.82 sq.m.
Second Floor – 697.26 sq.m.	Second Floor – 294.82 sq.m.
Third Floor – 697.26 sq.m.	Third Floor – 294.82 sq.m.
Basement 1 – 998.10 sq.m.	Basement 1 – 526.81 sq.m.
Basement 2 – 998.10 sq.m.	Basement 2 – 604.25 sq.m.
Stilt Area – 1723.37 sq.ft. (160.16 sq.m.)	
Height – 15.80 Mtr.	Height – 15.80 Mtr.
Ground Coverage at Site – 721.49 sq.m.	Ground Coverage at site – 342.82 sq.m.

9. We think that we have been able to highlight that appellant No.1 has effected constructions far in excess of his entitlement and so have the respondents, save and except pertaining to the mezzanine floor wherein the respondents have a construction not only far in excess but adversely affecting appellant No.1, who was not able to further construct the mezzanine floor; proportionate to his share.

10. As noted herein above in para 8, when appellant No.1 submitted revised plans for sanction, the same were rejected as there were deviations in the existing construction including the mezzanine where an area in excess of the permissible was constructed by the respondents. This led the

appellant No.1 to file a writ petition in the year 1988, which he amended in the year 2006 and of the multiple various reliefs prayed for, when the writ petition was finally heard, he confined the relief only to prayer 'g', 'j(i)' and 'j(ii)'.

11. Reflecting upon the impugned decision of the learned Single Judge; noting the aforesaid facts the learned Single Judge has noted that in the Writ Petition originally filed admittedly there was no prayer qua the mezzanine floor, although we find averments made in the writ petition raising a grievance to the excess constructions made by the respondents qua the mezzanine floor, but for reasons best known to the appellant No.1 he made no relatable prayer thereto. Impugned order would reveal that the writ petition was finally pressed with respect to prayers 'g', 'j(i)' and 'j(ii)', which read as under:-

“(g) A writ of or in the nature of Mandamus and/or any other appropriate writ, order or direction do issue commanding the respondent No.1 to forthwith take steps to demolish the excess construction made by respondents No.2 to 5 in Block 'A' belonging to the said respondents.

(j)(i) A writ of or in the nature of Mandamus and/or any other writ/order or direction do issue allowing the petitioner to construct the mezzanine floor the extent of one third of total sanctioned area.

(j)(ii) A writ of or in the nature of Mandamus and/or any other writ/order or direction do issue commanding respondent No.1 to grant a completion certificate in respect of Block 'B' i.e. the petitioner's portion of the building called 'Rishymook' at 85-A, Panchkuian Road, New Delhi.”

12. As noted by the learned Single Judge, with respect to prayer 'g' the petitioner urged only with respect to excess constructions pertaining to the mezzanine floor being demolished and not the others. The reason is obvious. Even the appellant No.1 has made excess construction.

13. The learned Single Judge has copiously noted the correspondence exchanged between appellant No.1 and NDMC and after highlighting the fact that till appellant No.1 amended the writ petition on 24.3.2006, no prayer was made with respect to the mezzanine floor.

14. The legal question debated before the learned Single Judge was: Whether any mezzanine floor could be constructed without being included in the FAR in terms of MPD-2021 and the bye-laws in force since August 2007. The reason why this question was posed was that any sanction to a plan post August 2007, if included a permission to construct a mezzanine floor, required the mezzanine floor to be included in the FAR. Of course, such mezzanine floors which were constructed prior thereto would not be included for purposes of computation of FAR and the only condition was that the mezzanine floor could not exceed $\frac{1}{3}^{\text{rd}}$ of the ground floor coverage. In other words, if minus the mezzanine floor constructed by the respondents, the FAR was fully utilized, the question of granting relief to appellant No.1 in terms of prayer 'j(i)' did not arise because under no circumstances could any mezzanine be now constructed post 2007. To put it differently, in said situation whether or not respondents had constructed a mezzanine in excess of their entitlement became irrelevant.

15. Noting the decisions reported as 1995 (1) SCC 125 State of West Bengal vs. Terra Farma Investment & Trading Pvt. Ltd., 1992 (3) SCC 455 Usman Gani J. Khatri vs. Cantonment Board, 2008 (8) SCC 765 NDMC & Ors. vs. Tanvi Trading & Credit Pvt. Ltd. & Ors., 2007 (11) SCC 40 Commissioner of Municipal Corporation, Shimla vs. Prem Lata Sood & Ors. and 1999 (7) SCC 314 UOI vs. Indian Charge Chrome, the learned Single Judge has held that with respect to sanction of building plans, it is the law in force as on date when approval is granted which has to be considered and not the law as of the date when the plans were submitted.

16. Indeed, the learned Single Judge has rightly extracted the ratio of law from the afore-noted decisions and thus the argument advanced before the learned Single Judge and before us that the appellants have a right to enforce the claim when they approach the Court as per law then applicable and not as per building bye-laws in force when the learned Single Judge decided the lis is not tenable in law.

17. We highlight that save and except the mezzanine floor, the appellant No.1 as also the respondents have constructed in excess of their respective share in the FAR. The existing building has utilized the entire FAR in Block 'A' as well as Block 'B'. It may be true that the respondents have a mezzanine area in excess of their share, but in view of the building bye-laws in force when the learned Single Judge decided the lis, the same became irrelevant, in that, no right of the appellant No.1 was adversely affected.

18. We do not go into the issue raised by the respondents that the excess mezzanine area constructed by

the respondents has been compounded for the reason, whether compounded or not would make no difference inasmuch as when the learned Single Judge decided the lis any mezzanine area to be constructed would be required to be adjusted against the FAR and since entire FAR stands consumed the question of grant of sanction to any further mezzanine being constructed would not arise.

19. We dismiss the appeal but refrain from imposing costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 29, 2011
dk