

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4623/2011 and C.M.18280/2011 (by respondent No.4 for stay)**

Decided on: 17.11.2011

IN THE MATTER OF :

ARJUN SINGH

..... Petitioner

Through: Mr. S.A. Siddique, proxy counsel for
Mr. Mohammad Sajid, Advocate.

versus

MCD AND ORS

..... Respondents

Through: Mr. Dev P. Bhardwaj, Standing
Counsel, for respondents No.1 & 2/MCD.
Mr. V.K. Rao and Ms. Jyoti Singh, Senior
Advocates with Mr. Sanjeev Kumar Chaswal
and Ms. Saahila Lamba, Advs. for R-4.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

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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 |

HIMA KOHLI, J. (Oral)

1. This application (C.M. No.18280/2011) is filed by respondent No.4 praying *inter alia* for restraining respondents No.1 & 2/MCD from taking any steps to demolish the construction on property bearing No.WZ-491, Basai Dara Pur, New Delhi, in respect of which, the

present petition has been filed by the petitioner praying *inter alia* for directions to respondents No.1 to 3 to take legal action against the unauthorized construction existing on the said premises.

2. In the order dated 08.11.2011, it was noted that a status report had been filed by respondents No.1 and 2/MCD, wherein it was averred that the subject premises was inspected on 05.08.2011 and in the course of inspection, it was noticed that the entire construction had been raised on the subject property without any sanction plan. As a result, the same was booked on 04.10.2011. On 07.10.2011, respondent No.4 applied for regularization of the existing structure. The aforesaid application of respondent No.4 for regularization was rejected by the respondent/MCD on 03.11.2011 and a demolition order was passed thereafter.

3. On 8.11.2011, it was contended on behalf of respondent No.4 that the file of the Department should be examined inasmuch as the Chief Town Planner of respondent No.1/MCD had put up a note, recommending that the construction existing on the subject premises should be regularized, which fact had been concealed by respondent No.1/MCD from this Court. While adjourning the matter to 30.03.2012, respondent No.1/MCD was directed to produce the relevant records of the case for perusal.

4. In the meantime, the present application has been filed by

respondent No.4, apprehending threat of demolition on the part of respondent No.1/MCD.

5. Counsel for respondent No.1/MCD states that the concerned officer from the Department is present and he has brought the relevant file with him. He draws the attention of this Court to the noting dated 20.09.2011 of the Assistant Engineer of the area, wherein a note was taken of the comments offered by the Chief Town Planner to the effect that the side lane of property bearing No.WZ-491, Basai Dara Pur, New Delhi, was to be maintained at 5 meters. It was noted by the Assistant Engineer that the said comments of the Chief Town Planner were based on the development plans of Basai Dara Pur, however, since it was a case of regularization of a building existing prior to the issuance of the development plans, the Building Department could take an affidavit/undertaking from the applicant as per the existing policy in respect of widening of the side lane and then process the case for regularization. The aforesaid note was put up to the Executive Engineer (Building), West Zone, who observed in his note dated 02.11.2011, that it was evident that some of the building encroached on the side lane, which is public land and since the Department had no policy for regularizing construction existing on public land, the side lane would require widening, which is why the request for regularization made by respondent No.4 would have to be

rejected.

6. Learned Senior Advocate appearing for the applicant/respondent No.4 submits that the aforesaid observations made by the Executive Engineer are an improvement on the earlier finding of the respondent/MCD, as is evident from the earlier noting in the file dated 03.08.2011, wherein it has been stated that most aspects related to regularization of the property were clarified and the only issue remaining for clarification was that of ownership. It is further stated that it is the case of respondent No.4 that sanction plans are not required to be obtained from the respondent/MCD in Basai Dara Pur, which is a part of village *Abadi* area.

7. The petitioner in the present case has only sought a limited relief of directions to respondents No.1 to 3 to take legal action against the unauthorized construction in the subject premises, which as per the respondent/MCD has already been done in the form of the demolition order dated 04.11.2011. In view of the fact that respondent No.4 has a remedy against the order passed by the respondent/MCD, rejecting his regularization application, which is by way of an appeal before the Appellate Tribunal, MCD, it is deemed appropriate to dispose of the present petition with liberty granted to respondent No.4 to approach the Appellate Tribunal, MCD for appropriate relief. All the aforesaid contentions raised by respondent No.4 here, can be raised by him

before the Appellate Tribunal, MCD and interim protection from demolition action by the respondent/MCD can also be sought from the Tribunal.

8. As it is stated on behalf of respondent No.4 that necessary steps shall be taken to file an appeal within a period of two weeks, it is directed that no coercive steps shall be taken against the subject premises for a period of two weeks, subject to the condition that respondent No.4 shall not carry out any further construction and/or create any third party right in the subject premises, till the appeal is heard and disposed of by the Appellate Tribunal, MCD.

9. It is further stated by the learned Senior Advocate appearing for the applicant/respondent No.4 that respondent No.4 has not been furnished with the demolition order dated 04.11.2011. Respondent No.1/MCD is directed to furnish a copy of the demolition order to respondent No.4 through counsel within two days. The period of two weeks granted to respondent No.4 to approach the Tribunal, shall be reckoned from the date of receipt of the demolition order.

10. Needless to state that none of the observations made in the present petition shall influence the Appellate Tribunal, MCD, which shall be at liberty to hear the appeal and pass appropriate orders thereon, as per law.

11. The petition is disposed of alongwith the pending application.

The file of respondent No.1/MCD is returned.

12. The date fixed in the writ petition, i.e., 30.03.2011, stands cancelled.

DASTI to respondent No.1/MCD and respondent No.4.

HIMA KOHLI,J

NOVEMBER 17, 2011
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