

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7047/2011 and CM 16113/2011**

Decided on 26.09.2011

IN THE MATTER OF :

SURESH CHAND JAIN AND ORS

..... Petitioners

Through: Mr. Ravinder Sethi, Sr. Advocate with
Mr. Sumit Bansal and Mr. Ajay Monga, Advs.

versus

MCD

..... Respondent

Through: Mr. H.S. Phoolka, Sr. Advocate with
Ms. Mini Pushkarna, Standing Counsel, MCD and
Mr. Kanwar Faisal, Advocate

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?

} Yes

HIMA KOHLI, J. (Oral)

1. At the outset, counsel for the petitioners states that he proposes to confine the present petition to petitioners No.1 to 5 and petitioner No.8, while deleting petitioners No.6 and 7 from the array of the petitioners. Leave, as prayed for, is granted. The present petition is confined to petitioners No.1 to 5 and petitioner No.8.

2. Petitioners No.1 to 5 and petitioner No. 8 are aggrieved by the

W.P.(C) 7047/2011

Page 1 of 8

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

vacation notice dated 21.09.2011 issued by the respondent/MCD in respect of their premises as detailed in Annexure P-1 enclosed with the writ petition.

3. Pursuant to the order dated 23.09.2011, affidavits have been filed by petitioners No.1 to 6 and petitioner No.8, seeking to explain the circumstances, in which they failed to reveal the factum of institution of an earlier writ petition, registered as W.P.(C) 6895/2011, which was disposed of vide order dated 20.09.2011. The sum and substance of all the affidavits is identical. It has been stated by all the deponents that they had filed the earlier writ petition on an apprehension that the respondent/MCD might take demolition action in respect of their premises. The said writ petition was disposed of on 20.09.2011 but a copy of the aforesaid order was not made available to the deponents and on the very next day, i.e., on 21.09.2011, the impugned vacation notices were pasted at their premises by the respondent/MCD, on account of which they decided to engage a counsel for drafting and filing the present writ petition. It is stated that the rest of the petitioners were relying on petitioner No.2 for the purpose of drafting and filing of the present petition as the said petitioner No.2 was interacting with the advocate and forwarding him the papers, they were unaware of the fact that no mention was made in the present petition of filing of W.P.(C) 6895/2011, much less the orders passed thereon. Petitioner No.2, Shri Gian Chand has stated in his affidavit that on account of the urgency in the matter

and in view of the immediate threat of demolition of the subject premises, the factum of filing of the earlier writ petition and the orders passed thereon was not conveyed to the present counsel due to *bona fide* inadvertence and the said omission was unintentional. All the petitioners have tendered their unqualified apologies for the aforesaid oversight and have sought to explain the same by stating that there was no *mala fide* in not mentioning the factum of filing of the earlier writ petition.

4. Having perused the affidavits filed in terms of the order dated 23.09.2011, the same are accepted subject to the condition that petitioners No.1 to 5 and petitioner No.8 shall each deposit a sum of ₹.10,000/- as costs within one week. 50% of the costs shall be paid by the petitioners to the respondent/MCD through counsel and the remaining 50% shall be deposited with the Delhi High Court Legal Services Committee.

5. The present petition is filed by the petitioners praying *inter alia* for quashing of the vacation notices dated 21.9.2011 issued by the respondent/MCD in respect of their properties.

6. Counsel for the petitioners states that aggrieved by the demolition orders passed by the respondent/MCD in respect of their respective subject premises (mentioned in Annexure P-1), the petitioners had preferred their respective appeals before the Appellate Tribunal, MCD. The aforesaid appeals were allowed by the Appellate Tribunal, MCD, vide orders dated 8.4.2008 and while setting aside the demolition orders, the

case was remanded back to the quasi judicial authority for fresh adjudication. The respondent was directed to decide the matter within two months by passing a speaking order, to be communicated to the petitioners, and in the meantime, the petitioners were directed to maintain *status quo* in respect of the construction, possession and title of the subject premises.

7. Counsel for the petitioners states that thereafter, the petitioners appeared before the Assistant Engineer (Building), MCD City Zone, New Delhi and submitted their replies before the said Officer. After considering the replies of the petitioners, an order came to be passed by the MCD. The operative para of one such order (Annexure P-6) is reproduced herein below :

"Taking into consideration the above, I am of the view that since the property in question is situated in the Walled City, and further the party has already got his property registered with the Corporation, in terms of Clause 16.2 of MPD-2021, the property as such is exempted from any punitive action till the Special Area Building Regulations are framed for the said Area is notified or maximum three years, whichever is earlier.

Hence in view of the discussions made hereinabove, it is clear that no action is warranted qua the property in question and as such in view of clause 16.2 MPD-2021, the applicant/owner is entitled to avail the benefit as provided under clause 16(2) of MPD-2021, subject to fulfillment of the covenants made therein and since the property is situated in Walled City, the present matter be kept in abeyance till the Special Area Building Regulations are framed for the said Area is notified or maximum three years, whichever is earlier."

8. After passing of the aforesaid order by the MCD, the

petitioners preferred a writ petition, registered as WP(C)No.1378/2010, praying *inter alia* that no coercive steps be taken against the premises of the petitioners till the Special Area Building Regulations are framed in terms of the MPD 2021. It is submitted that the aforesaid writ petition came to be finally disposed of by the Division Bench vide order dated 23.2.2011 (Page 102) noting *inter alia* the fact that a notification dated 17.1.2011 had been published in the Gazette, notifying the Building Regulation for Special Area, Unauthorized Regularized Colonies and Village Abadis, 2010. In view of the aforesaid observations, the petitioners withdrew the aforesaid writ petition.

9. This was followed by the filing of the above mentioned writ petition, registered as WP(C)No.6895/2011, wherein the petitioners herein had sought directions to the respondent/MCD to not take any coercive steps against their properties. The said writ petition was disposed of on the date of admission itself by passing an order dated 20.9.2011, wherein the statement of the counsel for the respondent/MCD was recorded to the effect that appropriate notices for demolition or sealing shall be issued to the adversely affected parties if not already issued and if the petitioners would be aggrieved by the same, then the remedies available under the Statute would be open to them. The seriatim of events reveal that within a period of one day of passing of the aforesaid order, the petitioners were served with the impugned vacation notice dated 21.9.2011 stating *inter alia* that the period of protection in

9

accordance with the provisions of MPD 2021 had come to an end and the demolition orders were revived, and as a result, the MCD was duty bound to demolish the subject premises.

10. Counsel for the petitioners states that the impugned vacation notices issued by the MCD are mis-conceived and are liable to be quashed as there are no demolition orders that were passed by MCD, after passing of the orders dated 8.4.2008 by the Appellate Tribunal, MCD.

11. This Court has perused the orders passed by Assistant Engineer (Building), MCD City Zone, New Delhi, which reveal that instead of complying with the orders of the Appellate Tribunal, MCD by passing a speaking order within the time granted, the aforesaid officer decided to keep in abeyance the matter itself till the notification of the Special Area Building Regulations for the said area or a maximum three years, whichever is earlier.

12. The contention of the counsel for the respondent/MCD that the aforesaid observations were in fact of the Assistant Engineer (Building) and ought to be treated as a demolition order, is taken note of only to be rejected for the reason that when the officer passing the said orders specifically noted that the matter should be kept in abeyance, then there is no question of treating the said observations as a demolition order, which could have followed only after revival of the matter.

13. In the aforesaid facts and circumstances, the impugned vacation notices dated 21.9.2011 are set aside. However, having regard

to the submission made by the learned Senior Advocate appearing for the respondent/MCD that the MCD is willing to grant a hearing to the petitioners before passing appropriate orders in terms of the earlier orders passed by the Appellate Tribunal, MCD on 8.4.2008, the petitioners are directed to appear before the Assistant Engineer (Building), MCD City Zone, New Delhi on 30.9.2011 at 11.00 AM. When the petitioners appear before the respondent/MCD on 30.09.2011, they shall produce the proof of deposit of costs as directed hereinabove.

14. Apart from the replies submitted earlier, the petitioners shall be at liberty to take any additional pleas that may be available to them both, in law and facts, by making submissions before the aforesaid officer on the date and time fixed above. The submissions made by the petitioners shall be duly considered, whereafter appropriate orders shall be passed by MCD, preferably within a period of four weeks from the date of conclusion of submissions, under written intimation to the petitioners.

16. In case the petitioners are aggrieved by the order that may be passed, they shall be at liberty to assail the same as per law.

16. As learned Senior Advocate for the respondent/MCD states that if the orders passed after hearing the petitioners are adverse to them, no coercive action shall be taken against the subject premises for a period of six days from the date of receipt of the notice, as envisaged under the Statute, therefore no further protection is required to be granted in favour of the petitioners.

The petition is disposed of, along with the pending application.

A copy of this order be given **dasti**, to the counsels appearing for the parties.



HIMA KOHLI,J

SEPTEMBER 26, 2011
sk