

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7097/2011 & C.M. No.16206/2011**

Decided on 26.09.2011

IN THE MATTER OF :

HARISH CHANDER

..... Petitioner

Through : Mr. Sumit Bansal, Advocate with
Mr. Ajay Monga and Mr. Ateev Mathur, Advs.

versus

MCD

..... Respondents

Through : Mr. H.S. Phoolka, Sr. Adv. with
Ms. Maninder Acharya and Ms. Mini Pushkarna,
Advs. with Syed Anwar, Executive Engineer
(Building), City Zone and Mr. Montu Assistant Law
Officer.

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*** 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. At the outset counsel for the petitioner states that due to a *bona fide* typographical error, the premises number of the petitioner has been wrongly described as "4259-60 , Gali Bhairon Wali, Jogiwarra, Nai

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the digital data is as per the physical
file and no page is missing.

Sarak, Chandni Chowk, Delhi", in the present petition, while the correct number of the premises is "4259/VI, Gali Bhairon Wali, Jogiwara, Nai Sarak, Chandni Chowk, Delhi."

2. It is directed that wherever the premises number of the petitioner is described as "4259-60, Gali Bhairon Wali, Jogiwara, Nai Sarak, Chandni Chowk, Delhi", the same shall read as "4259/VI, Gali Bhairon Wali, Jogiwara, Nai Sarak, Chandni Chowk, Delhi".

3. The present petition is filed by the petitioner praying *inter alia* for quashing of the vacation notice dated 21.9.2011 issued by the respondent/MCD in respect of the second floor of the property bearing No.4259/VI, Gali Bhairon Wali, Jogiwara, Nai Sarak, Chandni Chowk, Delhi.

4. Counsel for the petitioner states that aggrieved by the demolition order dated 6.12.2007, passed by the respondent/MCD in respect of the subject premises, the petitioner preferred an appeal before the Appellate Tribunal, MCD, registered as Appeal No.295/AT:MCD/2007. The aforesaid appeal was allowed by the Appellate Tribunal, MCD, vide order 8.4.2008 and while setting aside the demolition order dated 6.12.2007, the case was remanded back to the quasi judicial authority for a fresh adjudication. The respondent was directed to decide the matter within two months by passing a speaking order, to be communicated to the petitioner, and in the meantime, the petitioner was directed to maintain *status quo* in respect of the construction, possession and title of

the subject premises.

5. Counsel for the petitioner states that thereafter, the petitioner appeared before the Assistant Engineer (Building), MCD City Zone, New Delhi and submitted his reply before the said Officer. After considering the reply of the petitioner, an order dated 4.11.2008 came to be passed by the MCD (Annexure P-8). The operative paras of the aforesaid order are 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."

6. After passing of the aforesaid order by the MCD, the petitioner 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 petitioner 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

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23.2.2011 (Annexure P-13) 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 petitioner withdrew the aforesaid writ petition.

7. This was followed by another writ petition preferred by the petitioner recently, registered as WP(C)No.6764/2011, wherein he sought directions to the respondent/MCD not to take any coercive steps against his property. The said writ petition was disposed of on the date of admission itself by passing an order dated 16.9.2011, wherein the statement of the counsel for the respondent/MCD was recorded to the effect that at present no orders had been passed by the respondent/MCD either for demolition or sealing the subject premises and further, in case any such action is proposed against the subject premises, the same would be taken after issuing appropriate notice in that regard. The seriatim of events reveals that within a period of five days of passing of the aforesaid order, the petitioner was served with the impugned vacation notice dated 21.9.2011 stating *inter alia* that the period of protection in accordance with the provisions of MPD 2021 had come to an end and the demolition order was revived, and as a result, the MCD was duty bound to demolish the subject premises.

8. Counsel for the petitioner states that the impugned vacation notice issued by the MCD is mis-conceived and is liable to be quashed as

there is no demolition order that was passed by MCD, after passing of the order dated 8.4.2008 by the Appellate Tribunal, MCD.

9. This Court has perused the order dated 4.11.2008, passed by Assistant Engineer (Building), MCD City Zone, New Delhi, which reveals that instead of complying with the order 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.

10. The contention of the counsel for the respondent/MCD that the aforesaid observations made in the order dated 4.11.2008 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 order dated 4.11.2008 specifically noted that the matter should be kept in abeyance, then there is no question of treating the said observation as a demolition order, which could have followed only after revival of the matter.

11. In the aforesaid facts and circumstances, the impugned vacation notice dated 21.9.2011 is 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 petitioner before passing appropriate orders in terms of the earlier order passed by the Appellate Tribunal, MCD on 8.4.2008, the petitioner is directed to appear before the Assistant Engineer (Building), MCD City

Zone, New Delhi on 30.9.2011 at 11.00 AM.

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

13. In case the petitioner is aggrieved by the order that may be passed, he shall be at liberty to assail the same as per law.

14. As learned Senior Advocate for the respondent/MCD states that if the orders passed after hearing the petitioner are adverse to him, 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, no further protection is required to be granted in favour of the petitioner.

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

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