

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7831/2011 and CMs 17719-20/2011**

Decided on: 03.11.2011

IN THE MATTER OF :

MAHENDER KUMAR BANSAL

..... Petitioner

Through: Mr. Rajan Sabharwal, Advocate

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr. Kapil Dutta, Advocate for

Ms. Mansi Gupta, Advocate

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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. The present petition is filed by the petitioner praying *inter alia* for directions to the respondent/MCD to decide the application of the petitioner dated 03.07.2008 for regularization of property bearing No.988-990 situated at Kucha Pati Ram, Bazar Sita Ram, Delhi.

2. Counsel for the petitioner states that on 24.10.2007, the respondent/MCD issued a notice under Section 348 of the DMC Act,

declaring the subject premises as dangerous. Thereafter, an application was submitted to the respondent/MCD for permission to carry out necessary repairs. In December 2007, the petitioner started repairing the structure built up on the aforesaid premises. On 28.01.2008, on a complaint received by it *qua* the said repairs, the respondent/MCD directed the petitioner to stop carrying out the repair work. Aggrieved by the aforesaid action of the respondent/MCD, the petitioner filed a suit for permanent injunction against the respondent/MCD, seeking to restrain it from taking any demolition action in respect of the subject premises. Initially, an interim order was passed in the aforesaid suit proceedings in favour of the petitioner. However, as the respondent/MCD issued a demolition order dated 29.02.2008 in respect of the subject premises, the aforesaid suit was disposed of.

3. On 03.03.2008, a sealing order was passed in respect of the subject premises. Aggrieved by the aforesaid sealing order as also the demolition order, the petitioner preferred an appeal before the Appellate Tribunal, MCD, which was dismissed vide order dated 02.06.2008. On 06.06.2008, a part of the subject premises was demolished and the remaining portion was sealed. On 03.07.2008, an application for regularization was submitted by the petitioner alongwith the rectification plans. The petitioner also made a request for de-sealing of the subject premises, for carrying out necessary rectifications, which was allowed by the

respondent/MCD vide order dated 14.11.2008 by granting to the petitioner, a period of 30 days to carry out rectification as per plan and as a result, the subject premises was de-sealed on 25.11.2008. However, the property was again sealed on 07.01.2009, whereupon the petitioner filed an appeal before the Appellate Tribunal, MCD.

4. The aforesaid appeal filed by the petitioner was dismissed by a detailed judgment dated 18.10.2011 passed by the Appellate Tribunal, MCD wherein it was observed that various reports were submitted by the respondent/MCD to show that the petitioner had failed to complete the rectification work within the prescribed time as per his own undertaking. Some of the reports mentioned in the aforesaid judgment are dated 06.07.2010, 25.08.2010, 06.09.2010 and the undated reports were submitted on 17.09.2010 and 08.10.2010, which as per the Tribunal, clearly established the petitioner's non-cooperative attitude and wrongful conduct. The Tribunal observed that vide order dated 16.02.2010, a further opportunity was granted to the petitioner to remove the excess coverage/unauthorized construction, whereafter the respondent/MCD was directed to file a status report. As per the status report dated 07.05.2010 submitted by the respondent/MCD, 10% excess coverage was still left to be rectified by the petitioner (Annexure P-9).

5. In view of the aforesaid status report , the Appellate Tribunal, MCD called for a fresh inspection report after a joint inspection was conducted so as to verify as to whether compliance of the earlier status report dated 07.05.2010 had been done or not. The judgment notes that the petitioner failed to participate in the joint inspection on one pretext or the other and failed to carry out the necessary rectification. In these circumstances, it was felt by the Tribunal that there was no need to grant another opportunity to the petitioner to carry out the rectification work. Instead, the respondent/MCD was directed to demolish the remaining unauthorized construction and non-compoundable deviations at the risk and expense of the petitioner. Aggrieved by the aforesaid judgment dated 18.10.2011, it is stated that the petitioner has preferred an appeal before the District Judge, registered as MCD Appeal No.02/2011, which is pending before the said forum. However, the interim application accompanying the appeal has been rejected by an order dated 24.10.2011 (Annexure P-6).

6. Counsel for the petitioner states that the petitioner has not assailed the aforesaid rejection order in the present proceedings but has sought directions to the respondent/MCD to decide his application for regularization dated 03.07.2008.

7. The petitioner cannot be permitted to blow hot and cold in the same breath. On the one hand, he does not take any steps to remove the

excess coverage/unauthorized construction at the subject premises and on the other hand, it is his grievance that the respondent/MCD is not acting on his application for regularization. As noted above, in the course of the proceedings before the Appellate Tribunal, MCD, the petitioner was granted an opportunity to carry out the rectification work in respect of the 10% excess coverage left to be rectified as per the report dated 07.05.2011, but he did not comply. Thereafter, yet another opportunity was granted to the petitioner to carry out the necessary rectification work, whereafter a joint inspection was ordered to be undertaken but the petitioner did not participate in the said joint inspection. Now, for the petitioner to seek to blame the respondent/MCD for proposing to take coercive action against the subject premises without deciding his application for regularization cannot cut any ice as the entire blame lies at the door of the petitioner, who has not taken any step by carrying out the rectification work, for the respondent/MCD to have processed his application for regularization as per law.

8. The facts of the case have been extensively discussed in the judgment dated 18.10.2011, which clearly brings out the fact that despite repeated opportunities having been granted to the petitioner for carrying out the remaining rectification work, to enable the respondent/MCD to consider his pending application for regularization, necessary rectification work was not carried out by him. The inevitable conclusion is that the

claim of the petitioner that the respondent/MCD is not processing his application for regularization, is without any basis.

9. In such circumstances, this Court does not find any merit in the present petition, which appears to be a circuitous route adopted by the petitioner to assail the rejection order dated 24.10.2011 passed on the interim application accompanying the appeal preferred by him before the Appellate Authority against the judgment of the Tribunal. Needless to state that the observations made hereinabove are limited to the relief sought by the petitioner in the present proceedings and the learned District Judge, before whom his appeal against the judgment dated 18.10.2011 is stated to be pending, shall proceed to hear and dispose of the same as per law, uninfluenced by the present order.

10. The present petition is dismissed being devoid of merits alongwith the pending applications.

NOVEMBER 03, 2011
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(HIMA KOHLI)
JUDGE