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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

APP-1

+ **W.P. (C) No. 603 of 2011 & CM APPL Nos. 9890, 16617/2011**

NARESH KHANNA & ANR

..... Petitioners

Through Ms. Amrita Sanghi with Mr. Sujit Prasad and Mr. Abhishek Kumar Singh, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents

Through Mr. Ajay Arora with Mr. Kapil Dutta, Advocates for MCD/R-1.

Mr. Prem Prakash, Advocate for R-2.

Mr. B.B. Gupta with Mr. Harsh Hari Haran, Advocates for R-3.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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09.04.2012

1. The Petitioners, Mr. Naresh Khanna and Mrs. Anju Khanna, are the joint owners of the entire second floor along with terrace rights of the property bearing No. B-2/6, Vasant Vihar, New Delhi ('the building in question'). Mr. Ravi Sinha, Respondent No. 2 owns the ground floor and his wife owns the basement. Respondent No. 3 Mr. Mandeep Bains is not the owner of any part or portion of the building in question. The first floor of the said property

is jointly owned by MBS Enterprises Private Limited and Bains Builders Private Limited, both of whom are represented by counsel. 17

2. With a view to constructing the third floor, the Petitioners sent a letter dated 8th December 2010 to Respondent Nos. 2 and 3. While Respondent No. 2 objected to right of the Petitioners to construct the third floor, no reply was received from Respondent No. 3. The Petitioners state that they submitted an application to the Municipal Corporation of Delhi ('MCD') on 13th January 2011 seeking permission to construct the third floor. According to the Petitioners, the said application was not accepted by the MCD on the ground that the Petitioners had failed to obtain consent of the other co-owners/occupants of the building. In the said context, the present writ petition was filed on 29th January 2011 seeking directions to the MCD to grant the Petitioners permission for constructing the third floor without any requirement of obtaining the consent of Respondent Nos. 2 and 3.

3. On 1st February 2011 this Court noted the submission of learned counsel for the MCD that although the judgment of the Division Bench of this Court in *Municipal Corporation of Delhi v. Smt. Usha Devi Sharma* 127 (2006) DLT 274 (DB) dealt with the question of grant of sanction for floor wise

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development, and a circular was also brought out in that regard by the MCD, the said circular was kept in abeyance. This Court also took note of the judgment dated 30th September 2010 of this Court in W.P. (C) No. 4629 of 2007 (*Vijay Aggarwal v. Commissioner, Municipal Corporation of Delhi*) which left a window open for according sanction in such cases.

4. Thereafter, the present petition was kept adjourned from time to time since learned counsel for the MCD informed the Court that a formal order was yet to be passed on the Petitioners' application. On 10th October 2011 the Executive Engineer (EE)-I, Building (HQ), MCD wrote to the Petitioners *inter alia* stating that it had received photocopies of the file pertaining to the application for sanction of the building plan. Since the file in original was not received, and since the photocopy of the file did not reflect the application being made by all the co-owners of the property in question, and in view of the fact that there was no policy for floor-wise sanctioning as on that date, the application could not be entertained. The MCD further stated that the formal decision would be communicated to the Petitioners "as and when you apply to the office of the undersigned in original."

5. This Court was informed on 31st October 2011 by learned counsel for the

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MCD that the MCD had prepared draft guidelines for floor wise sanction of the building plans in light of the decision of this Court in *Smt. Usha Devi Sharma v. Commissioner, MCD* [W.P.(C) No. 3280 of 2004]. Objections had been invited from the public. Later, on 14th February 2012, this Court was informed that draft guidelines had been submitted to the Lieutenant Governor ('LG') for approval after accounting for the objections received from the public.

6. It appears that the said draft guidelines are yet to be approved by the LG.

7. It is submitted by Ms. Amrita Sanghi, learned counsel for the Petitioners that the Petitioners are not seeking to construct beyond the extent permissible in terms of the FAR, vis-a-vis., the second and third floors, as evidenced in the sale deed. It is also stated that the Petitioners, being husband and wife, would not have more than one vehicle, so that no issue regarding availability of parking space would arise. She states that they also do not intend to utilize any FAR that may be available to the other co-owners/occupants of the building in question. At this stage the Petitioners only want the MCD to consider their application and, after hearing the objections of the other co-owners, give a reasoned order thereon. Ms. Sanghi

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stated that the application in original with the proposed plan for construction of the third floor will be submitted to the EE-I, Building (HQ), MCD within one week from today.

8. Mr. B.B. Gupta, learned counsel for the owners of the first floor, and Mr. Prem Prakash, learned counsel for the owners of the ground floor and basement, state that they have no objection to MCD considering the application of the Petitioners subject to their objections thereto being considered by the MCD.

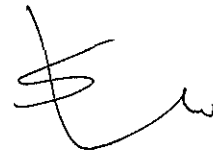
9. Mr. Ajay Arora, learned counsel for the MCD states that in view of the above submissions made on behalf of learned counsel for the Petitioners as well as Respondent Nos. 2 and 3, the MCD will, if the application in original is submitted to it by the Petitioners within one week, take a decision thereon, after hearing objections, if any, of the other co-owners/occupants. The decision will be taken by the MCD within four weeks from the date of hearing of the objections of the parties and communicated to the Petitioners and other parties within a week thereafter. It will be open to the MCD to point out to the Petitioners any defect in the application in original filed by them. It is made clear that in view of the submissions made on behalf of the

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co-owners/occupants of the other portions of the building in question as recorded hereinabove, MCD will not raise an objection that the consent of the co-owners/occupants of the other portions of the building in question has not been given.

10. If the Petitioners or any of the parties are aggrieved by the decision of the MCD, it will be open to them to seek appropriate remedies as may be available to them in accordance with law.

11. The petition and the pending applications are disposed of. Order be given dasti.



S. MURALIDHAR, J

APRIL 09, 2012

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MCD

disposed of

09.04.12

⇒ CM-17943/12 (on for
compliance of
above order)