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

+ W.P.(C) 58/2009

% **Judgment dated 07.03.2013**

AMAR SINGH

..... Petitioner

Through Mr. R.K. Saini, Mr. Sitab Ali Chaudhary
& Mr. Vikram Saini, Advocates

versus

M.C.D. & ANR.

..... Respondent

Through: Mr. Kapil Dutta, Advocate for MCD along with
Mr. Ram Kishan (Head clerk), MCD
Mr. Tarun Sharma and Mr. Boudh Prabha,
Advocate for respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Rule.
2. With the consent of counsel for the parties, the writ petition is set down for final hearing and disposal. The necessary facts to be noticed for the disposal of the present writ petition are that one Sh. Hans Raj (since deceased) was granted Perpetual Lease and Conveyance Deed in respect of Shop No.27, Municipal Market, Mandelia Road, Kamla Nagar, Delhi (measuring 16 X 18 ft.) by the MCD on 18.05.1971. The same was duly registered with Sub-Registrar of properties. The copy of the Perpetual Lease and Conveyance Deed have been placed on record. The said Sh. Hans Raj entered into an Agreement to Sell with the petitioner to sell a portion of the demised shop measuring 4 X 18 ft. towards the side of Shop No. 26 (of which the petitioner was already in possession as a tenant and which portion was separated from the rest of the demised shop by a portion wall). The Agreement to Sell was reduced into writing on 29.09.1969. As per the terms of the agreement, till the time of execution

of the sale deed, the petitioner was to keep on paying rent of the shop to Sh.Hans Raj. Sh.Hans Raj did not complete the sale in favour of the petitioner and rather executed a sale deed for the entire shop in favour of one Smt. Shanti Devi on 09.10.1972. Smt. Shanti Devi thereafter served a notice of eviction dated 18.10.1975 on the petitioner claiming herself to be the new owner and landlady of the demised shop.

3. Mr.Saini, counsel for the petitioner submits that even in the sale deed executed in favour of Smt. Shanti Devi it was stipulated that as and when the petitioner wishes that the sale deed to be executed in his favour in respect of the portion of the demised shop in his possession and in respect of which he had a prior Agreement to Sell with the owner (Smt. Shanti Devi) would do the needful. The petitioner thereafter filed a suit for specific performance of the Agreement to Sell dated 29.08.1969 against Sh.Hans Raj in which Smt.Shanti Devi was also impleaded as defendant No. 2. The suit for specific performance was decreed by the Civil Judge, Delhi on 24.09.1994 by holding that the petitioner was entitled to the relief prayed for and it was directed as under:-

“The defendant No. 2 is therefore, directed to do all acts necessary for the execution of the sale deed as per the agreement dated 29.8.69 pertaining to the sale of a portion of shop No. 27, measuring ‘4 x 18’ situated at Mandelia Road Kamla Nagar, Delhi-7, and seek the permission of the M.C.D. within 2 months from the date of decree and if the M.C.D. accords permission to execute the sale deed in favour of the plaintiff within two months from the date of such permission accorded by the MCD”.

4. Since Smt. Shanti Devi failed to comply with the terms of the decree, an execution petition was filed by the petitioner herein and permission was also sought from the MCD to sell the demised shop in favour of the petitioner which was refused by the MCD. Subsequently, the petitioner

applied for permission to the MCD and pursued the matter regularly. The permission was rejected by the MCD by an order dated 21.09.2004 and was communicated to petitioner vide letter dated 23.09.2004. The Order of rejection dated 21.9.2004 was challenged by the petitioner by filing writ petition No.2166/2007, wherein the following prayer was made:

b) A writ of certiorari quashing the action of the MCD Respondent No. 1 in refusing to grant permission for sale of part in question of the demised shop by the respondent No. 2 to the petitioner, being illegal, arbitrary, mala fide irrational, unjust and without jurisdiction and in violation of the principles of equity, justice and good conscience and consequently the order dated 21.09.2004 and the letter dated 23.09.2004 and 04.01.2006 (Annexure P-7)

c) A writ of mandamus commanding the MCD to forthwith grant permission for sale of part in question of the demised shop by the Respondent No. 2 to the petitioner on account of the judgment and decree of the Civil Court dated 24.09.1994.

5. The writ petition No.2166/2007 was disposed of by an order dated 21.3.2007. Operative portion of which reads as under:

“5. The MCD is directed to examine the application for permission in the context of the lease deed itself. The decision by the MCD be taken within three months from today and will be communicated to the petitioner and respondent no.2 in writing within 10 days of such decision being taken. With these directions the writ petition is disposed of.”

6. The MCD was directed to examine the application for permission in the context of the Lease deed itself. MCD was further directed to take a possession within a period of three months. The application for permission of the petitioner was however, again rejected by an order dated 21.9.2007, which led to the filing of another writ petition bearing No.7301/2007. While deciding the aforesaid writ petition a Single Judge

of this Court considered the rival contentions of both the parties, and the court noticed the fact that the MCD in their counter affidavit relied on clauses 2 and 6 of the lease deed dated 18.5.1971 in support of their contention that Sub-division of the plot is not permissible. The Single Judge noted the contention of both the parties and did not find the submission of the MCD acceptable. Paragraphs 4 to 8 of the order dated 25.3.2008 is reproduced below:

4. MCD in their counter affidavit has relied upon Clauses 2 and 6 of the lease deed dated 18th May, 1971, which for the sake of convenience are reproduced below:-

“The lessee shall not deviate in any manner from the plan nor alter the size of the plot whether by sub-division, amalgamation or otherwise, without prior approval of the lesser(sic).

Whenever, the title of the lessee is transferred in any manner, whatsoever, the transfer(sic) and the transferee shall, within three months of the transfer, give notice of such transfer in writing to the lesser (sic).”

5. The contention of MCD is that sub-division of the plot is permissible under Clause 2 but sub-division of the building or the super structure on the plot is not permissible. The second contention of the MCD is that no prior permission was obtained or information regarding transfer was given to MCD.

6. The stand taken by the MCD cannot be accepted. What was sold to Mr. Hansraj was a built up shop and Clause 2 of the lease deed permits sub-division and amalgamation of the plot with prior permission. The lease nowhere stipulates that sub-division or amalgamation of the super structure or the building is not permissible or requires prior permission. For sub-division of the plot, prior permission is required but there is no restriction as far as super structures are concerned. There is no bar in the lease deed for division of the super structure. In case the original lessee was not entitled to sub divide or amalgamate the super structure, then such

restriction should have been incorporated in the lease deed itself.

7. A better and more reasonable manner of reading Clause 2 would be that plot includes super structure and building. Therefore, sub-division or amalgamation of super structure is permitted with permission of MCD. It may be relevant to state here that what was sold to Mr. Hansraj was the shop including the plot. Thus, the stand of MCD that plot can be sub-divided but the superstructure cannot be sub-divided cannot be accepted.

8. The second contention of the MCD that no prior permission was obtained, cannot be sustained. Permission can be granted retrospectively. In our case transfer of immovable property in law requires execution of a registered document of title and the said event has not happened. The stand taken by the MCD, therefore, cannot be accepted.”

7. The matter was then remanded back to the MCD with a direction to re-examine the claim made by the petitioner for sub-Division of the shop for the purposes of the execution of the sale deed for the portion measuring 4 x 18 ft. in favour of the petitioner within a period of six weeks. The application of the petitioner met with the same fate, which is evident from the order passed by the MCD on 23.12.2008, which reads as under:

**“MUNICIPAL CORPORATION OF DELHI
LAND & ESTATE DEPARTMENT
TOWN HALL: DELHI-06.**

No.: ADC/L&E/2008/D-5833

Dated 23.12.2008

To

Sh. Amar Singh
Shop No. 27, Bhama Shah Market,
Kamla Nagar, Delhi.

Sub:- Grant of sale permission in respect of portion of the shop
No.27, Bhamashah Market, Kamla Nagar, Delhi in

compliance to the order of Delhi High Court dated 25.3.2008 in WP(C) No.7301/2007 titled Amar Singh Vs. MCD & Ors.

Sir,

Pursuant of the directions dated 25.3.2008, MCD was directed to examine the claim for sub-division of the shop for the purpose of execution of the sale deed for portion measuring 4' X 18' in favour of petitioner Sh. Amar Singh by Respondent No.2, Sh. Hansraj Sachdeva within a period of 06 weeks.

The matter was examined in the light of the observations of the Hon'ble Delhi High Court in the aforementioned order and in terms of the lease deed and the relevant provisions governing the subject matter.

The competent authority of the MCD, after considering the relevant provisions and pros and cons of the matter, has observed that in the instant case, plot includes super structure since the entire building was in existence from the very beginning. Therefore, the sub-division is not permissible as it alters the plan/size of the plot without permission of the MCD. In view of the above reason, the request for grant of sale permission in your favour can not be acceded to.

This issue with the prior approval of Addl. Cm.(Revenue).

Asstt. Commissioner
Land & Estate Department"

8. The stand of the MCD before this Court is no different than the stand taken by the MCD in the earlier writ petition. In the judgment dated 25.3.2008 and more particularly in paragraphs 6 and 7 the same contentions of the MCD were rejected. There is no occasion for this court to take a different view than the view taken by the Court while deciding WP(C)No.7301/2007. Accordingly, the present writ petition is allowed. The order dated 23.12.2008 is quashed.

9. Since this is the third round of litigation between the parties, it is deemed appropriate and in the interest of justice to issue a writ of mandamus to the respondents to grant permission to the petitioner for sale in terms of decree dated 24.09.1994 passed by the Civil Court, within six weeks from the date of receipt of the order rather than remand the matter back once again.
10. Petition stands disposed of, in above terms, with costs of Rs.10,000/- to be paid by the respondent no.1 to the petitioner.

G.S.SISTANI, J

MARCH 04, 2013
rs/ssn