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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 11116/2009

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Judgment dated 15.03.2013

KRISHANA SHARMA & ANR.

..... Petitioners

Through : Mr.A.S. Chadha, Sr. Adv. with Mr.B.L.
Wali and Mr.Anuj Dhir, Advs.

versus

MCD & ORS

..... Respondents

Through : Mr.Ajay Arora, Adv. for respondent
no.1.
Mr.Piyush Joshi, Adv. for respondent
no.2.
Mr.Arjun S. Bawa, Adv. for respondents
no.3 and 4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Present writ petition has been filed by the petitioners under Article 226 of the Constitution of India seeking a direction to set aside the decision dated 12.8.2009 taken by the Nodal Steering Committee pursuant to the order dated 5.3.2009 passed by a Division Bench of this Court in LPA No.708/2008. The petitioners also seek a direction to respondent no.1, MCD, to demolish the property bearing no.F-14/7, Vasant Vihar, New Delhi, and hand over the site to the petitioners. The petitioners also seek directions to respondent no.1 to recover all the charges/penalties from respondent no.2, who has constructed the building in violation of the building bye-laws and by compounding six dwelling units and the servant quarters in the basement of the property in question.

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2. The necessary facts, to be noticed for disposal of this writ petition, are that the petitioners claim themselves to be the owners and in possession of a substantial part of the property known as B-14/7, Vasant Vihar, New Delhi, which is built on a plot of land measuring 400 sq. yards. The property consists of six dwelling units i.e. two flats, each, on the ground floor, first floor and second floor along with six servant quarters in the basement. Respondent no.2 is stated to be the builder, who had entered into a collaboration agreement with the owner while respondents no.3 and 4 are the purchasers of one dwelling unit, each, in the rear portion of the ground floor and the first floor. As per the writ petition, the construction was to be carried out by the builder after due sanction of the building plan. The builder was liable to construct as per the building bye-laws. In case of non-observance of rules and regulations the entire liability was to fall on the builder and the builder was to keep the owner indemnified against claims or demands by the MCD.
3. It is the case of the petitioner that respondent no.2 has blatantly violated the provisions of the building bye-laws while constructing the building. As per the writ petition, the DDA issued 'C' Form on 9.3.1989 and 'D' Form on 10.3.1989 and also accepted the compounding fee. Occupancy certificate was also issued by the DDA on 13.3.1989. Subsequently, the Power of Attorney in favour of the builder was revoked on account of the disputes and differences between the parties. A petition, being Suit No.1315-A/1989, under Section 20 of the Arbitration Act was also filed by the owners in which a retired Registrar of this Court was appointed as the Sole Arbitrator. The petitioner learnt that the MCD had displayed the number of the said property in their website in the category of unauthorized construction. The petitioner thereafter filed W.P.(C)No.5333-34/2006 seeking a direction to the MCD to compound

six dwelling units and in case the construction was non-compoundable demolition action be initiated.

4. During the pendency of the above writ petition, the parties attempted to resolve the matter amicably, however, since there was no amicable settlement, the learned Single Judge on 22.5.2007 after hearing the arguments and while considering the affidavit dated 21.5.2007 filed by the MCID passed a detailed order thereby directing the Principal, School of Planning and Architecture, to nominate any senior architect of his choice to inspect the subject property and prepare a detailed report on its status with particular reference to its safety. Pursuant to the order dated 22.5.2007 passed by the learned Single Judge, a detailed status report dated 23.7.2007 was filed before the learned Single Judge on 27.7.2007 by Sh.Anil Dewan, Assistant Professor of Architecture, School of Planning and Architecture, New Delhi, and Shri Binod Kumar Singh, Assistant Professor in structural Engineering, Vaastu Kala Academy College of Architecture, New Delhi. On 12.9.2007 respondent no.3 filed objections to the report of the Architecture and the High Court directed Sh.Anil Dewan and Sh.Binod Kumar Singh to appear in Court on 4.10.2007 so that effective directions could be passed in the matter. On 4.10.2007 the learned Single Judge passed a detailed order and directed Sh.Anil Dewan, Assistant Professor of Architecture, and Shri Binod Kumar Singh, Assistant Professor of Structural Engineering and Court Commissioner, Ms.Manmeet Arora, Advocate, to visit the subject premises and the samples be analysed by a Government approved laboratory, namely, Shri Ram Test House. It was further directed that Sh.Anil Dewan will coordinate to ensure that the concerned analyst from the laboratory would remain present at the premises and also directed the parties to appear before the Delhi High Court Mediation Centre on

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10.10.2007. Sh.Anil Dewan, Assistant Professor of Architecture, and Sh.Binod Kumar Singh, Assistant Professor of Structural Engineering thereafter filed a detailed report on 10.3.2008 and came to the conclusion that the building has not been constructed as per the Building Bye-Laws of Delhi and the building does not have structural stability as per BIS Code. It is further the case of the petitioner that when the matter came for consideration of the learned Single Judge on 10.7.2008 the learned Single Judge without going into the merit of the case and the documents, passed an order and disposed of the petition. Being aggrieved and dissatisfied with the impugned order and judgment dated 10.7.2008 passed by the Single Judge, the petitioners filed an appeal, being I.PA No.708/2009, in the High Court *inter alia* praying for setting aside the impugned order and judgment dated 10.7.2008 passed by the Single Judge. The LPA was disposed of by an order dated 5.3.2009. While disposing of the LPA, the Court referred the matter to the Nodal Steering Committee, which consisted of specialized technical officers of the MCD, who were competent and authorized to pass the order. It was further directed that the said specialized technical officers would examine and consider the contentions in respect of the reports dated 26.7.2007 and 18.12.2008, provisions of the Act, Bye Laws, evidence and material relied upon by the parties and thereafter pass an appropriate order deciding whether the property No.E-14/7, Vasant Vihar would be dangerous and unsafe for occupation or requires repairs, whether there was any unauthorized construction in the property and whether the same can be compounded. The order dated 5.3.2009 passed by the Division Bench reads as under:

ORDER
05.03.2009

We do not see any reason to interfere with the order under appeal dated 10.7.2008 passed in Writ Petition (C) No. 5333-34/2006. Learned Single Judge has directed that the reports dated 26.7.2007 and 18.2.2008 will be examined by the Chief Commissioner, MCD and after hearing the parties appropriate order will be passed. The reports submitted by the Architect and Chief Engineer are technical reports. These reports will have to be examined by the authorities under the Delhi Municipal Corporation Act, 1957, before the final order is passed. Parties have right to reply upon or contest the reports before the authorities and the final order is to be passed by the authorities after recording their finding. We do not think it will be appropriate for this court to assume the role of a technical expert and interpret the two reports and pass orders, which have to be passed by the authorities under the Act.

2. Learned counsel for the Appellant, however, points out that the Chief Commissioner has passed an order dated 16.10.2008 but this is an ex parte order which was passed without issue of proper notice to the Appellant. Learned counsel for the Appellant has produced before us copy of the notice fixing hearing before the Chief Engineer and it is stated that the notice itself was posted belatedly so as to prevent the Appellant from appearing. Learned counsel for the Appellant, therefore, submitted there is non-compliance of the order dated 10.7.2008.

3. Learned counsel for the Respondent ? MCD submits that the order dated 16.10.2008 passed by the Chief Commissioner ? VII, MCD may be treated as cancelled and as he has already expressed his opinion, the matter may be referred to the Nodal Steering Committee constituted under Writ Petition (C) No. 4582/2003 titled Kalyan Sanstha Social Welfare Org Vs. Union of India and Ors. Learned counsel for the Appellant and the private Respondents have agreed to the said suggestion. It is stated that the Nodal Steering Committee consists of specialized technical officers of MCD and are competent and authorized to pass orders.

4. In view of the above, the Appellant and the private Respondents will be given an opportunity of hearing before the Nodal Steering Committee, who will examine and consider their contentions in respect of the reports dated 26.7.2007 and 18.2.2008, provisions of the Act, bye laws and evidence and material relied upon by the

parties and thereafter pass an appropriate order deciding whether the property no. E-14/7, Vasant Vihar, New Delhi is dangerous and unsafe for occupation or requires repairs and whether there is any unauthorized construction in the property, whether the same can be compounded etc. The report of the Nodal Steering Committee will be implemented by the Municipal Corporation of Delhi. The Appellant and the Respondent will appear before the Nodal Steering Committee on 20th April, 2009. The time and venue of the meeting will be communicated to the Appellant and the private Respondents through their counsel on or before 13th April, 2009.

5. The Nodal Steering Committee will be entitled to have further hearing but will pass an order within a period of two months from the date of the first hearing on 20th April, 2009.

6. It is clarified that this Court has not expressed any opinion on merits of the case or the two reports dated 26.7.2007 and 18.2.2008. These are aspects which will be examined by the Nodal Steering Committee. The Appeal is accordingly disposed of."

5. The Nodal Steering Committee finally after hearing both the parties on 23.6.2009 vide its letter dated 12.8.2009 informed the petitioners of having decided the matter. By the said letter the Committee also advised MCD for taking action in conformity with the findings of the Committee and also advised the petitioners to seek a legal remedy in this regard. Being aggrieved and dissatisfied with the impugned decision dated 12.8.2009 passed by the Nodal Steering Committee pursuant to the order dated 5.3.2009 passed in LPA No.708/2008, the present writ petition has been filed by the petitioners praying that the directions passed by the Nodal Steering Committee be set aside and further the MCD be directed to demolish the property bearing no.E-14/7, Vasant Vihar, New Delhi.

6. The Nodal Steering Committee has *prima facie* given a categorical finding that there is no imminent danger to the building and it is safe for occupancy. There are not non-compoundable deviations, however, the

following rectifications are required:

- (i) Temple in front set back;
- (ii) Partition in the basement; *and*
- (iii) Six dwelling units against permissible of five dwelling units.

7. The submission of Mr.Amit Chaddha, Senior Advocate, appearing on behalf of the petitioners, and Mr.B.I. Wali, counsel for the petitioners, is that the MCD has failed to comply with the directions of the Nodal Steering Committee, besides the Nodal Steering Committee has not considered the report of the Sri Ram Lab Authorities and further the MCD has failed to consider that there is no sanctioned plan of the building in question.

8. The submissions made by counsel for the petitioners are refuted by Mr.Arora, counsel for the MCD, as also by Mr.Bawa, counsel for respondents no.3 and 4. Mr.Arora submits that there is no infirmity in the order passed by the Nodal Steering Committee and the Committee passed the said order after hearing the petitioners. It is further submitted by Mr.Arora that the order passed by the Nodal Steering Committee is perfectly legal and in accordance with law. Mr.Arora also submits that the findings of the Nodal Steering Committee are yet to be implemented by the MCD.

9. Mr.Bawa, learned counsel for respondents no.3 and 4, submits that the present writ petition is without any merit. It is merely an arm twisting tactics and the purchasers are being dragged into the litigation on account of a private dispute between the petitioners and the builder. It is also submitted by Mr.Bawa that the prayers made in the earlier writ petition is practically the same and on this ground alone the present writ petition is liable to be dismissed.

10. I have heard learned counsel for the parties and considered their rival

submissions. LPA No.708/2008 was disposed of by a Division Bench by an order dated 5.3.2009, which has been extracted above. The Division Bench had noticed that the reports dated 26.7.2007 and 18.2.2008 would be examined by the Chief Commissioner, MCD, and thereafter an appropriate order would be passed. The grievance of the petitioner that the Chief Commissioner had passed an ex parte order was also addressed by the Division Bench by cancelling the order of the Chief Commissioner and referring the matter to the Nodal Steering Committee, which suggestion was agreed to by all the parties. It was also directed that the Nodal Steering Committee would give an opportunity of hearing to all the parties and the Committee would examine and consider the reports dated 26.7.2008 and 18.2.2008. A direction was also issued to the MCD to implement the report of the Nodal Steering Committee. Admittedly, the report of the Nodal Steering Committee has not yet been implemented by the MCD. The Nodal Screening Committee has given detailed findings based on documents and after hearing all the necessary parties. No cogent reasons have been shown to reject the report of the Nodal Screening Committee. It may however, be noticed that the MCD has failed to act on the said report.

11. Learned counsel for the MCD has submitted that the report of the Nodal Steering Committee will be considered and further the MCD will also address the fears of the petitioners that the building is without any sanctioned plan and the construction is unauthorized.

12. In view of the stand taken by the parties, the present writ petition is disposed of with the following directions:

- (i) The MCD will consider the report of the Nodal Steering Committee as also the report of the inspection carried out by Sri Ram Laboratory Authorities, if not already considered,

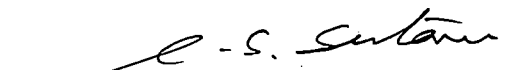
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and thereafter appropriate action will be taken in accordance with law;

- (ii) While considering the report of the Nodal Steering Committee the MCD will also consider whether the building in question has a sanctioned plan and whether there is any unauthorized construction in the building or not;
- (iii) The MCD will thereafter pass appropriate directions within ten weeks from receipt of the order passed today.
- (iv) Needless to say in case any of the parties is aggrieved by the directions passed by the MCD it will be open for them to take recourse to such remedies which may be available to them in accordance with law.

13. The writ petition and the application stand disposed of.

14. DASTI to the parties.


G.S. SISTANI, J

MARCH 15, 2013

msr