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

! W.P.(C) 8590/2007

% ***Judgment pronounced on January 04, 2013***

SEWA INTERNATIONAL FASHIONS LTD. & ANR. ..... Petitioner

Through: Mr.N.K. Kaul, Sr. Advocate with Mr.Akhil Sachar, Ms.Deepali Sharma, Advocates

versus

M.C.D & ORS ..... Respondent

Through: Mr.Parvinder Chauhan, Adv. for DUSIB
Mr.Devvrat Singh for Mr.Rajiv Bansal, Advocate for the DDA
Ms.Mini Pushkarna and Mr.S.Tyagi Advocate for the MCD

W.P.(C) 8560/2007

DISCOVERY ESTATES PVT LTD & ANR ..... Petitioner

Through: Mr.N.K. Kaul, Sr. Advocate with Mr.Akhil Sachar. Ms.Deepali Sharma, Advocates

versus

M.C.D & ORS ..... Respondent

Through: Mr.Parvinder Chauhan, Adv. for DUSIB
Mr.Devvrat Singh for Mr.Rajiv Bansal, Advocate for the DDA
Ms.Mini Pushkarna and Mr.S.Tyagi Advocate for the MCD

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Pleadings in both these writ petitions are complete. Both the petitions have been heard together with the consent of the parties and are being disposed of by a common order. The petitioner in the Writ Petition

No.8560/2007 *inter alia* seeks quashing and setting aside of order D/124/Dir.(RP)/S&JJ/07 dated 14.11.2007 and notice No.D/8/RP (Cell)/2006 dated 12.01.2006 issued by respondent no.1 and all subsequent proceedings taken by the respondent no.1 in pursuance to the cancellation order. A direction is also sought to respondent no.1 to issue a no due certificate with respect to building constructed upon plot No.8, Shivaji Place District Centre, Raja Garden, New Delhi, which is required by the respondent no.2 for issuance of a completion-cum-occupancy certificate. An identical prayer is made in the Writ Petition No.8590/2007 with respect to cancellation order dated D/123/Dir.(RP)/S&JJ/07 dated 14.11.2007 with respect to plot bearing No.7, Shivaji Place District Centre, Raja Garden, New Delhi.

2. For the sake of convenience necessary facts in respect of Writ Petition No.8560/2007 are being noticed. Petitioner no.1 is stated to be a company incorporated under the Companies Act, 1956 and is the auction purchaser of plot No.8, Shivaji Place District Centre, Raja Garden, New Delhi, from Slum and J.J. Department, MCD. The petitioner no.1 has constructed a commercial complex in accordance with the terms and conditions prescribed by the Slum Department of the MCD and Delhi Building Bye-laws, after sanction from the DDA. Approximately 45 crores is stated to have been spent in developing and constructing the plot No.8 Shivaji Place District Centre, Raja Garden, New Delhi.

3. It is the case of the petitioner that upon completion of construction petitioner has obtained a NOC from Fire Services and has applied to DDA for issuance of COC for which inspection stood carried out and other formalities are complete.

4. Mr.Kaul, learned senior counsel for the petitioner submits that the application of the petitioner for issuance of COC with respect to plot

No.8, Shivaji Place District Centre Raja Garden, New Delhi, was pending before DDA, when the Slum Department of MCD issued a show cause notice dated 12.01.2006 with respect to plot No.8, Shivaji Place District Centre, Raja Garden, New Delhi, alleging that Arch. [Dy. Director (TP)] of MCD had reported that petitioner had amalgamated plot No.8, Shivaji Place District Centre, Raja Garden, New Delhi, with the adjacent plot i.e. Plot No.7, purchased by Sewa International Fashions Ltd. (petitioner in Writ Petition No.8590/2007) in the same auction as was held by the Slum Department of MCD, in respect of plot no.8, in violation of the conditions of the lease Deed dated 11.03.2003 executed by the Slum Department of MCD in respect of plot No.8, in favour of the petitioner. A similar show cause notice was also issued to the petitioner in WP(C)No.8590/2007. The petitioner replied to the show cause notice issued by the MCD vide its letter dated 06.02.2006 and apprized the Slum Department of MCD that all the terms and conditions of the lease deed had been duly complied with and the petitioner had not violated such a condition. It was categorically stated that the petitioner has not amalgamated plot No.8 with the adjacent plot No.7. A request was made for withdrawal of the show cause notice. Dissatisfied with the reply of the petitioner, a cancellation order dated 14.11.2007 was passed.

5. In the meanwhile, the DDA informed the petitioner that COC with respect to plot no.8 would be issued only upon receipt of no due certificate / NOC from the Slum Department of MCD, as the Slum Department of MCD was the land owning agency. Repeated representations made to the Slum Department did not bear any fruit. A representation dated 29.08.2007 was also made to the Commissioner, MCD seeking issuance of requisite instructions to the concerned officer of the Slum Department of MCD to issue a no due certificate / NOC with respect to plot No.8 and also sought

an opportunity of personal hearing. Consequent to the representation, a personal hearing was granted by the Commissioner, MCD on 07.09.2007 when the petitioner made oral submissions with respect to the representations so made.

6. Pursuant to the hearing further written submissions were filed pertaining to the queries raised during the personal hearing. It is the case of the petitioner that in the written submissions filed on 10.09.2007 before the Commissioner, MCD, each and every aspect of the show cause notice was dealt with.

7. Mr.Kaul, further submits that during the personal hearing petitioner was directed to clarify certain new aspects of the matter which did not fall within the scope of either the issuance of no due certificate by the Slum Department or the MCD's show cause notice. On 15.11.2007 the petitioner received a cancellation letter. It is contended that although the cancellation order mentions that various enquiries and proceedings were carried out internally by MCD and the Office of Hon'ble Lieutenant Governor of Delhi regarding the impugned notice dated 12.01.2006 and the replies / representations dated 27.02.2006, 10.09.2007, the petitioners were neither informed, nor associated in any such proceedings. It is also the case of the petitioner that no inspection, as alleged was carried out on 02.10.2007 or 11.10.2007 by the MCD in the presence of the petitioners, nor the petitioners are aware of any such inspection.

8. Mr.Kaul, further submits that copies of the inspection reports and other material sought to be relied upon by the respondent, while passing the order dated 08.11.2007 was never provided to the petitioner, thereby depriving the petitioner of their valuable right of explaining or rebutting the same, which amounts to violation of principles of natural justice. It is submitted that the cancellation order of 14.11.2007 is devoid of any

reason, is void and unconstitutional for want of reasons. It is also the case of the petitioner that the property is without any encroachment, unauthorized construction and the same has been constructed, as per the sanctioned plan.

9. Mr.Kaul, learned senior counsel for the petitioner also submits that the cancellation order dated 14.11.2007 as well as the Show Cause Notice dated 12.1.2006 was restricted to the alleged amalgamation of Plot no.8 with Plot no.7 in violation of Clause II(2)(4) of the Lease Deed dated 11.3.2003 as executed between the President of India and the Petitioner with respect to Plot No.8. The grounds so raised are erroneous that the petitioner had amalgamated plot no.8 with adjacent plot no.7, in violation of the Lease deed.

10. Mr.Kaul, further submits that since the stand of the Slum and J.J. Wing of MCD and the stand of the DDA was at variance in the order dated 28.04.2009, the court noticed the submissions of counsel for the petitioner that on the same cause of action a show cause notice was issued by the respondent no.2, DDA on 14.02.2006 to the petitioner which was withdrawn by the respondent no.2 vide order dated 26.02.2007, however, the respondent no.1, MCD still persisted in issuing of the cancellation order. Keeping in mind that two authorities before the Court had taken a variable stand on the basis of same documents, the lieutenant Governor was requested to call for a meeting of the Vice-Chairman, DDA, Commissioner of MCD and the Additional Commissioner, Slum and J.J. Wing to explore the possibility of resolving the issue.

11. In compliance with the aforesaid order a status report has been filed by respondent No.2 and 4 on the issue of alleged amalgamation, which reveals that there is no amalgamation of plot No.7 and plot No.8. Having regard to the status report, it has been prayed that the show cause notice

dated 12.01.2006 and the cancellation order dated 14.11.2007 are a nullity, which were passed on an erroneous premise that the petitioner had violated clause II (2) (4) of the lease deed dated 11.03.2003.

12. As far as the irregularities pointed out in the status report, it is contended by Mr.Kaul that the same are beyond the scope of the show cause notice and the cancellation order, and thus the alleged irregularities are neither within the scope of the present writ petitions, nor the authorities can travel beyond the show cause notice. In support of his submission, reliance is placed on ***SACI Allied Products Ltd. U.P. Vs. Commissioner of Central Excise, Meerut*** (2005) 7 SCC 159 and more particularly on paragraphs, 16, 17 and 18, which are reproduced below:

> 16. Thus according to the appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, appellants' price to the independent dealers cannot be taken as the basis for assessing appellants' sales to Syndet in Uttar Pradesh. This finding of the appellate Tribunal is based on first proviso to Section 4(1)(a) of the Act. While the show cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(a) of the Act, the appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(a) of the Act. It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show cause notice or in the impugned order and it was for the first time that the appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show cause notice and the order of the Collector, which is impermissible. The appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show cause notice or in the order.

> 17. In this context, we may usefully refer to the judgment of this Court in the case of Reckitt & Colman of India Ltd. vs. CCE, 1996 (88) ELT 641. This Court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.
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> 18. The impugned order of the Tribunal which had gone beyond the show cause notice and the order of the respondent-Collector is, therefore, liable to be set aside."

13. Counsel for the MCD has relied on the status report which has been filed before this court. Mr.Chauhan, counsel for the MCD submits that a joint inspection was carried out with respect to properties in both the writ petitions and during inspection various other violations were found, which were committed by the petitioner, including construction of water storage tank, STP, rain water harvesting arrangement, additional sewerage lines, fire fighting lines, cables, roads land scaping work outside the plot area without any approval from the respondent. It is further alleged that in violation of clause 6(a) of the lease deed the building has been occupied without an occupancy certificate, shops / floor space have been transferred, possession parted in favour of third parties in clear violation of the terms and conditions of the lease.

14. As far as the amalgamation is concerned, Mr.Chauhan, submits that during inspection it was found that both the plots were independent by way of separate property external walls.

15. I have heard counsel for the parties and considered their rival contentions. Issuing of a show cause notice dated 12.01.2006 and the cancellation order issued subsequent thereto has led to the filing of the present writ petitions. As per the show cause notice the respondent no.1 had noticed that plot No.8 had been amalgamated with plot No.7 in violation of clause II (2) (4) of the lease deed. Dissatisfied with the reply of the petitioner the

cancellation order was passed. The relevant extract of the show cause notice dated 12.01.2006 and the cancellation order are reproduced below:

"***Show Cause Notice dated 12.01.2006***

And whereas the lessee is required to abide with the terms and conditions of Lease Deed and Clause II (2)(4) of the said Lease Deed provided that Lessee shall not defeat in any manner from the lay out plan nor alter the site of the commercial plot/ mixed land use plot for the said purpose either by sub-division, amalgamation or otherwise unless specifically permitted to do so by the Lessor.

And whereas it has been noticed/ represented by the ARCH. Dy.Director (TP) on 24.11.2005 that you have amalgamated plot under reference with Plot No.7 in violation of the aforesaid conditions of the Lease Deed."

"***Cancellation order dated 14.11.2007***

AND WHEREAS you were issued notice to show cause under Clause III of the lease deed vide Notice No.D/09/RP Cell/2006 dated 12.01.2006 requiring you to show cause against the violation of Clause II (2) (4) of the said lease deed, within 30 days from the date of receipt of said notice.

AND WHEREAS your representations dated 27.02.2006, 10.09.2007 and other correspondence have been considered in depth. You were also afforded an opportunity of hearing in person on 07.09.2007 in the above connection in the office of Commissioner, MCD.

AND WHEREAS the site inspection was also conducted on 01.03.2007 and 02.10.2007 by the officers of Slum & J.J. Thereafter, inter departmental committee was constituted to enquire into legal and technical aspects. On 11.10.2007, the site inspection was also conducted by the inter departmental committee members and found the deviations and violations pointed out in the show cause notice dated 12.01.2006 were not rectified by you and the committee submitted its report accordingly.

After considering the material and facts on record and the entire issue in totality, the Hon'ble Lt. Governor, Delhi has been pleased to determine the lease vide his order dated 08.11.2007.

You are hereby asked to handover the vacant and peaceful possession of property, under reference, to the concerned Executive Engineer DD (S)-I on 21.11.2007 at 11:00 AM, who has been directed to remain present at site for the said purpose on the appointed date and time."

16. A perusal of the show cause notice and the cancellation order clearly shows that the only violation brought to the notice of the petitioner pertained to the amalgamation of both the plots. The status report which has been filed pursuant to the orders passed by this court clearly supports the case of the petitioner and which fact is not denied by the counsel for the respondents that there is no amalgamation of both the plots. Relevant extracted from status report reads ad under:

"4. **AMALGAMATION**

The construction of plot No.7 & 8 are as per the approved layout plan, plot no. 7 & 8 are independent plots abutting each other and separate with an expansion joint. The building plans of both the plots were sanctioned separately. During inspection both plots were found independent by way of separate property external walls. Since, there is no setback mentioned in the approved Layout and MPD-2001, therefore, setback, were not insisted upon. The entry & exit points in both the buildings are separate at both ground floor levels and of basement. The inter-connection in corridors in both the plots are ground floor & upper floor is allowed through atrium which is as per the control condition."

17. The submissions of Mr.Chauhan, with regard to the other violations pointed out are unacceptable as no show cause notice has been issued to the petitioner till date with regard to the violations alleged by them. As per settled law, the MCD cannot travel beyond the terms of the show

cause notice, as the petitioners were never granted an opportunity to meet the said allegations against them. Resultantly both the writ petitions are allowed. The show cause notice and the cancellation order are quashed and the petitioners will be entitled to all the consequential reliefs, which were not considered by the respondent on account of the order of cancellation, however, it is made clear that in case the respondents find any violation in either of the properties, it would be open for them to take recourse to such remedies, which may be available to them, in accordance with law.

18. Writ petitions are allowed in above terms. No order as to costs.

G.S.SISTANI, J

JANUARY 04, 2013
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