

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2404/2012

Decided on : 03.02.2014

IN THE MATTER OF

RENU AGRAWAL AND ANR

..... Petitioners

Through : Mr. Sudhanshu Batra, Sr. Advocate
with Mr. Arvind Kr. Gupta, Advocate

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

..... Respondents

Through : Mr. M.K. Singh, Advocate for DDA
with Mr. Amit Das, Director (Building).
Mr. Ankur Arora, Advocate for R-3 & 4
with respondent No.3 in person.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. The present petition has been filed by the petitioner praying *inter alia* for issuance of directions to the respondents No.1 & 2/DDA to sanction addition/alteration plans in respect of the first floor of the premises bearing No.A-225, Shivalik, Malviya Nagar, New Delhi, as submitted on 27.10.2011.

2. The undisputed facts of the case are that late Smt. Shakuntala Devi (mother of the petitioner No.2 and respondent No.3) was the owner of the subject property by virtue of a Sale Deed dated 20.11.1990. During her lifetime, Smt. Shakuntala Devi had executed a gift deed in respect of the basement, ground and mezzanine floors of the subject premises in favour of her daughter-in-law, respondent No.4/Ms. Manju Agrawala, that was

registered on 2.6.2005. Similarly, Smt. Shankuntala Devi had executed a gift deed in respect of the first floor and the terrace above the first floor in favour of her other daughter-in-law, the petitioner No.1, registered on 26.10.2005. Thereafter, on 24.11.2006, the first floor and the terrace of the subject premises were got mutated in favour of the petitioner No.1 in the records of the MCD. Similarly, mutation in respect of the basement, ground and mezzanine floors was carried out in favour of the respondent No.4.

3. In the year 2006, Smt. Shankuntala Devi and her husband, Mr. H.S. Agrawala filed a suit for cancellation of the gift deed and for declaration against the respondents No.3 & 4, registered as CS(OS)No.600/2006. During the pendency of the aforesaid suit, the parties arrived at a compromise, as recorded in the Compromise Deed dated 27.8.2007, and based on the said compromise, the suit was disposed of on 20.9.2007.

4. On 27.10.2011, the petitioners submitted a plan to the respondents No.1 & 2/DDA for carrying out additions/alterations on the first floor and construction of the proposed second and third floors on the subject premises, along with the requisite fee, etc. However, the respondents No.1 & 2/DDA did not sanction the building plans and instead, on 5.3.2012, DDA issued a notice to show cause to the petitioner No.1 and respondent No.4 under Sections 30(1) and 31(A) of the DDA Act calling upon them to explain as to why demolition of the unauthorized and illegal development as mentioned in the said notice should not be undertaken. On 2.4.2012, the

petitioners submitted a reply to the aforesaid notice to show cause and reiterated their request for sanction of the building plans in terms of the application submitted by them on 27.10.2011.

5. Aggrieved by the inaction on the part of the respondents No.1 & 2/DDA, the petitioners have filed the present writ petition.

6. It is submitted by Mr.Sudhanshu Batra, Sr.Advocate appearing on behalf of the petitioners that the respondents No.3 & 4 have not been cooperating with the petitioners and it is on account of their non-cooperation and resistance to the petitioners raising any construction on the subject property that the respondent No.2/DDA has been declining to grant sanction to the proposed building plan.

7. The aforesaid submission is however, denied by learned counsel for the respondents No.3 & 4, who states that his clients have no objection to the respondents No.1 & 2/DDA sanctioning the building plan submitted by the petitioners in accordance with law and subject to ensuring that the structural strength of the presently existing built up structure is not adversely affected.

8. When the present petition was listed for admission on 8.7.2012, learned counsel for the respondents No.1 & 2/DDA had stated, on instructions, that the basement of the subject premises was being used by the respondents No.3 & 4 for office-cum-residential purposes and there were deviations on the ground floor, besides extra coverage. It was stated that

action had already been initiated against the occupants/owners of the ground floor and the basement and thereafter, a sealing order was passed by the respondents No.1 & 2/DDA on 7.8.2012 in respect of the subject premises.

9. Aggrieved by the aforesaid sealing order, the respondents No.3 & 4 had filed an appeal before the Appellate Tribunal, which was ultimately allowed and the sealing order was quashed on 7.1.2013. On 8.3.2013, the submission of the counsel for the respondents No.1 & 2/DDA was recorded to the effect that inspection of the subject premises was carried out on 23.1.2013 and 12.2.2013 and fresh show cause notices were being issued to the petitioners and respondents No.3 & 4/occupants/owners of the subject premises and the matter was listed for hearing before the Director (Building), DDA on 21.3.2013.

10. In the order dated 3.4.2013, the statement of the counsel for the petitioners was recorded to the effect that the petitioners had prepared a tabulated chart in respect of the deviations mentioned in the show cause notice issued by the DDA and a bare perusal thereof would demonstrate that the deviations pointed out in the portion of the premises under the occupation of the petitioners and the mezzanine floor are either of a compoundable nature, or do not concern them. The said tabulated chart was duly furnished to the counsel for the respondents No.1 & 2/DDA and the Director (Building), DDA was directed to take into consideration the

aforesaid tabulated chart at the time of passing of the order on the show cause notice dated 8.3.2013, for an efficacious resolution of the dispute between the parties.

11. It is stated by the counsels for the parties that after considering the tabulated chart furnished by the petitioners, the Director (Building), DDA had passed an order dated 6.6.2013. However, when the aforesaid order was placed before the Court, it was noticed that it did not deal with any of the contentions raised by the petitioners in the tabulated chart. As a result, vide order dated 25.7.2013, the order dated 6.6.2013 passed by the Director (Building), DDA was set aside and he was directed to pass a reasoned order dealing with all the contentions raised by the petitioners and keeping in mind the decision rendered in **WP(C)No.3535/2001** entitled 'Ashok Kapoor & Ors. vs. MCD'.

12. Pursuant to the aforesaid directions, the respondent/DDA has placed on record a copy of the order dated 2.9.2013 passed by the Director (Building), DDA, wherein it has been observed as under :

"In view of above given reasons as elaborated under different paras, the submission of one single Building Plan of the entire building under reference is essentially require for sanctioning of addition and alteration from Regulatory Authority point of view. On account of non-compliance of the directions of Speaking Order dt. 03.05.2013, the Regulatory Authority, Director (Bldg.) had no option left except to pass the Sealing-cum-Demolition Order under D.D.Act-1957 on dt. 06.06.2013.

This Order is given under my hand and seal on this 2nd day of September, 2013 in compliance to the Hon'ble High Court Order dt. 25.07.2013."

13. Mr.Sudhanshu Batra, learned Senior Advocate appearing for the petitioners contends that the aforesaid order dated 2nd September, 2013, which the respondent/DDA describes as a fresh reasoned order, is contrary to the guidelines that were laid down in the case of Ashok Kapoor (supra).

14. In the case of Ashok Kapoor (supra), the petitioners therein had purchased rights over the first floor of a property situated in Green Park, New Delhi and they had submitted their plans to the civic authority for sanction in respect of the proposed second and third floors over the terrace of the first floor. The respondent/Municipal Corporation had pointed out certain deficiencies in the said plans, which the petitioners claimed they had rectified, but yet again the civic authority had rejected the said plans. As a result, the petitioners had filed the aforesaid writ petition for issuance of a writ of mandamus to the MCD for sanctioning the building plans of the subject property.

15. In the aforesaid case, the respondent/MCD had taken a stand in its counter affidavit that non-compoundable deviations were existing on the ground and first floors and there was also some misuser of the ground floor. It was further stated that the building plans were required to be signed by all the co-owners insofar as coverage of the building is concerned. Thirdly, it was stated that the FAR is governed by the overall size of the plot and structural safety has to be taken into account. After considering the

submissions made by the parties in the aforesaid case, the learned Single Judge had made the following observations, which are relevant for consideration :

“.....Once the property is segregated into different portions and mutated accordingly, there cannot be any requirement of all the co-owners to sign the building plans. If the plot and the building are both co-owned, then only the requirement for such co-owners to sign may at all arise. **The segregation of interest of the different co-owners is recognized by the respondent Corporation by mutation of the different portions in individual names of different persons. The fate of an individual owner cannot be dependent on the pen of a person, who happens to be the owner of a different portion of the building. Thus, there cannot be any requirement of signatures of all the co-owners.**

Insofar as non-compoundable deviations and misuse are concerned, it was always open to the respondent Corporation to take action against the same. In fact, it is stated that some action has been taken. The petitioners are not preventing the said action being taken in respect of the ground and first floors. **The inaction on the part of the respondent Corporation to take appropriate action against the ground and first floors cannot deprive the petitioners to the rights of having their plans approved. There is no doubt that the structural aspects of the building have to be considered and the building has to be seen as a whole dependent on the load factor it can take. However, this is not the reasoning for rejection of the building plans.** In case, any alterations are required in the building plans on account of structural requirements, the same can always be intimated to the petitioners.

A Writ of Mandamus is, thus, issued directing the respondent Corporation to consider the building plans of the petitioner *de hors* the objection of the building plans being signed by all the co-owners and the issue of misuse and deviations in the ground and first floors. A decision be taken within a period of six weeks from today and the petitioners can

appear personally before the Executive Engineer (Building), South Zone on 02.04.2003 for any clarification.” (emphasis added)

16. A perusal of the aforesaid decision reveals that in similar facts as are engaging the Court in the present writ petition, where the subject property is segregated in different portions, the first floor and the terrace thereof stand mutated in the name of the petitioner No.1 whereas the basement, ground floor and the mezzanine floor stand mutated in favour of the respondent No.4, the Court had held that there would not be any requirement for all co-owners to sign the building plans. This Court finds no reason to take a different view. The separate interests of the petitioner No.1 and respondent No.4 in the subject property has already been recognized by the Municipal Corporation.

17. Counsel for the respondent Nos.1 & 2 /DDA states, on instructions, that the Department has no objection to sanctioning the building plans in favour of the petitioners as long as the structural safety of the presently existing building is not compromised.

18. In the present case, admittedly, the subject plot, on which the built-up structure exists, is co-owned by the petitioner No.1 and the respondent No.4 in equal shares and counsel for the respondent No.4 has stated that his client has no objection to sanctioning of the building plans subject to the structural safety of the building being kept in mind. The civic authority, namely, South Delhi Municipal Corporation, has admittedly segregated the

interest of the petitioners and the respondent No.4 and recognized them by mutating different portions of the subject property in their respective names. In such circumstances, the observations made by the respondent/DDA in the fresh order dated 2nd September, 2013 that the consent of the co-owner is required, loses significance. In the opinion of this court, there does not appear any requirement for the respondent No.4 to sign the building plans or give any no objection to the respondents No.1 and 2/DDA.

19. Coming to the alleged deviations referred to by the respondents No.1 & 2/DDA in the fresh order dated 2nd September, 2013, a perusal thereof reveals that only two deviations mentioned at Sr.No.6 & 7(a) of the tabulated chart relate to the first floor portion owned by the petitioner and all the remaining deviations pertain to the basement, ground and mezzanine floors that are owned by the respondent No.4.

20. Learned Senior Advocate appearing for the petitioners states that the deviations mentioned by the DDA on the first floor are compoundable in nature and the petitioners are ready and willing to get them compounded.

21. Insofar as the non-compoundable deviations and misuser on the basement, ground and the mezzanine floors are concerned, it is open to the respondent/DDA and/or the civic authority to take appropriate action against the same in accordance with law. But that itself cannot be a ground to turn down the building plans submitted by the petitioners.

22. The contention of the counsel for the respondents No.1 & 2/DDA that the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Bill, 2009 has placed an embargo on the DDA and on the civic authorities from taking any action in respect of the non-compoundable deviations/misuser till December, 2014, can hardly be a ground for refusing to sanction the building plans submitted by the petitioners for their portion of the subject property or for preventing them from raising construction in their portion of the subject premises in accordance with law. This Court is of the opinion that the petitioners are well within their rights to approach the respondents No.1 & 2/DDA for getting their plans sanctioned as per the Building Byelaws, without awaiting any action on the part of the DDA in respect of the non-compoundable deviations and/or misuser in the basement, ground and mezzanine floors of the subject premises which are admittedly in the ownership and possession of the respondent No.4.

23. While considering the building plans, undoubtedly, the structural safety of the built up structure should not be compromised in any manner. Mr.Batra, Senior Advocate states that the petitioners had furnished a structural safety certificate issued by a Government Approved Valuer, Chartered Engineer, Structural Designer and Surveyor to the DDA, wherein it has been certified that the existing structure that was built in the year 1991, is in excellent condition and there is no deterioration and it can take the load of additional second and third floors to achieve the permissible FAR.

24. On an enquiry from the learned counsel for the respondents No.1 & 2/DDA as to whether the DDA has undertaken an independent exercise to establish the structural safety of the building before passing the order dated 2nd September, 2013, the reply is in the negative. There is no reason whatsoever given in the rejection order with regard to the structural safety certificate filed by the petitioners and furnished to the respondent/DDA.

25. As the aforesaid aspect has not even been examined by the respondents No.1 & 2/DDA before passing the order dated 2nd September, 2013, it is directed that the structural safety certificate placed on record by the petitioners at pages 181-182 of the paper book shall be duly considered by the respondents No.1 & 2/DDA and if it meets the stipulated requirements, then the same shall be accepted. If there is any requirement for making alterations in the building plans on account of structural concerns, the same shall be intimated by the respondents No.1 & 2/DDA to the petitioners in writing.

26. Coming to the issue of permissible FAR, as it is a single entity plot, counsel for the petitioners assures the Court that 50% of the permissible FAR shall be consumed as per the Building Byelaws in the structure above the first floor, while the remaining 50% shall enure to the benefit of the respondent No.4.

27. The present petition is accordingly disposed of, while setting aside the order dated 2nd September, 2013 passed by the respondents No.1 & 2/DDA.

Directions are issued to the respondents No.1 and 2/DDA to consider the building plans of the petitioners afresh without raising any objection with regard to NOC required to be issued by the co-owners and keeping aside the aspect of non-compoundable deviations and misuser existing in the basement, ground and mezzanine floors of the subject premises, owned and occupied by the respondent No.4, which DDA shall be entitled to deal with in accordance with law.

28. A fresh decision shall be taken by the respondent/DDA within eight weeks from today. To obviate any requirement of any clarification that may be required by the respondents No.1 & 2 /DDA from the petitioners, they are directed to appear before the Deputy Director (Building), DDA on 3.3.2014 at 3.00 PM.

29. The petition is disposed of.

Copy of the order be given ***DASTI*** to the counsel for the respondents No.1 and 2/DDA under the signatures of the Court Master.

FEBRUARY 03, 2014
sk/mk

(HIMA KOHLI)
JUDGE