

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.05.2015

+ **W.P.(C) 1497/2012 & CM 3311/2012**

MCD

..... Petitioner

versus

BHARAT BHUSHAN JAIN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ajay Arora with Mr Kapil Dutta.

For the Respondent : Arvind Nigam, Sr. Advocate

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner corporation has filed the present petition impugning an order dated 13.02.2012 (hereafter the 'impugned order') passed by the District Judge, Delhi whereby the appeal filed by the petitioner corporation against an order dated 10.10.2011 passed by the Appellate Tribunal, MCD (hereafter the 'Tribunal') was dismissed. The Tribunal, by the order dated 10.10.2011, held that the building plans submitted by the respondent in respect of his property were deemed to have been sanctioned by the petitioner corporation in favour of the respondent with effect from 19.10.2010 as the petitioner corporation had failed to decide the application of the respondent within a period of 60 days as mandated by Section 337 of the Delhi Municipal Corporation Act, 1957 (hereafter 'the Act').

2. The petitioner corporation submits that the Tribunal and the District Judge, erred in holding that the plans submitted by the respondent for

constructing his property bearing No. 4752, 4758 at 23, Ansari Road, Darya Ganj, New Delhi, were deemed to be sanctioned. According to the petitioner corporation, the height of the building as per the plans – although in conformity with the unified building bye-laws – is higher than as permitted by Archeological Survey of India (ASI). And, the respondent has also not provided for stilt parking. The petitioner corporation submits that as the plans submitted by the respondent were contrary to law, the provisions of Section 337 of the Act were inapplicable and the Tribunal and the District Judge, erred in not considering the same.

3. The limited controversy to be addressed is whether the District Judge erred in holding that the plans submitted by the respondent were deemed to be sanctioned by virtue of Section 337(1) of the Act and, consequently, rejecting the appeal filed by the petitioner corporation.

4. The brief facts relevant to examine the controversy in the present petition are under:-

4.1 The respondent is the owner of the property bearing No. 4752, 4758 at 23, Ansari Road, Darya Ganj, New Delhi (hereafter the 'said property'). The respondent desired to reconstruct the said property for residential use after demolishing the same and, therefore, on 28.07.2010, the respondent served a notice of his intention to build in terms with Section 333 of the Act, read with the Building Bye-laws for the Union Territory of Delhi, 1983 under the jurisdiction of Delhi Municipal Corporation (hereafter the 'Building Bye-Laws'). The said notice (hereafter also referred to as an 'application') for sanction of the building plan was received by the

Building Department, City Zone of the petitioner corporation. In response to the application, the petitioner corporation issued an Invalid Notice (hereafter referred to as 'IN') dated 10.08.2010 pointing out the following alleged infirmities in the application:-

- “1. Complete chain of ownership document;
2. Part Zonal Layout Plan - 3 copies;
3. Latest House Tax Receipt;
4. Three sets of drawing - Blue prints;
5. One set of drawing cloth mounted;
6. Affidavit regarding SABR;
7. The case will be forwarded to ALO City, Town Planning & the outcome intimated.”

4.2 On 20.08.2010, the respondent, by its letter dated 12.08.2010, replied to all the queries raised by the petitioner corporation in its IN.

4.3 Thereafter, on 01.11.2010, the respondent filed an appeal before the Tribunal claiming that plans submitted by the respondent were deemed to be sanctioned under Section 337(1) of the Act as the petitioner corporation had failed to communicate any rejection or sanction of the building plan within 60 days from the date of the receipt of the information on the queries demanded by the corporation and praying that the said plans be released.

4.4 By an order dated 10.10.2011, the Tribunal allowed the appeal and held that the building plans submitted by the respondent were deemed to be sanctioned in favour of the respondent with effect from 19.10.2010 as it was found that there was a lapse on part of the petitioner corporation in not deciding the application of the respondent within 60 days from the date of

the receipt of the response to the queries raised by the petitioner corporation by the IN dated 10.08.2010. The petitioner corporation filed an appeal (being Appeal No.01/2011) before the District Judge challenging the order dated 10.10.2011, which was also dismissed by the impugned order dated 13.02.2012.

5. The learned counsel for the petitioner corporation contented that in order to avail the benefit of deemed sanction, the application has to be in proper format and in conformity with the provisions of the Act and the Building Bye-Laws, 1983. It was contended that the benefit of deemed sanction cannot be granted to the respondent as the application for sanction of the building plan suffers from various concealments and misstatements and, therefore, the said application was *non est* and could not be treated as an “*application in law*”. The petitioner relied on the decision of this Court in **Sharan Kaur v. MCD and Ors.: W.P.(C) No.8556/2007**, decided on 09.04.2008.

6. The learned counsel for the petitioner corporation submitted that the application suffered from following discrepancies, concealments and misstatements:-

(a) That the application which ought to have been moved before the Building H.Q. was filed before the Zone which was not the proper forum for dealing the same.

(b) That in view of the clarification received from ASI, the height of the proposed building, which falls in the regulated area, cannot exceed 15 meters from the ground level upto *mumty*/parapet. The respondent in his

application mentioned the proposed height of building as 13.80 meters, when in fact the height of the building as proposed in building plan was 17.80 meters.

(c) That there is no provision of stilt parking in building plan as submitted even though the provision of stilt parking is mandatory in view of circular dated 27.04.2011 issued by MCD. Further, a Division Bench of this Court in **P.K. Chatterjee and Ors. v. Union of India and Ors.:** W.P.(C) **No.4598/2010, decided on 29.05.2014** has directed that the circular dated 27.04.2011 would continue to operate till a final decision is taken by the competent authority.

(d) That the misstatement given/made by the respondent, duly supported by the affidavits of the architect, claiming that the proposals are strictly in accordance with building bye-laws and the plot is not affected in the scheme of the road width. It is stated that the respondent's property is on a road, which is proposed to be widened.

(e) The respondent had applied indicating that the plot of land was 250 Sq. mtrs, but in fact the plot of land measured 250.82 Sq mtrs. and even according to the then extant bye-laws, the respondent was required to provide for parking space for two cars.

7. He contended that once the Commissioner points out defects in the application, the benefit of deemed sanction is not available to the owner. In the present case, various INs dated 10.08.2010, 26.10.2010, 14.12.2010, 22.12.2010, 17.03.2011 and 08.09.2011 were issued by the petitioner corporation, however, the defects or deficiencies were not removed by the

respondent. Further, the period of 60 days would be counted from the date of valid and lawful application. The petitioner relied upon the decision of this Court in **Gyan Prakash Sharma v. Delhi Development Authority: 97 (2002) DLT 205.**

8. The learned counsel for the petitioner corporation contended that the present petition is fully covered by a decision of the Supreme Court in **Howrah Municipal Corporation and Ors. v. Ganges Rope Co. Ltd. and Ors.: (2004) 1 SCC 663.** He submitted that notwithstanding any act of omission or commission by any agency, the law of the land as applicable on the date of decision would have to be followed. He submitted that the requirement of stilt parking is now mandatory and, therefore, any building which does not provide for the same, cannot be permitted.

9. The learned counsel for the respondent contended that the circulars dated 27.05.2009 and 27.04.2011 are executive orders without having any statutory force and therefore, cannot override the provisions of the Act or provisions of Master Plan 2021 (hereafter 'MPD 2021'). The respondent further contended that his application was filed prior to the circular dated 27.04.2011 and therefore, the said circular would be inapplicable in the present case. Further, under the MPD 2021, there is no provision for having mandatory stilt parking in the residential premises and even if the premises are on a notified road, the owner is entitled to ground coverage and FAR as permissible in respect of a residential building.

10. He contended that the proposal of the respondent mentioned the height of the building as 17.85 mtrs, which is permissible under law as

under Bye-law 12.7.1 of the Building Bye-laws, a mumty, parapet walls, overhead water tanks are exempted from height calculation and therefore, after removing the height of the said items, the height of the building of the respondent comes within the restriction prescribed by the ASI.

11. The learned counsel for the respondent further contended that the time period prescribed under Section 337 of the Act is mandatory in nature and as the petitioner corporation failed to communicate its decision, the application of the respondent is deemed to have been sanctioned by the petitioner corporation. Further, various notices allegedly issued by the petitioner corporation were, admittedly, issued after the effective date of deemed sanction, i.e. 19.10.2010 and the notices were sent through UGC and not through registered post as mandated by Section 444 of the Act.

12. The respondent also disputed the petitioner corporation's assertion that there were misstatements in the application. He contended that the same was in the format prescribed in terms of Clause 6.2.9 of the Building Bye-laws, i.e. as per Appendix – 'A'

13. The question whether the District Judge erred in concluding that the building plan submitted by respondent would be deemed to be sanctioned by virtue of Section 337(1) of the Act, has to be considered in the context of the aforesaid rival submissions.

14. Before the Tribunal, the petitioner corporation had contended that the benefit of Section 337(1) of the Act was not available to the respondent as the plans had been examined and several INs had been issued to the respondent after 20.08.2010. This was disputed by the respondent; he

claimed that he had received only one IN dated 10.08.2010 to which he responded on 20.08.2010. The Tribunal examined this dispute and came to a conclusion that petitioner corporation had not sent the INs as claimed by them for several reasons. First and foremost, it was found that the INs had been sent by UPC which was a departure from the regular procedure of sending the INs by speed post; the first IN, i.e. IN dated 10.08.2010, which was duly received by the respondent, had been sent by speed post. Secondly, the petitioner corporation had not produced the relevant records when the same were called for. Apparently, the relevant records were produced after the Court had issued warnings on two occasions. Thirdly, one of the IN was stated to have been issued after the appeal had been filed and notice had been served on the petitioner corporation. The Tribunal was of the view that this was clearly an attempt to doctor the records. Fourthly, the purpose of IN is to inform the applicant as to the deficiencies and call for the necessary information. This, obviously, cannot be done in a piecemeal manner by issuing multiple INs from time to time. The findings of the Tribunal regarding the INs are, essentially, findings of fact and have also been affirmed by the District Judge. These findings were based on sound reasoning and in my view, no interference is warranted by this Court in these proceedings. Clearly, the scope of this petition is not to re-appreciate the evidence already examined by the authorities/courts below. Thus, unless the findings are found to be perverse, no interference with the same is called for in these proceedings.

15. The learned counsel for the petitioner corporation focused his arguments mainly on the contention that the application filed by the

respondent was *non est* as, according to the petitioner corporation, the same was not in accordance with the law. The petitioner corporation had advanced this argument principally on the ground that building plans submitted by the respondent indicated the height of the building to be above 15 meters and this was contrary to the permission granted by the ASI. In addition, the petitioner corporation submitted that the building did not provide for stilt parking, which was mandatory.

16. Insofar as the provision of stilt parking is concerned, there is no dispute that at the material time there was no requirement for providing stilt parking. The said requirement was introduced by way of a circular dated 27.04.2011. The relevant extract of the said circular is quoted below:-

“To ensure the parking of vehicles within the premises, it has been decided to make the provision of stilt mandatory for the residential plot measuring 100 square meter and above up to 1000 square meter including notified roads. Henceforth, proposal seeking sanction of building plan to raise construction on vacant plot or fresh construction after dismantling the entire existing structure shall require proposal/provision of stilt equivalent to proposed ground floor coverage.”

[emphasis provided]

17. On a plain reading of the said circular, it is apparent that the said circular is effective prospectively. The respondent contends that the said circular being an executive direction cannot override the Building Bye-laws. However, without going into the said controversy, even if the said contention is not accepted, it cannot be disputed that the circular would have no application for plans sanctioned prior to 27.04.2011. The circular

itself uses the word “henceforth” and in my view, the same leaves no room for any ambiguity for controversy. In the present case, the respondent had claimed that its plans were deemed to have been sanctioned on 19.10.2010 after the expiry of 60 days from 20.08.2010. Clearly, if the respondent’s contention is accepted – as has been done by the Tribunal and the Appellate Court – the plans submitted by the respondent would have to be considered on the basis of the laws as prevalent on the date of deemed sanction. The plans submitted by the respondent cannot be faulted on account of any subsequent amendments.

18. The petitioner corporation contends that as per the circular dated 27.05.2009, the respondent was required to provide for car parking @ 2 ECS/100 square meters of the proposed built up area of the ground floor (ECS stands for Equivalent Car Space). The respondent controverts this and contends that if the area of the plot is less than 250 square meters, there is no requirement to provide for parking space within the plot. However, for plots between 250 square meters and 300 square meters, parking space of 2 ECS is required to be provided. The petitioner’s plot measures 300 square yards which is equivalent to 250.82 square meters. The respondent has contended that by virtue of Note No. 1 of Regulation 4.4.3 of MPD 2021, a variation of 2% is permitted while converting square yards to square meters. According to the respondent, if the said clause is applied, the area of the plot would fall within the limit of 250 square meters and, admittedly, no parking space is required to be provided within the plot if its area is less than 250 Square meters. The learned counsel for the petitioner corporation did not dispute this proposition but contended that the application for

sanction of the building plan did not refer to Note No. 1 of Regulation 4.4.3 of MPD 2021 but simply disclosed the plot to measure 250 square meters, thus, the application for sanction of building plans itself should be considered as misleading.

19. In view of the above position, it is clear that as on the date of application (i.e. 28.07.2010) and the date of claimed deemed sanction (i.e. 19.10.2010), there was no mandatory requirement to provide for parking space within the plot. Nonetheless, the respondent has provided for 2 ECS within the plot and, therefore, the plans submitted by the respondent had clearly conformed to the Building Bye-laws and the MPD 2021 at the relevant time.

20. As indicated above, the learned counsel for the petitioner corporation focused his arguments, principally, on the contention that the plans submitted by the respondent were contrary to the permission as granted by the ASI. The learned counsel drew the attention of this Court to a communication dated 26.11.2009 issued by the ASI granting permission to the respondent to construct the building in question.

21. A perusal of the said communication indicates that the ASI had granted permission to construct the building but had stipulated that *“the construction is restricted upto the maximum height of 15m (49.20’feet) from the ground level up to mumty/parapet wall with 1.83m (6’feet) deep basement below the ground level as per plan, section and elevation submitted.”*

22. The learned counsel for the respondent had submitted that the ASI has raised the permissible height subsequent to the aforesaid approval. Obviously, this contention cannot be considered as it is the respondent's contention that the building plans must be tested on the anvil of laws applicable on the date of submission of plans or the date of deemed sanction.

23. Undisputedly, the respondent would have to restrict the height of the building in conformity with the approval granted by the ASI. However, the question to be addressed is whether the submission of plans by the respondent for a building of a height of 15 meters, excluding mumty and parapet wall, would render the application *non est* as urged on behalf of the petitioner corporation. Indisputably, the building plans submitted by the respondent conform to the Building Bye-Laws. In terms of Bye-Law 12.7.1 mumty and parapet wall are to be excluded from the calculation of height. The said Bye-law 12.7.1 of the Building Bye-Laws is quoted below:-

“12.7.1 Height Exceptions- The following appurtenant structures shall not be included in the height of building covered under bye-law No.12.7 – roof tanks and their supports not exceeding 1.0m in height, ventilating, air-conditioning and lift rooms and similar service equipments, stairs covered with mumty not exceeding 3.0m in height, Chimneys and parapet wall and architectural features not exceeding 1.5m in height – unless the aggregate area of such structures including barsati, exceeds 1/3 of the roof of the building upon which they are erected.”

24. The restriction imposed by the ASI has to be complied with; however, the same cannot be considered as rendering the application *non*

est. In this regard, it is relevant to refer to Section 337(2) of the Act which reads as under:-

“337. When building or work may be proceeded with.-

(1) xxxx xxxx xxxx xxxx

(2) Where a building or work is sanctioned or is deemed to have been sanctioned by the Commissioner under sub-section (1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of any bye-law made thereunder.”

25. It is clear from the above that notwithstanding the sanction of the plan, the building has to be raised so as not to contravene any provision of the Act or any other law or bye law made thereunder. Thus, although the respondent would have to restrict the height of the building to 15 meters, the same does not imply that the application filed by the respondent is no application at all. A notice to construct is not rendered *non est* merely because the proposed building plan may contain a deviation or a feature which is not permissible in law. Section 337(2) of the Act itself contemplates a situation, where a sanctioned plan, deemed or other wise, may not be in conformity with any law and postulates that building is to be constructed so as not to contravene any of the provisions of the Act or any other law or of any bye-law made thereunder.

26. The fact that the plans indicate the height of the building to be restricted to 15 meters by excluding mumty and parapet wall does not mean that the application for sanction is contrary to law. In my view, the reliance

placed by the petitioner corporation on the decision of this Court in *Sharan Kaur (supra)* is misplaced. In that case, the applicant had not filed the ownership documents, which were required. Further the documents submitted were neither signed by the architect nor owner, as mandatorily required. The municipal corporation had also informed the applicant in that case that without clearing the questions as to the division of the plot, the application would not be treated as per law. It is in that context that the Court held that the building plans submitted by the petitioner did not comply with the requirement of Section 333 of the Act. At this stage, it is relevant to refer to Section 333 of the Act which reads as under:-

“333. Erection of building.-(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.

(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed.”

27. In terms of Section 333 of the Act, the application for sanction has to be made by giving a notice in writing in such form and containing such information as may be prescribed. By virtue of Bye law 6.1 of the Building Bye-Laws, the notice has to be as per Appendix A to the said Bye-Laws. Further, Bye-Law 6.3 of the Building Bye-Laws mandates that the plans shall be signed by the owner/licensed architect registered with the Council of Architects. In addition, express provision has been made under Bye-Law 6.1 of the Building Bye-Laws for the information that must necessarily accompany the notice. Various documents and plans that are required to be submitted alongwith notice are also specified under Bye-Law 6 of the

Building Bye-Laws. Clearly, if an application or notice is sent, which is not in the prescribed form or does not contain the information as prescribed as under Bye law 6 of the Building Bye-Laws, the application would not comply with the requirements of a notice under Section 333 of the Act. In the case of ***Sharan Kaur*** (*supra*), the Court found that the notice did not comply with the requirements as indicated above. However, in the present case, there is no dispute that the notice of intention to build was submitted by the respondent in the prescribed form and was compliant with requirements of Bye law 6 of the Building Bye-Laws. Thus, the application could not be ignored.

28. In my view, the controversy with regard to the height of the building would not render the application under Section 333 of the Act as *non est*. The District Judge had examined this issue and also concluded that:-

“....the MCD while releasing the sanction plan can delete the construction of mumty in order to bring it within 15 meters, but that cannot be made a ground for rejection or withholding the sanction.”

29. I find no reason to interfere with the aforesaid conclusion.

30. The learned counsel for the petitioner also laid much stress on the decision of the Supreme Court in ***Howrah Municipal Corporation*** (*supra*). In my view, the said decision would be inapplicable in the facts of the present case; principally, for the reason that in that case there was no provision as to a deemed sanction. The Supreme Court had expressly noted that the relevant provision, i.e. Section 175 of the Howrah Municipal Corporation Act, 1980, had used the word “ordinarily”. In terms of the said

provision the municipal authority would ordinarily grant or refuse sanction within a period of 60 days from the date of application for grant. The Court further observed that the relevant provisions did not provide for “deemed sanction” or “deemed refusal” on the expiry of 60 days period and concluded that without an express sanction, no construction is permissible. The Court held that although applicant may have a “legitimate” or “settled expectation” to obtain the sanction, the same did not create a “vested right” to obtain a sanction. This is in variance with the express provisions of Section 337(1) of the Act, which reads as under:

“337. When building or work may be proceeded with. - (1)

Where within a period of sixty days, or in cases falling under clause (b) of section 331 within a period of thirty days, after the receipts of any notice under section 333 or section 334 or of the further information, if any, required under section 335 the Commissioner does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, the Commissioner shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:

Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Commissioner may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub-section shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.”

31. Plainly, if the Commissioner does not refuse to sanction the building or having refused does not communicate the same to the person who has given the notice to construct, the Commissioner shall be deemed to have accorded the sanction to the building or work. Thus, Section 337 of the Act - unlike Section 175 of the Howrah Municipal Corporation Act, 1980 – does provide for a deemed sanction.

32. It is also relevant to note that in *Howrah Municipal Corporation (supra)* the respondent therein had applied for sanction of additional floors and while the application was pending, the building rules were amended. It is in this context, the Court held that the laws as applicable on the date of the decision of the sanction would be applicable. The aforesaid decision of the Supreme Court is an authority for the proposition that the corporation would have while sanctioning a building plan considered the building plan prevalent on that date and not on the date when the application for sanction had been made. In the present case, the date of deemed sanction would have to be taken as the date of decision, as on that date the respondent was vested with the right to proceed with the construction as per its plans but not in contravention of law.

33. In my view, the decision of a Co-ordinate Bench of this Court in *Gyan Prakash Sharma (supra)* is also inapplicable in the facts of the present case. The said decision was rendered in respect Bye law 6.7.4 of the Building Bye-Laws in the context of an application filed before the Delhi Development Authority (DDA). Bye-law 6.7.4 of the Building Bye-Laws reads as under:-

“6.7.4 If within 60 days of the receipt of notice under 4 6.1 of the Bye-laws, the authority fails to intimate in writing to the person, who has given the notice, of its refusal or sanction or any intimation, the notice with its plans and statements shall be deemed to have been sanctioned provided the fact is immediately brought to the notice of the Authority in writing by the person who has given notice and having not received any intimation from the Authority by the person who has given notice and having not received any intimation from the Authority within the fifteen days of giving such written notice. Subject to the conditions mentioned in this bye-law, nothing shall be construed to authorise any person to do anything in contravention or against the terms of lease or titles of the land or against any other regulations, bye-laws or ordinance operating on the site of the work.”

34. The Building Bye-Laws are unified Bye laws which are also applicable in respect of applications made to the DDA or the New Delhi Municipal Council. These authorities are constituted under separate statutes. The Delhi Development Authority Act, 1957 does not contain any provision with respect to a deemed sanction and, therefore, Bye-law 6.7.4 of the Building Bye-Laws is applicable in its entirety to application for development made to the DDA under the Delhi Development Act, 1957. However, in the present case, the notice for construction has been submitted in compliance of Section 333 of the Act. Section 337(1) of the Act contains express provision with regard to the deemed sanction. Clearly, the provisions of the Building Bye-Laws cannot override the provisions of the Act. Bye-Law 6.7.4 of the Building Bye-laws cannot dilute the provisions of Section 337(1) of the Act. The District Judge had considered this issue and held as under:-

“22. There is substantial force in the submission of learned Counsel for respondent inasmuch as when there is no such requirement of giving 15 days notice under the substantive provision of the DMC Act, the provisions of building bye-laws cannot over-ride the provisions of the DMC Act and deprive a person of his valuable right which accrued to him under the substantial provision of DMC Act. As such, this objection is again devoid of any merit and deserves to be rejected.”

35. I find no infirmity with the aforesaid view. Further, it is also relevant to take into account that the respondent had filed an appeal claiming deemed sanction. This itself could be construed as a notice by the petitioner corporation. The petitioner corporation did not communicate refusal of the sanction even within 15 days of being served with the appeal.

36. Although IN dated 10.08.2010 referred to various alleged irregularities, it is apparent from the response thereto that most of the documents alleged to have been not supplied with the notice were in fact available with the petitioner corporation. I also concur with the view that the petitioner corporation cannot issue multiple INs and raise issues in a piecemeal manner. The notice to build cannot be turned into an obstacle course for the applicants. It is appropriate for the corporation to examine the notice/application and issue a comprehensive notice raising all issues; any further IN would necessarily have to relate to any deficiency pointed out earlier and not cured by the owner.

37. The learned counsel for the petitioner corporation also contended that the application made by the respondent was not to the correct authority. I do not find any merit in this contention as the notice for construction was served as per the Bye-Laws. Notably, the application of the respondent was

not rejected on this ground. On the contrary, the petitioner corporation served an IN dated 10.08.2010 pointing out certain alleged deficiencies; this did not include any objection that the application had been addressed to the wrong authority/office. The petitioner corporation has also not pointed out any provision of law, which would require the respondent to file its application at another office. If the petitioner corporation was of the view that the application has been served at the wrong office, it would, in the normal course return the application and advice the respondent to forward to the concerned authority; there would be no occasion for the recipient authority to examine the application any further and issue an IN.

38. During the course of the arguments, it was enquired from the learned counsel for the petitioner corporation as to what were the substantial objections to the proposed building. In response to the aforesaid query, Mr Arora, learned counsel for the petitioner corporation, candidly, submitted that the main objections of the petitioner corporation is with respect to; (a) a non provision of the stilt parking and; (b) non surrender of space for road widening. The learned counsel for the respondent responded to the above and submitted that the provision of a stilt parking would effectively mean the respondent giving up his right to build an additional floor as strict height restrictions were imposed by the ASI. In regard to surrendering of space for road widening, the learned counsel for the respondent submitted that the respondent had provided a front set back of 10 feet and a maximum of 4 feet of space would be required for road winding. And, the respondent would not object if the petitioner corporation acquired the space in accordance with law along with other properties on the road.

39. As indicated above, the provision of stilt parking cannot be imposed with respect to the building in question since the directions for imposing the same were prospective. Insofar as the surrender of the space for road widening is concerned, the same cannot be made a pre-condition for sanction of plans. If the petitioner corporation has decided to widen the road, it would have to execute the road works even if a building plan is not sanctioned; and the petitioner corporation would have to acquire the land in accordance with law for the said purpose. In view of the statement made by the learned counsel for the respondent that the setback provided leaves enough room for the petitioner corporation to acquire the strip of 4 feet for road widening purposes, it would be open for the petitioner corporation to acquire the said space as and when the road widening project is implemented. The respondent cannot resist such acquisition if made in accordance with law.

40. In view of the aforesaid, I find no reason to interfere with the impugned decision of the District Judge. Accordingly, the petition is dismissed. The pending application also stands disposed of. No order as to costs.

VIBHU BAKHRU, J

MAY 11, 2015
RK