

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.05.2015

+ **W.P.(C) 3637/2013 & CM No.6812/2013**

KANWAL SIBAL

.....Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Amit Sibal, Sr. Advocate with
Mr Alok K. Aggarwal.

For the Respondents : Mr Anil Grover, Standing Counsel, NDMC
and Ms Divya Jain, Advocate for NDMC.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner, *inter alia*, impugns a letter dated 19.10.2012 sent by New Delhi Municipal Council (hereafter 'NDMC') whereby the petitioner's application for sanction of plans for carrying out addition/alteration works on the terrace of the second floor of the property bearing no. 171, Jor Bagh, New Delhi were returned principally on the ground that the same were not signed by other co-owners of the property (i.e owners of other floors of the property bearing no. 171, Jor Bagh, New Delhi).

2. Briefly stated, the relevant facts necessary for considering the controversy are as under:-

2.1 The petitioner is the owner of the second floor and the terrace above the second floor of a three storey building constructed on a plot of land measuring 349.99 square meters bearing the address, 171/172, Jor Bagh, New Delhi (hereafter 'the property in question'). The ground floor and the first floor of the property in question are owned by different persons.

2.2 On 09.03.2011, the petitioner applied to NDMC for sanction of addition construction proposed to be carried out by him on the terrace of the property in question. This application was rejected by NDMC by a letter dated 7.04.2011 pointing out various deficiencies in the application including that the owners of other floors had not co-signed the petitioner's application. The petitioner again applied for the sanction on 25.09.2012 after curing all deficiencies pointed out by NDMC except the requirement that the application be signed by the owners of other floor. NDMC, by its letter dated 19.10.2012, returned the petitioner's application stating that the plot cannot be sub-divided and the application has to be signed by the co-owners of the plot as per provisions of Building Bye-laws and NDMC Act. The relevant extract of the said letter is quoted below:-

“With reference to your above mentioned letter it is to inform you that the proposal received in this office through a letter have not been signed by the co-owners as per provision of BBL / NDMC Act. As the plot cannot be subdivided as such you are requested to submit the proposal on the prescribed Proforma as per BBL / Master plan, NDMC Act, duly signed by the all the co-owners of this plot alongwith requisite fee & ownership documents, therefore, your proposal received through above mentioned letter is returned-herewith in original.”

2.3 The second floor of the property in question is mutated in the name

of the petitioner and is assessed separately for levy of property tax.

3. The learned counsel for the petitioner contended that there is no provision in law whereby the signatures of owners of other floors are required as a precondition for the grant of sanction for development of one's own property. The learned counsel further referred to the decision of a Division Bench of this court in **Municipal Corporation of Delhi v. Smt. Usha Devi Sharma: 127 (2006) DLT 275 (DB)** in support of his contention that it was not necessary that an application for development of a floor of a property be co-signed by owners of other floors of the property if the property is recorded separately in the name of the applicant.

4. The learned counsel for NDMC contended that the petitioner is having undivided share to the extent of 30% in the property in question and the plot of land has not been sub-divided in the records of L&DO and therefore, the application for sanction of any construction is required to be signed by all co-owners of the entire plot. He further submitted that as the plot of land in question had not been mutated in the records of L&DO, the decision of **Municipal Corporation of Delhi v. Smt. Usha Devi Sharma** (*supra*) is not applicable and the present case is covered by a decision of co-ordinate bench of this court in **Brij Kishore Anand v. MCD & Ors.: W.P.(C) 180/2010**, decided on 10.04.2011.

5. It was contended on behalf of NDMC that the sanction of plans for only one floor would amount to sub-division of plot, which is not permissible as per the MPD 2021 as the conditions laid down relating to ground coverage and FAR in MPD 2021 are seen in respect of the entire

plot of land as a single unit as specified in the approved layout plan. Further, as per clause 6.3 of the Building Bye Laws, all plans are required to be duly signed by all co-owners of the property so as to ensure that the other co-owners do not have any objection to the addition/alteration of the property. It was contended that even though an application is submitted by one of the owners but its feasibility needs to be examined in the context of the entire plot as one unit. Therefore, the requirement of signatures of all co-owners/co-sharers on the proposal is a valid requirement as per the law.

6. The only question that needs to be addressed is whether it is necessary for the petitioner to obtain a No Objection Certificate (NOC) from owners of other floors of the property in question and whether NDMC's rejection of the petitioner's application solely on the ground that it has not been co-signed by other owners is justified.

7. There is no dispute that the petitioner has acquired the ownership of the entire second floor as well as the terrace by two separate registered sale deeds. By a sale deed dated 13.01.2004, the ownership of the entire terrace over the second floor along with 3% undivided share in the plot of land was registered in favour of the petitioner. By another sale deed of the same date, the petitioner had acquired the entire second floor along with 27% undivided share in the plot of land. The petitioner has paid the specified transfer charges. Indisputably, the said portions of the property in question have been mutated in the name of the petitioner, in the records of NDMC. The petitioner has also paid his municipal taxes with respect to the second floor of the property in question, which have been separately assessed. Undeniably, the petitioner would have the right to construct on the second

floor in accordance with the building bye-laws. The question whether in such circumstances, the petitioner is required to obtain the NOCs from other co-owners of the property in question is no longer *res integra*. In **Ashok Kapoor and Anr. v. Municipal Corporation of Delhi: W.P.(C) 3535/2001**, decided on 11.03.2003, a Coordinate Bench of this Court held that once a property is segregated in different portions and mutated accordingly, there could not be any requirement of all co-owners to sign the building plans. The relevant extract of the said judgment is quoted below:-

“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 recognised 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.”

8. A similar view was taken by a coordinate bench of this Court in **Smt. Usha Devi Sharma v. Commissioner, Municipal Corporation of Delhi: W.P.(C) 3280/2004**, decided on 23.05.2005 which was also upheld by a Division Bench of this Court in **Municipal Corporation of Delhi v. Smt. Usha Devi Sharma** (*supra*).

9. The Building Bye-Laws for Union Territory of Delhi, 1983, under the jurisdiction of New Delhi Municipal Council (hereafter referred to as the ‘Building Bye-Laws’) do not mandate that consent of owners of other portions of the property be obtained for carrying on any construction. Bye

Law 2.56 of the Building Bye-Laws defines the term owner as under:-

“2.56 *Owner* – The owner is a person, group of persons, a Company, Trust, Institute, Registered Body, State or Central Government and its attached subordinate Departments, Undertakings and like in whose name the property stands registered in the revenue records.”

10. Bye Law 6.1 of the Building Bye-Laws mandates that every person who intends to erect, re-erect or make alterations in any place in a building shall give a notice of its intention to do so in the prescribed form. Bye Law 6.1 of the Building Bye-Laws is quoted below:-

“6.1 *Notice*-Every person who intends to erect, re-erect or make alterations in any place in a building or demolish any building shall give notice in writing to the Authority of his said intention in the prescribed form (See Appendix A) and such notice shall be accompanied by plans and statements in sufficient (See-Bye-law No. 6.1.1) copies, as required under Bye-law Nos. 6.2 and 6.3. The plans may be ordinary prints on ferro paper or any other type. One of them shall be cloth mounted. One set of such plans shall be released and the rest retained in the office of the Authority for record after the issue of permit or a refusal.”

11. It is apparent from the above that the notice under Bye Law 6.1 of the Building Bye-Laws had to be issued only by the person who intends to carry out any building activity. No such notice is required to be given by any other person. The form of notice is prescribed in Appendix A to the Building Bye-Laws and reads as under:-

“I hereby give notice that I intend to erect/re-erect/demolition or to make alteration in the Building No ----- or to-----
---on/in Plot No -----Block No ----- House no -----
----- situated at -----Scheme----- and in

accordance with the building Bye-laws of Delhi, Bye-law No---
-----AND I forward herewith, the following plans and
specifications duly signed by me and-----
(name in block letters), the Licenced
Architect/Engineer/Supervisor/Group-Licence No.-----who
have prepared the plans, designs etc. and who will supervise its
erection and a copy of other statements/documents (as
applicable):”

12. Bye Law 6.3 of the Building Bye-Laws requires that the plans be duly signed by the owners/licenced Architect registered with the Council of Architects. The said Bye Law reads as under:-

“6.3 ***Signing the Plans*** – All the plans shall be duly signed by the owner/licenced Architect registered with Council of Architects and shall indicate their names, address, licence and enrolment number. However, plans in respect of plots upto 500 sq. metres and upto 4 storeys may be signed by a licenced engineer and for plots upto 100 sq. metres and upto 2 storeys by a licenced supervisor, instead of licenced architect subject to its being approved by the Competent Authority.”

13. A plain reading of the above indicates that the person intending to raise construction must submit plans, which are signed by the owner or an Architect or must provide documents of ownership. In cases where earmarked property is separately registered and recorded in the revenue records, the relevant ownership documents would be the documents evidencing title of the portion of property which is sought to be constructed upon and not the entire property. As indicated above the expression “owner” has been defined to mean the person in whose name the property stands registered in the revenue records.

14. In the present case, it is not disputed that the second floor of the

property in question as well as the terrace above the second floor are registered in the name of the petitioner in the revenue records. The construction proposed to be raised by the petitioner is clearly on his portion of property in question which is duly recorded in the petitioner's name. Therefore, in my view, there would be no occasion for NDMC to insist that the petitioner obtain a NOC from owners of the other floors.

15. The learned counsel for NDMC has contended that the decision of this Court in ***Municipal Corporation of Delhi v. Smt. Usha Devi Sharma*** (*supra*) would have no application as the plot of land on which the building stands has not been mutated in the name of the separate co-owners. He emphasized that the petitioner has an undivided share in the land below the building and as per MPD-2021 the plot cannot be sub-divided. He stated that in absence of sub-division, it could not be construed that the petitioner was the owner of the property in question. I find it difficult to accept this submission; first and foremost for the reason that the facts in the case of ***Usha Devi Sharma*** were not materially different. In that case also the petitioner therein had purchased a floor of the building constructed on a plot of land in Kailash Colony, New Delhi (which was a plotted development). The said plot of land was also not subject to any sub-division.

16. Thus, the grounds on which the aforesaid decision in ***Municipal Corporation of Delhi v. Smt. Usha Devi Sharma*** (*supra*) is sought to be distinguished is non-existent. Secondly, the registered title deeds in favour of the petitioner clearly indicate the petitioner to be the exclusive owner of the terrace above the second floor where additional construction is

proposed to be raised. Indisputably, no other person can claim any right to construct on the said portion. It is also not disputed that the petitioner is the recorded owner of his portion of the property in question conveyed to him under the sale deed. Thus, the requirements of the Building Bye-Laws would be satisfied if the plans are signed by the petitioner as the owner of the terrace on which construction is now proposed to be raised.

17. Thirdly, the contention that the plot has not been mutated in the name of the petitioner or other floor owners is misleading as the plot of land is not considered as a unit of assessment and the mutation in respect of the plot has not been recorded at all. The second floor of the property in question along with the undivided interest in the plot of land below has been mutated in the name of the petitioner and this is also the unit of assessment for the purposes of property taxes collected by NDMC; the property tax bill raised by NDMC separately in the name of the petitioner is with respect to the petitioner's property which subsumes the undivided share in the plot of land as well.

18. The learned counsel for NDMC also contended that without the consent of owners of other floors of the property in question there would be an issue with regard to sharing of FAR. Admittedly, the permitted FAR for the plots in question is 225. The FAR indicates the area that can be built up on a plot of land. Thus, as long as the additional construction sought to be raised is within the permissible FAR, there could be no objection by NDMC to sanction the said plans provided other conditions such as structural stability etc. are satisfied. Admittedly, the owners of other floors cannot raise any further construction on the terrace of the second floor. At

best, they may be permitted to make certain additions on their floor provided the same complies with the Building Bye-Laws. Thus, the question whether the other owners would be entitled to share FAR can at best be described as academic. The question whether FAR needs to be shared is also a debatable issue. However, the same need not detain this Court in this matter as, admittedly, the petitioner has committed that it does not propose to utilise more than 30% of the FAR, which in any case cannot be claimed by any other person. Thus, even assuming that additional FAR was required to be shared between owners of different floors, the petitioner would, nonetheless, be entitled to at least 30% of the additional FAR.

19. In my view, the reliance placed by the respondent on the decision of a Coordinate Bench of this Court in ***Brij Kishore Anand*** (*supra*) is clearly distinguishable. In that case, the Court - unlike in the case of ***Municipal Corporation of Delhi v. Usha Devi Sharma*** (*supra*) - had come to the conclusion that the property was not a segregated property. The said decision was entirely based on the interpretation of a deed of family settlement, which is not the case here. As indicated earlier, the facts of this case are similar to that in the case of ***Municipal Corporation of Delhi v. Usha Devi Sharma*** (*supra*) and in my view, the ratio of the said decision would clearly apply to the facts of the present case.

20. The reliance placed by NDMC on condition (iv) of Para 4.4.3 of MPD-2021 is also not apposite. The said condition is quoted below:-

“(iv) Sub-division of plots is not permitted. However, if there are more than one buildings in one residential plot, the sum of the built up area and ground coverage of all such buildings,

shall not exceed the built up area and ground coverage permissible in that plot.”

21. Para 4.4.3 of MPD 2021 relates to Control norms for building/buildings within residential premises. Part A of the said regulations provides for the maximum permissible ground coverage, FAR, number of dwelling units for different sizes of residential plots etc. The aforesaid condition proscribing sub-division of plots has to be read in context of the development control regulations specifying the aforesaid parameters. The substratal purpose of MPD 2021 is planned development of Delhi. Undisputedly, for the purposes of applying the parameters such as FAR, maximum ground coverage, maximum number of dwelling units etc. a plot of land in a plotted development is considered as a single unit. The aforesaid prohibition to sub-division does not affect the title as to the plots or the right of any one or more persons to construct thereon. As an illustration, if a plot of 1000 sq. metres is owned by two persons equally - who may or may not have divided the same amongst themselves - it would not be open for the said persons to insist that parameters as applicable to plots of 500 sq. metres be applied to each of their shares. Under the MPD 2021, ground coverage for a 1000 sq meters plot is only 40%; but for a plot of 500 sq. metres, 75% of ground coverage is permissible. Undeniably, the norms as applicable in respect of Maximum Ground Coverage, FAR, number of Dwelling Units etc. as specified for a plot of 1000 sq. metres would be applicable. This is quite different from stating that even if a person is entitled to construct on a portion of the property, he would, nonetheless, require the permission of the other because the unit for applying the norms fixed is a single plot. Thus, the parties owning a single

plot may demarcate their shares and if the ownership of demarcated shares is recognised and accepted by NDMC, there would be no requirement for the owners of demarcated shares to seek the NOC from other co-owners in order enable to them to carry out the development of their property. Thus, the contention that the building plan must be signed by all owners by virtue of clause (iv) of the conditions to paragraph 4.4.3 of MPD 2021 is not sustainable.

22. It is also necessary to bear in mind the principal purpose for framing Building Bye-Laws. Clearly, the same is to ensure that the buildings are constructed in conformity with the norms and parameters stipulated for planned development. Thus, in cases where an indefensible right of ownership of a property is established and recognised, NDMC would have to confine its examination to the issues germane to planned development.

23. The petition is, therefore, allowed. The impugned letter dated 19.10.2012 rejecting the petitioner's plans is set aside and NDMC is directed to examine the proposed plans and sanction the same if the plans are in conformity with the Building Bye-Laws, without insisting for a NOC from owners of other floors of the property in question.

24. Pending application stands disposed of. No order as to costs.

VIBHU BAKHRU, J

MAY 27, 2015
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