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

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Date of Decision : March 12, 2015

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LPA 519/2014

ANGELA JAITLY & ANR

..... Appellants

Represented by: Mr.Rajiv Nayyar, Sr.Advocate
instructed by Mr.Tanmaya Mehta,
Mr.Arshdeep Singh and Mr.Hitesh
Rai, Advocates

versus

KAILASH MEHNDIRATTA & ORS

..... Respondents

Represented by: Mr.Y.P.Adhyaru, Sr.Advocate
instructed by Ms.Manmeet Kaur,
Mr.Varun Kumar and Mr.Manan
Chadha, Advocates for R-1
Mr.G.D.Mishra, Advocate for R-2
along with Mr.Sanjeev Kumar, AE
Mr.N.A.Khan, Advocate for
Mr.Anjum Javed, Advocate for R-
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CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned decision dated July 30, 2014, WP(C) No.4763/2014 filed by the appellant has been dismissed by the learned Single Judge holding that the appellant would be a person aggrieved and thus the remedy would be an appeal under Section 347B of the Delhi Municipal Corporation Act, 1957 before the Appellate Tribunal constituting under the said Act.

2. The appellant is the neighbour of the first respondent and the grievance is to a sanction granted to the first respondent to effect construction on plot No.597, Gali Ghanteshwar, Katra Neel, Chandni Chowk, Delhi.
3. Existing of an alternative remedy is no bar to the maintainability of a writ petition. The principle of comity adopted by the Courts is that if there is an effective alternative remedy the same should be availed of. But, Courts have interfered if an issue of law arises, not warranting any factual adjudication.
4. The instant case required the legal position to be cleared.
5. We do so in appeal.
6. The first respondent obtained a sanction of a building plan on the assumption that the plot size of the parcel of land owned by the respondent was 91.92 sq.mtrs. It turned out that the actual plot area was 80.43 sq.mtrs. and thus the first plan got sanctioned has been superseded by the second.
7. Concededly for road widening, 12.95 sq.mtrs has to be kept apart by the first respondent.
8. Thus $80.43 \text{ sq.mtrs} - 12.95 \text{ sq.mtrs} = 67.48 \text{ sq.mtrs}$ is the utilizable area.
9. Whereas the appellant wants it to be declared that the FAR permissible would be with respect to the utilizable area of the plot of land. It measures 68.48 sq.mtrs. The respondent asserts that the FAR would relate to the total plot area being 80.43 sq.mtrs.
10. The New Building Regulations for Special Area, Unauthorized Regularized Colonies & Village Abadis has a provision which reads as under:-

“(b) Colonies/Areas Approved prior to 1962

(i) In the colonies and area for which layout plans were approved by a competent authority prior to the enforcement of Master Plan in 1962, the building plans for the plots which are affected in the right of way of roads as shown in the Master Plan/Zonal Plan would be sanctioned after ensuring the right of way of the road and a further setback as per Building Bye-Laws for the resultant plot. The coverage, however, would be permitted on the total area of the approved plot. However, if coverage is not achieved after leaving the right of way of the road and the prescribed setback, no relaxation in setbacks would be permitted.

(ii) The owner would furnish an undertaking that he would leave the land and hand over the same to the Corporation as and when asked for free of cost for the widening of the road.

(c) Old Built-up Areas like Walled City, parts of Civil Lines and Paharganj etc.

(i) On the plots that have a separate identity prior to the formation of the Corporation or approved as such by a competent authority, building plans would be sanctioned after ensuring the right of way of the roads in according with the Master Plan/Zonal Plan or the City Area Policy. The applicant would furnish an undertaking that he would leave the land required for road widening free of cost as and when asked for by the Corporation.

(iii) The coverage will, however, be permitted on the entire area of the plot. However, if coverage is not achieved after leaving the right of way of the road and the prescribed setback, no relaxation in setbacks would be permitted.

(iv) The setbacks shall be ensured as per City Area Policy and the case of Civil Lines area as per Building Bye-Laws.”.

11. The instant plot of land would be covered by clause (c)(ii).

12. Thus, the position would be that as regards the FAR, which is 350, the first respondent would be entitled to a total cover area of 269.92 sq.mtrs. This would entitle the first respondent to raise four floors and on each floor the cover area would be 67.48 sq.mtrs. In other words, after leaving 12.95 sq. mtrs. for road widening out of the 80.43 sq.mtrs plot area owned by the first respondent, he would be entitled to a cover area of 67.48 sq. mtrs. each on the ground floor, first floor, second floor and the third floor.

13. Declaring the legal position as aforesaid we terminate our journey in appeal by noting the factual controversy.

14. As per the appellant the cover area on each floor is more than 67.48 sq.mtrs, a fact disputed by the respondent.

15. It is agreed between learned counsel for the parties that this could be resolved by the Executive Engineer of the concerned zone measuring the existing construction in presence of the appellant and the respondent for which a notice shall be given by the Executive Engineer to the appellant as also to the first respondent, intimating the date and time when the Executive engineer would measure the existing construction effected on the plot by the first respondent.

16. If any issue subsists concerning the same, parties shall be entitled to remedy as per law.

17. We note that in the writ petition the petitioners had made a grievance concerning the basement dug in respect of which the learned Single Judge has not expressed any opinion.

18. It is agreed between learned counsel for the parties that any issue concerning basement could be urged by the appellant before an appropriate forum.

19. The appeal is disposed of declaring the legal position as above and passing consent directions as noted above.

20. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 12, 2015

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