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

+ **W.P.(C) 6062/2013**

USHA CHANDNA & ANR

..... Petitioners

Through: Mr. Pradeep K. Bakshi, Mr. Rajat Navet
and Mr. Hardik Luthra, Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Arun Birbal and Mr. Sanjay Singh,
Advocates

Mr. Aman Usman, Advocate for Ms. Meena Mittal

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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18.09.2015

CM No.20265/2015 (Exemption)

1. Allowed subject to just exceptions.

W.P.(C) 6062/2013 and CM No.20264/2015 (u/O. 1 R. 10 CPC)

2. This is writ petition whereby, a challenge has been laid, essentially, to the order dated 26.08.2013 passed by the Appellate Tribunal, MCD, Tis Hazari Courts, Delhi (in short the Tribunal), in appeal No.178/AT/MCD/2012.

2.1 There are other prayers made as well. There is a prayer made to set aside and quash order dated 02.03.2012, passed by the respondent (in short the DDA) whereby, the additional sanction granted on 19.02.2009 qua the subject property described as : “2nd and 3rd floor of the property bearing no.A-181, Shivalik, Malviya Nagar, New Delhi” (hereafter referred to as the subject property) was revoked.

2.2 In addition to the above, the petitioner has also sought a direction qua the respondent/DDA for consideration of their application dated 16.09.2013 for regularising /compounding the alleged unauthorised construction carried out in the aforementioned property.

2.3 Furthermore, consequential prayers in the form of directions, in effect, by way of injunction against demolition of the aforementioned subject property as also for issuance of completion and occupancy certificate has been sought.

2.4 Before I proceed further, I will be referring to the land on which the subject property is built as vacant plot. Similarly, the building constructed on the vacant plot which includes all floors (including the subject property) will be adverted to as the super structure, wherever necessary the floors in the super structures will be referred to separately.

3. Briefly, the background, in which, the present writ petition, has been filed, is as follows :-

3.1 The original owner of the subject property is one, Ms. Renu Saxena. She, evidently, acquired rights in the vacant plot, on which the super structure is built, by way of a lease deed dated 05.05.1993.

3.2 To begin with, only ground and first floor were constructed on the vacant plot.

3.3 On 19.09.1994, Ms. Renu Saxena entered into an agreement to sell with one, Ms. Meena Mittal. By this agreement, Ms. Renu Saxena and Ms. Meena Mittal agreed on sale of first floor of the super structure; albeit without terrace rights.

3.4 On 29.07.2004, Ms. Renu Saxena entered into another agreement to sell with Ms. Meena Mital – this time around, in respect of the ground floor

portion. This agreement apparently specified that no rights were given vis-a-vis the terrace on the first floor.

3.5 In the interregnum, it appears, on 01.09.2003, Ms. Renu Saxena entered into an agreement to sell with the petitioners herein. This agreement was executed by Ms. Renu Saxena with the petitioners qua terrace rights on the first floor of the super structure then in place.

3.6 The record shows that on 02.09.2004, the aforementioned property was converted into freehold by the DDA, and consequently, a conveyance deed was executed thereupon, on 26.10.2004 in favour of Ms. Renu Saxena.

3.7 It is averred by the petitioners that based on a general power of attorney executed by Ms. Renu Saxena in favour of one, Mr. Sanjeev Mittal, the husband of Ms. Meena Mittal, sale deeds were executed qua ground floor and first floor in favour of his wife i.e. Ms. Meena Mittal.

3.8 According to the petitioners, Ms. Renu Saxena had no knowledge of the factum of the execution of the said Sale deeds.

3.9 Be that as it may, Ms. Meena Mittal, apparently, vide her complaint dated 10.03.2008, addressed to the DDA brought to its notice that she had not given her no objection for construction of second and third floor on the aforementioned property. In the complaint, Ms. Meena Mittal raised concerns about the structural stability of the then existing super structure.

4. Evidently, on 09.05.2008, Ms. Renu Saxena, filed for approval of additional building plan with the respondent/DDA.

4.1 It appears that on 27.06.2008, the DDA responded to the complaint lodged by Ms. Meena Mittal. In their response, the DDA was indicted that, they do not consider floor-wise ownership.

4.2 Apparently, Ms. Meena Mittal, once again, wrote to the DDA vide

letter dated 01.09.2008. By this communication, Ms. Meena Mittal articulated her apprehension concerning unauthorised construction on the second floor on the then subsisting super structure.

4.3 It is the case of the petitioners that they obtained a No Objection Certificate (NOC) from the concerned cooperative society (i.e. Rehabilitation Ministry Employees Cooperative House Building Society Ltd.) for construction of a third floor on the then subsisting super structure. This certificate though, indicated that it was only a provisional NOC, which was subject to the final decision of the Supreme Court qua construction of the third floor.

4.4 Armed with the above, Ms. Renu Saxena wrote to the respondent on 03.11.2008, 17.11.2008 and 26.12.2008 for grant of building sanction plan as, according to her, she had completed the formalities in that regard.

4.5 Based on the request made by Ms. Renu Saxena, additional building plans for construction of second and third floor were sanctioned by the DDA, on 19.02.2009.

4.6 Having acquired the necessary sanction, the petitioners, commenced construction in May 2009. Ms. Meena Mittal who, as indicated above, is the owner and occupier of the ground and first floor, at this point in time, instituted a suit for injunction in the District Court. This suit was instituted on 21.05.1999 and is numbered as : Suit No.828/2009.

4.7 I am informed that the petitioners were impleaded as defendants in the said suit and based on their application filed under Order 7 Rule 11 of the CPC, the plaint was rejected.

4.8 Ms. Meena Mittal, who was aggrieved, by the said order, I am informed, has carried the matter in appeal. The appeal is pending with the

Additional District Judge.

4.9 To be noted, the main relief sought in the said suit by Ms. Meena Mittal is for passing of decree of permanent injunction on construction of second and third floor.

5. As a matter of fact in the suit Ms. Meena Mittal had moved an application for interim injunction under Order 39 Rule 1 and 2 of the CPC which was dismissed by the Civil Judge, on 10.07.2009.

5.1 Against the said order, an appeal was preferred, which was dismissed by the Additional District Judge, on 11.02.2010.

5.2 The petitioners aver that the construction of the second and third floor stood completed, on 22.02.2010.

5.3 On an application being made by Ms. Renu Saxena for issuance of an occupancy certificate, the said application was dismissed by the DDA, on 06.04.2010, on the ground that the matter was sub-judice.

5.4 I am told that in the interregnum, Ms. Meena Mittal had also filed a suit for declaration in respect of the sanction of the building plans by the DDA. This suit, however, I am informed, stood dismissed as withdrawn with liberty to file appropriate proceedings before the concerned statutory Tribunal.

5.5 I am further informed that against the observations that Ms. Meena Mittal had liberty to approach the statutory tribunal to ventilate her grievance, a petition was filed by the petitioners, which was dismissed.

6. What is of relevance, in so far as the present action is concerned, is that, on 02.02.2011, Ms. Meena Mittal, wrote to the DDA for revocation of the sanction building plan qua the second and third floor.

6.1 The DDA accordingly, issued a legal notice dated 13.05.2011 to Ms.

Renu Saxena under Section 30(1) and 31 A of the Delhi Development Act, 1957 (in short the DDA Act).

6.2 Ms. Renu Saxena was called upon to show cause as to why demolition of unauthorised construction ought not to be carried out. The show cause notice alleged that Ms. Renu Saxena had suppressed the material and had misrepresented facts while obtaining sanction of building plans.

6.3 In response to the said show cause notice, Ms. Renu Saxena, filed a reply and put in an appearance on several dates. The concerned officer of the DDA thereafter, passed an order dated 03.01.2012, revoking the sanction of the building plans accorded vide order dated 19.02.2009.

6.4 Aggrieved by this, a writ petition was preferred by the petitioners as well as Ms. Renu Saxena. This writ petition was numbered as : WP(C) 778/2012.

6.5 The said writ petition was disposed by a learned single Judge of this court vide order dated 07.02.2012. The learned single Judge while disposing of the writ petition issued the following operative directions in paragraph 5 of the order. For the sake of convenience, the same are extracted hereinafter :-

“...5. In these circumstances, the present petition is allowed and the impugned order dated 03.01.2012 is quashed and set aside while directing the respondent/DDA to pass a well reasoned speaking order on the basis of the averments made by petitioner no.3 in her replies and her oral submissions. A fresh order shall be passed by the respondent/DDA within a period of four weeks from today under written intimation to petitioner no.3. In case, petitioner no.3 is aggrieved by the order that may be passed, she shall be entitled to seek remedies as per law..”

(emphasis is mine)

6.6 Pursuant to the order passed by this court, the DDA passed a speaking order dated 02.03.2012 whereby, it reiterated its earlier decision of revocation of the sanction building plan.

6.7 Ms. Renu Saxena along with the petitioners assailed the order dated 02.03.2012 passed by the DDA by way of a statutory appeal. This appeal was filed before the Tribunal.

6.8 It is, in this appeal that the impugned order dated 26.08.2013 came to be passed.

7. However, what is required to be noticed, is that, prior to the passing of the final order, on 13.06.2012, the Tribunal had passed an interim order whereby, the petitioners, for some strange reasons were deleted from the array of parties. It is important in this context to note the observations of the Tribunal to decipher as to what propelled it to delete the petitioners from the array of parties. The relevant observations for the sake of convenience are extracted hereinafter :-

“...However after considering the record as well as order of the Hon’ble High Court dated 07.02.2012 passed in Writ Petition (C) no.778/2012, I am of the view that appellants no.2 and 3 have been unnecessarily joined in the present appeal. The impugned order was not passed against them; no show cause notice was issued against them nor were any proceedings initiated against them. They may be having an interest in the subject property in the capacity of owner and had filed the above Writ Petition along with appellant no.1 but paragraph no.5 of the order of the Hon’ble High Court had given liberty to appellant no.1 (who was the petitioner no.3 in the Writ petition) only to seek remedy as per law, if fresh speaking order is subsequently passed against her by the respondent. Despite filing Writ Petition jointly by all

the three appellants when only right was given to appellant no.1, Smt. Renu Saxena by Hon'ble High Court to challenge the impugned order then present appellant no.2 and 3 have no right to come to this Tribunal. There is thus misjoinder of the parties and accordingly, it is directed that appellant no.2 and 3 be deleted from the present appeal..”

(emphasis is mine)

7.1 The petitioners being aggrieved by the final order passed by the Tribunal (i.e. order dated 26.08.2013) preferred the instant writ petition.

7.2 Parallely the petitioner also filed an application dated 16.09.2013, with the DDA, to seek regularization of the impugned construction qua the second and third floor.

7.3 Notice in this petition was issued on 23.09.2013. Since then, the DDA has filed a counter affidavit.

7.4 I may only indicate that Ms. Meena Mittal has filed an application, being CM No.20264/2015, under Order 1 Rule 10 read with Section 151 of the CPC for being impleaded as party to the present proceedings.

7.5 Before I deal with that application of Ms. Meena Mittal, let me advert the tenability of the order passed by the Tribunal vis-a-vis the petitioners.

8. As would be evident from the facts narrated above, the Tribunal deleted the petitioners from the array of parties (and in my view, erroneously) as it misunderstood the directions of this court contained in order dated 07.02.2012.

8.1 A careful perusal of the directions contained in paragraph 5 of the order dated 07.02.2012, passed by this court, would show that all that this court had directed the DDA to do was to “...pass a well reasoned speaking order on the basis of the averments made by petitioner no.3 i.e. Ms. Renu Saxena in her replies and oral submissions...”. Liberty was given to

petitioner no.3 i.e. Ms. Renu Saxena to assail the order in accordance with the law if, she were aggrieved by the DDA's final determination.

8.2 By this order, the High Court did not exclude the petitioners herein (who were also petitioners, in the said petition) from availing the statutory remedy if, they were affected by the final determination by the DDA.

8.3 In my view, therefore, the Tribunal misdirected itself, in deleting, the petitioners, from the array of parties. Undoubtedly, the order passed by the Tribunal affected their interest and therefore, they had every right to be heard.

8.4 I am informed that Ms. Renu Saxena had preferred a statutory appeal against the order of the Tribunal to the District Judge, and that, the said appeal has been dismissed as withdrawn, on 18.09.2014.

8.5 Notwithstanding the above, in my view, the order passed by the Tribunal cannot sustain, since, the petitioners, were not given due opportunity to prosecute their appeal.

9. Accordingly, the order dated 26.08.2013, passed by the Tribunal, is set aside. The appeal is restored to its original position. The Tribunal will rehear the appeal and pass appropriate orders thereafter.

9.1 In these circumstances, the interlocutory application filed by Ms. Meena Mittal has been rendered infructuous. It is accordingly, disposed of.

10. Mr. Usman, in support of the application filed on behalf of Ms. Meena Mittal says that his client should also have an opportunity to oppose the appeal, before the Tribunal.

10.1 In this behalf, the only observation that I am inclined to make, at the moment, is that Ms. Meena Mittal may move the Tribunal, and the Tribunal thereafter, will pass appropriate orders, as to whether or not Ms. Meena

Mittal, can contest the appeal.

10.2 In view of the above, other prayers do not require consideration of the court.

10.3 Having regard to the fact that this matter has been pending for quite some time, the Tribunal is directed to dispose of the appeal as expeditiously as possible though not later than four (4) months from today.

10.4 Mr. Bakshi, who appears for the petitioners, undertakes to the court that pending adjudication of the appeal before the Tribunal, the petitioners will maintain status quo as to the title and the structure of the subject property.

11. The captioned petition and the pending application are, accordingly, disposed of, in aforesaid terms.

RAJIV SHAKDHER, J

SEPTEMBER 18, 2015

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