

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

Date of decision: 13th May, 2015

+ **LPA 657/2014**

SUPERIOR EXIM (P) LTD. Appellant

Through: Ms. Gurmeet Bindra, Adv.

Versus

M/S VEENA ASSOCIATES & ANR Respondents

Through: Mr. B.M. Agarwal, Adv. for R-1.
Mr. D.S. Mahendru, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 28th July, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.4712/2014 preferred by the appellant.

2. Notice of the appeal was issued. We have heard the counsel for the appellant and the counsels for the respondents No.1&2.

3. The respondent No.1 is a tenant under the appellant in a portion of property No.2, Underhill Road, Civil Lines, Delhi. On complaints of the appellant, the respondent No.2 North Delhi Municipal Corporation (NDMC)

booked the respondent No.1 for unauthorized construction in the portion of the property in its tenancy and passed an order of demolition of the said unauthorized construction. The respondent No.1 filed an appeal before the Appellate Tribunal, Municipal Corporation of Delhi (ATMCD); when the said appeal came up for hearing on 11th January, 2012, the respondent No.1, referring to the National Capital Territory (NCT) of Delhi Laws (Special Provisions) Act, 2011 sought adjournment *sine die* of the hearing of the appeal and which was agreed to by the counsel for the appellant. Accordingly, the ATMCD vide order dated 11th January, 2012 adjourned the hearing of the appeal *sine die* with liberty to the parties to have the same revived as and when required.

4. The appellant filed an application for revival of the appeal contending that it was wanting to rebuild the property and the plans whereof were not being sanctioned owing to the unauthorized construction subject matter of the appeal before the ATMCD and further contending that the provisions of the NCT of Delhi Laws (Special Provisions) Act, 2011 were not applicable to the subject unauthorized construction.

5. The Appellate Tribunal, MCD vide order dated 18th February, 2014 dismissed the said application of the appellant holding that the provisions of

the NCT of Delhi Laws (Special Provisions) Act, 2011 were applicable to the subject unauthorized construction and also that the appellant having on an earlier occasion agreed to the hearing of the appeal being adjourned *sine die* could not, while the NCT of Delhi Laws (Special Provisions) Act, 2011 was still in force, seek revival thereof.

6. Aggrieved therefrom, the writ petition from which this appeal arises was filed. However the learned Single Judge, by the impugned order, dismissed the writ petition *in limine*, agreeing with the reasons given by the ATMCD.

7. The counsel for the appellant before us argued that at this stage, the question whether the unauthorised construction subject matter of the proceedings before the ATMCD is protected by the NCT of Delhi Laws (Special Provisions) Act or not need not even be addressed. It was argued that the said question would arise only if the appeal preferred by the respondent No.1 is dismissed. It was contended that the said law is not a bar to the ATMCD determining the validity of the order of the respondent No.2 NDMC, of the construction being unauthorized and being liable to be demolished. It was contended that the said question be allowed to be determined and the said decision be not kept in abeyance.

8. Per contra, the counsel for the respondent No.1 argued that if the construction was protected under the said law and could not be demolished, there is no purpose in pursuing the appeal or inviting a decision thereon. It was further argued that the appellant, on an earlier occasion having agreed before the ATMCD for adjournment of the proceeding *sine die*, cannot, without any change in circumstances, be permitted to change its mind.

9. We have considered the rival contentions.

10. We enquired from the counsel for the respondent No.1 that whether owing to the aforesaid law, the very functioning of the ATMCD can be brought to a standstill. If it were to be said that all unauthorized constructions in the city are protected by virtue of the said law which has been extended from time to time and owing thereto all the proceedings before the ATMCD are to be stayed or adjourned *sine die*, it would result in the ATMCD having no work at the moment and suddenly having a flood of work as when and the aforesaid law were to come to an end.

11. No proper answer was forthcoming.

12. We find merit in the suggestion of the counsel for the appellant that even if the construction by the respondent No.1 inspite of being

unauthorized were to be protected for the time being from action of demolition owing to the law aforesaid, at least the decision whether the same is unauthorized or not and is liable to be demolished or not be allowed to be returned by decision of the appeal and the said decision be not deferred. A Single Judge of this Court in ***Om Prakash Singh Vs. New Delhi Municipal Council*** MANU/DE/4699/2013 has held that the said law is not a bar to the municipality issuing notice under Section 247 of the New Delhi Municipal Council Act, 1994 of unauthorized construction having been carried out and to show cause as to why it should not be demolished.

13. Another aspect which appears to have escaped attention of all concerned, is that if it were to be held in the appeal that the construction in the portion of the respondent No.1 is not unauthorized, then the respondent No.2 NDMC cannot on the ground thereof deny sanction of building plans submitted by the appellant. The decision of the appeal is essential for this reason also.

14. As far as the second reason given by the ATMCD is concerned, we may notice that the NCT of Delhi Laws (Special Provisions) Act, 2011 was valid for one year only and has thereafter been extended from year to year. Even if the appellant at that time had agreed to adjourn *sine die* of the

appeal on the presumption that the law is for a period of one year only, upon the law being extended, it cannot be said that the appellant is estopped from applying for revival of the appeal. We therefore do not agree with the reasoning given by the ATMCD and accepted by the learned Single Judge, of the appellant being so not entitled for revival of the appeal.

15. The appeal is accordingly allowed; the order dated 28th July, 2014 of the learned Single Judge and resultantly the order dated 18th February, 2014 of the ATMCD are set aside.

16. The application of the appellant for revival of the appeal (which was adjourned *sine die* vide order dated 11th January, 2012) before the Appellate Tribunal, MCD stands allowed.

17. The parties to appear before the Appellate Tribunal, MCD on 7th July, 2015 for fixing of a date for hearing of the appeal.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 13, 2015

‘bs’