

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.02.2015

+ **W.P.(C) 7712/2012**

SHANTA DUNEJA

..... Petitioner

versus

MCD AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr J. C. Mahindro.

For the Respondents : Ms Biji Rajesh for SDMC.
Mr Mohit Kumar for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying that respondent No.1 be directed to demolish the illegal and unauthorised construction raised by respondent No.2; to restore the load bearing walls to its original condition; and to rectify the damage caused to the petitioner's property Flat No. 285 Mandakini Apartments, Alaknanda, Kalkaji, New Delhi-19.

2. The petitioner is the owner/resident of a duplex Flat (on the first and second floor) bearing no. No.285, Mandkani Apartment, Kalkaji, New Delhi 110019. The ground floor duplex flat bearing No. 283 is owned/occupied by respondent No.2. Respondent No.2 has covered a

courtyard on the ground floor and the same is the bone of contention in the present petition.

3. The learned counsel for the petitioner submits that the covering of the courtyard has resulted in loss of petitioner's privacy inasmuch as the roof of the courtyard is now at the floor level of the first floor and the window of the dining room of the petitioner's flat now opens to the terrace over the courtyard. And, any person now standing on this terrace has an unhindered view of part of the petitioner's living spaces. The petitioner thus prays that the said roof be demolished and her privacy be restored.

4. The learned counsel for respondent no. 2 has handed over a counter affidavit, which is taken on record. The learned counsel for respondent No. 2 has referred to the respondent corporation's policy and submits that by virtue of clause 2(III)(1) of "Instructions and Guidelines for Building Permit and Completion Certificate in Respect of DDA's Flats" (hereafter the 'policy') it is permissible to cover a courtyard. He submits that the petitioner had also agitated her grievances before the Appellate Tribunal, MCD and contends that by virtue of the order dated 13.03.2012 passed by the Appellate Tribunal, MCD (hereafter 'the Tribunal') in Appeal No. 99/AT/MCD/2009 captioned "Dr S.N. Purwar v. Municipal Corporation of Delhi", respondent no.2 is entitled to enjoy the terrace over the courtyard. It is also submitted that providing door to access the terrace is a condonable alteration by virtue of clause 2(I)(4) of the policy.

5. South Delhi Municipal Corporation (hereafter 'SDMC') has filed a status report, *inter alia*, stating as under:

“It is submitted that there is policy of DDA permitting additional coverage on DDA Flats. It lays as under:

“In three or four storied flats the owners at upper floor shall have the right to cover the area available as a result of **coverage of courtyard/terrace of floor below**. In such cases the residents of DDA flats in a vertical stack served by the same staircase should give their consent and jointly apply for permission.”

That it can be seen that covering of courtyard is permissible. However, owner of ground floor needs consent of owner(s) of DDA flats in a vertical stack served by the same staircase.”

6. I have heard the learned counsel for the parties.
7. On 23.10.2007, respondent no.2 applied for regularisation of the unauthorised construction/alteration carried out by respondent no.2 at his property. Respondent no.2's application for regularisation was rejected by Municipal Corporation of Delhi on 08.02.2008. Neither the application for regularisation nor the order rejecting the same have been placed on record. However, it is apparent from the judgment of the Tribunal rendered on 13.03.2012 that respondent no.2's application for regularisation was rejected on the following three grounds:-

- “1) Projections on the municipal land
- 2) Non submission of NOC from the owner of flat no. 285
- 3) Misuse of garage for residential purpose.”

8. The Tribunal's judgment dated 13.03.2012 also indicates that though the petitioner was not formally joined as a party to the proceedings before the Tribunal, she was permitted to file documents and make submissions.

9. Insofar as permission or NOC from the petitioner is concerned, the Tribunal held that the same was not necessary in view of the law laid down by this Court in **MCD v. Smt. Usha Devi Sharma: 127 (2006) DLT 275** and **Ashok Kumar v. MCD: Civil Writ Petition No.3535/2001, decided on 11.03.2013.** The Tribunal held that the flats in question were separate and independent. And, the regularisation application submitted by respondent no.2 without the signatures of the owner of flat no.285 (the petitioner herein) or without obtaining her NOC was perfectly valid and proper and the objection raised by the MCD in this regard was set aside. The Tribunal held that clause 2(III)(1) of the policy was applicable and the only requirement to be fulfilled by respondent no.2 for construction was to comply with building byelaws and ensure structural safety of the building. It was further held that clause 2(III)(2) of the policy would not apply as the said clause would be applicable only where flats were constructed in a vertical stack. The Tribunal was of the view that the flats in question were not flats built in a vertical stack.

10. The question whether the unauthorised constructions/alterations carried out by respondent no.2 are to be regularised is still pending consideration with SDMC. Although the petitioner has succeeded before the Tribunal, it is not certain whether the same has been accepted by SDMC as the SDMC's status report (as quoted herein before) affirms its stand that a consent of the petitioner would be required in view of the clause 2(III)(2) of the policy.

11. In the aforesaid circumstances, I am refraining from expressing any opinion on the questions whether an NOC from the petitioner was required

and/or whether clause 2(III)(2) of the policy is applicable.

12. For the purposes of the present petition, it is assumed that clause 2(III)(1) of the policy is applicable as contended by respondent no.2 and as accepted by the Tribunal.

13. At this stage, it is necessary to refer to the policy, the relevant extracts of which are quoted below:-

“2. ADDITION(S)/ALTERATION(S) ALLOWED IN DDA FLATS :

XXXX XXXX XXXX XXXX

(I) Condonable Items :

XXXX XXXX XXXX XXXX

(4) Providing door in courtyard wherever not provided,

XXXX XXXX XXXX XXXX

(III) ADDITIONAL COVERAGE PERMITTED WITH PRIOR PERMISSION :

1. Covering of courtyard and floor level terraces is allowed subject to fulfillment of building byelaws and structural safety.
2. In three or four storeyed flats the owners at upper floor shall have the right to cover the area available as a result of coverage of courtyard/terrace of floor below. In such cases the residents of DDA flats in a vertical stack served by the same staircase should give their consent and jointly apply for permission.

XXXX XXXX XXXX XXXX

All the addition/alteration(s) and additional coverage will be governed by 5-basic principles :

- There is no encroachment on the public land.
- Structural stability of the building is ensured.
- Light and ventilation of the habitable rooms is ensured as per the building bye-laws.
- There is no infringement of other's rights.
- The service elements such as manhole, rain water fittings, sanitary fittings etc. are not disturbed and remain exposed for periodical inspection and maintenance.

The owner(s) will be allowed to cover additional space with prior permission of MCD as per the prescribed procedure.

The existing additional covered area and addition(s)/ alteration(s) can also be got regularized by the owner(s) of DDA flats if the same are within the prescribed norms following the same procedure.”

14. According to respondent no.2 Clause 2(III)(1) above enables respondent no.2 to not only cover the courtyard but also use the terrace so created by opening a door on the same from the first floor portion of his duplex flat.

15. In my view, the said contention cannot be accepted. Even if, it is found that respondent no.1 is permitted to cover the courtyard of the ground floor, it does not necessarily follow that respondent no.2 is also entitled to use the floor above the courtyard by accessing the same from the first floor

portion of his property. The contention that respondent no.2 is entitled to open a door on the said terrace by virtue of clause 2(I)(4) of the policy is also not sustainable. As is apparent from the plain reading of clause 2(I)(4) of the policy, providing a door in courtyard is a condonable item; however, the assumption that the terrace formed on the first floor as a result of covering the ground floor courtyard would constitute respondent no.2's courtyard on the next floor is completely erroneous. It is necessary to bear in mind that the flats owned by the petitioner as well as respondent no.2 are duplex flats. Whereas respondent no.2 is in occupation of the entire area of the ground floor, his space on the first floor is limited; only two bedrooms and a bathroom are available to respondent no.2 on the first floor. The balance area of the first floor is with the petitioner which includes a living room, dining room, kitchen, a bedroom and a bathroom. The area available with respondent no.2 on the first floor is adjacent to the lower level of the petitioner's unit and the said areas are separated by common walls.

16. The terrace formed by casting a roof over the ground floor is on the same level as the floor of the first floor units. In the circumstances, the action of respondent no.2 in accessing the terrace would undoubtedly cause an inconvenience to the petitioner as the said terrace is immediately outside the window of the dining room of the petitioner. The photographs produced indicate that respondent no.2 has placed certain furniture and other articles on this terrace. Any person using the said area would have an immediate view into a part of the living space of the petitioner and, thus, would clearly result in petitioner's loss of privacy.

17. The policy also clearly specifies that any addition/alteration and

additional coverage would, *inter alia*, be subject to the principle that there is no infringement of other's rights. In the present case, the attempt on the part of respondent no.2 to not only cover the courtyard on the ground floor but also utilise the space above to garner a larger share on the first floor would certainly impinge upon the rights of the petitioner as the first floor space of the building is also shared by the petitioner. In addition, the petitioner's grievance that any use of the terrace above the covered courtyard would also cause loss of privacy is justified. The petitioner has also annexed photographs which indicate the uncomfortable proximity of persons on the said terrace. In this view, the use by respondent no.2 of the terrace above the courtyard cannot be permitted.

18. It is also relevant to note that respondent no.2's flat is a three bedroom unit. Apparently, respondent no.2 has integrated the car garage on the ground floor as a part of his residential flat. In addition, respondent no.2 has covered the courtyard to make an additional room. The petitioner on the other hand has a two bedroom unit. Thus, during the course of the proceedings, respondent no.2 was asked whether he would be willing to close the door which had been unauthorisedly opened by him on the terrace above his courtyard and permit the petitioner to use the said space as this would put a quietus to the dispute. Respondent no.2 was not agreeable to the same; according to the learned counsel for the said respondent, the same would be unjustly riching the petitioner.

19. In the circumstances, the present petition is disposed of with the direction that respondent no.2 would close the door opened on the terrace above the courtyard and restore the wall to its original position. Respondent

no.2 is further restrained from using the said terrace in any manner. The respondent would also ensure that the terrace is periodically cleaned and filth and water do not accumulated on the terrace in question.

20. It would be open for the petitioner to appeal against the judgment of the Tribunal dated 13.03.2012 inasmuch as the Tribunal has held that an NOC from the petitioner was not required for carrying out the additions and alterations done by respondent no.2. It will also be open for SDMC to assail the decision of the Tribunal by filing an appeal under Section 347(d) of the DMC Act before the concerned District Judge (as it has been held by Supreme Court in Civil Appeal No.5075/2005 captioned “Amrik Singh Lyallpuri v. UOI & Ors.” that such an appeal would lie with the concerned District Judge).

21. The petition is disposed of with the aforesaid directions.

FEBRUARY 25, 2015
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VIBHU BAKHRU, J