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

+ **Date of Decision: 07.12.2015**

% **RSA 162/2015**

VINOD KUMAR JAIN & ORS

..... Appellant

Through: Mr. S.C.Singhal, Advocate

versus

VINOD SRIVASTAVA & ORS

..... Respondent

Through: Mr. Rajan Sabharwal, Standing
Counsel for respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 23.03.2015 passed by the first appellate court, namely, the SCJ-cum-RC(N/W), Rohini Courts, Delhi, in RCA No. 3/14, whereby the said first appeal preferred by the appellant/defendant has been dismissed and the judgment and decree passed by the trial court, namely, the learned Civil Judge-XII, Central, Tis Hazari Courts, Delhi, in Suit No. 273/14 has been affirmed.

2. The original suit had been preferred by respondent No. 1 – Vinod Srivastava to seek several reliefs, including, the relief that the unauthorised

construction put up by the appellants above the ground floor i.e. up to third floor be directed to be removed. A direction to the Municipal Corporation of Delhi-respondent No. 5 was sought that they remove the unauthorised constructed being raised by defendant Nos. 1 to 4. The trial court decreed the suit and the first appellate court has upheld the said decree.

3. It is not in dispute that in respect of Nimri Colony, where the suit property is situated, Municipal Corporation of Delhi formulated a policy vide resolution No. 386 dated 25.09.2000. Under this policy, the layout plan of the colony was revised with each flat was permitted a coverage of 100 sq. Meters on a plot area of 135 sq. Meters. On the ground floor, the coverage was envisaged by extension of depth of the plot by 8' in front and by 22' in the rear of the existing flats. The ground floor flat owners and the second floor/upper flat owners were permitted the same covered area i.e. 100 sq. Meters each. It was clearly stated that any construction beyond 100 sq. Meters shall have to be demolished/cleared by the flat owners failing which the MCD shall take action under the law.

4. In clause (viii) of the resolution, it was clarified that while the ground floor flat owner is allowed to construct in the rear court yard, he will confine his part of the covered area only in the ground floor. On the first floor, no construction could be raised on the rear side. The terrace rights over the newly constructed area on the ground floor upto depth of 22' were to remain with the ground floor owner. So far as the first floor/upper floor flat owner was concerned, they were permitted to use and exhaust the ground coverage of 100 sq meters by raising construction on the front area (upto 8') and by raising construction on the second floor. This is clear from clause (ix) of the

said resolution.

5. A perusal of the Scheme shows that the charges to be levied for permitting such additional construction were set out in Clause (xi) of the said Scheme.

6. From the judgment of the trial court, it appears that the appellant had raised construction not only on the first floor but also on the second floor and even on the third floor. The construction on the third floor was not permitted at all. Consequently, the trial court decreed the suit thereby directing defendant No. 5, namely, the Municipal Corporation of Delhi, to demolish the construction on the second floor and third floor above flat No. 182, Nimri Colony, Ashok Vihar, as per site plan Mark A. Further injuncting relief was also decreed in favour of the plaintiff. The first appeal preferred by the appellant met the same fate.

7. The submission of Mr. Singhal, learned counsel for the appellant, is that the appellant had been required to deposit, and has deposited Rs. 2,30,663/- on 21.01.2008, and by deposit of the said amount, the entire existing construction stood regularised. He further submits that even as per the status report filed by Municipal Corporation of Delhi before the trial court, the construction was found only up to second floor and there was no third floor found to be in existence. Mr. Singhal further submits that on a reading of the policy contained in Resolution No. 386 of the Municipal Corporation, dated 25.09.2000, 100 sq. Meters area could be covered both on the second floor and third floor independently.

8. On the other hand, Mr. Sabharwal, learned counsel for the respondent/ Municipal Corporation of Delhi, fully supports the impugned judgment and

decree. He submits that firstly, additional construction has been raised on the second and third floor which is beyond the permissible limits under the aforesaid Scheme. He further submits that demolition has been directed to be carried out and shall be carried only strictly in terms of the Scheme and in respect of the area which is in excess of 100 sq. Meters covered area on first and second floor put together. He further submits that the submission with regard to interpretation of the Scheme as advanced by Mr. Singhal is incorrect inasmuch, as, the total covered area on the first and second floor put together could not exceed 100 sq. Meters. In this regard, he placed reliance on clauses (i), (viii) and (ix) of the said Scheme.

9. Having heard learned counsels, I am of the view that there is no merit in the present second appeal and it does not raise any substantial question of law for consideration of this Court. Mr. Singhal has not been able to point out any perversity in the concurrent finding of the two courts below calling for interference by this Court.

10. Clause (i), (viii) and (ix) of the scheme formulated by the municipal corporation with regard to regularisation of unauthorised construction/encroachment of land in Nimri Colony reads as follows:

“(i) The layout plan for the colony should be revised with each flat permitted a coverage of 100 sq. mtrs. on a plot area of 135 sq. mtrs. on ground by envisaging an extension of the depth of the plot by 8 ft. in front and by 22 ft. in the rear of the existing flats. The size of the plot shall thus be 25’-3” x 57’-6”= 1451.9 sq. ft. (135 sq. mtrs.). The ground floor flat owners and the first floor/upper flat owners will have the same covered area permissible i.e. 100 sq. mtrs. each. Any construction beyond 100 sq. mtrs. and beyond prescribed size of the plot

shall have to be demolished/cleared by the flat owner himself failing which MCD will have to take action under the law.

(viii) It is further clarified that while the ground floor flat owners is allowed to construct in the rear courtyard he will confine his part of the covered area only on the ground floor. No first floor construction on the structure in the rear shall be permitted at any stage. Terrace rights, however, shall remain with the ground floor owner for this part on the rear.

(ix) The upper floor owner will construct his part of the permissible covered area on the first and second floor. He may construct on the additional area in the front with the consent of ground floor flat owner but he will not be permitted any construction on the rear courtyard constructed by ground floor owner”.

11. A plain reading of the aforesaid clauses clearly shows that the ground floor flat owner is entitled to extend the coverage in the front by upto 8 ft. and similarly to extend the coverage of rear by upto 22 ft. Whereas the resulting roof in the front additional coverage (upto 8 ft.) would be available to the first floor flat owner for making similar coverage, the rear additional coverage of upto 22 ft. depth cannot be utilised by the first floor flat owner, and the resulting area on the first floor can be used as open terrace by the ground floor owner, to whom it shall belong. So far as the first floor flat owner is concerned, to be able to cover the area of 100 sq. mtrs., the scheme permits him to raise construction on the second floor. Thus, the area of the first and second floor put together can be upto 100 sq. mtrs. covered area.

12. From the aforesaid, it is clear that there is no merit in the submission of Mr. Singhal that the appellant was entitled to cover 100 sq. mtr. area on the first floor, and another 100 sq. mtr. on the second floor. Mr. Singhal does not dispute that it is not possible to have covered area of 100 sq. mtr.

on either the first floor, or the second floor, independently. Reading of clause 8 and 9 leave no manner of doubt that the right conferred on the first floor flat owner to have covered area of 100 sq. mtr. is by raising additional construction on the first and second floor alone, within the terms of the scheme.

13. The aspect of recovery of penalty is contained in clause (xi), which reads:

“(xi) Recovery of the penalties proposed shall be in the following manner:-

- a) The original land under possession of each unit comprising of ground floor and first floor is 62.26 sq. mtrs. and the revised size recommended of each unit is 135.0 sq. mtrs. The excess land (72.74 sq. mtrs.) shall be allotted at the L&DO rate for the area i.e. Rs.5830/- per sq. mtrs. The total cost of the excess land under each unit shall be realised from the owners of ground floor and first floor flats in equal shares. In case the plot area is less than 135 sq. mtrs., the amount shall be reduced proportionately but shall be shared by the two flat owners.*
- b) The original built up area of each flat is 670 sq. ft. (62.26 sq. mtrs.) and the total built up area now recommended to be allotted to each of the ground floor and first floor flat owners is 100 sq. mtrs. Therefore, the additional built up area which is to be allowed to each of the flat owner is 37.74 sq. mtrs. The compounding fees charges for the built up area beyond 62.26 sq. mtrs. and upto 100 sq. mtrs. shall be @ Rs.25/- per sq. mtrs.*
- c) The total cost of augmentation of water supply and sewerage as calculated by Delhi Jal Board is Rs.113.16 lakhs. The augmentation charges payable per flat works out to Rs.17,682/-.*
- d) The flat owners shall make the payment towards the land premium, regularisation charges and augmentation charges*

etc. within a period of 90 days from the date of the final orders of the Hon'ble High Court of Delhi”.

14. So far as the submission of Mr. Singhal with regard to deposit of Rs.2,30,663/- is concerned, it is not even the appellants case that the appellant has been asked to pay the penalty/regularisation charges for an area in excess of 100 sq. mtr. In any event, even if it were to be assumed for the sake of arguments that the appellant has been charged regularisation charges/penalties in excess of what was payable, the same would not grant protection to the appellant against the demolition of excess coverage (over and above 100 sq. mtr. on the first and second floor put together), and the said coverage, as is beyond the scheme formulated by the MCD, is liable to be demolished. The appellant may have had a right to claim refund of the excess payment, if any.

15. The submission that coverage was made only upto second floor and not beyond that, and that the same was within the area permissible under the scheme also does not impress this court, as the scope of the present proceedings is not to decide the disputed questions of fact. The two courts below have consistently returned findings that the area in occupation of the appellant was not only on the first and second floor, but that he had even constructed on the third floor. The appellant has not been able to point out as to how the said findings are perverse.

16. Accordingly, I find no merit in the present appeal and dismiss the same, while making it clear that defendant no.5 shall demolish the construction on the third floor entirely, and such other construction on the second floor as is found to be in excess covered area of 100 sq. mtr. when

the area of first and second floor is taken together. The other reliefs granted by the courts below with regard to injunction and the right of access to the plaintiff to the terrace are maintained.

17. The appeal stands disposed of in the aforesaid terms. The parties are left to bear their respective costs.

VIPIN SANGHI, J

DECEMBER 07, 2015

sl /sr