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

% *Date of Decision : August 18, 2015*

+ **LPA 543/2015**

NEW DELHI MUNICIPAL COUNCIL Appellant
Represented by: Mr.Anil Grover, Advocate with
Ms.Divya Jain and Mr.Satish Kapoor,
Advocates

versus

KANWAL SIBAL & ORS Respondents
Represented by: Mr.Amit Sibal, Sr.Advocate
instructed by Mr.Alok K.Aggarwal,
Mr.Vinay Tripathi and Mr.Gaurav
Tanwar, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.15654/2015

Allowed subject to just exceptions.

CM No.15652/2015

For the reasons stated in the application the delay in filing the appeal is condoned.

LPA No.543/2015

1. Kanwal Sibal, the respondent No.1 in the appeal was the writ petitioner. He had laid a challenge to a communication dated October 19, 2012 sent to him by the New Delhi Municipal Council, returning to him the

application and accompanying documents submitted by him to the Council. Kanwal Sibal had submitted an application along with necessary documents seeking sanction of the Council to effect additions and alterations on the second floor and the terrace of property bearing Municipal No.171, Jor Bagh, New Delhi. The reason why the Council returned the application to Kanwal Sibal, as indicated in the communication dated October 19, 2012, is that all the co-owners of the plot of land bearing Municipal No.171, Jor Bagh, New Delhi have not signed the application which was submitted.

2. Neither party is at variance that the plot of land bearing Municipal No.171 (Block No.172), Jor Bagh, New Delhi ad-measures 349.99 square meters, on which a building comprising a ground floor, a first floor and a second floor was constructed. When the building was constructed, the FAR utilized was spread over the three floors i.e. the ground, first and the second floor, with 167.77 square meters built up area on the ground floor and 165.50 square meters on the first and the second floor respectively. Thus total built up area on the plot was 498.77 square meters. The permissible FAR being 1.5, it is apparent that only 1.42509 FAR was utilized. The further undisputed fact is that when the Master Plan for Delhi-2021 was notified the permissible FAR stood increased to 2.25 and since only 1.42509 FAR had been utilized further FAR of 0.82491 could be utilized, which translates to 288.71 square meters additional construction being permissible on the plot. The further undisputed fact is that pursuant to the policy of conversion of lease-hold tenure into free-hold tenure, lease-hold rights conferred upon S.R.Channa & Sons (a partnership firm) by the Land and Development Office under the perpetual lease-deed dated April 23, 1971 was converted into a free-hold tenure in the name of the successor-in-

interest of the partners of the firm S.R.Channa & Sons, with such relinquishments which were effected and noted in the deed of free-hold conversion. Thus, with the execution of the conveyance deed dated August 09, 2001 the interest in the land became a free-hold interest. On January 13, 2004 the owners of the land and the building sold to Kanwal Sibal the second floor along with the terrace, a car parking space in the driveway of the building together with 27% undivided, indivisible and impartible ownership rights in the land underneath the building. The ground floor and the first floor were sold to two other persons by the owners thereof. With the increase in the FAR, Kanwal Sibal submitted an application to the Council seeking permission to effect additions and alterations on the second floor and the terrace above and locus claimed by him was his ownership under the sale-deed dated January 13, 2004, mutation in the record of the Council in his name for purposes of payment of house tax qua the property purchased by him under the sale-deed dated January 13, 2004. He claims that in his proposal he has restricted his claim to 1/3rd of the remaining FAR because he does not want to impinge upon the right of the owners of the ground floor and the first floor.

3. The only fault found by the Council to the proposal submitted by Kanwal Sibal is that the co-owners of the plot of land i.e. those who owned the ground floor and the first floor of the building have not signed the proposal submitted.

4. With reference to a decision dated May 23, 2005 passed by a learned Single Judge of this Court in W.P.(C) No.3280/2004 Usha Devi Sharma Vs. The Commissioner MCD & Anr., which was upheld by the Division Bench of this Court in the decision reported as 127 (2006) DLT 275 MCD Vs.

Smt.Usha Devi Sharma, against which Petition seeking Special Leave to Appeal was turned down by the Supreme Court on August 07, 2006, the learned Single Judge has granted relief to Kanwal Sibal and vide order dated May 27, 2015 has directed the Council to examine the proposal submitted by Kanwal Sibal as per the building bye-laws without insisting that the owners of the ground floor and the first floor should sign the same. The learned Single Judge has also noted a decision dated March 11, 2003 in W.P.(C) No.3535/2001 Ashok Kapoor Vs. MCD, which as per the learned Single Judge supported the case projected by Kanwal Sibal.

5. The decisions relied upon by the learned Single Judge bring out that there can be more than one owner in respect of a property and that law recognizes separate ownership of different dwelling units/flats and therefore a distinction has to be drawn in cases where the unity of title and possession is retained and where different floors are owned in severalty by different persons; notwithstanding unity of title in the land.

6. Learned counsel for the Council urges that condition (iv) of para 4.4.3 of MPD-2021 prohibits the sub-division of plots and therefrom the counsel urges that since FAR is related to a plot, the utilization of the FAR would be relating to the size of the plot and hence all owners of the plot have to join by signing the application seeking permission to make additions and alterations if the FAR is increased and the benefit of the increase is intended to be taken.

7. Condition (iv) of para 4.4.3 of MPD-2021 reads as under:-

“(iv) Sub-division of plots is not permitted. However, if there are more than one buildings in one residential plot, the sum of the built up area and ground coverage of all such buildings, shall not exceed the built up area and ground coverage

permissible in that plot.”

8. A bare perusal of condition No.(iv) of para 4.4.3 of MPD-2021 shows that while prohibiting sub-division of plots, using the word ‘*however*’ as the first word of the next sentence, it states that if there are more than one building on one residential plot (and we need to note that the word ‘*in*’ between the words ‘*one building*’ and ‘*one residential plot*’ is a grammatical error and should read ‘*on*’ because a building is constructed on a plot and not in a plot) the sum of the built up area and ground coverage of all such buildings shall not exceed the built up area and ground coverage permissible on the plot.

9. This makes it an interesting reading. While recognizing the single entity of a plot by making it non sub-divisible, it recognizes more than one building on one residential plot. Implicit would be the recognition of ownership in severalty, as distinct from joint, of more than one person in the different buildings on one single entity residential plot.

10. The definition of owner, as per bye-law 2.56 of the unified building bye-laws, shows that the person in whose name the property registered in the revenue record would be the owner thereof. Since the property with which we are concerned is in a municipal area and is assessed to house tax, in the revenue record i.e. the record of the Council the owner of the ground floor, the first floor and the second floor along with the terrace are shown recorded as separate owners, each liable to pay the municipal house tax qua the respective portion owned by him and thus the view taken in the decisions noted by the learned Single Judge is a sound view i.e. different floors in the same building if owned by different persons would be treated as separate

buildings.

11. Law recognizes the difference between unity of ownership, which concerns title, and unity of possession. Law recognizes that where unity of ownership is retained, the unity of possession may be disrupted. Civil law recognizes that whereas title to a plot of land and a building constructed thereon may be retained in unity, different portions can be possessed independently i.e. in severalty by the joint owners. Law recognizes partition of a building on a single entity plot of land where different portions of the built up area are enjoyed by different owners separately while retaining commonality of interest in the land on which the building is erected.

12. The reflection of this jural concept, in the context of the building bye-laws and the Master Plan for Delhi-2021, would be that since a plot of land is made indivisible and hence would be treated as a single entity plot, ownership in the land by different persons would be with reference to the proportionate share they may have in the land, as an impartible and indivisible interest, but as regards the building constructed thereon, to which would be linked the right to utilize the FAR, different floors would be treated as different buildings and entitled to the proportionate FAR, not requiring the owners of different floors to sign jointly an application submitted by the owner of a floor to effect additions and alterations in his part of the building. Of course, while considering the application it would be the duty of the Council to ensure that the applicant limits his request for additional construction to the proportionate benefit of the increased FAR allocable to his share. We note that in the instant case, it is the case of Kanwal Sibal that the proposal submitted by him limits the additional construction which he intends to make to his 1/3rd share in the additional

FAR. Notwithstanding said stand taken by Kanwal Sibal, which may possibly be treated as a concession made by him, even if Kanwal Sibal was not to take that stand, even as per law the distribution of the FAR would so warrant. The reason is that as per bye-law 2.36 of the building bye-laws 1983, FAR is defined as the quotient obtained by dividing the total covered area (plinth area) on all floors multiplied by 100 by the area of the plot. This is subject to the modification under the Master Plan for Delhi. In the instant case the multiplier of 100, taken to the unit value 1 was earlier on increased to 1.5 and thereafter to 2.25 as per MPD-2021. The total area of the plot being 349.99 square meters the total construction permissible would be 787.48 square meters i.e. 349.99×2.25 . As per condition No.X under para 4.4.3 of MPD-2021, for plots above 250 square meters and up to 500 square meters the minimum setbacks in the front and the rear have to be 3 meters each. Further, one setback on the site has to be of 3 meters. In other words on three sides of the plot 3 meters open area has to be maintained. The total height of the building as per MPD-2021 has to be 15 meters. Thus, the height restriction and the restriction of permissible coverage of the plot would be further requirements of law which would impact the distribution of the FAR on the plot of land, and since there are three co-owners of the plot of land who own in severalty the ground, first and the second floor of the building (with the terrace rights being with the owner of the second floor) the FAR benefit even as per law has to be made available equally to the three owners of the plot, to be utilized by them on their respective floors. Further, the owner of the second floor would additionally be bound by the height restriction on the building. The issue of structural stability will have to be kept in mind by the Council. Applicability of any other bye-law or any

provision of MPD-2021 concerning the height of the building would also have to be kept in mind by the Council. In other words, the rejection of the application submitted by Kanwal Sibal on the ground that it has not been signed by the owners of the ground floor and the first floor is illegal, and we accord our concurrence with the view taken by the learned Single Judge who has returned the finding to said effect. As directed by the learned Single Judge, the proposal submitted by Kanwal Sibal would need application of mind by the Council in the context of the building bye-laws applicable and the MPD-2021.

13. The appeal is accordingly dismissed in limine but without any order as to costs.

CM No.15653/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 18, 2015

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