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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : 31.03.2016

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LPA 383/2012

TEJ PRATAP SINGH

..... Appellant

Through: Mr.Ravi Gupta, Sr.Adv. with
Mr.Deepak Khosla and Ms.Bhoomija
Verma, advocates

versus

NDMC

..... Respondent

Through: Mr.Vivek B.Saharya, Addl.Standing
Counsel , NDMC with Mr.Mananjay
Kumar Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The appellant's grievance against the order of the Single Judge is that his challenge to the NDMC's action in retaining 6131.46 sq. ft. of land which is part of the appellant's property i.e. 23, Barakhamba Road, New Delhi (hereafter called as "suit property") was rejected. The Single Judge was of the opinion that the NDMC's action is not arbitrary and that the property (to the extent above) could be retained.

2. Having regard to the order that this court proposes to make, a detailed discussion on facts is essential. The suit property was notified as a residential property. The appellant argues that though the property is residential in nature, it applied for constructing a commercial building seeking the benefit of the NDMC's prevailing

scheme for that purpose. The appellant complained that at the time it approached NDMC for sanction, the latter imposed a further condition that the disputed portion i.e. 6131.46 sq. ft. ought to be kept open for its use and for the purpose of a public road i.e. road widening. The appellant engaged in correspondence with the NDMC to protest the continued use by the latter of the portion for parking purpose and ultimately approached this court. The NDMC's response in the writ proceedings was that the petitioner had consciously accepted the condition on which the commercial building was permitted and that since there was no change in circumstance, having secured the advantage that was sought, it could not claim that the continued use for NDMC purpose was without authority of law. In the hearing, learned counsel for the petitioner had relied upon ***Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi*** 1995 SCC (1) 47 contending that under similar circumstances where the Municipal Corporation of Delhi had used private property, the court had directed that prevailing market price had to be paid for the time the lay out was sanctioned since the title continued to vest in the private owner.

3. The learned Single Judge set out the facts and thereafter by brief discussion dismissed the appellant's claim, stating as follows:

“9. The fundamental issue raised is whether the respondent-NDMC can at all impose such a condition of handing over of land for parking lot without payment of compensation as precedent condition for use of residential premises for commercial purpose. This question can be straight away answered as there is no acquisition of the petitioner's land by

the respondent-NDMC and so there is no question of payment of any compensation. As regards putting some portion of the land abutting commercial premises to use for the purpose of parking lot by the Municipal Authorities is concerned, the same can be done as Apex Court in Pt. Chet Ram (supra) has permitted such user for the beneficial enjoyment of the property. Here in the instant case, beneficial enjoyment of commercial property can be only when adequate parking facilities are provided to the general public who would be frequently visiting the subject premises.

10. This Court is of the considered opinion that the precondition to hand over rear portion of the land abutting the subject premises to the respondent-NDMC for parking lot, put by the respondent-NDMC to change of the use of the subject premises from residential to commercial, is a reasonable condition and such action of the respondent does not suffer from any arbitrariness. On the discrimination aspect, the petitioner cannot assert anything because the similarly placed land owners of property bearing No. 19, 21 and 25 at Barakhamba Road, New Delhi have already handed over the rear portion of their premises for being used for the parking lot by the NDMC and even if the NDMC is charging a fee for it, there is nothing illegal about it. So far as acquiescence of the petitioner to hand over afore-noted rear portion of land abutting the subject premises, to the respondent-NDMC for parking lot is concerned, the same cannot be said to be under duress because it was always open to the petitioner to have challenged it, instead of agreeing to hand over the aforesaid portion of the land to NDMC for parking lot to the subject premises.”

4. This court has considered the submissions of the parties. Learned counsel relied upon Section 208 of the New Delhi Municipal Corporation Act and *Pt. Chet Ram Vashist (supra)* to contend that after noticing that the heart of the matter was the issue of legality of the NDMC's action in imposing the condition extracting the permission to use the property, the impugned judgment did not address the issue at all. Learned counsel for the NDMC, on the other hand, urged that the appellant's conduct precludes it from contending that the use of the open space is without authority of law.

5. Para 9 of the impugned judgment would clearly show that the Single Judge was conscious of the main issue i.e. the NDMC's action in imposing a condition which required the appellant to surrender a portion of its land and keep it vacant for use by NDMC free of all charges had to be addressed. However, the learned Single Judge did not examine any provision of law or even the prevailing scheme or for that matter its legality which permitted the NDMC to insist that a substantial portion of land could be kept within its control and out of the purview of the appellant's use, for an indefinite period. It is quite possible that the scheme which permitted commercial constructions to be made was statutory. On the other hand, it is quite likely that it was not. In either event the permissibility of such conditions, which authorised the NDMC to an inhibited free use of substantial private property was a matter that required consideration in the light of the provisions of New Delhi Municipal Corporation Committee Act, 1994 as well as the pre-existing law (given that the scheme was

legitimately made in 1976) as well as the Article 300-A of the Constitution of India. However, the Single Judge did not address these issues at all. As a result, we are of the opinion that the impugned judgment cannot be sustained. It is hereby set aside. The matter is remitted for fresh consideration by the learned Single Judge who shall consider the provisions of the scheme, its permissibility having regard to the expressed provisions of the NDMC Act, rules and regulations framed thereunder and Article 300-A of the Constitution of India besides other rival conditions made by the parties. All the rights and contentions of the parties are expressly reserved. Parties shall appear before the concerned Single Judge on 26.04.2016.

6. The appeal is allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 31, 2016

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