

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

% **Date of decision: 30th March, 2016.**

+ **W.P.(C) No.6522/2010, CM No.5627/2014 (of the respondent no.5 for direction), CM No.12239/2015 (for permission to place on record the counters), CM No.12240/2015 (for exemption) & CM No.16348/2013 (of the respondent no.5 for necessary direction).**

LALIT MOHAN MADHAN

..... Petitioner

Through: Mr. Raman Kapur, Sr. Adv. with Mr. Aviral Tiwari, Adv.

Versus

**MUNICIPAL CORPORATION OF
DELHI & ORS.**

..... Respondents

Through: Mr. Neeraj & Mr. Vijay Joshi, Adv.
for R-1.
Mr. Y.K. Gupta, Attorney of R-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the demolition order dated 20th August, 2009 and the sealing order, if any and the order dated 30th August, 2010 of the respondents No.1 to 4 Municipal Corporation of Delhi (MCD) with respect to rear portion of Property No.B-1/26, Vasant Vihar, New Delhi. Mandamus is also sought commanding the respondents No.1 to 4 MCD to de-seal the property and to decide the application of the petitioner for regularization of the construction in the rear portion of the property in accordance with the order dated 23rd July, 2010 in W.P.(C) No.11305/2009 and Appendix 'Q' to

Building Bye-Laws and yet further in accordance with the order dated 5th August, 2002 in W.P.(C) NO.376/1998.

2. Notice of the petition was issued and vide order dated 18th October, 2010, Mr. O.P. Gupta also claiming to be the owner of the property was ordered to be impleaded as party to the petition and subject to the petitioner continuing to remain bound by the conditions imposed in order dated 23rd July, 2010 in W.P.(C) No.11305/2009 and the property continuing to be sealed, demolition of the rear portion was stayed. Vide order dated 30th October, 2014, the respondents No.1 to 4 South Delhi Municipal Corporation (SDMC) being the successor of MCD was directed to inspect the property No.B-1/26, Vasant Vihar, New Delhi and to demolish the unauthorised non-compoundable portion, if any and to file a status report. However, it was reported that Mr. O.P. Gupta was obstructing compliance of the said direction by the respondents No.1 to 4 SDMC. Accordingly, vide order dated 30th January, 2015 notice was issued to Mr. O.P. Gupta to show cause why action for contempt of Court be not taken against him. On 4th February, 2015, Mr. O.P. Gupta appeared and tendered unconditional apology and which was accepted and the notice issued of contempt discharged. Respondents No.1 to 4 SDMC filed a report that a portion of the rear side of

the property is non-compoundable and requires to be rectified. Per contra, Mr. Y.K. Gupta attorney of Mr. O.P. Gupta, on 24th March, 2015 contended that the entire rear portion of the building was unauthorised and liable to be demolished. The order dated 24th March, 2015 records that Mr. O.P. Gupta was taking advantage of the fact that he is residing in the premises and was frustrating the attempts of the petitioner to enjoy the rear portion of the property. It was further *prima facie* observed that if the building was contrary to sanctioned plan then the building has to be demolished in entirety as action taken with respect to portion of the building would be inequitable. SDMC was again directed to file a full report as to the deviations from the sanctioned plan which are not compoundable and the proposed action in respect of the property in entirety including the front portion. In compliance therewith, a status report dated 9th July, 2015 has been filed by the respondents No.1 to 4 SDMC to the effect:

- (i) that in compliance with the directions dated 30th October, 2014 and 31st January, 2015 status report had already been submitted;
- (ii) that non-compoundable portions had already been mentioned in the last status report;

(iii) to demolish the non-compoundable deviations, demolition action was taken on 17th June, 2015 and thereafter from 29th June to 4th July, 2015;

(iv) that the property was re-sealed after demolition.

3. It was informed during the hearing on 16th July, 2015 that only the compoundable portions of the property have been left after the demolition.

4. Thus, the only issue which requires consideration is, whether the petitioner is entitled to a direction as claimed in this regard.

5. Mr. Y.K. Gupta as attorney of respondent No.5 Mr. O.P. Gupta opposed the same. It was argued that the petitioner, claiming to be purchaser of the property from Mr. S.C. Goel brother of Mr. O.P. Gupta is not entitled to claim regularisation. Reliance in this regard is placed on ***Royal Paradise Hotel (P) Ltd. Vs. State of Haryana*** (2006) 7 SCC 597. Copies also of (i) judgment dated 21st September, 2010 in W.P.(C) No.6390/2010 titled ***M/s Mehrasons Jewellers Pvt. Ltd. Vs. Municipal Corporation of Delhi***; (ii) judgment dated 19th January, 2011 in W.P.(C) No.4515/2008 titled ***P.N. Kohli Vs. Union of India***; and, (iii) judgment dated 27th October, 2005 in Appeal (Civil) No.6588/2005 titled ***Jaipur Municipal Corporation Vs. C.L. Mishra***, were handed over.

6. I am however of the opinion that the said question is now no longer open to consideration. I had in an earlier round of litigation between the parties namely W.P.(C) No.11305/2009 titled **L.M. Madan Vs. M.C.D.** occasion to consider the matter and had pronounced the judgment on 23rd July, 2010 whereby referring to the order dated 5th August, 2002 in W.P.(C) No.376/1998 titled **S.C. Goel Vs. MCD** yet earlier filed, MCD was directed to consider the application of the petitioner for regularisation of compoundable portions in the rear portion of the property, after hearing the petitioner as well as the said Mr. O.P. Gupta. The respondents No.1 to 4 SDMC in compliance therewith has passed order dated 30th August, 2010 and has observed that regularisation of the rear portion of the property cannot be considered being in violation of the perpetual lease of the land underneath the property, Master Plan for Delhi (MPD)-2021 and prevailing Building Bye-Laws and further observed that regularisation of existing building can be considered only if both of the sub-lessees jointly apply for whole of the building for regularisation of unauthorised construction / deviations. The correctness of the said reasoning is to be tested.

7. As far as the reason given of the construction carried out being in violation of the perpetual lease of the property is concerned, I had occasion

to deal therewith also in my judgment dated 30th August, 2011 in W.P.(C) No.3668/1996 titled *S.C. Goel Vs. D.D.A.* and W.P.(C) No.4958/2001 titled *S.C. Goel Vs. Lt. Governor*. It is noted therein that Delhi Development Authority (DDA) as grantor of the lease of the land underneath the property had already cancelled the same and re-entered the property and which was subject matter of a suit filed by Mr. O.P. Gupta. I am of the view that since the action of the DDA as superior lessor to re-enter the property is still pending adjudication and there is an interim order therein, consideration of the application for regularisation should not be held up for the said reason.

8. The other reason given by respondents No.1 to 4 SDMC in the order dated 30th August, 2010, of the construction being violative of MPD-2021 and prevailing Bye-Laws, in my opinion, cannot be a ground for denying regularisation of the compoundable portions because of the directions already issued in the earlier rounds of litigation in this regard.

9. As far as the last reason given in the order dated 30th August, 2010 for denying regularisation of compoundable portions, of the same being not possible without Mr. O.P. Gupta joining in the same, as already observed in the order dated 24th March, 2015 supra, respondent No.5 Mr. O.P. Gupta cannot be permitted to frustrate the attempts of the petitioner to enjoy his

portion of the property. Mr. O.P. Gupta thus cannot, while enjoying a portion of the property in his possession, by withholding his consent, deny regularisation to the extent possible of the remaining portion of the property.

10. SDMC, in its status reports filed in this Court has already disclosed the portions which are compoundable / regularisable and has demolished the remaining portions of the property.

11. The petition is thus disposed of directing SDMC to pass a formal order showing the portions which are compoundable / regularisable and the terms of regularisation be communicated to the petitioner.

No costs.

MARCH 30, 2016
'bs'

RAJIV SAHAI ENDLAW, J.