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

\+ W.P.(C) 8478/2004

RAMESH KAKKAR (HUF)

..... Petitioner

Through Mr. Jayant Kumar Mehta, Mr. Shaurya Kutiala and Mr. Aditya Singhal, Advocates

versus

MCD & ORS.

..... Respondent

Through Mrs. Biji Rajesh for Mr Gaurang Kanth, Advocate for MCD
Mr. Puneet Sabharwal, R-3 in person
Mr. Shiv Prakash Pandey and Mr. Raghav Pandey, Advocates for R-4

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% 03.02.2017

W.P.(C) 8478/2004 and CM No. 38815/2016

Petitioner Ramesh Kakkar is the co-owner along with respondent no.3 Smt. Usha Sabarwal of property bearing no. M-61, G.K. Part-1, New Delhi. This property measures 196 sq.yards. It was occupied by three tenants (including respondent no.4 S.S.Kohli) who is in occupation of the ground floor of the property).

Allegations in the petition are that this property was booked for an unauthorized construction. In view of the illegal structure constructed raised upon it by respondent no.4, the property was partly sealed on 24.02.2004 and again on 27.02.2004. The portion under the tenancy of respondent no.4 stood sealed. Appeals against this order of sealing were preferred before the ATMCD.

The petitioner made a complaint to the statutory body / respondent SDMC regarding this unauthorized construction which had been carried out by respondent no.4 as also by respondent no.3. Respondent no.3 and respondent no.4 undertook to remove all the non-compoundable deviations and to pay the compounding fee, they also made a statement undertaking to rectify the unauthorized construction. Portions of this property which were illegal were demolished.

On 20.04.2004 the learned Lt. Governor (appellate body of the ATMCD) reversed the order passed by the ATMCD and while noting the stand of the corporation that the illegal deviations have been removed had directed the respondents to pay the compounding fee.

This Court has been informed that compounding fee of Rs. 2,51,000/- has since been paid. The submission of the petitioner is that this compounding fee has been paid not by respondent no.4; this is against the provisions of law as a tenant has no authority to pay the compounding fee. To substantiate his arguments he has placed reliance upon two judgements reported as ***47 (1992) DLT 21 (Division Bench) titled Brij Bans Bahadur Vs. NDMC & Ors and ILR (2006) I DELHI 567 R.K.Sharma Vs. NDMC And Anr.***

This stand of the petitioner is refuted by the respondents. The stand of the Corporation / respondent no.1 is that the order of the Lt.

Governor suffers from no infirmity as the Lt. Governor had correctly noted that since the unauthorized construction has been removed those deviations which were compoundable could be compounded on the payment of the compounding fee; compounding fee since having been paid there is no grievance left with the petitioner.

Respondent no.3 a co-owner of this property submitted that all illegal deviations have been removed and compounding fee of Rs. 2,51,231/- has since been paid.

The stand of respondent no.4 has also been perused. In his counter affidavit he has stated that the illegal deviations have been removed and half of the compounding fee i.e. 1,25,616/- has been paid by him; this was pursuant to the order passed by the Lt. Governor on 28.04.2004. He had paid this fee as this was a question of his survival and property could not be desealed unless this compounding fee was paid.

Respondent no.3 (present in person) submits that he had in fact approached the petitioner for payment of 50% of the compounding fee but petitioner failed to oblige; it was in these circumstances that half of the compounding fee has been paid by the tenant.

The whole argument of learned counsel for the petitioner is bordered on the submission that tenant has no authority to pay the compounding fee and such the fee paid by the tenant being unrecognized in law the impugned order is liable to be set aside.

This Court is unable to accede to this obstructive attitude of the petitioner. The admitted position as on date is that alleged illegal deviations in the afore noted property has since been demolished. It is also not in dispute that compounding fee of Rs.2,51,231/-has been paid for those deviations which were compoundable meaning thereby that by the payment of the compounding fee the alleged illegal deviations stand legalized. The only issue that remains is whether this compounding fee could not have been paid in part by respondent no.4.

This submission has to be examined in the facts of this case. In the facts of this case one of the co-owner i.e respondent no.3 was representing the status of both the owners before the Lt. Governor. It was in his presence that this order was passed.

There is no doubt to the proposition that a compounding can only be done on the asking of the owner and it is the obligatory duty of the owner to pay the compounding fee. None the less the stand of respondent no.3 was that he approached the petitioner for payment of half of the compounding fee but the petitioner was not ready to oblige. Respondent no.4 has stated that since this was a question was of his survival and his shop could be desealed only if the compounding fee was paid in full, he had agreed to pay 50 percent of the balance fee which was 1,25,616/-

In this background, this Court is of the view that submission of the petitioner that the act of the tenant in paying part of the compounding fee would set aside and make naught the order passed by the Lt. Governor on 28.04.2004 is a meritless contention. The circumstances in which this 50 percent compounding fee has been paid by respondent no.4 has already been detailed.

This Court also notes that this appears to be a litigation which is not perse transparent. It appears to be bordered on other grievances which petitioner has against respondent no.4. This Court has been informed that petitioner has filed eviction proceedings against respondent no.4 which are pending before Rent Controller. That petition is hotly contested.

The judgments relied upon by the petitioner do not come to his aid. They only lay down well settled proposition that a compounding is normally done at the behest of the owner. The necessary corollary is that a compounding fee is normally paid by the owner but in this case where the co-owner/petitioner was willing to pay his share of the compounding fee to get his shop desealed; respondent no.4 had no other option but to pay the balance fee. At the cost of repetition it is not the case of the petitioner that the act of compounding the deviations was otherwise illegal. This petition is without any merit.

Dismissed.

At this stage, on the asking of the petitioner it is noted that any observations made by this Court will not influence the proceedings pending before the Rent Controller.

No further orders are called for in this petition.

Petition disposed of accordingly.

INDERMEET KAUR, J

FEBRUARY 03, 2017
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