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

+ LPA 134/2017

Date of Decision: 26.04.2017

HARISH BAJAJ & ANR Appellants
Through: Mr.Sunil Chaudhary,
Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR
..... Respondents
Through: Ms.Mansi Gupta, Adv for R-
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CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE ANU MALHOTRA
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JUDGMENT (ORAL)
GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellants assail the order dated 17th January, 2017 passed by the learned Single Judge dismissing the Writ Petition (civil) No.333/2017 filed by the appellant.
2. The factual matrix is undisputed.
3. The appellants are the owners of the property No.F-8, Prashant Vihar, Delhi which was purchased by them from the Delhi Development Authority. The property was got converted to free-hold and registered conveyance deed dated 16th December, 2008 was executed by the Delhi Development Authority in favour

of the appellants. So far as the ground floor of this property was concerned, the appellants sold the same to the real brother of appellant No.1, who thereafter sold the same to the respondent No.2. The first floor of the said property and the terrace above had remained under the possession and exclusive ownership of the appellant. A copy of the conveyance deed of the entire plot in favour of the appellants as well as the sale deed whereby the ground floor was transferred to the predecessor in interest of the respondent No.2 have been placed on record.

4. It is undisputed that the respondent No.1 North Delhi Municipal Corporation admits that the appellants are owning the first and second floor of the property No.F-8, Prashant Vihar, Rohini, Delhi inasmuch as they are accepting the property tax only for this portion from them, whereas the property tax for the ground floor portion is being accepted by the respondent No.1 from the respondent No.2.

5. The appellants complain that on account of *mala fide* and dishonesty of respondent No.2, he has started making false and malicious complaints qua the property of the appellants resulting in the North Delhi Municipal Corporation taking action against their portion on the property. As a result, the appellants have been constrained to seek relief and redressal before the Appellate Tribunal of the Municipal Corporation of Delhi.

6. In view of the fact that the appellant's son has got recently married, need for more space arose in the house and as such the appellant wanted to raise further construction on the second floor.

It is further submitted that on account of the Master Plan, 2021, coming into force, the floor area ratio has also increased entitling the appellants to construct second and third floors over the terrace of the first floor of the property. In this view of the matter, the appellants submitted an application for sanctioning building plans with the respondent No.1. However, vide a letter dated 12th August, 2016, the appellants were informed that the plans could not be sanctioned for want of 'No Objection Certificate' from the respondent No.2.

7. Aggrieved thereby, the appellant's assail the rejection of the application by way of Writ Petition (Civil) No.333/2017. However, the writ petition as opposed by the North Delhi Municipal Corporation placing reliance on the provisions of Section 347(B)(f) of the Delhi Municipal Corporation Act and also on the submission that the appellants were required to supply the complete ownership papers of all the floors. The learned Single Judge by the judgment dated 17th January, 2017 accepted the objections of the respondents and rejected the writ petition. Hence, this appeal is before us.

8. We have heard the learned counsel for the parties and considered the record of the case.

9. It is also undisputed position that the property had originally been acquired by the appellants by virtue of a registered lease deed from the Delhi Development Authority and that the same was absolutely and exclusively converted into free hold by the Delhi Development Authority and on which issued a registered

conveyance deed in the favour of appellants. Thereafter, the appellants have sold the ground floor of the property to the brother of appellant No.1 who transferred the same by a registered deed to the respondent No.2. It is therefore an undisputed position that the ground floor of the property does not belong to the appellants. Therefore, so far as the appellants are concerned, they own only the first and the second floors of the property.

10. In this regard, we may refer to the pronouncement in *Municipal Corporation of Delhi v. Smt. Usha Devi Sharma*; 2006 III AD(DELHI) 515, wherein the Court observed that the appeal wherein in similar circumstances, the Court had observed that the appellant was an example of how a citizen can be compelled to litigate due to sheer harassment by officers of the State. By this writ petition related to rights claimed by the writ petitioner who had purchased the second floor of the free hold property bearing No.K-1, Kailash Colony, New Delhi and was seeking sanction of building plans to make construction thereon. The MCD had taken a stand that the plans could not be sanctioned since they had not been signed by the other co-owner of the entire plot, that is, the owners of the ground and first floors.

11. So far as the aspect of co-ownership is concerned, we extract hereunder the observations of the Court in paragraph 8 of the pronouncement in *Smt.Usha Devi Sharma* (Supra):

“8. At the outset, it may be mentioned that a similar issue appears to have arisen in CW 3535/2001 which was decided by another

learned Single Judge on 11th March, 2003 in which it was held as under:-

Once the property is segregated into different portions and mutated accordingly, there cannot be any requirement of all the co-owners to sign the building plans. If the plot and the building are both co-owned, then only the requirement for such co-owners to sign may at all arise. The segregation of interest of the different co-owners is recognized by the respondent Corporation by mutation of the different portions in individual names of different persons. The fate of an individual owner cannot be dependent on the pen of a persons, who happens to the owner of a different portion of the building. Thus, there cannot be any requirement of signatures of all the co-owners.”

12. On the issue of the requirements of “ No Objection Certificate” is concerned, in *Smt. Usha Devi Sharma* (Supra), the Court had held as follows:

“ 9. The learned Single Judge took note of the above decision but added some other reasons for agreeing with the writ petitioner. The learned Single Judge after examining the provisions of the Building Bye-laws, 1983 and on an analysis thereof came to the conclusion, with which we agree, that there is no requirement that if the owner of a flat or a floor in a property intends to put up some construction, he must obtain a no objection certificate from the other flat owners. As long as separate ownership of different flats is permissible in law, each

owner is responsible for the construction that he makes. If the construction is contrary to law, the Appellant is entitled to demolish it but if the owner of the flat wishes to make some construction and applies for sanction in accordance with law, the Appellant cannot reject it on the ground that the owners of other flats should give their no objection. It is quite clear from the Building Bye-laws that other owners have no concern with the property of a particular owner as long as that owner makes construction thereon in accordance with the Building Bye-laws after obtaining sanction. The insistence of the Appellant that the other co-owners of the property, namely, the owner of the ground floor and the first floor must give their no objection is not warranted by any provision of the Building Bye-laws, nor was any such Bye-law brought to our notice.”

13. We find that this judgment is on all fours with the rights and claims asserted by the appellants before us and see no justification as to how the request of the appellants for permission to raise the additional construction can be rejected.

14. On the same issue, Mr.Sunil Chaudhary, learned counsel appearing for the appellants, has drawn our attention to the pronouncement reported in 220 (2015) DELHI LAW TIMES 148; ***Kanwal Sibal v. New Delhi Municipal Council & Ors.***, wherein NDMC was enforcing the similar requirement on the petitioner who was seeking to raise additional construction. We extract herein the observation of the learned Single Judge who allowed the

challenge to the rejection of his building place by the order dated 19th October, 2012:

“21. Para 4.4.3 of MPD 2021 relates to Control norms for building/buildings within residential premises. Part A of the said regulations provides for the maximum permissible ground coverage, FAR, number of dwelling units for different sizes of residential plots etc. The aforesaid condition proscribing sub-division of plots has to be read in context of the development control regulations specifying the aforesaid parameters. The substratal purpose of MPD 2021 is planned development of Delhi. Undisputedly, for the purposes of applying the parameters such as FAR, maximum ground coverage, maximum number of dwelling units etc. a plot of land in a plotted development is considered as a single unit. The aforesaid prohibition to sub-division does not affect the title as to the plots or the right of any one or more persons to construct thereon. As an illustration, if a plot of 1000 sq. metres is owned by two persons equally - who may or may not have divided the same amongst themselves - it would not be open for the said persons to insist that parameters as applicable to plots of 500 sq. metres be applied to each of their shares. Under the MPD 2021, ground coverage for a 1000 sq meters plot is only 40%; but for a plot of 500 sq. metres, 75% of ground coverage is permissible. Undeniably, the norms as applicable in respect of Maximum Ground Coverage, FAR, number of Dwelling Units etc. as specified for a plot of 1000 sq. metres would be applicable. This is quite different from stating that even if a person is entitled to construct on a portion of the property, he

would, nonetheless, require the permission of the other because the unit for applying the norms fixed is a single plot. Thus, the parties owning a single plot may demarcate their shares and if the ownership of demarcated shares is recognised and accepted by NDMC, there would be no requirement for the owners of demarcated shares to seek the NOC from other co-owners in order enable to them to carry out the development of their property. Thus, the contention that the building plan must be signed by all owners by virtue of clause (iv) of the conditions to paragraph 4.4.3 of MPD 2021 is not sustainable.

22. It is also necessary to bear in mind the principal purpose for framing Building Bye-Laws. Clearly, the same is to ensure that the buildings are constructed in conformity with the norms and parameters stipulated for planned development. Thus, in cases where an indefensible right of ownership of a property is established and recognised, NDMC would have to confine its examination to the issues germane to planned development.”

15. Ms.Mansi Gupta, learned counsel for the respondent, submits that the application was rejected in view of the policy decision of the MCD of September, 2012 and it is further contended that the construction of the appellant is the subject matter of the demolition proceedings. It is submitted by Mr.Sunil Chaudhary, learned counsel for the appellants, that the action of the North Delhi Municipal Corporation was illegal and is the subject matter of challenge before the Appellate Tribunal wherein the appellants have been afforded protection under the Delhi Laws

(Special Provisions) Act, 2011.

16. Be that as it may, the direction made by us is required to be abide by law.

17. In the present case, the appellants are the co-owners of the property, wherein the construction is to be raised, have applied for sanction of the building plan. In these circumstances, the necessity of the respondent No.1 for a “ No Objection Certificate” from the respondent No.2 is completely unwarranted.

18. The municipal authorities would consider the permissibility of that proposed construction from every aspect as postulated in the municipal laws and bye-laws as well as other statutes which may have a bearing. It is required to be ensured that all constructions strictly abide by the law.

19. In view thereof, the order dated 12th August, 2016 passed by the North Delhi Municipal Corporation, rejecting the application for sanction of building plans of the appellants on the ground that the same was not accompanied by a “ No Objection Certificate” of the “co-owners”, is not sustainable and is hereby set aside and quashed.

20. For the same reason, the judgment dated 17th January, 2017 passed by the learned Single Judge in W.P.(Civil) No.333/2017, is also hereby set aside and quashed.

21. As a result, the respondent is directed to consider and process the application of the appellant for sanction of the plans, which has already been filed by the appellant which was rejected, within a period of three weeks from today. The order thereon be

communicated to the appellant, who if still aggrieved thereby, may proceed in accordance with law.

Dasti.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 26, 2017/sv