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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3226/2016 & C.M.No.13755/2016

SEEMA SOOD AND ANR

..... Petitioners

Through Ms. Anita Sahani, Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ANR

..... Respondents

Through Ms. Puja Kalra, Adv for the SDMC.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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27.01.2017

1 The petitioner is aggrieved by the order dated 12.04.2016. Vide this order, the petitioner had been communicated that his regularization plan which had been approved earlier was liable to be revoked; his status of regularization (vide File No. 76/RZ/B/SZ/11 dated 28.09.2011) was withdrawn; the existing construction being unauthorized and without any legal sanction was liable for action.

2 The petitioner is aggrieved; his submission is that he had been granted a due regularization on 28.09.2011; his building had been regularized and he had paid all regularization charges; thereafter after five years, he received a communication on 12.04.2016 revoking this regularization; is thus clearly arbitrary; it has prejudiced his rights; it is liable to be set aside.

3 Counter affidavit has been filed by both the respondents. The stand of respondent No. 1/DDA is that the question of

regularization/relaxable limit in this plot i.e. plot No. M-17, Green Park Main, New Delhi (hereinafter referred to as the 'demised premises') was brought to the notice of the Technical Committee of the DDA; the Technical Committee vide its decision dated 11.08.2011 had noted as under:-

"The proposal for relaxation in setback for preceding to preceding category was explained by SE (HQ) Bldg, MCD wherein it was informed that if the setback are relaxed for preceding category, 66% of the Ground Coverage is achievable, whereas the permissible Ground Category on the said plot is 75% as per MPD-2021. After the detailed discussion, Technical Committee agreed to the proposal with the provision that existing Ground (69%) as per drawing submitted by MCD should be frozen. Further that all other development control norms with respect to FAR Height, BBL etc. will be adhered to by the Local Body i.e. MCD."

4 Submission is that after these minutes had been recorded, the owner of another property i.e. C-75, Shivaji Park, New Delhi (in auction proceeding) also wanted to take advantage of this order for which purpose the counsel for the DDA had taken time to take instructions. The matter was processed and was put up before the learned Lt. Governor. The opinion of the legal department was also sought. MPD-2021 was examined. The decision of the Technical Committee dated 11.08.2011 qua property No. M-17, Green Park Main was reversed; the following observations were made. They read herein as under:-

"The proposal was presented by Dy. Director (Plg.) MP and DC. During the meeting, following issues were deliberated:

(a) *As per the MPD-2021 of para 4.4.3A related to Development Control Norms of Residential Plot-Plotted Housing, in its sub-para pt. (x) (a) wherein minimum setbacks are prescribed, provides that In case the permissible coverage*

is not achieved with the prescribed setbacks in a plot, the setbacks of the preceding category may be allowed.”There is no provision for permitting setback of preceding to preceding category in Residential Plotted Housing in MPD-2021.

(b) In case of property no. M-17, Green Park, the Technical Committee vide item No.20/2011 dated 11.08.2011 gave the benefit of ground coverage of preceding to preceding category by way of relaxation of setbacks which was not within the jurisdiction of the Technical Committee.

(c) Further, it is observed that the ground for coverage of 75% is the maximum limit and not the minimum which may vary according to the shape of the Plot.

Hence, the decision taken by the Technical Committee vide item No. 20/2011 dated 11.08.2011 in case of property No. M-17, Green Park is void ab initio and therefore, stands withdrawn”

5 Submission of respondent No.1 (DDA) being that the benefit of ground coverage of preceding to preceding category by regularizing the setback not being as per MPD-2021, the Technical Committee could not have opined thereto and as such the report of the Technical Committee dated 11.08.2011 was set aside.

6 The stand of respondent No. 2/South Delhi Municipal Corporation (SDMC) has also been examined. Their stand is that it was in view of the report of the Technical Committee of the DDA dated 11.08.2011 that the question of regularization of the demised premises was considered and the Department had regularized the existing construction.

7 Submission of respondent No. 2 being that because of the subsequent order of the Technical Committee, DDA which had re-examined the matter on 23.10.2015 it had decided to withdraw its earlier decision taken on 28.09.2011; the impugned notice (12.4.2016)

issued to the petitioner suffers from no infirmity.

8 Arguments have been heard. Record has been perused.

9 Admittedly the status of regularization of the disputed property had been granted to the petitioner; this was in terms of the report of the Technical Committee dated 11.08.2011.

10 Record shows that the building plan of the demised premises was sanctioned on 28.05.1981; this was for raising construction from the basement up to the barsati i.e. second floor. The measurement of the plot was 538.83 square meters with a setback of 4.5 meter on the front side and other three sides of 3 meter each. In the year 2010, the petitioner had applied for regularization under MPD-2021 claiming to avail the benefit of the additional FAR and setbacks of preceding to preceding category. As per the provisions of clause 4.4.3 of MPD-2021 where the permissible ground coverage was not achieved with the setback of the category in which the property falls the setback of the preceding category may be allowed but MPD-2021 was silent on the preceding to preceding category benefit. Thus the request of the petitioner was forwarded to the Technical Committee of the DDA who was the expert body dealing with these matters.

11 Admittedly, the permissible ground coverage for this size of a plot was 75% i.e. 404.12 square meters. The petitioner sought a regularization in the setback in the preceding to preceding category as the ground coverage as permissible for this size of a plot was not achievable even with the setback of the preceding category. The coverage of the existing structure in the disputed property was 69% i.e. 373 square meter and only the front setback to the extent of 3

meter was maintained. As noted supra, the Technical Committee of the DDA while examining the proposal of the petitioner had noted that if the setbacks are relaxed for the preceding category, 66% of the ground coverage is achievable whereas permissible ground coverage at the said plot is 75% as per MPD-2021. The Technical Committee accordingly agreed with the proposal of the petitioner with a proviso that the existing ground coverage (69%) as per the drawing submitted by the Corporation should be frozen and all other developmental control norms with respect to FAR height, BBL etc shall be adhered to by the Corporation. This proposal had been forwarded by the Executive Engineer of the Corporation to the Technical Committee of the DDA on 19.07.2011; on 29.08.2011, this proposal for relaxation in the setbacks from preceding to preceding category of the petitioner was considered; in these minutes of the Technical Committee (29.08.2011) it was noted as under:-

“The proposal for relaxation in set backs from preceding to preceding category was explained by SE (HQ) Bldg., MCD wherein it was informed that if the set backs are relaxed for preceding category, 66% of the Ground Coverage is achievable, whereas the permissible Ground Coverage on the said plot is 75% as per MPD-2021. After the detailed discussion, Technical Committee agreed to the proposal with the proviso that existing Ground Coverage (69%) as per drawings submitted by the MCD should be frozen. Further that all other development control norms with respect to FAR height, BBL etc. will be adhered to by the Local Body i.e. MCD.”

12 It is an admitted fact that the permissible ground coverage of a plot of present size is 75% as per MPD-2021; by giving the benefit to the petitioner and by permitting a relaxation in the setback from

preceding to preceding category, the existing ground coverage would not exceed the 69%; this was clear even as per the drawing submitted by the petitioner. There is also no quarrel on this point even today. It is also a matter of record that after the Technical Committee had granted its approval vide minutes dated 29.08.2011, the petitioner vide communication dated 21.09.2011 had been asked to pay the compoundable deviation fee which was a sum of Rs.8,79,069/-. This amount was paid by a demand draft by the petitioner on 28.09.2011. This status i.e. regularization of the plot of the petitioner continued thereafter up to 12.04.2016 when the impugned notice was served upon the petitioner informing him that there was an error committed by the Technical Committee in giving benefit of preceding to preceding category to the petitioner which was liable to be revoked. This error was admittedly brought to the notice of the Department only when a subsequent party i.e. owner of C-75, Shivaji Park, New Delhi had filed a petition seeking parity on the same count as that of the petitioner.

13 This Court is of the view that the petitioner already having been granted the benefit of regularization which had come in his favour in August, 2011 and he having paid the regularization fee (Rs.8,79,069/-) to the Department in September, 2011 as also the additional and relevant fact that although 75% of ground coverage is permitted in a plot of such a nature (as per MPD-2021) and regularization granted to the petitioner who has made a coverage of only 69% which would again be within the permissible limit of MPD-2021, this Court is of the view that in the peculiar facts and

circumstances of the present case, relaxation of the preceding to preceding category granted to the petitioner could not now have been revoked; this is also keeping in view the fact that the petitioner already having granted a regularization five years ago, his regularization was set aside suo moto without even granting a hearing to the petitioner.

14 The revocation letter dated 12.04.2016 is accordingly set aside. The regularization already granted to the petitioner vide minutes of the Technical Committee will remain in force. It is made clear that this order may not be treated as a precedent to be followed by the Department in all cases; this order has been passed in the peculiar facts and circumstances of the present case.

15 Petition disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 27, 2017

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