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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on 30th November, 2017

+ W.P.(C) 7821/2017

MRS. VIREN SINGH

..... Petitioner

Through

Mr. Rakesh Kumar Khanna, Sr. Adv.
with Ms. Seema Rao, Ms. Shefali
Jain, Ms. Mahima Rathi and Ms.
Vaishali Gupta, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ANR

..... Respondents

Through

Ms. Puja Kalra, Adv. for NDMC.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT

A. K. CHAWLA, J. (ORAL)

Instant petition has come to be filed with the prayers, as follows:

“1. Issue an appropriate Writ, order or direction including the one in the nature of Mandamus, directing the respondents to allow the application for sanction for carrying out constructions on 3rd floor of the property No. B-165 Naraina Vihar, New Delhi as per the plans submitted upon accepting the request for the said purpose by the petitioner.

2. To issue an appropriate writ, order or direction quashing the order/communication No. D/AE(B)/KBZ/2017/572 dated 05/07/17 and order/communication No.D/AE(B)/KBZ/2017/613 dated 19/07/17 issued by the respondent No.2.

.....”

2. Petitioner acquired ownership title of terrace/roof rights of the property bearing no. B-165, Narayana Vihar, New Delhi from his sister, who was the owner with terrace/roof rights of the second floor of the subject property. By the petition, the petitioner seeks issuance of a Writ of Mandamus to the respondent-North Delhi Municipal Corporation for sanction of the building plan on the third floor, inasmuch as, the application made for the purpose, has come to be declined vide communication dated 19.7.2017, a copy whereof, forms part of the petition as Annexure P8 (running page 63), on the premises that floor-wise sanction/regularization cannot be approved. Placing reliance upon the various judgments of this Court, the latest of which came to be passed on 26.4.2017 in Harish Bajaj & Anr. Vs. North Delhi Municipal Corporation, Mr. Khanna, Id. Sr. Counsel strenuously contends that subject rejection proceeds on the premise an NOC from the Co-owner, is required. In Harish Bajaj's case (supra), the Division Bench of this Court, made observations on the subject, which are, as under :

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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 plan 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. metres 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 ByeLaws. 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.

Ms. Kalra, Id. Counsel for the respondent on her part submits that for the floor-wise sanction of building plans and/or floor-wise regularisation of the properties, all of the three Corporations of Delhi have sent a proposal to DDA for formulating a policy, inasmuch as, diverse issues crop-up on account of floor-wise sanction of building plans. For the purpose, Ms. Kalra, Id. Counsel for the respondent-North Delhi Municipal Corporation adverts to a communication dated 1.8.2017 addressed to Vice Chairman, DDA. In the face of the judicial pronouncements of this Court, the latest of which is in Harish Bajaj's case (supra) can, a proposal simplicitor have the effect of keeping the judicial pronouncements on hold? Certainly Not. As long as the judicial pronouncements are in vogue, these are binding and need to be strictly followed. Mere proposal cannot not have the effect of over-reaching the judicial pronouncements. Taking note of submissions of Ms. Kalra, when, Ms. Kalra is queried, as to when the proposal made vide communicated dated 1.8.2017, is likely to fructify, Kalra, waivers and is at pains to say, anything. Her difficulty is understandable. The proposal has to undergo a treacherous path and besides the time for the decision to be taken, the outcome also cannot be foreseen, in the near future.

3. In view of the foregoing, communication dated 19.7.2017 is set aside and quashed and the writ petition is disposed off with a direction to the respondent to process the application of the applicant for sanction of the building plans, within four weeks from today. It is made clear that the application would be processed in consonance with the prevalent building bye-laws and MPD-2021, but, for the insistence of NOC of the co-owner. Petition and the pending applications stand disposed off accordingly.

Dasti under the signatures of the Court Master.

A. K. CHAWLA, J

NOVEMBER 30, 2017

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