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

+ **W.P.(C) 11358/2017**

NEW DELHI TRADERS ASSOCIATION & ANR Petitioners

Through: **Mr P.S. Bindra, Ms Rishika Arora
and Ms Savi Abbot, Advocates.**

versus

UNION OF INDIA & ORS

..... Respondents

Through: **Mr Ripu Daman Bhardwaj, CGSC
with Mr Gaurav Rohilla, GP and Mr
T.P. Singh, Advocates for R-1 & 3.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.12.2017

VIBHU BAKHRU, J

CM No. 46396/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 11358/2017 and CM No. 46395/2017

3. The petitioner no.1 is a registered society and an Association of Persons, who are in occupation of premises located in Connaught Place, New Delhi.

4. The principal grievance of the petitioner is that respondent no.2, New Delhi Municipal Council (hereafter 'NDMC'), and respondent no.3, the Heritage Conservation Committee (hereafter 'HCC'), are insisting the members of the petitioner no.1 association to seek permission of the NDMC

and HCC before carrying out any repair works including works such as re-roofing, flooring, white washing etc. According to the petitioners, the same is contrary to the Unified Delhi Building Byelaws, 2016 (hereafter 'UDBL').

5. In view of the above, the petitioner has filed the present petition, *inter alia*, praying as under:-

- “(i) PROHIBITION restraining the Respondents interfering in the Members of Petitioner Association carrying out works which are covered under Clause 2.14 of Unified Building Byelaws, 2016 for which no notice and building permit is required.
- (ii) CERTIORARI for quashing letter dated 10.2.2017 (Annexure: P-1) issued by Respondent No.3 observing that provisions contained in Clause 7.26 of Unified Building Byelaws, 2016 (Annexure-II) are applicable to Heritage Building / Precinct and provisions of Clause 2.14 of Unified Building Byelaws are not applicable to Heritage Building.”

6. Mr Bindra, learned counsel appearing for the petitioners contended that in terms of Bye-law 2.14 of the UDBL, no notice or any permit is necessary for carrying out any minor repairs or alterations work in a building. He referred to clause a. of Byelaw 2.14 which expressly provides that a building permit may not required for plastering or cladding and patch repairs, except for the 'Heritage Buildings' where HCC's permission is required. He submitted that apart from clause a. of Byelaw 2.14 of the UDBL, there is no mention of a requirement for any permission from HCC in respect of other works for which no building permit is required. He, thus, contended that the question of seeking permission from HCC in respect of

other works or alterations as listed out in various clauses (other than clause a.) of Bye law 2.14 of the UDBL did not arise.

7. Mr Bindra further contended that the provisions of Byelaw 7.26 of the UDBL, which contain provisions (by reference to Annexure II) for conservation of *inter alia* heritage sites and heritage buildings must be read to exclude those works / alterations for which no permission was required in terms of Byelaw 2.14 of the UDBL.

8. Next, Mr Bindra referred to Byelaw 6.4.1 of the Delhi Building Byelaws 1983 (which were applicable prior to the UDBL coming into force) and submitted that even prior to UDBL coming into force, no permission was necessary for carrying out certain works such as re-roofing, renewal of roof, flooring and re-flooring etc. as specified under Byelaw 6.4.1 of the Delhi Building Byelaws, 1983. He submitted that in respect of Heritage buildings and sites, a specific provision was made which restricted any development or re-development or engineering operation or addition / alteration and repairs relating to Heritage buildings and sites. He submitted that although Byelaw 23.3 of the Delhi Building Byelaw, 1983 was widely worded, yet the respondents always understood that for minor repairs and renewal such as re-flooring, re-roofing and other repairs, no permission was required.

9. He referred to a letter dated 12.05.2015 sent by Deputy Chief Architect, NDMC in response to a clarification sought by one of the occupants of premises located in Connaught Place (F-28, Connaught Place). In the said letter it was clarified that internal renovation works did not

require any permission as it fell under clause 6.4.1 of the Delhi Building Byelaw, 1983. On the strength of the aforesaid letter, Mr Bindra submitted that respondent nos. 2 and 3 also understood that no permission of the HCC was required for works that were covered under Byelaw 6.4.1 of the Delhi Building Byelaw, 1983. He contended that Byelaw 2.14 of the UDBL carved out a further exception in the cases of plastering / cladding and patch repairs where permission of HCC was required. However, there was no requirement for any permission for other works, as specified in Byelaw 2.14 of the UDBL. Consequently it was implied that no permission for such works was required.

10. Lastly, Mr Bindra referred to Annexure II to UDBL and submitted that the information required in the form for the application for permission to carry out repairs/renovation of Heritage Buildings/Sites, was extensive and also included a three dimensional model. He contended that this itself was indicative of the fact that minor repairs / alterations covered under Byelaw 2.14 of the UDBL, did not require any permission of the HCC.

11. I have heard the learned counsel for the parties.

12. At the outset, it is relevant to refer to Byelaw 2.14 and Byelaw 7.26 of the UDBL, which are set out below:-

“2.14 Building permit not required

No notice and building permit is required for addition/ alterations which do not otherwise violate any provisions regarding building requirements, structural stability, fire safety requirements and involves no change to the cubic contents or to the Built up area of the building as defined in bye laws, (at

the risk and cost of the Owner / Architect / Engineer / Structural Engineer) for the following:

- a. Plastering/cladding and patch repairs, except for the Heritage Buildings where Heritage Conservation Committee's permission is required
- b. Re-roofing or renewal of roof including roof of intermediate floor at the same height;
- c. Flooring and re- flooring;
- d. Opening and closing windows, ventilators and doors opening within the owners plot. No opening towards other's property/ public property will be permitted.
- e. Rehabilitation / repair of fallen bricks, stones, pillars, beams etc.
- f. Construction or re- construction of sunshade not more than 75cm. in width within one's own land and not overhanging over a public street;
- g. Construction or re-construction of parapet and also construction or reconstruction of boundary walls as permissible under Bye Laws;
- h. White washing, painting etc. including erection of false ceiling in any floor at the permissible clear height provided the false ceiling in no way can be put to use as a loft /mezzanine etc.
- i. Reconstruction of portions of buildings damaged by storm, rains, fire, earthquake or any other natural calamity to the same extent as existed prior to the damage as per sanctioned plan, provided the use conforms to provisions of MPD.
- j. Erection or re-erection of internal partitions provided the same are within the preview of the Bye-laws.

k. For erection of Lifts in existing buildings in residential plotted development (low -rise). Change/Installation/ re-arranging/relocating of fixture/s or equipment/s without hindering other's property/public property shall be permitted.

l. Landscaping

m. Public Art

n. Public Washroom, Security Room, Bank ATM, up to a maximum area of 9.0 sq. m only (permitted in setback area, provided it does not obstruct fire vehicles movement) in plot more than 3000sqm. See Chapter 12.

o. Placing a porta cabin upto 4.5sqm within the plot line subject to free fire tender movement.

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7.26 Provision for Conservation of Heritage Sites including Heritage Buildings, Heritage Precincts and Natural Feature Areas.

Provision for Conservation of Heritage Sites including Heritage Buildings, Heritage Precincts and Natural Feature Areas shall be as per Annexure -II."

13. Although, Mr Bindra is correct in his submission that none of the clauses of Byelaw 2.14 except clause a. indicates that any permission of the HCC is required; however, that by itself cannot be interpreted to restrict the plain language of Byelaw 7.26 and Annexure II to UDBL. A plain reading of the UDBL indicates that special provisions have been made in respect of certain buildings such as industrial buildings; educational buildings for schools/colleges; assembly buildings such as cinema, theatres, multiplex, auditorium, museum, exhibition hall, gymnasium etc.; and poultry farms

Similarly, the UDBL also contains special provisions for conservation of Heritage Sites including Heritage Buildings, Heritage precincts and Natural Feature areas, the provisions of which are contained in Annexure II to UDBL.

14. Regulation 1.1 of Annexure II to UDBL expressly provides that the Regulations contained in Annexure II are applicable to Heritage Sites/Buildings. Regulation 1.1 is set out below:-

“1.1 Applicability. This regulation shall apply to heritage sites which shall include those buildings, artifacts, structures, streets, areas and precincts of historic, architectural, aesthetic, cultural or environmental value (hereinafter referred to as Listed Heritage Buildings/Listed Heritage Precincts) and those natural feature areas of environmental significance or of scenic beauty including but not restricted to, sacred groves, hills, hillocks, water bodies (and the areas adjoining the same), open areas, wooded areas, points, walks, rides, bridle paths (hereinafter referred to as ‘listed natural feature areas’) which shall be listed in notification(s) to be issued by Government/identified in MPD.”

15. Regulation 1.3 of Annexure II provides for certain restrictions in development/re-development and repairs in respect of Heritage buildings and is reproduced below for ready reference:-

“1.3 Restrictions on Development /Re-development/ Repairs etc.

- (i) No development or redevelopment or engineering operation or additions/ alterations, repairs, renovations including painting of the building, replacement of special features or plastering or demolition of any part thereof of the said listed buildings or listed precincts or listed natural feature areas shall be allowed except with the

prior permission of Commissioner, MCD, Vice Chairman DDA/Chairman NDMC. Before granting such permission, the agency concerned shall consult the Heritage Conservation Committee to be appointed by the Government and shall act in accordance with the advice of the Heritage Conservation Committee.

- (ii) Provided that, before granting any permission for demolition or major alterations / additions to listed buildings (or buildings within listed streets or precincts, or construction at any listed natural features, or alternation of boundaries of any listed natural feature areas, objections and suggestions from the public shall be invited and shall be considered by the Heritage Conservation Committee.
- (iii) Provided that, only in exceptional cases, for reasons to be recorded in writing, the Commissioner, MCD/Vice Chairman DDA /Chairman NDMC may refer the matter back to the Heritage Conservation Committee for reconsideration.

However, the decision of the Heritage Conservation Committee after such reconsideration shall be final and binding.”

16. A plain reading of Regulation 1.3 as quoted above indicates that no development or re-development or engineering operation or addition/ alterations or repairs of any part of the listed buildings is allowed, except with the prior permission of the competent Officer of NDMC. It is also expressly provided that before granting any permission, the HCC would be consulted and the agency granting permission would have to act in accordance with the advice of HCC.

17. The meaning of the word ‘repairs’ as used in Regulation 1.3 has to be understood in its plain meaning and cannot be read down to mean only

structural and major repairs, as canvassed by Mr Bindra.

18. It is also apparent that Annexure II contains special provisions, *inter alia*, relating to Heritage Sites and, thus, would override the general provisions contained in other Byelaws of the UDBL. It is settled law that in case of any repugnancy the special statutory provisions would override the general provisions. Thus even if it is accepted - which this Court does not – that there is some repugnancy between the provisions of Byelaw 2.14 and 7.26, the provisions of 7.24 which pertain to a particular set of buildings/areas, would override the provisions of Byelaw 2.14.

19. It is also necessary to bear in mind the object and purpose of enacting special provisions requiring permission of the HCC. The object is plainly to ensure that the listed heritage buildings are preserved and no repairs or renovation are carried out which alter the character of those buildings. A plain reading of some of the clauses of Byelaw 2.14 of the UDBL indicates that it includes several works, which have a propensity for altering the characters of a building. This includes landscaping (clause L); Public Art (clause M); erection of lifts (in clause K); construction of parapet and boundary walls (clause G) opening and closing of windows, ventilators and doors opening (clause D).

20. Clearly, if the character of Heritage Buildings is to be preserved, it would be essential to ensure that repairs and works as specified under Byelaw 2.14 of the UDBL are carried out in a manner so as to not damage their heritage value. One of the principal objectives of constituting the HCC is to ensure that no works are carried out which may have the effect of

damaging or altering the character of listed Heritage Buildings.

21. Thus, even if the rule of purposive interpretation is applied, the width of Regulation 1.3 of Annexure II to UDBL cannot be interpreted to be whittled down by the language of Bye law 2.14 of the UDBL. More importantly, this Court finds no ambiguity in the plain language of Regulation 1.3 of Annexure II to UDBL so as to restrict its interpretation in the manner as suggested by Mr Bindra.

22. It is a well settled Rule of statutory interpretation that if the words of the statute are clear and unambiguous, the Courts are bound to give effect to the said meaning. The words of a statute must be understood in their natural and ordinary sense and unless such construction leads to some absurdity or runs contrary to the context, the same must be given effect to. In the present case, it is difficult to accept that the plain words of Regulation 1.3 of Annexure II lead to any irreconcilable difference with the provisions of Byelaw 2.14 of UDBL.

23. Insofar as the form for seeking permission is concerned, it is plainly evident that the details required are fairly extensive and some of them - for example presenting a three dimensional model - may not be necessary if the works contemplated are merely minor repairs such as re-flooring etc. However, this cannot be interpreted to mean that no permission is required for such works. The endeavour is clearly to make the form of the application exhaustive, as the said form would also cater to an applicant requesting permission to make major alterations. Plainly, if certain information is wholly irrelevant in the context of the repairs proposed to be done, the

applicant would be at liberty to point out that the same is not applicable. This Court is not persuaded to accept that because the form of the application for permission requires extensive information, no permission is required for the works as contemplated under Byelaw 2.14 of UDBL.

24. In view of the above, the petition is dismissed as unmerited. The pending applications are also disposed of.

DECEMBER 19, 2017
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VIBHU BAKHRU, J

