

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 23 , 2016

Judgment delivered on: January 06, 2017

+ LPA 856/2015
MEENA MITTAL

..... Appellant

Through: Mr.Aman Usman with Mr.J.K. Bhola,
Adv.

versus

DDA & ORS

..... Respondents

Through: Mr.Arun Birbal, Adv. for DDA.
Mr.Pradeep K.Bakshi with Mr.Hardik Luthra,
Adv. for R-2 & 3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

LPA No.856/2015

1. This appeal has been filed by the appellant challenging the order of the learned Single Judge dated September 18, 2015 in Writ Petition (Civil) No. 6062/2013 whereby the learned Single Judge has allowed the writ petition filed by the respondent Nos. 2 and 3 and set aside the order dated August 26, 2013 passed by the Appellate Tribunal MCD and directed the Tribunal to rehear the appeal and pass appropriate orders thereof. We may note

here that the application filed by the appellant herein under Order 1 Rule 10 read with Section 151 CPC for impleadment was held to be infructuous and on, a plea advanced by the learned counsel for the appellant herein that his client i.e the appellant should have an opportunity to oppose the appeal before the Tribunal, the learned Single Judge has observed that the appellant may move the Tribunal and the Tribunal thereafter will pass appropriate orders as to whether the appellant can contest the appeal.

The Facts:-

2. One Ms. Renu Saxena acquired the rights in a vacant plot on which super structure is built, by way of a Lease Deed dated May 5, 1993. Today the property bears the No. A-181, Shivalik, Malviya Nagar, New Delhi. On September 19, 1994 and July 29, 2004 Ms. Renu Saxena entered into Agreements to Sell with the appellant Ms. Meena Mittal for selling the first floor and ground floor of the super structure without the terrace rights. In the interregnum, on September 1, 2003 Ms. Renu Saxena entered into an Agreement to Sell with the respondents 2 and 3 qua the terrace rights on the first floor of the super structure then in place.

3. On September 2, 2004, the subject property was converted into freehold and Conveyance Deed was executed on October 26, 2004 in favour of Ms. Renu Saxena. It is noted that the appellant herein Ms. Meena Mittal filed a complaint dated March 10, 2008 addressed to the DDA, brought to its notice that she has not given her No Objection for construction of second and third floor of the aforementioned property. In her complaint,

she raised concerns about the structural stability of the then existing super structure. On May 9, 2008 Ms. Renu Saxena filed for approval of additional building plan with the DDA. It is noted that Ms. Renu Saxena wrote to the DDA on November 3, 2008, November 17, 2008 and December 26, 2008 for grant of building sanction plan as, according to her she had completed the formalities in that regard. Based on the request of Ms. Renu Saxena, additional building plan for construction of second and third floor was sanctioned by the DDA on February 19, 2009. Having acquired the necessary sanction, the respondents 2 and 3 herein commenced construction in May, 2009. At this point of time, Ms. Meena Mittal, the appellant herein who was the owner and occupier of the ground and the first floor filed a suit for injunction in the District Court on May 21, 2009 and the suit was numbered as 828/2009. During the pendency of the suit, the respondents 2 and 3 filed an application under Order 7 Rule 11 of the CPC. On such application, the plaint was rejected. The appellant herein, aggrieved by the said order carried the matter in appeal. The appeal is said to be pending before the Additional District Judge. It is noted from the learned Single Judge order that the appellant herein filed a suit for declaration in respect of the sanction of the building plan by DDA. The suit, however, was dismissed with liberty to approach the concerned Statutory Tribunal.

4. It is also noted that on February 2, 2011, the appellant herein Ms. Meena Mittal wrote to DDA for revocation of the sanction building plan qua the second and third floor. It appears that vide order dated January 3, 2012, the DDA revoked the sanction of the building

plan, which was accorded on February 19, 2009. Aggrieved by this, Ms. Renu Saxena filed a writ petition being W.P.(C) No. 778/2012. The writ petition was disposed of by the learned Single Judge of this Court on February 7, 2012 calling upon the respondent DDA to pass a well reasoned order on the basis of the averments made by the petitioner No.3 therein (Ms.Renu Saxena) in her replies and her oral submissions. Liberty was granted to the petitioner No.3, if aggrieved by the order, to seek remedy as per law. Pursuant thereto, the DDA passed a speaking order dated March 2, 2012 whereby it reiterated its earlier decision of revocation of the sanction building plan. Ms. Renu Saxena and the respondents 2 and 3 herein assailed the order dated March 2, 2012 passed by the DDA by way of a Statutory Appeal. It is in this appeal that the impugned order dated August 26, 2013 came to be passed.

5. What is noted by the learned Single Judge is that on June 13, 2012, the Tribunal passed an interim order whereby the respondents 2 and 3 herein were deleted from the array of parties. It is also noted by the learned Single Judge that the respondents 2 and 3, apart from challenging the order dated August 26, 2013 had also filed an application dated September 16, 2013 with the DDA to seek regularization of the impugned construction qua the second and third floor. It is also noted by the learned Single Judge that Ms. Meena Mittal filed an application under Order 1 Rule 10 read with Section 151 CPC for being impleaded as a party in the writ proceedings. The learned Single Judge in paras 8.1 to 8.5 has held as under:-

“8.1 A careful perusal of the directions contained in paragraph 5 of the order dated 07.02.2012, passed by this Court, would show that all that this Court had directed the DDA to do was to “... pass a well reasoned speaking order on the basis of the averments made by petitioner No.3 i.e Ms. Renu Saxena in her replies and oral submissions...”. Liberty was given to petitioner No.3 i.e Ms. Renu Saxena to assail the order in accordance with the law, if, she were aggrieved by the DDA’s final determination.

8.2 By this order, the High Court did not exclude the petitioners herein (who were also petitioners, in the said petition) from availing the statutory remedy, if they were affected by the final determination by the DDA.

8.3 In my view, therefore, the Tribunal misdirected itself, in deleting, the petitioners, from the array of parties. Undoubtedly, the order passed by the Tribunal affected their interest and therefore, they had every right to be heard.

8.4 I am informed that Ms. Renu Saxena had preferred a statutory appeal against the order of the Tribunal to the District Judge, and that, the said appeal has been dismissed as withdrawn on 18.09.2014.

8.5 Notwithstanding the above, in my view, the order passed by the Tribunal cannot sustain, since, the petitioners, were not given due opportunity to prosecute their appeal.”

6. During the course of submissions, Mr. Aman Usman, learned counsel for the appellant would submit that the writ petition against the order of the Tribunal MCD is not maintainable in view of the available remedy of Statutory Second Appeal, which was availed by Ms. Renu Saxena, who was a party to the said sanction and revocation thereof. He would also submit that the respondents 2 and 3 were never aggrieved by the order dated

June 13, 2012 passed by the Tribunal whereby, they were deleted from the array of parties as they neither preferred an appeal nor filed a writ petition against the said order. He would state that the matter of sanction and revocation of the additional building plan was between Ms. Renu Saxena and DDA and she preferred a Statutory Second Appeal against the said order dated August 26, 2013 of the Tribunal, before the District Judge and the appeal was dismissed as withdrawn.

7. He would also submit, that the building plan got sanctioned due to fraud committed by Ms. Renu Saxena and under such circumstances, the learned Single Judge could not have set aside the order of the Tribunal dated August 26, 2013. He also states that the learned Single Judge while restoring the appeal, granted opportunity to the respondents 2 and 3 to prosecute the appeal. However, no such liberty was granted to the appellant to contest the same, though appellant is the sufferer of the construction done by respondents 2 and 3.

8. On the other hand, learned counsels appearing for the respondent nos.2 and 3 would support the order of the learned Single Judge.

9. Having heard the learned counsel for the parties, we find no infirmity in the order of the learned Single Judge. There is no dispute that the earlier writ petition being W.P.(C) No. 778/2012 was filed by Ms. Renu Saxena as petitioner No.3 and respondents 2 and 3 herein as the other two petitioners. Merely because the learned Single Judge in W.P.(C) No. 778/2012 has directed the DDA to pass a reasoned and speaking order on the averments made by Ms. Renu Saxena and the learned Single Judge granted liberty to Ms. Renu Saxena

to seek such remedy as available in law, would not preclude the respondents 2 and 3 who were also petitioners and having acquired the rights of the terrace of the first floor in view of the Agreement executed with Ms. Renu Saxena to file a Statutory Appeal before the Tribunal. The learned Single Judge was right in making observation on the order passed by the Tribunal on June 13, 2012 wherein the Tribunal has deleted the respondents 2 and 3 from the array of parties, which it could not have. Surely, they had an interest qua the terrace rights on the first floor, on which second and third floors were sought to be constructed or constructed. The order was passed by the Tribunal on June 13, 2012 was on a misunderstanding of order dated February 7, 2012 passed by this Court in W.P.(C) No. 778/2012.

10. The plea of Mr. Usman that respondents 2 and 3 have not challenged the order dated June 13, 2012 is concerned, the same is not appealing as the final order of the Tribunal dated August 26, 2013 had effected the rights of the respondents 2 and 3 against which a writ petition was filed by the respondents 2 and 3 being W.P.(C) No. 6062/2013, which was entertained by the learned Single Judge and culminated in the impugned order. That apart, the suit No. 828/2009 filed by the appellant was rejected, on the application filed by the respondents 2 and 3 herein, cannot be overlooked. That apart, we note from the impugned order, a plea was advanced on behalf of the appellant that she may be given an opportunity to oppose the appeal before the Tribunal. Such a statement would surely demonstrate that the appellant herein has accepted the conclusion of the learned Single Judge in the

impugned order dated September 18, 2015 whereby the learned Single Judge has set aside the order dated August 26, 2013 of the Tribunal and restored the appeal.

11. Even the submission of the learned counsel for the appellant that the learned Single Judge has not granted the appellant, the right to contest the appeal before the Tribunal is not appealing for the reason that the learned Single Judge has observed the appellant to move the Tribunal, and the Tribunal will pass appropriate orders. This observation of the learned Single Judge would reveal that whether, the appellant need to be heard in the appeal shall be decided by the Tribunal. We do not see any infirmity.

12. Insofar as the judgment of this Court referred to by the learned Counsel for the appellant in the case of *O.P. Malik v. MCD and others dated October 25, 2004*, would not have any relevance to the issue, which arose for consideration in the present appeal, as neither the learned Single Judge nor this Court has gone into the merit of the dispute between the parties.

13. The appeal is without any merit. The same is dismissed.

CM No.28550/2015 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 06, 2017

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