

\$~

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

Date of Decision: 02.05.2018

+ LPA 244/2018 & CM APPL. 17811-14/2018

NEW DELHI TRADERS ASSOCIATION (REGD) AND ANR

..... Appellants

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

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ripu Daman Bhardwaj and
Mr. Gaurav Rohilla, Advocates for
R-1 & 3.
Mr. R.N. Vats, Standing Counsel for
NDMC with Mr. G.S. Sistani, ASC
for NDMC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.

1. The appellant, a trade association espousing the cause of shop-owners and occupants of similar commercial spaces in Connaught Place, in New Delhi, is aggrieved by the judgment of a learned single judge, who dismissed its writ petition. Under Article 226, the challenge by the appellant was to a letter dated 10.2.2017 issued by the Heritage Conservation Committee ("HCC"). The other respondent is the New Delhi Municipal Council (hereafter "NDMC"). The appellant complained that the HCC and NDMC were insisting that the members of its association should seek

permission from both NDMC and HCC, before routine repairs including works such as re-roofing, flooring, white washing etc. The appellants complained that such precondition violates the Unified Delhi Building Bye-laws, 2016 (hereafter, the “Bye-laws”).

2. Mr. Bindra, counsel for the appellants argued that in terms of Bye-law 2.14 no notice or permission is necessary for any minor repairs or alterations work in a building. Reference was made to the bye-law, which states that a building permit may not be required for plastering or cladding and patch repairs, except for the heritage buildings where HCC’s permission is required. Counsel argued that that apart, there is no mandate for any permission from HCC in respect of other works for which no building permit is required. Counsel argued that the single judge therefore misconstrued Bye-law 7.26 which contains provisions (by reference to Annexure II) for conservation of heritage sites and heritage buildings and stated that they must be read to exclude those works/ alterations for which no permission was required in terms of Bye-law 2.14 of the UDBL. Counsel also referred to Bye-law 6.4.1 of the Delhi Building Bye-laws 1983 (which were applicable prior to the 2016 Bye-laws) and urged that even earlier, no permission was necessary to undertake certain works such as re-roofing, renewal of roof, flooring and re-flooring etc. (as specified under Bye-law 6.4.1 of the Delhi Building Bye-laws, 1983). Mr. Bindra argued that for 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. It was urged that although Bye-law 23.3 of the Delhi Building Bye-laws, 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.

3. Counsel then alluded 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) which clarified that internal renovation works did not require any permission as it fell under clause 6.4.1 of the Delhi Building Bye-laws, 1983. It was submitted that the respondents also understood that no permission of the HCC was required for works that were covered under Bye-law 6.4.1 of the Delhi Building Bye-law, 1983. He contended that Bye-law 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. Learned counsel also referred to Annexure II to the 2016 Bye-laws and argued 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 Bye-law 2.14 of the UDBL, did not require any permission of the HCC.

4. Bye-law 2.14, which is in issue here, reads as follows:

“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.”

Bye-law 7.26 reads as follows:

“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.”

5. The single judge accepted that permission for the matters listed in Bye-law 2.14 was not needed. Yet, he was of the opinion that *ipso facto* that cannot be interpreted to restrict the plain language of Bye-law 7.26 and Annexure II to UDBL. The impugned judgment thereafter reasoned as follows:

“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.”

6. This court concurs with the reasoning and judgment of the learned single judge. The details sought (from occupiers and owners) by way of an application are fairly broad and wide ranging; yet they are also contextual. The mere fact that not all details are necessary for routine and inconsequential repairs such as flooring repairs, routine whitewashing etc., cannot mean that in other cases, where heritage issues are implicated, Bye-law 2.14 is to be given full effect. The wide interpretation urged by the appellants (who press for a stand alone application of Bye-law 2.14, divorced from other provisions) therefore cannot be accepted. The effort of the respondents to frame an application was to make it exhaustive, as it applies to those requesting permission to make major alterations. The text of Bye-law 2.14 could not divorce it from the context and the overall objective of the HCC is to ensure that in the guise of routine repairs (which do not call for permission) in fact heritage related changes that implicate or undermine conservation should not be taken up.

7. For the above reasons, it is held that there is no merit in this appeal; it is accordingly dismissed without order on costs.

भारतमेव जयते

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 02, 2018