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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4189/2018, CM Nos. 16463-16464/2018**
RAHUL CHAUDHARY

..... Petitioner

Through: Mr. Hem C. Vashisht, Adv.

versus

COMMISSIONER - SDMC AND ANR.

..... Respondent

Through: Mr. V. Madhukar, Adv. with Mr.
Sachin Sharma, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **25.04.2018**

CM No. 16464/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4189/2018

1. The present petition has been filed by the petitioner challenging the order dated December 13, 2017 passed by the learned District Judge whereby the learned District Judge has dismissed the appeal, which was filed by the petitioner challenging the order of the Appellate Tribunal, MCD dated April 05, 2016.

2. It was the case of the petitioner before the Appellate Tribunal, MCD

that he is the owner and in possession of property No. C-38A, which formed part of property No. C-38 measuring 220 sq. yds out of total area measuring 525 sq. yds, in Khasra No. 399/2, 400, 400 MIN situated in the revenue estate of Village Khanpur, Tehsil Hauz Khas, now known as C-Block, Shiv Park, Khanpur, New Delhi by way of General Power of Attorney dated January 20, 2015 executed by Sunil Kumar and Ajay Singh. That he got an electric meter installed in his name and he is enjoying the property without any hindrance from any corner till August 21, 2015 when 2-3 officials of the respondent started inquiring about the property No. C-37 and when the property NO. C-37 was not found, the officials started claiming that the property No. C-38A is the property No.C-37 and they are going to demolish the same in near future.

3. That the petitioner, the property No. C-38A is part of C-38 an old built up property and recently renovation work has been executed, but the respondents are not willing to believe the same rather insisted to seal the property being unauthorized and recently constructed. It was also his case that no show cause notice of demolition order or sealing order was issued qua the property of the appellant and the show cause notice/sealing order relied upon by respondent SDMC pertained to C-37, which is not his

property and since no show cause notice/sealing order has been served, therefore sealing order is liable to be set aside.

4. The Tribunal in its conclusion has on the issue whether the property C-37/C-38 are one and the same has in Paras 8 and 9 come to the following conclusion:-

8. *On perusal of record of respondent, it is evident that show cause notice dated 05.11.2014 and sealing order dt. 16.12.2014 is with regard to the property NO. C-37, Shiv Park, Khanpur, New Delhi, whereas according to appellant his property number is C-38A, Shiv Park, Khanpur, New Delhi. Respondent has filed photograph of the property which was to be sealed and was mentioned as property No. C-37 in the sealing order. The photographs filed by the appellant is also appeared to be of same property. Hence, it cannot be said that the notice was passed qua some other property.*

9. *As far as difference in property number is concerned, appellant has admitted that the property number has not been given by the Municipal Corporation or any other Government Authority, hence the same is self style number given by property owner themselves. He also admitted that there is no property No. C-37 in the said locality is highly unlikely that if there is C-38 there will be no C-37 as usually house numbers run in chronological order.*

9. *Onus was upon the appellant to proved that his property no. is not C37 butC38. The appellant has filed General Power of Attorney dt. 20.01.2015 and will in which property no. C-38 is mentioned, but General Power of Attorney only notarized and not registered. Similarly, from the electricity bill filed by the appellant it is evident that though same is of property no. C38A but date of energisation is 24.07.2015 hence even electricity connection was also taken after the*

passing of sealing order hence do not help to proved that property in question is having no. C38 when the sealing order was passed. The sealing order was passed on 16.12.2014 it cannot be ruled out that after sealing order in order to avoid sealing number of property has been kept as C38A instead of C37. As far as other GPA file by him is concerned same is of property no. C38. Undoubtedly these GPA are for the period prior to passing of sealing order but same are also notorized and thus does not inspire much confidence.”

5. Insofar as the plea of non service of show cause notice is concerned, the Tribunal has concluded as under:-

“10. Even otherwise, since respondent has purchased the property on 20.01.2015 hence no question of issuing show cause notice arise. Same would be issued to then owner or builder of property. From perusal of respondent record, I am agreed with the contention of Ld. Counsel for respondent that show cause notice of sealing and sealing order has been sent by way of speed post to Sh. Nigam Choudhry owner/builder of the property No.C-37. Hence, it cannot be said that show cause notice/sealing order has not been served. Ld. Counsel for MCD also submitted that one room set at basement has also been sealed in the property on 03.09.2015 and rest of the property not sealed as found occupied.”

6. I note, even the Tribunal has gone into the plea of the petitioner that the property of the petitioner is protected under National Capital Territory of Delhi Laws (Special Provisions) Second Amendment Act, 2014 and has in para 11 concluded as under:-

“11. Another contention of Ld. Counsel of appellant that property is protected from demolition is also not tenable. The photograph filed by him show that property in question is

built up to ground floor and first to fourth floor and appeared to be recent construction. In the chain of GPA filed by him detail of construction has not been mentioned. No other document has been placed on record by the appellant that the property in question was constructed prior to 30.06.2014 so that the same is protected from National Capital Territory of Delhi Laws (Special Provision) Second Amendment Act, 2014.”

7. In an appeal before the learned District Judge, the learned District Judge, has on all the three pleas, came to the following conclusion:-

“It may be noticed that though the appellant claims to have purchased the property by means of a GPA from Shri Sunil Kumar and Shri Ajay Singh on 20.01.2015, the appeal was filed against the sealing order dated 16.12.2014 and any demolition order and show cause notice, if it had been made. The documents filed by the appellant also include a notice issued to Shri Nigam Chaudhary, resident of C-37, Shiv Parkash, Khanpur, New Delhi dated 09.09.2014 where it is recorded that the basement and the ground floor to fourth floor had been constructed. The appellant has not been able to produce any proof that the numbers on the property are provided by the municipality. Therefore, other evidence would have to be looked into to determine whether C-37 and C-38A is one and the same property.

From the documents of the appellant, it appears that there is a property no. C-38. So as rightly pointed out by the Ld. Counsel for the respondents there ought to be a number C-37 preceding it, as house/property numbers are given in seriatim. The Ld. ATMCD relied CIS-MCD APPL-11-2016 Page 8 of 11 on the photographs, one filed by the respondents showing the property which was to be sealed and described as property no. C-37 in the sealing order and the two photographs filed by the appellant and concluded that the property was one and the same. The Ld. ATMCD also

observed that since the number has not been given by the Municipal Corporation or any other Government Authority and since the appellant had admitted that there was no property C-37 in the locality, it was unlikely that if there is C-38 there would be no C-37.

The conclusion of the Ld. ATMCD that the property was one and the same appears to be for cogent reasons which the appellant has not been able to shake. The confusion in numbering seems to have been created after the sealing order dated 16.12.2014. This seems to be borne out from the observations of the Ld. ATMCD that the electricity bills showed the date of energising of electricity at property no.C-38A on 07.05.2015 which showed that the electricity connection at this address was taken after the passing of the sealing order and cannot help to prove that the number of the property was C-38A and not C-37. This Court would go a little further and observe that the sealing order dated 16.12.2014 seems to have been followed by the execution of an un-registered GPA dated 20.01.2015 creating a number C-38A.

Thus, there appears to be no doubt that the property at which the show cause notice was served to the previous owner is the same property, which the appellant now claims to be his own. The Ld. ATMCD rightly concluded that since the sealing order was pursuant to the notice served upon the previous owner there would be no cause for issuing a fresh notice to the subsequent purchaser, being the appellant, if at all the document namely, the GPA is to be treated as transferring the title. The Ld. ATMCD, therefore, rightly concluded that the sealing order CIS-MCD APPL-11-2016 Page 9 of 11 has been passed in accordance with law.

As to the claim of protection under the Delhi Laws (Special Provisions) Act of 2006, the Ld. ATMCD rightly concluded that the photographs showed the property to be new construction. The orders during the proceedings of the Public Grievance Commission do not help

the appellant, as he cannot approbate and reprobate simultaneously. These orders relate to C- 37 and according to the appellant C-37 is not his property. Yet he seeks to rely on those orders to support his claim that his property C-38A is an old built up property. In any case, the orders by the Public Grievance Commission also directs demolition of the property at C-37. The observations in the Public Grievance Commission order dated 09.02.2017 observing that the property was old and constructed and no construction was going on has to be read in the context of the fact that in the instant case the sealing order had been passed in 2014 and the reference to fresh construction at an adjacent site has also been referred to. Again interestingly, this document also referred to the property as C-37 even subsequent to the appeal filed before the Ld. ATMCD against the sealing order. Thus, the observations have to be considered contextually.”

8. The learned counsel for the petitioner has reiterated the same submissions before this Court. He has also relied upon a judgment of this Court in the case of ***Manoj Kumar v. Delhi Development Authority 2007 VII AD (Delhi) 558***, wherein the facts are that the petitioner in the said case is said to be the owner in possession of the property bearing No. HR-139, Pul Pehladpur, Delhi, measuring 100 square yards. The said property falls under an unauthorised colony. It is noted that the Government has assured the residents of unauthorised colonies that there is no intention of acquiring the built up areas. The Central Government had appointed a Committee to give its report on regularisation of the said unauthorised colonies. Besides

this, certain directions were also given by a Division Bench of this Court. It was the case of the petitioner in the said case that on July 12, 2001 and July 19, 2001, the officials of DDA and MCD visited the spot for taking forcible possession of the suit property. Consequently, the suit was filed for permanent injunction seeking a restraint order against the respondent from demolishing and sealing the property in question. It was the stand of the DDA in a written statement that the property in question falls in Khasra No. 232 measuring 4 bighas and 16 biswas, which was acquired in the year 1983. A symbolic physical possession of the land was taken under Award dated March 04, 1983 and the land in question was placed at the disposal of DDA and they contested the plea of the petitioner that he is entitled to protection as the colony is going to be regularized. It appears that against an order not favourable to him, the petitioner therein filed an appeal before this Court. This Court had allowed the appeal on the ground that the petitioner cannot be discriminated and the respondents must wait to see whether the Government regularizes the colony in question or not.

9. Suffice to state, the said judgment has no applicability in the facts of this case. Moreover, in view of limited contentions raised before the Appellate Tribunal, MCD; the District Judge and even before this Court the

finding of the Appellate Tribunal and the District Judge are findings of fact, which cannot be interfered with in writ jurisdiction. I do not see any merit in the petition. The same is dismissed.

CM No. 16463/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 25, 2018/ak