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

+ W.P.(C) 1500/2019 & CM APPL. Nos. 6949-51/2019

NEENA CHADHA

..... Petitioner

Through : Mr. Akhil Sachar, Ms.Sunanda
Tulsyan, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION

AND ANR

..... Respondents

Through: Ms. Mini Pushkarna, Standing
Counsel for North DMC with
Ms.Swagata Bhuyan, Ms.Shiva
Pandey, Advocates for R1.
Mr. J.B. Meena, Assistant
Engineer(Building), Karol Bagh
Zone, North DMC.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **14.02.2019**

CM APPL. No. 6950/2019 (for exemption)

Allowed, subject to just exceptions.

This application stands disposed of.

CM APPL. No. 6951/2019 (for tagging of the writ petition)

Learned counsel for petitioner seeks leave to withdraw this application.

The application is dismissed as withdrawn.

W.P.(C) No. 1500/2019 & CM APPL. No. 6949/2019 (for interim relief)

The petitioner is resident/owner of the front half-portion of

property bearing No. C-3/23 Rajouri Garden, New Delhi, which she says she purchased in 1997.

After purchasing the subject property the petitioner applied for mutation of her name in the records of respondent No.1/North DMC's predecessor corporation for purposes of payment of property tax. *Vidé* letter dated 21.02.2015 the petitioner's name was mutated, as requested, in respect of front half-portion of property No. "C-3/23 area measuring 110 sq. yds. (out of total area measuring 220 sq. yds.) at Rajouri Garden, New Delhi".

Subsequently rectification order dated 26.11.2010 also came to be passed in respect of the rateable value of the subject property recording in the rectification order as under:

"In the present case, the RV of the property constructed on a plot measuring 110 sq.yds. was revised on account of rebuilt, change in use & ownership for which a notice under Section 126 of DMC Act, 1957 proposing to fix the RV at Rs.6,00,000/- w.e.f. 1.4. 1999 was issued and the same was confirmed exparte by an order dated 24.7.2002."

Thereafter, sometime in 2017, the petitioner applied for and obtained on-line sanction for a building plan under the 'Saral Scheme' of Unified Building Bye-Laws for Delhi 2016 ; the petitioner furnished the requisite undertaking required for such sanction to respondent No. 1/North DMC ; and also paid a sum of Rs.2,64,398/- towards grant of sanction.

Learned counsel for the petitioner states that sometime in November 2017, Writ Petition (Civil) No. 10407/2017 came to be filed by a neighbour, who is respondent No. 2 in the present petition, alleging unauthorized construction in the subject property and seeking action against such construction. It is stated that the said writ petition is pending in this court and in order dated 29.01.2018 made in that matter, the following has been recorded :

“Learned counsel for the respondent No.1 also states, and which is equally supported by the learned counsel for the respondent No.3 that replies to the show cause notice under Section 338 of the DMC Act have been filed by the respondent no.3 with the North Delhi Municipal Corporation on December 5, 2017 and December 14, 2017 respectively. The same are under the consideration of the Corporation and it is expected that a final order shall be passed within four weeks. Noting the submission made by the Ld. Counsel for the respondent no.1 and directing the respondent no.1 to file the status report within two weeks thereafter, Re-notify on April 20, 2018.”

and the process referred to above culminated in the issuance of order dated 18.09.2018 by respondent No. 1/North DMC revoking the sanction of building plan accorded to the petitioner through the on-line ‘Sarat Scheme’.

Counsel for the petitioner further states that consequent upon revocation of the sanction, partial demolition action has already been taken against the subject property on 09.02.2019.

Counsel for the petitioner also states that the *only* basis on which respondent No. 1 is citing unauthorized construction in the

subject property is that, according to respondent No. 1, the petitioner has mis-represented the plot size to be 110 square yards instead of 220 square yards and therefore excess FAR came to be sanctioned for the subject property and the petitioner has therefore made excess construction on the subject property.

Counsel states, that as is evident from the Mutation Order as well as the Rectification Order, respondent No. 1/North DMC *itself acknowledged* the plot size to be of 110 square yards and it is therefore not available to respondent No. 1 to now contend that there was any mis-representation on the part of the petitioner.

Counsel for the petitioner states that show-cause notice dated 08.12.2017 was issued by respondent No. 1/North DMC only after Writ Petition (Civil) No. 10407/2017 was filed ; that action against the subject property has been taken at the behest and instance of respondent No. 2, who is the petitioner's neighbour in a different property bearing No. C-3/22 and not in the same property in which the petitioner lives. He also states that the complaint by respondent No. 2 was *mala fide* inasmuch as respondent No. 2 is interested in purchasing the petitioner's subject property. Counsel also says that the issue of deviation from the building sanctioned plan is strictly between the petitioner and respondent No. 1 and respondent No. 2 can have no concern or interest therein. The petitioner has also furnished reply dated 14.12.2017 to the show cause notice *inter alia* requesting a personal hearing in the matter.

Issue notice.

Ms. Mini Pushkarna, learned Standing Counsel appears on

advance copy and accepts notice.

Ms. Pushkarna cites para 4.4.3 of the Master Plan Delhi-2021, the relevant portion of which reads as under :

“(iv) Subdivision of plots is not permitted. However, if there are more than one buildings in one residential plot, the sum of the built up area and ground coverage of all such buildings, shall not exceed the built up area and ground coverage permissible in that plot.”

Counsel for the petitioner denies that there has been any sub-division of the plot in terms of constructing any wall dividing the plot into two separate portions ; and the sub-division, if any, is only notional since two separate individuals had bought the plot which admeasures 220 square yards in its entirety.

As is evident from a perusal of the foregoing provision of Master Plan Delhi-2021, while sub-division of plots is not permissible, but where there are more than one buildings in one residential plot, the mandate is that the sum of the built-up area and ground coverage of such buildings, shall not exceed the built-up area and ground coverage permissible in the plot as a whole.

In these circumstances, Ms. Pushkarna, on instructions from Mr. J.B. Meena, A.E. (Buildings)/KB2, Karol Bagh Zone, North DMC states that if the petitioner applies for a fresh sanction of the building plan on the basis of the FAR and ground coverage permitted on a 220 square yards plot, respondent No. 1 will re-consider the matter and accord sanction for construction on the basis of the ground coverage and FAR as is permissible for a 220 square yards plot in

accordance with law and the applicable rules and regulations.

Counsel for the petitioner on instructions from the petitioner's son Mr. Jaskaran Chadha states that the petitioner would be ready and willing to apply for a fresh building sanction; and undertakes to also rectify and bring the subject property in conformity with the requirements of the fresh building sanction.

In view of the above, the petitioner is directed to apply for a fresh building sanction within two weeks from today; respondent No. 1 is directed to consider and take a decision on such application within four weeks of the receipt of the application from the petitioner; and upon receiving such sanction, the petitioner shall rectify and bring the subject property in conformity therewith within a period of two months thereafter.

The petitioner is further directed to file an undertaking in this court in the above terms within a period of two weeks of this order.

The petition is disposed of in the above terms.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 14, 2019

j