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

Date of decision: 28th November, 2019

+ **CM(M) 589/2017 and CM APPL. 20235/2017**

MEENA SHARMA

..... Petitioner

Through: Ms. Bhakti Pasrija Sethi, Mr. Moksh Pasrija and Ms. Reshma Pasrija, Advocates (M: 9711354028).

versus

SEEMA AND ORS

..... Respondents

Through: Mr. Dalip Rastogi, Advocate for R-1.

Ms. Puja Kalra and Mr. Virendra Singh, Advocate for R-2, NDMC (M: 9312839323).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 33723/2018 (seeking waiver of the costs of Rs.10,000/-)

1. This is an application for waiver of the costs of Rs. 10,000/-. In view of the facts stated therein, the costs are reduced to Rs. 5,000/- which shall be paid within a period of one week from today.

2. The application is disposed of.

CM(M) 589/2017 and CM APPL. 20235/2017

3. The present petition has been filed challenging the impugned order dated 31st January, 2017 by which the application by the Petitioner under Order I Rule 10 seeking impleadment before the Appellate Tribunal has been rejected by the Tribunal. The case of the Petitioner is that she has been in occupation of the property in question being Ground Floor, 152-153, Pocket G-26, Sector -3, Rohini, New Delhi-110085 since the year 2000 and thereafter she purchased the said ground floor in 2002.

Respondent No. 1 is the owner of the first floor of the property and according to her, commenced construction on the second and third floor, contrary to the MCD bye-laws. Accordingly, a writ petition was preferred by her being WP(C) No. 4398/2014. Certain directions were issued in the said writ petition, which were not complied with, which led to filing of a Contempt Petition No. 606/2015. Vide order dated 4th August, 2015, the said contempt petition was disposed of, however, even the said order by which the contempt petition was disposed of was not complied with, leading to an application being filed seeking revival of the contempt. Vide order dated 18th December, 2015, the Court had observed that the Petitioner is a necessary and proper party before the MCD Appellate Tribunal, where the Respondent No. 1 had filed an appeal challenging the order passed by the Commissioner of MCD. Thus, vide the said order this Court disposed of the application, granting liberty to the Petitioner to move an appropriate application before the MCD Tribunal. By the impugned order, the Tribunal has rejected the said application.

4. Ms. Bhakti Pasrija Sethi, Id. counsel for the Petitioner submits that the Petitioner, who has the rights to the ground floor is a “*person aggrieved*” under the provisions of the MCD Act. She submits that the Tribunal has misread the judgment of this Court in ***Hardayal Singh Mehta v. M.C.D and Others, AIR 1990 Delhi 170***, while holding that the Petitioner is not a necessary or a proper party. She relies on the observations in ***Hardayal Singh*** in paragraph 27 of the said judgment. Further reliance is also placed by Id. counsel on ***ANZ Grindlays Bank v The Commissiner, MCD and Others, 1995 IIAD Delhi 573***, wherein “*person aggrieved*” has been interpreted in an expansive manner.

5. She submits that in view of these two judgments, the Petitioner is entitled to impleadment as a party before the Tribunal, and also to place documents on record, and argue her case before the Tribunal.

6. On the other hand, Id. counsel for Respondent No. 1 relies upon the judgement in ***Hardayal Singh*** to argue that the Petitioner is clearly not a person aggrieved within the meaning of the Act wherein it was observed as under:

“To conclude, it is found that the Tribunal has no power to add anyone except the corporation and its officers or servants as a party to an appeal under S. 343 of the Act, and, even otherwise, the impugned order is unjust and is invalid.”

It is submitted that the Petitioner is neither a necessary nor a proper party, but at best can be allowed to be represented in the proceedings as an intervenor, which the Tribunal has allowed in paragraph 8 and 9 of the impugned order. He further relies upon subsequent orders passed in ***Hardayal Singh***, where even the intervention by a party who had some grievance was also allowed only to a limited extent. He submits that this position in law has been consistently followed by this Court by various other Id. Single Judges, including in the judgment in ***Madhur Krishan Dhingra v. D.M.C. North and Others, WP(C) 9452/2017 (Decided on 27th October, 2017)***. Accordingly, it is submitted that the Petitioner ought not to be allowed to be impleaded as a party.

7. The short question that arises is whether the Petitioner is a necessary or proper party in the present case, in view of the judgments referred to by both sides. There is no doubt that in the initial writ petition which was filed by the Petitioner, the Id. Single Judge had disposed of the matter in the

following terms:-

“The petitioner has filed the present petition, inter alia, praying that respondent Nos. 1 and 4 be directed not to allow respondent Nos. 2 and 3 or any of their associates, agents, builders, etc. to carry out illegal and unauthorized construction on the second and the third floor above the first floor of the property bearing No. 152-153, Pocket-G-26, Sector-3, Rohini, Delhi 10085.

The learned counsel appearing for respondent No. 1 has handed over a status report stating that no building plan has been sanctioned in respect of the premises in question. It has been further pointed out that the property has been booked as U/c in the shape of amalgamation of two plots and deviation against sanctioned building plan at Ground Floor, and First Floor and U/c at entire SF and TF alongwith projection on Mpl land at each floors. It is stated that a show cause notice has also been issued to the owners/occupiers on 13.11.2014 and further action against the unauthorized construction would be taken in accordance with law. In view of this status report, no further orders are required to be passed in the present petition, except to direct that the respondents shall also communicate its decision with regard to the said property to the petitioner.”

8. As per the above order, the MCD had been directed to take action against the unauthorized construction in accordance with law. Alleging non-compliance of the said order, a contempt petition, being Contempt Case No. 606/2015 came to be filed by the Petitioner which was again disposed of vide order dated 4th August, 2015 in the following terms:-

“Present contempt petition has been filed alleging wilful disobedience of the order dated 14th January, 2015 passed by a Coordinate Bench of this Court in W.P.(C) 4398/2014 wherein the respondents had

undertaken to take action in pursuance to the show cause notice issued by them to occupants of second and third floors of the property No.152-153, Pocket-G-26, Sector-3, Rohini, Delhi-110085. Respondents were also directed to communicate their decision with regard to the said property to the petitioner.

Learned counsel for petitioner states that till date neither the respondents have furnished a compliance report nor they have taken any action against the unauthorised construction.

Ms. Puja Kalra, learned counsel for respondents, who appears on advance notice, on instructions of Mr. A.V. Sharma, A.E. (Bldg.), North DMC, Rohini states that the regularisation application of the owner of second and third floors of the property in question shall be disposed of within a period of fifteen days.

She also assures this Court that the petitioner shall be intimated of the decision in writing within a period of three weeks.

The statement made by learned counsel for respondents is accepted by this Court and respondents are held bound by the same.

In view thereof, the present contempt petition is disposed of as satisfied.

However, in the event, the aforesaid undertaking is not complied with, the petitioner is given liberty to seek revival of the present contempt petition.”

9. As per the above order, the regularization application by the Respondent No. 1 was to be disposed of within a period of fifteen days and the Petitioner was to be intimated of the decision in writing within a period of three weeks. An application seeking revival of the contempt petition moved by the Petitioner alleging noncompliance by the MCD was also disposed of on 18th December, 2015 in the following term:-

“Since the Appellate Tribunal, MCD, has passed the

stay order, learned counsel for petitioner wishes to withdraw the present contempt petition and pending applications with liberty to file an impleadment application in the proceedings pending before the Appellate Tribunal, MCD.

In the opinion of this Court, the petitioner is a necessary and proper party inasmuch as it was only at her instance the property in question has been booked.

With the aforesaid observation and liberty, present contempt petition and applications are disposed of.”

10. As it is evident from the reading of the above orders, this Court had already held that the Petitioner is a necessary and proper party inasmuch as it was at her instance that the property in question has been booked. The case law cited by the parties has to be considered in the backdrop of this factual position, inasmuch as the Petitioner is not just a person who has made complaints, but a party in whose favour a vested right has in fact being recognized by this Court. Such a factual condition did not exist in any of the judgments cited, including ***Hardayal Singh***. The order dated 4th August, 2015 clearly records that the Petitioner shall be intimated of the decision in writing to be taken by the MCD. This itself shows that if the Petitioner was aggrieved by the said order, she could have preferred any challenge to the said order. In view of this, the Id. Single Judge of this Court in the order dated 18th December, 2015 has also observed that the Petitioner is a necessary and proper party.

11. In the impugned order, while the Tribunal may be right in the manner in which ***Hardayal Singh*** is being interpreted, the factual distinction between the judgement in ***Hardayal Singh*** and the present case cannot be ignored. The judgment in ***ANZ Grindlays*** holds that any person

aggrieved can prefer an appeal under Section 343(2) of the Delhi Municipal Corporation Act as also under Section 347B. The relevant portion reads as under:

“(42) An order of stoppage under Section 344 and an order of sealing under Section 345A are both appealable under Section 347B, the right of appeal having been vested in ‘any persons aggrieved by the orders.

...

(44) A perusal of the above said provisions shows that orders of stoppage and/or demolition are to be made against ‘the person at whose instance the building or work has been commenced or is being carried on or has been completed.’ The order of stoppage does not contemplate any pre-decisional hearing being given or notice to show cause being issued before making an order. However under Section 343 no order of demolition shall be made unless ‘such person’ has been given a reasonable opportunity of showing cause against such order which is proposed to be made.

(45) The right of appeal is not restricted to “the person at whose instance the erection or the work has been commenced or is being carried on or has been completed. Right of appeal is wider. It is conferred on ‘any person aggrieved.’

(46) An order of stoppage or demolition may aggrieve persons other than those at whose instance the erection or work was commenced or was carried on or was completed. All those persons who were likely to benefit from or make use of the work or erection alleged to be unauthorized, would be the persons aggrieved, though they were not the persons at whose instance it was done or was being done.

...

(52) Though the entitlement to notice is not of the tenant, nevertheless the tenant may be a person aggrieved by an order of the Commissioner under Section 343 (1)/344. If the unauthorized construction exists in the premises in

occupation of the tenant then the demolition is sure, to effect his peaceful possession and enjoyment over the property. He would be a person aggrieved by an order of the Commissioner, though made against the owner/landlord. Such a tenant though not entitled to a notice and though the order may not be directed against him still would have right to prefer an appeal against the order for demolition, he being a person aggrieved by the order. Of course, during the hearing of the appeal he cannot claim any right on a pedestal higher than that of the owner/landlord under whom he claims and who has inducted him into the property.”

If the Petitioner is a person aggrieved, as is clear from the various orders, that have been passed and also from a perusal of the judgement in **ANZ Grindlays**, there is no reason as to why there should be multiplicity of appeals or proceedings, and as to why the Petitioner ought not to be impleaded before the Tribunal as a party. In order to avoid multiplicity of appeals being filed before the Tribunal, and following previous orders that have been passed in the Petitioner’s own case and considering the factual distinction between the present case and in **Hardayal Singh**, it is directed that the Petitioner shall be impleaded as a necessary/proper party in the appeal pending before the Tribunal. The Petitioner shall be heard, and shall be permitted to file pleadings in the matter and also assist the Tribunal in the manner it deems appropriate.

12. With these observations, the present petition is allowed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 28, 2019
MR