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

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Judgment delivered on: 28.01.2022

+ W.P.(C) 1908/2020

TIRATH RAM AHUJA PRIVATE LIMITED Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Anu Mehta, Mr. Rubinder Ghumman and Mr. Rohan Sharma, Advocates.

For the Respondent: Mr. Sanjiv Sen, Senior Advocate with Mr. Divya Prakash Pande, Standing Counsel, SDMC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 14576/2021 (early hearing)

1. The hearing was conducted through video conferencing.
2. For the reasons stated in the application, the application is allowed. With the consent of parties, petition is taken up for consideration today.
3. Next date of 22.02.2022 is cancelled.

**W.P.(C) 1908/2020**

1. Petitioner seeks quashing of communication dated 01.07.2019 whereby the application filed by the petitioner seeking sanction of a building plan in respect of property No.11, Friends Colony, West, New Delhi-110065 was rejected. Petitioner further seeks quashing of circular dated 10.04.2008.
2. Learned counsel for petitioner submits that the respondents had rejected the sanction of the building plan relying on circular dated 10.04.2008, however the said circular is not in public domain and not even available with the petitioner.
3. Learned senior counsel appearing for the respondent submits that even though petitioner has impugned the circular dated 10.04.2008, copy of the same has not been annexed with the petition. He submits that the circular is in public domain. Copy of the circular dated 10.04.2008 has been sent over the email of the Court Master. Same is taken on record. Copy of the same has also been provided to learned counsel for the petitioner.
4. The property of petitioner comprises of 3522 sq.mtrs. Petitioner had made an application seeking sanction of a building plan for 16 dwelling units.
5. By the impugned communication dated 01.07.2019 the sanction of building plan was rejected referring to circular dated 10.04.2008 which restricts the number of dwelling units to 10 in respect of the



properties whose area is above 3000 sq.mtrs.

6. Learned senior counsel appearing for the respondent further submits that circular dated 10.04.2008 has been issued in terms of the order of the Supreme Court dated 14.03.2008 in W.P(C) No.4677/1985 titled *M.C.Mehta vs. Union of India* wherein the Supreme Court referring to the Master Plan of Delhi, 2021 had reduced the number of dwelling units permitted by the Master Plan in respect of larger plots i.e. plot above 250 sq. mtrs. The order specifically directed the maximum number which would be permissible in respect of each of the categories above 250 sq. mtrs.

7. Learned senior counsel appearing for the respondent further submits that the Supreme Court in its order had directed as under:-

“(1) Where under MPD 2021, the permissible number of dwelling units is 6, it shall be 5 and in case where it is 9, it shall not be more than 7, and in other cases it shall be more than 10, i.e. of the categories 8 to 11 indicated in the comparative statement, as per the Master Plan.”

8. Learned senior counsel appearing for the respondent submits that the Supreme Court had reduced the number as permitted by the Master Plan, 2021 and specified the maximum permissible dwelling units for each category of plot size.

9. Learned senior counsel submits that for the categories 8 to 11



i.e. plots measuring 1500 to 2250 sq mtrs; 2250 to 3000 sq mtrs; 3000 to 3750 sq mtrs and above 3750 sq mtrs, where the maximum permissible dwelling units as per the Master Plan 2021 were 12, 15, 18, 21 respectively, the Supreme Court restricted the maximum number of permissible dwelling units to 10.

10. As per the Respondents, the Supreme Court was reducing the number of dwelling units which were permissible as per Clause 4.4.3 of MPD 2021. It is contended that while directing for categories 8 to 11 inadvertently the word “NOT” has been omitted before the words “be more than 10” so the phrase ought to have been read “shall not be more than 10” instead of “shall be more than 10”. It is stated that the Supreme Court was laying down the outer limit of dwelling units for various sizes of residential plots and logically “shall be more than 10” did not define any outer permissible numbers of dwelling units for the size of plot in question and had the Supreme Court intended to permit more than 10 dwelling units for categories 8 to 11 then in such an event there was no necessity for the Supreme Court to pass such direction in its order as the MPD 2021 already contained the outer limit to be maximum of 18 dwelling unit for the category in question in the instant writ petition.

11. Further, learned senior counsel appearing for the respondent submits that petitioner had filed an application before the Supreme Court in W.P.(C) No.4677/1985 titled *M.C.Mehta vs. Union of India* being IA No.136344/2019 and referring to its order dated 14.03.2008



and contending that for categories 8 to 11 i.e. plot sizes above 1500 sq.mtrs as enumerated hereinabove, the dwelling units would be more than 10 and would not be restricted to 10 and Petitioner had thus sought a direction to the MCD to sanction the building plans in terms of the order of the Supreme Court dated 14.03.2008..

12. Learned senior counsel appearing for the respondent also points out that the said application specifically referred to the communication dated 01.07.2019 (impugned in this Writ Petition) and contended that the number of dwelling units permissible for the plot of the petitioner measuring 3350 sq.mtrs would be more than 10. He submits that identical grounds have been raised in this writ petition and Petitioner seeks quashing of the communication dated 01.07.2019 rejecting the sanction of Building Plan.

13. Learned senior counsel further points out that order dated 26.11.2020 of the Supreme Court in W.P.(C) No.4677/1985 titled *M.C.Mehta vs. Union of India* records that petitioner withdrew the said application IA 136344/2019.

14. Learned senior counsel submits that petitioner having raised identical grounds before the Supreme Court with regard to the number of dwelling units permissible in the plot of the petitioner and thereafter having withdrawn the same is now precluded from raising the same issues before this Court.

15. Perusal of the application filed before the Supreme Court by the



petitioner (IA No.136344/2019) in W.P.(C) No.4677/1985 titled *M.C.Mehta vs. Union of India* as also the present Writ Petition shows that the contention of the petitioner in both is identical i.e. that the Supreme Court by its dated 14.03.2008 in W.P.(C) 4677/1985, *M.C.Mehta* (Supra) has held that the number of dwelling units permissible on the plot of petitioner measuring 3522 sq.mtrs is more than 10 and as such the rejection of the application seeking sanction of 16 dwelling is erroneous. In both the proceedings reference is made to the impugned communication dated 01.07.2019, whereby the sanction of plan was rejected.

16. The contention of learned counsel for the petitioner that petitioner had circulated a letter dated 10.02.2020 before the Supreme Court that petitioner intends to withdraw the said application is of no consequence as there is no reference to any letter in order dated 26.11.2020. Said order records

“IA NOS. 136342 AND 136344/2019 (APPLNS. FOR INTERVENTION AND DIRECTIONS ON BEHALF OF TIRATH RAM AHUJA PVT. LTD.) Learned counsel appearing for the applicant(s) prays for withdrawal of the instant applications. Prayer is allowed.

Accordingly, the interlocutory applications for intervention and directions are dismissed as withdrawn.”

17. Said order of the Supreme Court dated 10.02.2020 does not



record that the withdrawal was conditional or any liberty was sought and granted to the petitioner by the Supreme Court to pursue other remedies.

18. In view of the above, Petitioner is precluded from filing a petition before this Court re-agitating the issue which was specifically raised before the Supreme Court by way of the said application and unconditionally withdrawn.

19. During the course of proceedings, learned counsel for the petitioner relied on the copy of the Master Plan issued by the DDA incorporating modifications upto 31.03.2017 wherein it is contended that in para 4.4.3 pertaining to Control for Building/Buildings within Residential Premises, the number of dwelling units is still shown as against plot of sizes above 3000 to 3750 was still 18.

20. Said plea is of no consequence as having once withdrawn the plea before the Supreme Court, Petitioner is precluded from re-agitating the same issue before this court. Further, the restriction imposed by the Supreme Court would override the provisions of the Master Plan.

21. It may also be noted that Respondents have given an explanation with regard to the omission of the word “not” in the order dated 14.03.2008 of the Supreme Court while reducing the number of permissible dwelling units for various categories of plots. This contention of the Respondents seems to have merit specially when



examined in the light of the fact that Petitioner had filed an application before the Supreme Court specifically referring to the number of dwelling units permitted by it by order dated 14.03.2008 and then withdrawing the same unconditionally.

22. In view of the above, Petitioner cannot be permitted to reagitate the same issue and seek the same relief by filing this Petition. The Petition is accordingly dismissed.

23. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J.

JANUARY 28, 2022

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