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IN THE HIGH COURT OF DELHI AT NEW DELHI
NEUTRAL CITATION NO: 2022/DHC/002511



W.P.(C) 9921/2022

Date of Decision: 05.07.2022

IN THE MATTER OF:

SH. SANJEEV MALHOTRA & ANR. Petitioners
Through: Mr. Ayush Gupta, Advocate

versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through: Mr. Ashutosh Gupta, ASC for MCD

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 29138/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 9921/2022 and CM APPL. 29139/2022 (stay)

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioners seek quashing of reply/order dated 29.05.2022, whereby their application for grant of sanction of building plan qua the western side portion owned by them, *area measuring 1100 sq. yds. out of total area of 2200 sq. yds.*, in property bearing *No. H-1/4, Model Town, Delhi* (hereinafter, referred to as the '*subject property*') has been rejected. The petitioners also seek a direction to the respondent to grant a sanctioned building plan in respect of their portion in the subject property.

2. In respect of their claim of joint ownership of 50% share in the subject property, the petitioners have placed on record title documents, including gift deeds dated 05.09.2006 & 23.04.2007, and sale deed dated 11.08.2010.



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3. Learned counsel for the petitioners has submitted that the petitioner sought sanction of building plan from the respondent but the application was rejected vide order dated 29.05.2022, *inter-alia* on the ground that the proposal submitted by the petitioners is for a part of plot without the signatures of co-owners. The petitioners were directed to re-submit the proposal, signed by all the owners of the entire plot. Besides the aforesaid, the petitioners were also asked to comply with the directions contained in the letter dated 21.05.2022.

4. Learned counsel for the petitioners has further submitted that it is permissible for the petitioners, who are owners of 50% share in the entire plot, to seek sanction for the building plan without production of NOC from the co-owners. In this regard, he has placed reliance on the decisions of this Court in Municipal Corporation of Delhi v. Smt. Usha Devi Sharma reported as **2006 SCC OnLine Del 129**, Kanwal Sibal v. New Delhi Municipal Council & Ors. reported as **2015 SCC OnLine Del 9779** and Harish Bajaj & Anr. v. North Delhi Municipal Corporation & Anr. reported as **2017 SCC OnLine Del 8075**.

5. In Municipal Corporation of Delhi v. Smt. Usha Devi Sharma (Supra), this Court noted thus:-

“6. By the impugned judgment and order, a learned Single Judge held that the rejection of the building plan was not warranted in law and the appellant was directed to process the application for sanction in accordance with the judgment of the Court and pass an order within four weeks.

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8. At the outset, it may be mentioned that a similar issue appears to have arisen in CW 3535/2001 which was decided by another learned Single Judge on 11th March, 2003 in which it was held as under:

“Once the property is segregated into different portions and mutated accordingly, there cannot be any requirement of all the co-owners to sign the building plans. If the plot and the building are both co-owned, then only the requirement for such co-owners to sign may at all arise. The segregation of interest of the different co-owners is



recognized by the respondent Corporation by mutation of the different portions in individual names of different persons. The fate of an individual owner cannot be dependent on the pen of a persons, who happens to the owner of a different portion of the building. Thus, there cannot be any requirement of signatures of all the co-owners.”

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9. The learned Single Judge took note of the above decision but added some other reasons for agreeing with the writ petitioner. The learned Single Judge after examining the provisions of the Building Bye-laws, 1983 and on an analysis thereof came to the conclusion, with which we agree, that there is no requirement that if the owner of a flat or a floor in a property intends to put up some construction, he must obtain a no objection certificate from the other flat owners. As long as separate ownership of different flats is permissible in law, each owner is responsible for the construction that he makes. If the construction is contrary to law, the appellant is entitled to demolish it but if the owner of the flat wishes to make some construction and applies for sanction in accordance with law, the appellant cannot reject it on the ground that the owners of other flats should give their no objection. It is quite clear from the Building Bye-laws that other owners have no concern with the property of a particular owner as long as that owner makes construction thereon in accordance with the Building Bye-laws after obtaining sanction. The insistence of the appellant that the other co-owners of the property, namely, the owner of the ground floor and the first floor must give their no objection is not warranted by any provision of the Building Bye-laws, nor was any such Bye-law brought to our notice.”

6. In Kanwal Sibal (Supra), this Court set aside the letter rejecting the petitioner’s plans and directed the respondent/Council to provide sanction if the plans were in conformity with the Building Bye-Laws, without insisting on production of an NOC from the owners of other floors of the property in question. Relevant excerpt from the decision is reproduced below:-

“15. The learned counsel for NDMC has contended that the decision of this Court in Municipal Corporation of Delhi v. Smt. Usha Devi Sharma (supra) would have no application as the plot of land on which the building stands has not been mutated in the name



of the separate co-owners. He emphasized that the petitioner has an undivided share in the land below the building and as per MPD-2021 the plot cannot be sub-divided. He stated that in absence of sub-division, it could not be construed that the petitioner was the owner of the property in question. I find it difficult to accept this submission; first and foremost for the reason that the facts in the case of Usha Devi Sharma were not materially different. In that case also the petitioner therein had purchased a floor of the building constructed on a plot of land in Kailash Colony, New Delhi (which was a plotted development). The said plot of land was also not subject to any subdivision.

16. Thus, the grounds on which the aforesaid decision in *Municipal Corporation of Delhi v. Smt. Usha Devi Sharma (supra)* is sought to be distinguished is non-existent. Secondly, the registered title deeds in favour of the petitioner clearly indicate the petitioner to be the exclusive owner of the terrace above the second floor where additional construction is proposed to be raised. Indisputably, no other person can claim any right to construct on the said portion. It is also not disputed that the petitioner is the recorded owner of his portion of the property in question conveyed to him under the sale deed. Thus, the requirements of the Building Bye-Laws would be satisfied if the plans are signed by the petitioner as the owner of the terrace on which construction is now proposed to be raised.”

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21. Para 4.4.3 of MPD 2021 relates to Control norms for building/buildings within residential premises. Part A of the said regulations provides for the maximum permissible ground coverage, FAR, number of dwelling units for different sizes of residential plots etc. The aforesaid condition proscribing sub-division of plots has to be read in context of the development control regulations specifying the aforesaid parameters. The substratal purpose of MPD 2021 is planned development of Delhi. Undisputedly, for the purposes of applying the parameters such as FAR, maximum ground coverage, maximum number of dwelling units etc. a plot of land in a plotted development is considered as a single unit. The aforesaid prohibition to sub-division does not affect the title as to the plots or the right of any one or more persons to construct thereon. As an illustration, if a plot of 1000 sq. metres is owned by two persons equally-who may or may not have divided the same amongst themselves - it would not be open for the said



persons to insist that parameters as applicable to plots of 500 sq. metres be applied to each of their shares. Under the MPD 2021, ground coverage for a 1000 sq meters plot is only 40%; but for a plot of 500 sq. metres, 75% of ground coverage is permissible. Undeniably, the norms as applicable in respect of Maximum Ground Coverage, FAR, number of Dwelling Units etc. as specified for a plot of 1000 sq. metres would be applicable. This is quite different from stating that even if a person is entitled to construct on a portion of the property, he would, nonetheless, require the permission of the other because the unit for applying the norms fixed is a single plot. Thus, the parties owning a single plot may demarcate their shares and if the ownership of demarcated shares is recognised and accepted by NDMC, there would be no requirement for the owners of demarcated shares to seek the NOC from other co-owners in order enable to them to carry out the development of their property. Thus, the contention that the building plan must be signed by all owners by virtue of clause (iv) of the conditions to paragraph 4.4.3 of MPD 2021 is not sustainable.”

7. In Harish Bajaj (Supra), the order passed by the Corporation, rejecting the appellants’ application for sanction of building plans on the ground that the same was not accompanied by NOC of the co-owners was held unsustainable and quashed. It was observed:-

“13. We find that this judgment is on all fours with the rights and claims asserted by the appellants before us and see no justification as to how the request of the appellants for permission to raise the additional construction can be rejected.

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17. In the present case, the appellants are the co-owners of the property, wherein the construction is to be raised, have applied for sanction of the building plan. In these circumstances, the necessity of the respondent No. 1 for a “No Objection Certificate” from the respondent No. 2 is completely unwarranted.

18. The municipal authorities would consider the permissibility of that proposed construction from every aspect as postulated in the municipal laws and bye-laws as well as other statutes which may

have a bearing. It is required to be ensured that all constructions strictly abide by the law.”

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8. At this stage, learned ASC for the respondent, on instructions, submits that in case the petitioners submit fresh proposal, the same would be considered in accordance with law, subject to MPD-2021 and UBBL-2016, without insisting on production of NOC from the co-owners.

9. Learned counsel for the petitioners, on instructions, submits that the petitioners would claim only proportionate FAR, ground coverage and number of dwelling units, as applicable under law. He also submits that any compliance required in terms of the letter dated 21.05.2022 would be made.

10. In view of the aforesaid, no further orders are required to be passed. Accordingly, the present petition is disposed of, alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

JULY 5, 2022

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