

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

Date of decision: 23rd FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 104/2023 & CM APPLs. 6443-44/2023**

ANIL DUTT SHARMA

..... Appellant

Through: Mr. Manoj Kumar Dwivedi and Ms.
Anushka Pandey, Advocates.

versus

GOVERNMENT OF N.C.T. OF DELHI & ORS. Respondents

Through: Mr. Avishkar Singhvi, Mr. Vivek
Kumar and Mr. Naved Ahmed,
Advocates for R-1.
Mr. Ajjay Aroraa, Standing Counsel
for MCD with Mr. Kapil Dutta and
Mr. Anuj Bhargava, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant LPA has been filed challenging the Order dated 27.11.2019, passed by the learned Single Judge in W.P.(C) 37/2018, and Order dated 08.12.2022, passed by the learned Single Judge in the Review Petition, being Review Petition No.27/2020, which was filed by the Appellant herein in W.P.(C) 37/2018.

2. Facts of the case reveal that the Appellant herein approached this Court by filing W.P.(C) 37/2018 with the following prayers:

“(i) Issue writ, order or direction in nature of Mandamus or any other appropriate writ, order or directions to the Respondent.

(ii) Direct for CBI/Anti Corruption to investigate the case and vigilance Enquiry EDMC.

(iii) Direct the Vigilance department and the Zonal office to inform status of all complaints of the petitioner and the police and name of the officer responsible to intimate the status of the complaint after disposal.

(iv) Direct the respondent No.1 to take disciplinary and department action against the derelict officers Sh. Atique Ahmad, CVO. Sh.Rajesh Kumar, EE (B) Sh. Mandir and other concerned officers who have avoided to take action under DMC Act and against the accused persons under section 466A within the prescribed period defined under section 471 DMC Act and did not seal building under section 345A DMC Act.”

3. It is stated in the Writ Petition that unauthorised construction for commercial purpose is being carried out on properties No. D-246 and D-248, Dilshad Garden. It is also stated that there is a third property, namely, 245, Dilshad Garden, where also unauthorized construction is going on.

4. Status Report has been filed by the Corporation. It is stated in the Status Report that property No.D-246, Dilshad Garden, has been booked for unauthorised construction and a demolition order has also been passed on 25.04.2016 but the owners/occupiers have filed an appeal against the demolition order before the Appellate Tribunal Municipal Corporation of Delhi (*hereinafter referred to as ‘the Appellate Tribunal’*) and the Appellate Tribunal has passed an interim order in favour of the owners/occupiers. It is further stated in the Status Report that properties No.D-245 and D-248 near Mangal Bazar, Dilsahd Garden, Delhi do not exist and are not traceable.

5. After going through the material on record, the learned Single Judge, *vide* Order dated 27.11.2019, disposed of the Writ Petition by holding that the Respondents are taking steps to deal with the unauthorized construction on the properties in question. Learned Single Judge held that property No.D-246 has already been booked for unauthorised construction and a demolition order has also been passed which is the subject matter of appeal pending before the Appellate Tribunal and the Respondents were directed to abide by the directions as may be passed in the said appeal. As far as properties No. D-245 and D-248, Mangal Bazar, Dilshad Garden, Delhi, are concerned, the learned Single Judge gave liberty to the Appellant herein to make a representation to the Corporation by giving full details of the location of the said two properties and further directed the Corporation that in case such a representation is made, the Corporation shall deal with the same in accordance with law and take appropriate steps.

6. The Appellant filed a Review Petition, being Review Petition No.27/2020 challenging the Order dated 27.11.2019 by contending that the Corporation misled this Court by stating that properties bearing No. D-245 and 248, Dilshad Garden near Mangal Bazar, Dilshad Garden, Delhi do not exist and are not traceable. It is stated in the Review Petition that RTI information reveals that there are two properties, i.e. D-246 and 246 (part). It has been contended that properties No. D-245 and D-248 pertains to a part of the property No.D-246.

7. The Review Petition has been disposed of *vide* Order dated 08.12.2022. A perusal of the Order dated 08.12.2022 shows that when a specific query was put to the Appellant herein as to whether he has approached the concerned authorities by filing a representation regarding

properties No. D-245 and D-248, Mangal Bazar, Dilshad Garden, Delhi, the answer was in negative.

8. The Apex Court has time and again brought out that the scope of the review is narrow and is confined only to errors apparent on the face of record. There are definitive limits to the exercise of power of review, and the Supreme Court has reiterated the circumstances wherein the review of a judgement or an order can be sought. In Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.), (1995) 1 SCC 170, the Apex Court had observed as under:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the

order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

(emphasis supplied)

9. No error apparent on the face of record has been brought out by the Appellant in the Review Petition and, therefore, the learned Single Judge was justified in dismissing the Review Petition. A perusal of the Review Petition also shows that the Petitioner is a habitual litigant and is guilty of filing frivolous petitions. It has also been observed in the said Order that FIR No. 1110, under Section 384 IPC, has been registered against the Appellant for extortion at P.S. Bhajanpura, Delhi. This fact has not been denied by the Appellant.

10. The fact remains that property No.246 has already been booked by the Corporation and demolition orders have been passed and an appeal has been filed by the owners of the said property against the demolition order which is pending before the Appellate Tribunal. The Appellant herein has not filed any representation as has been permitted by the learned Single Judge *vide* Order dated 27.11.2019. No material has been placed on record by the Appellant to show that there is an error apparent on the face of record. The instant Appeal is nothing but an abuse of the process of law. Looking at the fact that the Appellant herein has already been saddled with the cost of Rs.20,000/- which was imposed by the learned Single Judge while

dismissing the Review Petition, this Court is not inclined to impose further costs.

11. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 23, 2023

Rahul

