

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

W.P.(C) 14993/2021, CM APPL. 47314/2021

Date of Decision: 28.04.2023

IN THE MATTER OF:

ANITA RAJ

..... Petitioner

Through: Mr. Ravi Kapoor, Mr. Rishav
Ambastha and Ms. Shreya
Kunwar, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Tushar Sannu, Standing
Counsel with Mr. Azad Bansala,
Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Article 226/227 of the Constitution of India, the petitioner seeks to assail the order dated 09.12.2021 passed by the District Judge in Appeal No. 1/2021 wherein the appeal filed by the Respondent No. 1 was allowed and the final order/judgment dated 25.06.2021 passed by the ATMCD in Appeal No. 7812021 titled R.K. Sharma v. SDMC was set aside.

2. Mr. Ravi Kapoor, learned counsel for the petitioner contended that the impugned order was passed without considering that the show cause

notice issued by respondent lacked material details of the alleged unauthorised construction.

3. Mr. Tushar Sannu, learned Standing Counsel for the respondent, on the other hand, has contested the present petition by contending that the petitioner is guilty of delaying the proceedings. He submits that earlier the petitioner had approached this Court by way of W.P.(C) 1469/2019 which was disposed of vide order dated 13.02.2019. Petitioner challenged said order before the Division Bench by way of LPA No. 162/2019 which was also disposed of vide order dated 30.07.2019.

4. A perusal of records would show that the petitioner has claimed that her late husband *R.K. Sharma* was the owner of property *bearing No. B-1/1140/Duplex, Vasant Kunj, New Delhi* and after his death, the petitioner acquired the title. The records further reveal that noticing the unauthorised construction in the shape of deviation against the sanctioned building plan, the respondent booked the same. It was alleged that the petitioner had extended the room as well as balcony in the subject property. A show cause notice, and vacation notice under Section 349 of the DMC Act was also issued to the petitioner. Later, Public Grievance Commission (PGC) vide its order dated 15.11.2017, 07.02.2018 and 11.04.2018 directed the respondent to take appropriate action against the unauthorised construction existing in the subject property. The said orders came to be challenged by the petitioner before this Court by way of W.P.(C) 1469/2019. A Coordinate Bench of this Court while noting that the proceedings were pending before the Appellate Tribunal, MCD, dismissed the petition. A challenge made before the Division Bench also came to be dismissed. Apparently, in the

proceedings before the Appellate Tribunal, the show cause notice was set aside whereafter, a second show cause notice was given to the petitioner. The Appellate Tribunal vide order dated 25.06.2021 remanded back the matter to the respondent with observation that both the show cause notices dated 22.12.2020 and earlier show cause notice dated 19.09.2017 were verbatim. The aforesaid order came to be challenged before the learned District Judge. In the impugned order, learned District Judge noted the categorical submissions of the respondent that show cause notice specifies that the petitioner had extended a room and a balcony. The only contention raised on behalf of the petitioner was that specific measurements were not given.

5. Noting the aforesaid, learned District Judge directed the Appellate Tribunal to consider the case on its own merits. Even in the present petition, the respondent has contended that no further details can be provided as the show cause notice already issued clearly specifies the details of unauthorised construction. It is stated that the extension has been carried in excess of standard building plan of DDA thus amounting to encroachment on public land.

6. In the considered opinion of this Court, in lights of the stand taken by the MCD, learned District Judge has rightly directed the ATMCD to decide the case on merits on the basis of pleas raised by both the parties. In view of the aforesaid, I find no ground to interfere with the impugned order. Consequently, the petition is dismissed alongwith miscellaneous application.

7. The parties are directed to appear before the ATMCD on 15.05.2023 at the first instance.

8. The Registry shall communicate a copy of this order to the Appellate Tribunal, MCD.

9. Considering that the show cause notices are of the year 2017, ATMCD is requested to expedite the appeal and disposed of the same within two months from today. It is clarified that the appeal shall be considered on its own merits without being influenced in any manner by the present order.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 28, 2023
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