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

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Judgment delivered on: 19.04.2023

+ CM(M) 1440/2022 & CM APPL. 55232/2022

MUNICIPAL CORPORATION OF DELHI Petitioner

versus

M/S INDIAN POTASH LIMITED ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Pritish Sabharwal, Adv.

For the Respondent : Mr. Rajshekhar Rao, Sr. Adv. with Mr. Manish Kaushik, Mr. Mishal Johari , Ms. Suigdha and Ms. Prachi Dubey, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 29.11.2022 passed by the learned Principle District & Sessions Judge in MCD Appeal No. 01/2022 titled *Municipal Corporation of Delhi Vs. M/S Indian Potash Limited* whereby the appeal of the petitioner was dismissed on the ground of delay in filing the said appeal.

2. The Appellate Court vide the impugned judgment has in a detailed manner examined the delay which has occurred in filing the appeal before it and has been able to examine /scrutinize the movement

of the file from the time the ATMCD had passed its judgment in the appeal filed by the respondent allowing the said appeal on 19.01.2022.

3. It is a settled law that at the time of examining, mentioning the appeal in case there is any application for condonation of delay, the Appellate Court is mandated to first consider the merits of the condonation of delay application before even touching upon the merits of the appeal itself.

4. In the present case nothing has been brought before this Court to show that the observations made by the learned Appellate Court regarding the delay which has occasioned, on account of lack of diligence in prosecuting its appeal before the learned Appellate Court while filing the aforesaid appeal.

5. This Court under Article 227 of the Constitution of India is only to consider if the court below has acted with any material irregularity or committed any judicial impropriety while passing the orders.

6. The Appellate Court in paras 7 to 18 has examined the delay which had occasioned no doubt it has also castigated the delay which had occasioned due to the negligence of the officers involved, however, that would not be subject matter to be looked into or considered by this Court under its supervisory jurisdiction.

7. It would be apposite to extract the paras 12 to para 18 of the impugned order which are as under:-

“12. There is no explanation at all as to why the

appellant applicant remained silent from 19.01.2022 (when the impugned order was passed) to 04.02.2022 (when certified copy of the impugned order was applied and received on the same date). I am not oblivious that since the limitation period to file the appeal survived from 19.01.2022 to 18.02.2022, silence and inaction on the part of the Appellant applicant during this period cannot be fatal to the application. But this silence is certainly an indicator of lethargy on the part of appellant applicant.

13. Having received the certified copy of the impugned order on 04.02.2022, the appellant applicant gained clear knowledge that appeal could be filed by 18.02.2022 only. But as mentioned above, it is only by way of noting dated 07.03.2022, i.e. even subsequent to expiry of limitation period, that the file was sent to Law Department and municipal Counsel for legal opinion. There is complete silence as to what happened during the period of more than a month from 04.02.2022 to 07.03.2022.

14. Even thereafter, from the desk of Executive Engineer to the desk of Superintending Engineer, the file took two days to travel, for which there is no explanation. It is not that file moved through different hands. The copies of notings clearly show that the file moved only in three hands, from Assistant Engineer to Executive Engineer to Superintending Engineer.

15. As further reflected from copies of notings, the file reached the office of Law Department on 10.03.2022 and for one page opinion, the Consultant (Law) took four days and delivered the same on 14.03.2022.

16. On 17.03.2022, the file was received back by the Assistant Engineer, after which were three holidays. But completely ignoring that the matter had already got delayed, the period from 21.03.2022 to 12.04.2022 was spent on preparing the draft appeal. For this long period also, there is no satisfactory explanation.

17. Thereafter, despite the draft appeal being ready on 12.04.2022, it was filed on 26.04.2022. Once again there is complete silence to explain inaction on the part of appellant applicant during this period. Admittedly, it is nobody's case that learned counsel for appellant applicant was engaged subsequent to 12.04.2022, which took time. According to the noting dated 12.04.2022, learned counsel for appellant applicant had already been engaged by that day. There is also no disclosure from the appellant applicant as to when file of the case was finally delivered to learned counsel for appellant applicant for being filed.

18. Further, from para 7 of the affidavit of the Executive Engineer, it appears that the Consultant (Law) is not presently working with the appellant corporation. It is not clear as to whether the Consultant (Law) is a regular post with the appellant corporation or it was some private consultant engaged by the appellant and if the latter, no particulars of the same have been disclosed. That would be relevant since according to the appellant applicant, major part of delay was in obtaining the legal opinion of the Consultant (Law)."

8. On considering the facts as observed by the First Appellate Court, this Court is of the opinion that the Appellate Court has neither committed any material irregularity or judicial impropriety while passing the impugned order keeping in view the manner in which the petitioner has delayed exercising its rights to impugn the order passed by the ATMCD.

9. Even otherwise, on merits Mr. Rajshekhar Rao, learned senior counsel appearing for the respondent has filed on the record of this Court a sanctioned plan in respect of another property on the same

stretch concerning plot No.10-B, Rajender Park, Shankar Road, New Delhi whereby on a similarly situated plot, the Municipal Corporation of Delhi had sanctioned the plan. However, in the case of the respondent for the reason that there was a proposed road widening vide notification dated 31.08.1994 on the same stretch of road, the respondent requests for sanctioning the plan was rejected.

10. In this regard, it would also be relevant to consider the minutes of the building plan committee held on 23.10.2016 placed at page 36 in relation to Item No.15/2016 relating to reason for refusal of sanctioning of the building plan in respect of the respondent herein which is reproduced hereunder:-

Item No. 15/2016

Subject:	Application for Action of building plan at 13-B, Rajender Park, Shankar Road, New Delhi.
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“The case was discussed at length and it was decided that as per clarification/ reply from DDA, the ROW of Shankar Road in the light of MoUD/DDA's Notification dated 31.08.1994 and letter of Joint Director, DDA dated 10.02. 1997 has been reduced from 61mtr. to existing available width for the stretch mentioned in the notification. For the stretch beyond that where the plot u / r falls, ROW as per the alignment plan available will prevail. Since, most of the plot area is coming under road widening in accordance with the alignment plan, the instant proposal cannot be processed for the sanction of Bldg. Plan. Therefore , the instant case is rejected .”

11. The merits of the aforesaid minutes of the building plan committee may not detain this Court inasmuch as the ATMCD had already rendered its judgment which was sought to be challenged by the petitioner before the District & Sessions Judge in the appeal which was rejected on the ground of limitation.

12. It is trite that under the supervisory jurisdiction, the High Court is not mandated to correct the errors and findings of facts and only the procedural irregularity alone are the once which are to be considered. Having regard thereto, this Court does not find any instance of such material irregularity or judicial impropriety while the Appellate Court had passed its impugned order.

The opinion of this court is further strengthened by the mandate of the observations made by the Hon'ble Supreme Court in "Sadhana Lodh Vs. National Insurance Co. Ltd. & Anr." reported in (2003) 3 SCC 524, wherein it had held that :-

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the deciding."

13. In view of the above, the petition is without any merits and is dismissed with no order as to costs.

14. It goes without saying that the directions passed by the ATMCD will be given effect within four weeks from today.

15. However, the observations made by the learned Appellate Court against the officers are expunged without diluting the reasons for dismissal of the appeal.

APRIL 19, 2023/ms

TUSHAR RAO GEDELA, J .

